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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 Parts 713 and 722

Farm Marketing Quotas, Acreage Allotments, and Production; Feed Grain, Rice, Upland Cotton, and Wheat; Cotton

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations at 7 CFR Part 713 to incorporate the provisions of the Extra Long Staple Cotton Act of 1983 and to remove obsolete regulations at 7 CFR Part 722 relating to Extra Long Staple (ELS) cotton acreage allotments and marketing quotas. The regulations at 7 CFR Part 713 are also amended to provide that producers may participate in the commodity programs authorized by the regulations only by contracting with CCC to comply with the requirements of these programs. In addition, the regulations have been amended to set forth additional requirements with respect to acreage which is eligible to be designated as acreage conservation reserve (ACR) acreage. The changes made in this interim rule will improve the effectiveness of the programs authorized by the regulations found at 7 CFR Part 713 in obtaining conservation benefits and in reducing production of program crops.

EFFECTIVE DATE: September 27, 1984. Comments must be received on or before November 26, 1984 in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: William Harshaw, ASCS, P.O. Box 2145, Washington, D.C. 20013, (202) 382-9878.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 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 programs to which this interim 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 interim 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.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment.

Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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.

Statutory Background—ELS Cotton

The Extra Long Staple Cotton Act of 1983 (the "Act") (Pub. L. 98-88) repealed section 347 of the Agricultural Adjustment Act of 1938, as amended, and section 101(f) of the Agricultural Act of 1949, as amended, effective beginning with the 1984 crop of ELS cotton. In addition, the Act made inapplicable, effective beginning with the 1984 crop of ELS cotton, those sections of the Agricultural Adjustment Act of 1938, as amended, which authorize a program of marketing quotas and acreage allotments for ELS cotton. The Act amended section 103 of the Agricultural Act of 1949 to provide for the following beginning with the 1984 crop of ELS cotton:

(1) *Definition of ELS cotton.* The Act provides the same definition as was previously incorporated in section 347 of the Agricultural Adjustment Act of 1938, as amended.

(2) *Loans.* The Act provides for making available nonrecourse loans to producers of ELS cotton. The loan rate is determined by the Secretary and shall be not less than 50 percent in excess of the loan rate for Strict Low Middling one and one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States.

(3) *Deficiency (target price) payments.* The Act provides that deficiency payments shall be made available to producers of ELS cotton, computed by multiplying the payment rate by the farm program acreage for the crop by the farm program payment yield for ELS cotton. The payment rate is the amount by which the higher of the average market price received by producers during the first eight months of the marketing year for such crop or the national average price support loan level is less than the established (target) price. The established (target) price shall be 120 percent of the loan rate.

(4) *Advance deficiency payments.* If an acreage limitation program is established for a crop of ELS cotton and it is likely that deficiency payments will be made for such crop, the Act authorizes the Secretary to make advance deficiency payments available to producers who participate in the program.

(5) *National program acreage and program allocation factor.* The Act provides that the Secretary shall establish and announce by November 1 of each ELS cotton crop year a national program acreage for the next year's crop which shall be the number of harvested acres the Secretary determines will be utilized domestically and for export during the marketing year for such crop. The Secretary is also required to determine a program allocation factor for each crop year. In general, such factor is determined by dividing the

national program acreage by the number of acres that the Secretary estimates will be harvested for such crop year. The Act also provides that the individual farm program acreage shall be determined by multiplying the allocation factor by the acreage of the crop planted for harvest on the farm. However, the national program acreage, the allocation factor, and the method of determining individual farm program acreages are not applicable if an acreage limitation program is in effect for the crop year.

(6) *Farm program payment yield.* The Act provides that the yield established for the farm shall be determined on the basis of the actual yields per harvested acre for the 3 preceding years. Adjustments shall be made for abnormal yields caused by natural disasters or other conditions beyond the control of the producer.

(7) *Acreage limitation (reduction) program.* The Act authorizes the Secretary to establish an acreage limitation program for a crop year if the Secretary determines that the total supply of ELS cotton will be excessive in the absence of such a program. The limitation shall be achieved by applying a uniform percentage reduction to the ELS cotton acreage base established for the farm. Producers who knowingly produce ELS cotton in excess of the permitted acreage are ineligible for loans and payments with respect to that farm. The ELS cotton acreage base established for the farm is the average of the acreage planted to ELS cotton for the 3 crop years immediately preceding the year prior to the current crop year, with adjustments to reflect established crop-rotation practices and to achieve a fair and equitable base. Further, a reserve is established for the 1984, 1985 and 1986 crops equal to 5 percent of the total acreage bases for those years. The reserve is to be used for making adjustments of farm acreage bases to correct inequities, prevent hardship, and to establish acreage bases on farms on which no ELS cotton was grown during the preceding four years. The acreage which is reduced under the acreage limitation program is required to be devoted to conservation uses. Under this program, the individual farm program acreage is the acreage on the farm planted to ELS cotton within the permitted acreage.

(8) *Land diversion program.* The Act authorizes the Secretary to make land diversion payments to ELS cotton producers if a land diversion program is determined to be necessary in order to adjust the total national acreage of a crop of ELS cotton to desirable goals. The acreage diverted must be devoted to conservation uses. The extent of the diversion and the manner in which diversion contracts are made shall be determined by the Secretary.

(9) *Acreage devoted to conservation uses.* The Act generally authorizes the Secretary to issue regulations with respect to the conservation uses to which reduced or diverted acreage must be devoted. These regulations are required to assure that the acreage is protected from weeds and from wind and water erosion. The Secretary may permit the acreage to be devoted to certain crops and uses if the production is needed to provide an adequate supply of the commodity, is not likely to increase the cost of the price support program, and will not affect farm income adversely. This acreage may also be devoted to wildlife food plots or wildlife habitat. The Secretary may pay a share of the cost of these practices or make additional payments if the producer agrees to permit public access to the land for hunting, fishing, trapping, and hiking.

(10) *Cross compliance.* The Act prohibits any requirement that a producer comply with the provisions of the program for another commodity as a prerequisite to be eligible for benefits for ELS cotton.

(11) *Payment limitation.* The Agriculture and Food Act of 1981 (the "1981 Act") provides that the total amount of payments which a person shall be entitled to receive annually under one or more of the feed grain, rice, upland cotton, and wheat programs shall not exceed $50,000. The Act amends the 1981 Act to include ELS cotton payments.

Changes for ELS Cotton

In most respects, the provisions of the Act as summarized above are similar to the satutory provisions which are applicable to feed grain, rice, upland cotton, and wheat. Accordingly, this interim rule amends the applicable sections of 7 CFR Part 713 to include ELS cotton on the same basis as the other commodities, except as follows:

(1) The authority for an ELS cotton program provided by the Act does not expire with the 1985 crop, unlike the statutory authority which authorizes feed grain, rice, upland cotton, and wheat programs only for the 4 years, 1982–1985. Accordingly, this interim rule amends the title of the subpart of 7 CFR Part 713 and provides that these regulations shall be applicable for 1984 and subsequent crops.

(2) This interim rule amends § 713.3 to provide for a definition of ELS cotton which is similar to the definition previoulsy found at 7 CFR Part 722.

(3) The Act specifies that ELS cotton acreage base established for a farm shall be the average of the acreage of ELS cotton planted for harvest on such farm for the 3 crop years immediately preceding the year prior to the current crop year. It also provides for establishment of an acreage base reserve for the 1984 through 1986 crops equal to 5 percent of the total acreage base acreage which shall be used to correct inequities and prevent hardship and to establish ELS cotton acreage bases for farms on which no ELS cotton was planted during the preceding 4 years. Section 713.7 has been revised to include these special requirements for ELS cotton.

Use of a Contract Instead of an Intention to Participate

In recent years, producers who wished to participate in the acreage reduction or similar production adjustment programs for one or more commodities were required to sign an intention to participate during a signup period specified by the Secretary. The signup period usually ended in March or April. The intention to participate was not, however, binding upon the producers. Producers who desired to withdraw from the program could do so before the final date for reporting crop acreages to the county ASCS office which was normally in June or July. There were no adverse consequences for withdrawing from the program, other than loss of eligibility for program benefits (i.e., price support loans and purchases, and applicable deficiency, diversion or disaster payments) for the commodity for the crop year.

As a result, many producers signed intentions to participate without committing themselves to comply with program requirements. Producers often would plan to plant in excess of the permitted acreage for the farm. If a disaster or other condition beyond the producer's control occurred between the time producer signed the intention and the final date for reporting crop acreages and the production expected from the producer's farm was thereby reduced, the producer would comply with program requirements by destroying the necessary amount of the disaster-affected acreage. If conditions were good, the producer would withdraw from the program and harvest the entire acreage. By signing an intention to participate, a producer would also be protected against declines in prices. If prices increased between the time the producer signed the intention to

participate and the final date for reporting crop acreages, the producer would withdraw from the program. If prices declined, the prospect of higher deficiency payments would lead producers to comply with requirements of the program.

This use of the production adjustment program in the manner described tended to impair its effectiveness. The program offers participating producers program benefits in return for a reduction in the acreage of the commodity that is planted for harvest. When a producer is able to participate because adverse weather conditions have reduced production, program benefits are paid and the Federal government incurs expenses as compensation for a reduction in production which would have been achieved even if the program was not available. Not only does such "accidental compliance" impair the cost-effectiveness of the program, it also impairs the credibility of the program among producers and the general public.

As an example of the magnitude of this problem, intentions to participate in the 1982 acreage reduction program for corn had been signed by producers for 75 percent of the base acreage. After the deadline for filing acreage reports, producers were in compliance with the 1982 program requirements for only 29 percent of the base acreage.

While an intention to participate was used for the 1983 acreage reduction and cash land diversion programs, a different approach was employed for the Payment-In-Kind (PIK) Program. Under the PIK Program, producers entered into a contract which was effective as of March 18, 1983. This meant that producers were committed to participate in the PIK Program some 3 to 4 months earlier than would have been the case if the intention to participate had been used. The PIK contract provided for the assessment of liquidated damages if the producer failed to comply with the contract. While final figures are not available, only a small number of producers withdrew from the PIK Program. Because of this favorable experience with the use of contracts in the 1983 PIK Program, notices of proposed determinations were published with respect to the 1984 price support and production adjustment programs for the commodity programs proposing the use of binding contracts for those programs. See 48 FR 20451, 48 FR 29025, 48 FR 35678, 48 FR 43056 and 48 FR 50589. On August 9, September 29, October 28, and December 16, 1983, the Secretary announced the details of those programs, including the use of binding contracts. See also 49 FR 1256, 49 FR 4404, 49 FR 7918, and 49 FR 9592 for a further discussion of this issue.

CCC will offer to enter into contracts with the operator and other producers on a farm for a specific crop year and commodity. The contract will require the operator and other producers to comply with the provisions of the commodity program as announced by the Secretary. The contract will require CCC to make program benefits for the commodity available to the operator and other producers if there is compliance with the contract. The contract will include a provision for liquidated damages if there is a failure to comply with the terms and conditions of the contract. To be eligible to offer to enter into a contract with CCC, the producer must be a person who either shares in the risk of producing the program commodity in the current year (or shares in the proceeds therefrom) on the farm for which the contract is submitted or would have shared in the commodity if it had been produced.

Accordingly, this interim rule adds § 713.49 and revises §§ 713.6, 713.50, and 713.105 in order to reorganize and revise requirements with respect to the use of contracts for participation in the commodity programs for the 1984 and subsequent crops.

Conservation Use Acreage and the Acreage Conservation Preserve

Experience with the 1983 acreage reduction, cash land diversion and PIK programs revealed some areas where improvements could be made in order to achieve greater conservation benefits in 1984 and subsequent years. In order to achieve this objective, this interim rule makes the following changes in 7 CFR Part 713:

(1) Under the provisions of the 1982 and 1983 programs, land devoted to approved conservation uses was designated as "conservation use acreage" (CUA). To emphasize the importance of conservation, acreage devoted to conservation uses in 1984 and subsequent years will be designated as "acreage conservation reserve" (ACR).

(2) Section 713.61 permitted land which was not cropped in the last 3 years to be designated as ACR acreage provided an equal acreage of eligible cropland was seeded to a replacement hay crop. Experience in 1983 has shown that producers normally see a replacement acreage before tilling old grassland. The provisions with respect to when the replacement crop must be seeded are amended by this interim rule to conform to this practice. Producers are also permitted to designate the replacement acreage as ACR acreage.

(3) There was extensive flooding in many parts of the country in 1983 which occurred after the provisions of the 1983 acreage reduction and cash diversion programs were announced. It became apparent that some producers would designate flooded land as ACR acreage, even though it would be impossible for the land to be planted to a crop for harvest in 1983. This was permissible under the announced rules for ACR acreage. However, the requirements for ACR acreage designated under the 1983 Payment-in-Kind Program prohibited flooded land from being designated if the land was Federally-owned or subject to a flooding easement. A provision of the Supplemental Appropriation Act for FY 1983 (Pub. L. 98–63, approved July 30, 1983) resulted in a change of this requirement so that the same requirements applied to all acreage designated as ACR in 1983, regardless of the program under which it was designated.

This interim rule adds a provision to § 713.61(c) which limits the eligibility of land which is flooded or under water. The provision will be effective for 1984 and subsequent years. The Department does not intend, however, to charge liquidated damages for a violation of the contract if flooding prevents a producer from having sufficient eligible land available for designation as ACR acreage. In such cases, contract requirements and benefits would be reduced or producers would be released from their contractual obligations.

(4) Section 713.61 has been rewritten for greater clarity;

(5) The notices of determination for the 1984 Wheat and Feed Grain Programs published in the **Federal Register** on January 10, 1984 (49 FR 1256) and February 6, 1984 (49 FR 4404), respectively, included a new requirement for acreage which is in a summer fallow rotation. In order to be eligible to be designated as ACR acreage, such acreage was required to be land that would have been planted in 1984 to small grains or row crops in the absence of the programs.

As signup for the 1984 programs progressed, it became evident that implementing this requirement would have reduced participation to the point that the 1984 programs would be ineffective. Therefore, the Secretary announced on February 18, 1984 that this requirement with respect to summer fallow rotation was being changed so that the requirements would be the same as those applicable to the previous acreage reduction programs. In view of this announcement, § 713.61 is amended to require that land which is in a

summer fallow rotation must have been devoted to small grains, row crops, or other crops planted annually in 1 of the 2 immediately preceding years, or considered as having been so cropped.

(6) This interim rule amends § 713.62 to include a general requirement that an approved cover crop or conservation practice shall be established on acreage designated as ACR acreage by the end of the spring planting season and shall be maintained through the end of the calendar year. While this requirement has been applicable under previous production adjustment programs, it has been determined that a revision of this provision in more specificity is desirable.

(7) This interim rule amends § 713.72 to provide that land devoted to small grains may be designated as ACR acreage and still be harvested or grazed. This provision shall apply to specific small grains growing before a specific date as announced by the Secretary. The Agricultural Programs Adjustment Act of 1984 (Pub. L. 98–258, approved April 10, 1984) amended the Agricultural Act of 1949 to provide that this provision shall be implemented for wheat for the 1984 crop year. Section 713.72, as amended, provides that such a provision may be implemented with respect to subsequent production adjustment programs.

Mixtures. This interim rule amends section 713.4 to provide that mixtures of small grains shall be considered to be the crop that is predominant in the mixture and will eliminate on difference between small grain producers, e.g., oats and wheat, and coarse grain producers, e.g., corn, when acreage is planted to more than one commodity during the same crop year. For example, currently a wheat producer whose acreage failed may replant the acreage to oats. If the producer has complied with the requirements of § 713.4(b), the acreage would be considered as only planted to wheat. The amendment to this section will provide that, if the producer complies with § 713.4(b), the acreage would be considered as planted to wheat and to oats in the same crop year. Since many of the changes in the regulations which are made by this interim rule are technical in nature and not significant and since producers are already planting their crops and must be aware of the revised program provisions, it has been determined that this interim rule shall become effective on September 27, 1984. However, comments from interested persons are requested. Comments must be received by November 26, 1984 in order to be assured of consideration. After the comments have been received and reviewed, a final rule will be published setting forth any changes which may be necessary in these regulations.

List of Subjects in 7 CFR Part 713

Acreage allotments, Cotton, Feed grains, Price support programs, Wheat, Rice

Interim Rule

Accordingly, the regulations at Chapter VII of Title 7 of the Code of Federal Regulations are amended by:

PART 722—[REMOVED]

A. Removing Part 722 from Subchapter B.

B. Amending Part 713 as follows:

1. The title of the part and subpart are revised to read as follows:

PART 713—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, AND WHEAT

Subpart—Feed Grain, Rice, Cotton, and Wheat Programs for 1984 and Subsequent Crop Years.

2. The authority citation for Part 713 is revised to read as follows:

Authority: Secs. 101(i), 103(g), 103(h), 105B, 107B, 107C, 109, 113, 401, 403, 1001, 95 Stat. 1242, as amended, 95 Stat. 1234, as amended, 97 Stat. 494, 95 Stat. 1227, as amended, 95 Stat. 1221, as amended, 96 Stat. 766, 91 Stat. 950, as amended, 94 Stat. 2573, as amended, 63 Stat. 1054, as amended, 91 Stat. 950, as amended; 7 U.S.C. 1441(i), 1444(g), 1444(h), 1444d, 1445b–1, 1445b–2, 1445d, 1445h, 1421, 1423, 1309.

3. Section 713.1 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 713.1 Applicability.

(a) The regulations in this subpart, which are applicable to the feed grain, rice, cotton, and wheat programs for the 1984 and subsequent year crops, set forth the terms and conditions under which producers of these commodities who enter into contracts with Commodity Credit Corporation (CCC) and comply with the contracts and the provisions of this subpart may qualify for program benefits.

(b) In accordance with section 1101 of the Agriculture and Food Act of 1981, as amended, and the regulations in Part 795 of this Chapter, as amended, the total amount of:

(1) Payments (excluding disaster payments) which a person shall be entitled to receive annually under the feed grain, rice, upland and ELS cotton, and wheat programs shall not exceed $50,000.

* * * * *

4. Section 713.3 is amended by redesignating the existing paragraphs (g) through (m) as paragraphs (h) through (n), adding a new paragraph (g), and revising newly redesignated paragraph (o) to read as follows:

§ 713.3 Definitions.

* * * * *

(g) *Extra Long Staple (ELS) cotton* means any of the following varieties of cotton which is ginned on a roller gin and is grown in counties specified by the Secretary: American-Pima; Sea Island; Sealand; all other varieties of the Bardadense species of cotton and any hybrid thereof; and any other cotton in which one or more of these varieties predominate.

* * * * *

(o) *Upland cotton* means planted cotton and stub cotton other than ELS cotton.

5. 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 that when corn or grain sorghum is mixed with another crop in the same row, the mixture shall be cosidered to be corn or grain sorghum, as applicable.

6. Section 713.6 is amended by revising the introductory text of paragraph (b) and adding paragraph (d) to read as follows:

§ 713.6 Farm yields.

* * * * *

(b) *Cotton and rice yields.* The yield in pounds per acre for the current year shall be the average of the actual yields per harvested acre for the farm for the 3 preceding years, adjusted as follows:

* * * * *

(d) *Reports of production and supporting evidence.* A report of production is required to determine the actual yield per acre in accordance with paragraphs (a)(2) and (b) of this section. Such report shall be made in accordance with instructions issued by the Deputy Administrator and on forms prescribed by the Deputy Administrator. When production has been disposed of through commercial channels, the county committee may require the operator or other producers to furnish documentary evidence in order to verify the information provided on the report. Acceptable evidence may also include

such items as the original or a copy of commercial receipts, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries. The county committee may also verify the evidence submitted by the producer with the warehouse, gin, or other entity which received production. If the evidence is not furnished or the information provided on the report cannot be verified, the county committee may disapprove the report of production.

7. Section 713.7 is revised to read as follows:

§ 713.7 Crop acreage bases.

(a) An acreage base shall be established for a farm for each year beginning with 1984 for barley, corn, grain sorghum, oats, rice, upland and ELS cotton, and wheat.

(b) The acreage base established for a crop of barley, corn, grain sorghum, oats, rice, upland cotton, or wheat for a farm shall be the average of the planted and considered planted acreages for the crop for 1 or more years as announced by the Secretary.

(c) The acreage base established for a crop of ELS cotton on a farm shall be the average of the planted and considered planted acreages for ELS cotton for the 3 years immediately preceding the year prior to the current year.

(d) If the county committee determines that a crop is grown on a farm in a clearly established crop-rotation pattern for 2 or more years, the acreage base established for such crop will be determined by using the years in the rotation cycle that correspond to the previous year or the 2 previous years.

(e) The acreage base established for a crop of a commodity on the farm may be adjusted as follows:

(1) The operator must show, and the county committee must determine, that the acreage base previously established for a crop of a commodity on the farm is not representative of the current operator's normal operations of the farm; and

(2) The county committee may approve a recomputation of the acreage base for the crop of a commodity on the farm in an amount not to exceed the planted and considered planted acreages for the farm for 1 or more previous years in accordance with instructions issued by the Deputy Administrator.

(f) The operator of a farm may request that the acreage base for a crop of a commodity on a farm be determined in acordance with either paragraph (d) or (e) of this section. Such a request shall not increase the acreage base for such crop in the current year. The county or State committee may approve an increase in the acreage base for such crop in future years in accordance with instructions issued by the Deputy Administrator.

(g) For each of the 1984, 1985, and 1986 crops of ELS cotton, an acreage base reserve is established that shall equal 5 percent of the total of the farm acreage bases established for such crop in accordance with paragraph (h) of this section. Such reserve shall be in addition to the total of the farm acreage bases and shall be used by the county committee, after approval by and in accordance with instructions issued by the Deputy Administrator, for the purpose of adjusting the 1984, 1985, and 1986 acreage bases established for the farm to correct for inequities and prevent hardship, and for the purpose of establishing acreage bases for farms on which no ELS cotton was planted during the period 1980 through 1983. The operator shall file a written request, in such form as is prescribed by the Deputy Administrator, for an adjustment using the reserve. Such adjustments shall be in addition to and not in lieu of adjustments approved under paragraphs (e) and (f) of this section.

8. Section 713.49 is added and § 713.50 is revised to read as follows:

§ 713.49 Nature of contract.

(a) The contract shall provide that the operator and each producer on the farm shall agree to limit the acreage of the crop planted for harvest and devote an eligible acreage of land to approved conservation uses as may be required by the commodity program for the crop as announced by the Secretary and as provided for in this subpart. The contract shall provide for recording the shares for division of deficiency payments for the crop. The operator shall also agree to timely file a report of acreage on Form ASCS–578 accurately listing the ACR acreage and the planted acreage of the crop(s) planted for harvest on the farm.

(b) CCC shall agree that harvested production of the crop shall be eligible for loans and purchases in accordance with 7 CFR Part 1421 and 7 CFR Part 1427. CCC shall also agree that deficiency payments, if it is determined that a final deficiency payment will be greater than zero, and any applicable diversion payments, disaster payments, or wheat grazing and hay payments shall be made to such operator and producers.

(c) The contract shall contain such other provisions as CCC determines appropriate to carry out programs established by this subpart.

(d) The contract shall provide for the payment of liquidated damages in the event that the operator or any other producers fail to comply with their obligations under the contract. The purpose of an acreage reduction, set-aside, cash land diversion, payment-in-kind or wheat grazing and hay program is to obain a reduction of acreage from the production of the applicable crops of commodities in order to adjust the total national acreage of such commodities to desirable goals. Once a contract has been entered into between CCC and producers, the Department and other segments of the agricultural community act based upon the assumption that the contract will be fulfilled and the reduction in acreage will be obtained. The actions of CCC include budgeting and planning for programs in subsequent crop years. A producer's failure to comply with a contract undermines the basis for these actions, damages the credibility of the Department's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years to offset the effect of the increased production in the current crop year. The adverse effects on CCC of the producer's failure to comply with a contract are obvious; however, it would be impossible to compute the actual damages suffered by CCC.

§ 713.50 Contracting procedures.

(a) *Signup.* Eligible producers may offer to enter into a contract with CCC by executing a contract and submitting it to the county ASCS office not later than a date specified by the Secretary.

(b) *Producer eligibility.*

(1) The producer must be a person who shares in the risk of producing the program crop produced in the current year (or shares in the proceeds therefrom) on the farm for which the contract is submitted, or would have shared in the crop if it had been produced on such farm in the current year.

(2) A minor will be eligible to participate in the program only if one of the following conditions exists:

(i) The right of majority has been conferred on the minor by court proceedings;

(ii) A guardian has been appointed to manage the minor's property and the applicable documents are signed by the guardian; or

(iii) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

9. Section 713.61 is revised to read as follows:

§ 713.61 Eligible land.

(a) For 1984 and subsequent years, land designated as acreage conservation reserve (ACR) acreage must:

(1) Meet one of the provisions of paragraph (b) of this section, and

(2) Meet all provisions of paragraph (c) of this section.

(b) ACR acreage must be cropland that:

(1) Is not in a summer fallow rotation and was devoted to small grains, row crops, or other crops planted annually in 2 of the 3 immediately preceding years. Land that was designated as ACR acreage or conservation use acreage under a production adjustment program will be considered as planted acreage in the year designated, except that land which is designated in accordance with paragraph (b)(3) of this section and which was not devoted to small grains or row crops in the immediately preceding year or land on which water storage systems are installed may not be so designated;

(2) Is in a summer fallow rotation as shown by the past history of crops on the farm if the land was devoted to small grains, row crops, or other crops planted annually in 1 of the 2 immediately preceding years, or was considered to have been so cropped;

(3) Is currently devoted to and in at least 2 of the 3 immediately preceding years was devoted to grasses or legumes for the production of hay, seed, or pasture in rotation with small grains or row crops if the acreage devoted to such grasses or legumes and designated as ACR equals exceed acreage newly seeded to such grasses or legumes;

(i) In the summer or fall of the preceding year or seeded in the spring of the current year; and

(ii) On cropland that would have been eligible for designation as ACR acreage under paragraph (b)(1) of this section.

(4) Is devoted to perennial grasses or legumes or other vegetative cover, excluding nursery stock and orchards or vineyards, if:

(i) The land had previously been eligible to be designated as conservation use acreage of ACR acreage, as applicable, in 1982 or a subsequent year; and

(ii) Such grasses or legumes were planted either in the spring of the year in which the land was eligible to be designated as ACR acreage or in the fall of the preceding year; or

(5) Does not meet the requirements of paragraph (b)(1) of this section if the ACR 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)(1) of this section, and such cropland is designated as ACR acreage in the following order:

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

(ii) All cropland was devoted to small grains or row crops in 1 of the last 3 years; and

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

(c) Land designated as ACR acreage may not be land:

(1) That is designated:

(i) Under the Water Bank Program in accordance with 7 CFR Part 752;

(ii) Under the Great Plains Conservation Program in accordance with 7 CFR Part 631;

(iii) Or as ACR acreage for another program crop;

(2) For which a deficiency payment is or could be made for the program crop;

(3) Used as turn areas, except that these areas may be designated if both of the following apply:

(i) Minimum size requirements as specified in 7 CFR Part 718 are met; and

(ii) The county committee determines that the areas are normally planted to a crop; or

(4) That the producer does not have authority to use for program crops (e.g., highways, railroads, and other right of ways, airport buffer strips, and other similar areas); or

(5) That is flooded or under water at any time during the year unless one of the following applies:

(i) Before any flooding occurred, the land was planted or could have been planted to a crop for harvest in the current crop year;

(ii) After being flooded, such land could be planted in the current year, by no later than the final reporting date for spring-seeded crops.

10. Section 713.62 is revised to read as follows:

§ 713.62 Approved cover crops and practices.

(a) *Establishing and maintaining cover crops or practices.*

(1) An approved cover crop or practice shall be established on acreage which is designated as ACR acreage by the end of the planting season for spring-seeded crops. Such cover crop or practice shall be maintained through the end of the calendar year except as follows:

(i) The ACR acreage may be seeded in the fall to crops which are of a type that when seeded in the fall in the county in which the farm is located normally attain maturity in the next calendar year;

(ii) The ACR acreage may be tilled in the fall for spring planting and left bare only if approved in accordance with paragraph (c) of this section; and

(iii) If the ACR acreage is used for nonagricultural purposes, the cover crop or practice must be maintained through the end of the nongrazing period established for ACR acreage.

(b) *Nationally approved cover crops and practices.* The following are nationally approved cover crops and practices for ACR acreage:

(1) Annual, biennial, or perennial grasses and legumes, excluding soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(2) Barley, oats, rice, wheat, and other small grains planted and disposed in accordance with instructions issued by the Deputy Administrator.

(3) Crop residue from using "no till" or "minimum till" practices.

(c) *Locally approved cover crops.* Cover crops and practices that will protect the ACR acreage from wind and water erosion throughout the calendar year may be approved on a State or local basis as follows:

(1) The county committee, in consultation with the district conservationist of the Soil Conservation Service (SCS), may recommend the cover crop or practice. The State committee shall consult with appropriate wildlife agencies and organizations and other interested groups to determine whether additional practices that further the goals of such organizations and groups can be developed.

(2) The cover crops of practices recommended shall not include:

(i) The growing of soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(ii) Control measures which are more costly to the producer than other similar alternatives normally accepted for the area.

(iii) Control measures which are inconsistent with erosion control measures normally used on other cropland in the area.

(3) Residue and stubble of destroyed program crops may be recommended, provided that the crop residue, as opposed to regrowth, shall not be grazed after the end of the nongrazing period announced by the county committee in accordance with § 713.63(b).

(4) The State committee shall approve the cover crops or practices after obtaining the written concurrence of the SCS State Conservationist, that the

practices will sufficiently protect the land from wind and water erosion.

11. Section 713.72 is amended by revising paragraph (a) to read as follows:

§ 713.72 Provisions applicable to certain small grains.

(a) Acreage that was devoted to wheat or another small grain may be designated as ACR acreage and be harvested or grazed in accordance with the provisions of this section. This provision shall be applicable only as provided in an announcement by the Secretary.

* * * * *

12. Section 713.103 is amended by revising paragraph (a) to read as follows:

§ 713.103 General payment provisions.

(a) *Issuance.* Payment of any amount due the operator or other producers on a farm shall be made only after the producers are determined to be in compliance with the contract and these regulations.

* * * * *

13. Section 713.104 is amended by revising paragraph (a) to read as follows:

§ 713.104 Advance payments.

(a) *General.* In order to receive an advance deficiency or diversion payment authorized for a crop:

(1) The operator and other producers on a farm must:

(i) Enter into a contract with CCC to participate in the acreage limitation, set-aside, and land diversion program, if applicable, and

(ii) Request the advance payment; and

(2) The farm must not have been determined to be out of compliance with any of the requirements of the contract or the program at the time of payment.

* * * * *

14. Section 713.105 is amended by removing the introductory paragraph, redesignating existing paragraphs (a) through (c) as paragraphs (b) through (d), and adding new paragraphs (a) and (e) to read as follows:

§ 713.105 Disaster provisions.

(a) *Eligibility for disaster payments.* Except as provided in paragraph (b) of this section, prevented planting and low yield disaster payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if:

(1) Crop insurance offered in accordance with the Federal Crop Insurance Act, as amended, is not available with respect to the producer's acreage of such commodity;

(2) The operator and other producers on the farm have entered into a contract with CCC for the applicable crop of the commodity, and have been determined to be in compliance with such contract;

(3) The operator submits an Application for Disaster Credit (herein called "Form 574") in accordance with instructions issued by the Deputy Administrator;

(4) The operator submits a report of production and disposition in accordance with § 713.6(d); and

(5) The county committee determines that the operator and other producers were prevented from planting an eligible commodity or that the production of an eligible commodity on an acreage resulted in a low yield of such commodity as hereinafter described in this section because of a drought, flood, other natural disaster or other condition beyond the control of the operator or other producer.

* * * * *

(e) Disaster payments shall be made as soon as practicable after the disaster is reported, the extent of the crop loss is determined, and payment is approved.

15. Section 713.108 is amended by revising paragraph (a) and adding paragraph (d)(4) to read as follows:

§ 713.108 Deficiency payments.

(a) *Basis for payment rate.* The deficiency payment rate shall be the amount by which the established (target) price exceeds the higher of:

(1) The national average loan rate established for the crop; or

(2) The national weighted average market price received by producers for the crop during:

(i) The first 5 months of the marketing year for wheat, feed grain, and rice;

(ii) The calendar year for upland cotton; and

(iii) The first 8 months of the marketing year for ELS cotton.

* * * * *

(d) * * *

* * * * *

(4) *ELS cotton.* May 15 following the current year.

16. Section 713.109 is amended by revising paragraph (a) to read as follows:

§ 713.109 Division of program payments.

(a) *General.* Each person on a participating farm shall be given the opportunity to participate in the program for a crop in proportion to such person's interest in the program crop or the interest such person would have had if the crop had been produced. The name of such person shall be listed on the contract. Federal agencies can earn no program payments, but any shares to which such agencies would otherwise be entitled shall also be shown on the contract as though the agencies were earning them. The sum of the percentage shares of the program payment shall equal 100 percent.

* * * * *

17. Section 713.111 is amended by revising paragraph (b) to read as follows:

§ 713.111 Successors-in-interest.

* * * * *

(b) When any person who had an interest as producer of the crop or would have had an interest in the crop as a producer if the crop had been planted (herein called "predecessor") is succeeded on the farm by another producer (herein called "successor") after a contract has been executed, any payment which is due and owing shall be divided between the predecessor and successor on such basis as the predecessor, successor, and the county committee agree is fair and equitable. the contract shall be revised accordingly, and the successor shall sign the revised contract. If the predecessor and successor fail to agree on a revised contract and the predecessor has become unable to carry out the producer's responsibilities under the contract and this appendix, CCC may terminate the contract with respect to the predecessor and enter into a new contract with the successor.

18. Section 713.112 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 713.112 Misrepresentation and scheme or device.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a program determination shall not be entitled to payments under the crop program with respect to which the representation was made and shall refund to CCC all payments received by such producer with respect to such farm and such crop program and shall be liable for liquidated damages in accordance with the contract.

(b) A producer who is determined by the State committee, or the county committee with the approval of the State committee, to have knowingly (1) adopted any scheme or device which tends to defeat the purpose of the program, (2) made any fraudulent representation, or (3) misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer

with respect to the farm and shall be liable for liquidated damages in accordance with the contract.

(c) Refunds determined to be due CCC under the provisions of this section shall bear interest at the rate specified in 7 CFR Part 1403. Such interest shall accrue from the date of disbursement to the date refunded.

* * * * *

19. In addition to the amendments set forth above, 7 CFR Part 713 is amended by striking the phrase "upland cotton" and inserting in lieu thereof "upland and ELS cotton" each place the phrase appears in the following sections:

(a) 7 CFR 713.3(b)(2);
(b) 7 CFR 713.5(d);
(c) 7 CFR 713.6(b);
(d) 7 CFR 713.10(c);
(e) 7 CFR 713.50(b)(1) (two times);
(f) 7 CFR 713.50(b)(3);
(g) 7 CFR 713.55(a);
(h) 7 CFR 713.55(b);
(i) 7 CFR 713.100(a) (two times); and
(j) 7 CFR 713.101(a).

20. In addition to the amendments set forth above, 7 CFR Part 713 is amended by changing all references to the phrase "conservation use acreage" to "ACR acreage" each place it appears except the reference in § 713.61(d) as amended by this interim rule.

Signed at Washington, D.C. on September 20, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-25691 Filed 9-26-84; 8:45 am]
BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 905

[Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, Amdt. 32]

Oranges, Grapefruit, Tangerines and Tangelos Grown in Florida; Amendment of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action lowers the minimum diameter requirement for domestic shipments of Florida pink seedless grapefruit and imports of pink seedless grapefruit from 3 9/16 inches (size 48) to 3 5/16 inches (size 56). This action recognizes a change in demand conditions for smaller size pink seedless grapefruit in different market outlets and is necessary to promote the interests of growers and consumers.

EFFECTIVE DATE: September 24, 1984–August 18, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final action 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.

The amendment is issued under the marketing agreement and Order No. 905 (7 CFR Part 905), both as amended, regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida. 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 Citrus Administrative Committee, and upon other available information. It is hereby found that the regulation of Florida pink seedless grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

Florida Citrus Regulation 6 was issued on a continuing basis subject to modification, suspension, or termination upon recommendation by the committee and approval by the Secretary. The committee meets prior to and during each season to consider recommendations for modification, suspension or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines and tangelos. Prior to making any such recommendations, the committee submits to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the act.

Florida seedless grapefruit production is expected to total 35 million boxes in 1984–85 compared to 36.4 million boxes last season. However, domestic shipments of pink seedless grapefruit are expected in increase 11.5 percent from last year. The increase in anticipated fresh shipments is partly attributed to the freeze-reduced crop in Texas and the increased demand for smaller sizes of pink seedless grapefruit in certain markets, particularly Canada.

The minimum size requirements, specified herein, reflect the committee's and the Department's appraisal of the need to revise the size requirements applicable to Florida pink seedless grapefruit due to current to prospective crop and demand conditions.

Under Section 8e of the act (7 U.S.C. 608e–1), whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality or maturity requirements as those in effect for the domestically produced commodity. Thus, the size requirements for imported pink seedless grapefruit will also change to conform to the size requirements for domestic shipments of Florida pink seedless grapefruit.

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 amendment is based and the effective date necessary to effectuate the declared purposes of the act. This amendment relieves restrictions on shipments of Florida pink seedless grapefruit. Handlers have been apprised of such provisions and the effective dates.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

PART 905—[AMENDED]

Accordingly, the provisions of § 905.306 are amended by revising the following entries in Table I, paragraph (a), applicable to domestic shipments, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
•	•	•	
Grapefruit:			
Seedless, pink	Sept. 24, 1984 to Aug. 18, 1985	Improved No. 2 (External) U.S. No. 1 (Internal).	3 3/16
	On and after Aug. 19, 1985	Improved No. 2 (External) U.S. No. 1 (Internal).	3 3/16
•	•	•	

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

Dated: September 24, 1984.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-25709 Filed 9-26-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 906, 910, 911, 919, 926, 927, 929, 930, 931, and 981

Expenses and Rates of Assessment for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenditures and establishes assessment rates under Marketing Orders 906, 910, 919, 926, 927, 929, 930, 931, and 981 for the 1984–85 fiscal periods. In addition, this regulation corrects an error in the assessment rate for Florida limes (M.O. 911) for the fiscal year ending March 31, 1985. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1984–March 31, 1985 (§§ 911.223, 926.224); May 1, 1984–April 30, 1985 (§ 930.214); July 1, 1984–June 30, 1985 (§§ 919.223, 927.224, 931.219, 981.334); August 1, 1984–July 31, 1985 (§§ 906.224, 910.222); September 1, 1984–August 31, 1985 (§ 929.225).

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities because they would not measurably affect costs for the directly regulated handlers.

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions are based upon recommendations and information submitted by each committee, established under the respective marketing orders, and upon other information. It is found that the expenses and rates of assessment, as hereinafter provided, will tend to effectuate the declared policy of the Act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking, and good cause exists for not postponing the effective dates until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Each order requires that the rate of assessment for a particular fiscal period shall apply to all assessable commodities handled from the beginning of such period. To enable the committees to meet current fiscal obligations, approval of the expenses and rates of assessment is necessary without delay. It is necessary to effectuate the declared policy of the Act to make these provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Parts 906, 910, 911, 919, 926, 927, 929, 930, 931, 981

Marketing Agreements and Orders, Oranges, Grapefruit, Texas, Lemons, California and Arizona, Limes, Florida, Peaches, Colorado, Tokay Grapes, California, Pears, Washington, Oregon, and California, Cranberries, Red Tart Cherries, Almonds.

Therefore, new §§ 906.224, 910.222, 919.223, 926.224, 927.224, 929.225, 930.214, 931.219, 981.334 are added, and § 911.223 is revised to read as follows (the following sections prescribe annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

§ 906.224 Expenses.

Expenses of $144,779 by the Texas Valley Citrus Committee are authorized for the fiscal year ending July 31, 1985. Unexpended funds may be carried over as a reserve.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

§ 910.222 Expenses and assessment rate.

Expenses of $633,325 by the Lemon Administrative Committee are authorized, and an assessment rate of $0.047 per carton of lemons is established for the fiscal year ending July 31, 1985. Unexpended funds may be carried over as a reserve.

PART 911—LIMES GROWN IN FLORIDA

§ 911.223 [Amended]

§ 911.223 (49 FR 32323) is revised by changing the assessment rate "$0.14 per bushel" to "$0.15 per bushel".

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

§ 919.223 Expenses and assessment rate.

Expenses of $1,000 by the Administrative Committee are authorized, and an assessment rate of $0.01 per bushel of peaches is established for the fiscal year ending June 30, 1985.

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

§ 926.224 Expenses and assessment rate.

Expenses of $191,690 by the Industry Committee are authorized, and an assessment rate of $0.14 per 23 pound lug of grapes is established for the fiscal year ending March 31, 1985. Unexpended funds may be carried over as a reserve.

PART 927—BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

§ 927.224 Expenses and assessment rate.

Expenses of $267,500 by the Control Committee are authorized, and an assessment rate of $0.0275 per Western Standard pear box of pears is established for the fiscal year ending

June 30, 1985. Unexpended funds can be carried over as a reserve.

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

§ 929.225 Expenses and assessment rate.

Expenses of $111,805 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.035 per 100-pound barrel of cranberries is established for the fiscal year ending August 31, 1985. Unexpended funds may be carried over as a reserve.

PART 930—CHERRIES GROWN IN MICHIGAN, NEW YORK, WISCONSIN, PENNSYLVANIA, OHIO, VIRGINIA, WEST VIRGINIA, AND MARYLAND

§ 930.214 Expenses and assessment rate.

Expenses of $124,800 by the Cherry Administrative Board are authorized, and an assessment rate of $1.10 per ton of cherries delivered for processing is established for the fiscal year ending April 30, 1985. Unexpended funds can be carried over as a reserve.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

§ 931.219 Expenses and assessment rate.

Expenses of $51,102 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized and an assessment rate of $0.0175 per Western Standard pear box of pears is established for the fiscal year ending June 30, 1985. Unexpended funds may be carried over as a reserve.

PART 981—ALMONDS GROWN IN CALIFORNIA

§ 981.334 Expenses and assessment rate.

Expenses of $13,617,946 by the Almond Board of California are authorized for the crop year ending June 30, 1985. An assessment rate for that crop year payable by each handler in accordance with § 981.81 is fixed at $0.0278 per pound of almonds (kernelweight basis) less any amount credited pursuant to § 981.41 but not to exceed $0.025 per pound of almonds (kernelweight basis).

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

Dated: September 21, 1984.

Thomas R. Clark,

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

[FR Doc. 84-25454 Filed 9-26-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 928

[Hawaiian Papaya Regulation 13, Amdt. 1]

Papayas Grown in Hawaii; Grade Requirement Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment of interim final rule with request for comments.

SUMMARY: This amended interim final rule revises the current grade requirements for Hawaiian papayas to provide an immature fruit tolerance level of 5 percent rather than the 3 percent currently provided. The amendment is necessary to promote orderly marketing in the interest of producers and consumers.

DATES: To become effective September 21, 1984 Comments due: October 29, 1984.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This amended rule has been reviewed under Secretary's Memorandum 1512–1 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 signficant economic impact on a substantial number of small entities.

This amended interim final rule is issued under the marketing agreement and Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Hawaiian papayas are currently regulated by grade under § 928.313 Hawaiian Papaya Regulation 13, which became effective as an interim final rule on July 1, 1984. It was never finalized at the close of the comment period. Under this regulation Hawaiian papayas shipped out of the State are required to grade Hawaii No. 1, with a tolerance of 3 percent for immature fruit. This amendment increases such tolerance to 5 percent. The amendment is based on information submitted by the Papaya Administrative Committee established under this marketing order, and upon other available information.

The Papaya Administrative Committee recommended relaxation of the current quality requirements applicable to fresh shipments of papayas. The committee reports that such requirements are resulting in unusually high cullage of fruit. Relaxing the grade regulation is designed to mitigate the problem while assuring an adequate supply of acceptable quality fruit for consumers. The committee reports that papaya production is up sharply this year with total production and export shipments running about double those of last year. The committee estimated in its marketing policy that total papaya production in 1984 would amount to 90 million pounds, compared with 54 million in 1983, 52.2 million in 1982, 65.7 million in 1981, and 48.1 million in 1980. Shipments to export markets in the continental United States, Canada, and Japan are estimated at a record 65 million pounds, compared with 35 million in 1983, 33.3 million in 1982, 44.8 million in 1981, and 33.4 million in 1980.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective date of this amendment to the interim final rule 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 rule is based and the effective date necessary to effectuate the declared policy of the act. Shipments of Hawaiian papayas are currently in progress and this action relieves restrictions on such shipments. Hawaiian papaya handlers have been apprised of the provisions and effective date of the amendment. The amended interim final rule provides a 30-day comment period. All comments received will be considered prior to finalization of this amended rule. It is found that this rule will tend to effectuate the declared policy of the act.

List of subjects in 7 CFR Part 928

Marketing agreements and orders, Papayas, Hawaii.

PART 928—[AMENDED]

Therefore, § 928.313 (49 FR 24109, June 12, 1984) is amended by revising paragraph (a) to read as follows:

§ 928.313 Hawaiian Papaya Regulation 13, Amendment 1.

(a) On and after September 21, 1984, no handler shall ship any container of papayas to any export destination (except immature papayas handled pursuant to § 928.152) unless such papayas grade at least Hawaii No. 1: *Provided,* That not more than 5 percent shall be immature fruit: *Provided further,* That the weight requirements specified in this grade shall not apply to such shipments.

* * * * *

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

Dated: September 21, 1984.

Thomas R. Clark,

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

[FR Doc. 84-25708 Filed 9-26-84; 8:45 am]

BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

14 CFR Part 293

[ER 1388; Economic Regulations Amdt. No. 1 to Part 293 Docket 39990]

Operations by Air Taxis in Alaskan Bush Routes Pursuant to Subcontract Agreements With Certificated Air Carriers

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB eliminates the current filing requirements governing air services performed by an air taxi on an Alaska bush route under a subcontract agreement with a certificated carrier. It also terminates a proposal to require that the certificated carrier file a notice when it intends to subcontract with a different air taxi or when the incumbent air taxi intends to terminate or reduce its service on the route.

DATES: Effective: October 29, 1984. Adopted: September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Arthur Barnes, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202–673–5405.

SUPPLEMENTARY INFORMATION: Air service to small communities in Alaska (known as bush points) is often provided by small air taxis under an arrangement (subcontract agreement) with a large certificated carrier that is authorized to serve that point. These subcontract agreements are governed by 14 CFR Part 293. Part 293 was adopted to make these subcontract agreements subject to prior Board approval and to establish guidelines to be followed by the Board in deciding whether to approve them. It also established reporting requirements.

By PDR–76/EDR–431 (46 FR 46592, September 21, 1981), the Board proposed to revoke the filing requirement under Part 293 (14 CFR Part 293) and replace the required reports under that part with less burdensome ones. The Board also proposed to place subcontracts under the notice requirements of Part 323, which governs terminations and reductions in service.

Comments were filed by Alaska Airlines, Wien Air Alaska, Kodiak Western Alaska Airlines, Gifford Aviation, and the U.S. Postal Service (USPS). The airline comments were primarily concerned about the continuation of reporting requirements and the imposition of notice requirements. The USPS generally supported the proposals.

The Board has decided to revoke Part 293, and not to adopt the other proposals.

The authority for Part 293 is section 412 of the Federal Aviation Act (49 U.S.C. 1382). In 1976, when Part 293 was adopted, section 412 required air carriers to file a copy of every agreement affecting air transportation that they entered into with another carrier. Under section 412, the filing of Alaskan subcontract agreements was explicitly mandatory. The Airline Deregulation Act of 1978 (Pub. L. 95–504) amended section 412 to eliminate this requirement, making the filing of these agreements discretionary with the carriers.

Under the proposal, the Board would also have required subcontract carriers to file the revenue and traffic data provided by commuters on CAB Form 298–C. There is no longer a need for that special requirement. Almost all subcontract carriers are now either registered as commuters or certificated, and as such must file that report. For the few cases where the carrier is not filing the report, the Board can require it on an *ad hoc* basis if needed.

The Board had also proposed to require certificated carriers or their subcontractors to file the notices required by Part 323 when terminating or reducing service at communities eligible for subsidized service under section 419 of the Act. That proposal was made to address the problem of unclear responsibility for filing the notice in a subcontract arrangement. Since that time, the problem has been resolved. The Board and communities are receiving proper notice, so the Board will not make the proposed change final.

Currently, § 293.5 grants an exemption from section 408(a)(5) of the Act to Alaskan air carriers to implement their subcontract agreements. Although we are revoking Part 293, we are continuing this exemption. It will be added to § 298.11(g) of 14 CFR Part 298. The language has been changed from the proposal to reflect subsequent changes to § 298.11(g).

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Pub. L. 96–354, took effect on January 1, 1981. The Act is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, will have a "significant economic impact on a substantial number of small entities." The proposal may have had a significant economic impact on small communities in Alaska that are now or will be designated eligible points (more than 200). The benefit from the clarification of the carrier's reporting obligation, the Board's improved capability to monitor air service there, and the added assurance that the carrier providing that service is fit, willing, and able would have been beneficial. The Board has found, however, that those benefits are being achieved without the need for any additional regulation.

The need, objectives, and legal basis for this rule are described above. Possible alternatives to this rule require imposition of burdensome requirements without any increase in benefit.

The discussion above constitutes the Board's regulatory flexibility analysis of this rule under 5 U.S.C. 604. Copies of this document can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428 (202) 673–5432, by referring to the "ER" number at the top of this document.

List of Subjects in 14 CFR Part 293

Alaska, Air taxis, Antitrust, Reporting and recordkeeping requirements.

Accordingly, the Civil Aeronautics Board amends Chapter II of 14 CFR as follows:

1. The authority for Part 293 is:

Authority: Secs. 204, 401, 407, 412, 416, 1001, Pub. L. 85–726, as amended, 72 Stat. 743, 754, 766, 770, 771, 788; 49 U.S.C. 1324, 1371, 1377, 1382, 1386, 1481.

PART 293—[REMOVED AND RESERVED]

2. Part 293, *Operations by Air Taxis in Alaskan Bush Routes Pursuant to Subcontract Agreements with*

Certificated Air Carriers, is removed and reserved.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-25712 Filed 9-26-84; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 298

[Economic Regulation 1389; Amdt. No. 29; Docket No. 39990]

Classification and Exemption of Air Taxi Operators

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is moving into this part of its rules the exemption of Alaskan bush route subcontract agreements from the approval requirement for air carrier control relationships. The exemption had been in a part of the rules that have been revoked. The change is at the CAB's initiative.

DATES: *Effective:* October 27, 1984. *Adopted:* September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Arthur Barnes, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5405.

SUPPLEMENTARY INFORMATION: The reasons for this change are fully stated in ER-1388, issued contemporaneously.[1]

List of Subjects in 14 CFR Part 298

Air taxis, Alaska, Antitrust, Consumer protection, Insurance and reporting requirements.

PART 298—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 298, *Classification and Exemption of Air Taxi Operators*, as follows:

1. The authority for Part 298 is:

Authority: Secs. 101(3), 204, 401, 404, 407, 416, 418, 419, Pub. L. 85-726, as amended, 72 Stat. 737, 743, 754, 760, 766, 771; 91 Stat. 1284; 92 Stat. 1732; 49 U.S.C. 1301, 1324, 1371, 1374, 1377, 1386, 1388, 1389.

2. Paragraph (g) of § 298.11 is revised to read:

§ 298.11 Exemption authority.

* * * * *

(g) Sections 408(a) and 409, for transactions and relationships to which those sections apply only because of the involvement of operators under this part, subcontract agreements involving the operation of air services by an air taxi operator over Alaskan bush routes of a certificated air carrier.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-25711 Filed 9-26-84; 8:45 am]

BILLING CODE 6320-01-M

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[1] **Editorial Note:** ER-1388 is published elsewhere in this issue of the **Federal Register** (FR Doc. 84-25712).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34-21339; IC-14169; File No. S7-954]

Facilitating Shareholder Communications

AGENCY: Securities and Exchange Commission.

ACTION: Deferral of effective date.

SUMMARY: To allow time for the most advantageous development of systems and procedures to implement Rule 14b-1(c), which requires brokers to provide issuers with the identity of nonobjecting beneficial owners, the Commission is deferring the effective date of the Rule until January 1, 1986. The Rule will improve the process by which issuers communicate with the beneficial owners of securities registered in the name of a broker by allowing issuers to communicate directly with these shareholders. The effective date of the relevant provision in Rule 17a-3(a)(9), requiring brokers to maintain records indicating whether beneficial owners object to disclosure of their identity to issuers, also is being deferred until January 1, 1986.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Betsy Callicott Goodell, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In July 1983, the Commission adopted new paragraph (c) of Rule 14b-1[1] under the Securities Exchange Act of 1934 (the "Exchange Act") to improve the process whereby issuers communicate with shareholders whose securities are held in street name.[2] New paragraph (c) requires brokers to provide issuers, upon request and assurance of reimbursement of reasonable expenses (direct and indirect), with the names, addresses and securities positions of customers who are beneficial owners of the issuers' securities and who have not objected to such disclosure. The Commission also adopted a corresponding amendment to Rule 17a-3(a)(9)[3] under the Exchange Act to ensure that the customer records maintained by brokers for street name holders include whether the beneficial owner has objected to the disclosure to issuers of his or her identity, address, and securities positions. To provide time for the determination of reasonable costs by self-regulatory organizations and to minimize costs, the Commission specified January 1, 1985, as the effective date for both provisions.

In adopting Rule 14b-1(c), the Commission left the determination of reasonable costs to the self-regulatory organizations, because, as representatives of both issuers and brokers, they are in the best position to make a fair allocation of costs. The New York Stock Exchange formed an Ad Hoc Committee on Identification of Beneficial Owners ("Ad Hoc Committee"), composed of issuers, brokers-dealers, banks, transfer agents, and proxy solicitors, to provide guidance on this issue. Recently the Ad Hoc Committee and other representatives from the private sector indicated that additional time was necessary to determine the reasonable costs of implementing the Rule and to put in place the systems and procedures necessary to implement the Rule most advantageously.

On July 25, the staff met with representatives from the self-regulatory organizations, the securities industry and the issuer community to discuss their progress in the determination of reasonable costs. Following the meeting, the participating representatives decided to request a one-year delay of the effective date of the Rule.[4] As part of that agreement, the representatives from the securities industry and the issuer community agreed to participate in a number of actions including sponsoring the development of an efficient means of furnishing beneficial owner information to issuers and establishing an

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[1] 17 CFR 240.14b-1(c).

[2] Release No. 34-20021 (July 28, 1983) [48 FR 35082].

[3] 17 CFR 240.17a-3(a)(9).

[4] The terms of the agreement are detailed in letters from the Securities Industry Association (the "SIA") to the American Society of Corporate Secretaries (the "ASCS") and the National Investor Relations Institute ("NIRI"), dated August 3, 1984, from the ASCS to the SIA, dated August 10, 1984, and from NIRI to the SIA, dated August 20, 1984. The letters are part of File No. S7-954.

appropriate schedule of reimbursement. They also requested that the following implications of Rule 14b–1(c) be clarified by no action letter, interpretation or amendment: (1) The obligation of issuers requesting the beneficial owner information to assume the responsibility of mailing the annual report; (2) the obligation of issuers to request names from all brokers; (3) the availability of lists other than on the annual meeting record date; and (4) the confidentiality of such lists. The representatives also agreed to support legislation that would extend the Commission's authority in this area to banks and other associations exercising fiduciary powers,[5] and that the implementation of the Rule on January 1, 1986, is not contingent upon the adoption of such legislation.

At a meeting with the Commission on August 17, 1984, representatives from the Advisory Committee on Shareholder Communications (the "Advisory Committee"), the Securities Industry Association (the "SIA"), the American Society of Corporate Secretaries (the "ASCS"), and the American Bankers Association (the "ABA") unanimously recommended deferring the effective date of Rule 14b–1(c) until January 1, 1986.

At the meeting, the Commission considered the importance of including banking institutions within the coverage of the Rule, as well as the need for cooperative support from the issuer and brokerage communities. The Commission noted that a majority of the shares held in nominee name are held by banking institutions.[6] The Commission also heard discussion about the extent to which customer confidentiality requests might reduce the percentage of shareholders about whom information is provided.

The representatives from the SIA and ASCS agreed to conduct regular meetings to facilitate the determination and allocation of reasonable costs and the development of systems that will provide cost effective implementation of the Rule, and to make periodic reports to the Commission staff on their progress. Because the parties affected by the Rule jointly recommended the deferral, the Commission believes it will result in a cooperative effort on the part of brokers and issuers to make the information provided pursuant to the Rule available in an efficient and timely manner. That information, in turn, will provide a means for issuers to communicate directly with their beneficial owners in an efficient and timely manner. Such direct communication will benefit shareholders by maintaining the system of nominee registration, while enhancing the effectiveness of the communications process.

Although implementation of the Rule is not contingent upon passage of legislation extending the Commission's authority in the proxy area to banking institutions, the Commission believes that the one year extension should provide sufficient time and incentive for the passage of such legislation. The Commission also believes that passage of the legislation would greatly increase the benefits of the rule for both issuers and shareholders. The additional time period also will be sufficient to design an efficient system that will not need major subsequent revisions. The SIA, the ASCS and the National Investor Relations Institute agreed to do their part to facilitate implementation of the Rule on January 1, 1986, without seeking any further delays of the effective date.

Administrative Procedure Act

On August 3, 1984, the Commission published in the **Federal Register** a notice of the public Commission meeting to consider deferral of the effective date of Rule 14b–1(c) and invited public comment on the issue. Of the three comment letters received, two supported deferral of the effective date and one opposed it. After hearing the discussion at the meeting on August 17, the Commission authorized the staff to prepare a release announcing the deferral of the effective date. Therefore, the Commission finds that there is no need for additional public comment at this time.

Because issuers and brokers need to know immediately that the effective date has been deferred in order to allocate financial and staff resources, and because the deferral relieves a compliance burden, the Commission finds good cause for making the deferral effective immediately, pursuant to the exemption to the Administrative Procedure Act provided in 5 U.S.C. 553(d).

Statutory Authority

Pursuant to its statutory authority under Sections 12, 14, 17 and 23(a) of the Exchange Act, the Commission hereby defers until January 1, 1986, the effective date of paragraph (c) of § 240.14b–1 and the corresponding amendment to § 240.17a–3(a)(9) of Title 17 of the Code of Federal Regulations. As required by section 23(a) of the Exchange Act the Commission has considered the impact that this action would have on competition and has concluded that it would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

By the Commission.

Dated: September 21, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–25717 Filed 9–26–84; 8:45 am]

BILLING CODE 8010–01–M

[5] On April 23, 1984, the Commission sent to the Congress proposed legislation to extend the Commission's authority with respect to certain proxy activities to banks and other associations exercising fiduciary powers. The legislation was introduced in the House of Representatives by Congressman Wirth (H.R. 5696) and in the Senate by Senator D'Amato (S. 2795). The House bill was attached to the tender offer legislation (H.R. 5693) and reported out of the House Energy and Commerce Committee on August 2, 1984.

[6] As of February 29, 1984. See July 16, 1984, letter from the Securities Industry Association to Chairman Shad. File No. S7–954.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Approval of Permanent Program Amendment From the State of Alabama Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Alabama as an amendment to the State's permanent regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment establishes a program for blaster training and certification.

Alabama submitted the proposed program amendment on January 9, 1984. OSM published a notice in the **Federal Register** on February 6, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 4384). The public comment period ended March 7, 1984.

A review of the proposed amendment by OSM identified several concerns. OSM notified Alabama of its concerns and on May 3, 1984, Alabama responded by submitting modifications to its proposed amendment. OSM reopened the comment period in a June 4, 1984 **Federal Register** notice to allow opportunity for public comment on the additional information (49 FR 23074).

After considering public comments and conducting a thorough review of the program amendment including modifications to the amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations and is approving the program amendment. The Federal rules at 30 CFR Part 901 codifying decisions concerning the Alabama program are being amended to implement the action.

EFFECTIVE DATE: September 27, 1984.

FOR FURTHER INFORMATION CONTACT: John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254–0890.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

Information regarding the general background on the Alabama State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program can be found at 47 FR 22020–22038 (May 20, 1982) and 48 FR 34026 (July 27, 1983).

II. Proposed Amendment

On January 9, 1984, Alabama submitted a proposed program for the training and certification of blasters working in surface coal mining operations. The amendment consisted of regulations, blaster records, certification course outline and course notes. The proposed regulations are set forth under Chapter 880–X–12—Training, Examination and Certification of Blasters.

At the time of the Secretary's approval of the Alabama program, OSM had not yet promulgated Federal rules governing the training and certification of blasters. Therefore, the State was not required to include such requirements in its program. However, in the notice announcing conditional approval of the Alabama program, the Secretary specified that Alabama would be required to adopt such provisions following promulgation of the Federal standards (47 FR 22020, May 20, 1982).

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). The Federal rules require each State to design and implement its own blaster certification program. Under the Federal rules, each State must develop the method of training, examination and certifying blasters which best meets local needs within the Federal regulatory framework. The federal rules require training, field experience, and written examination, and specify certain other requirements.

The Federal rules at 30 CFR 850.12 require the State regulatory authority to develop a program and submit it to OSM within 12 months after publication of the Federal rules. The Federal rules at 30 CFR 816.61(c) further provide that no later than 12 months after the State blaster certification program has been approved by OSM, all blasting operations in the State shall be conducted under the direction of a certified blaster.

On February 6, 1984, OSM published a notice in the **Federal Register** announcing receipt of the amendment and inviting public comment. The public comment period ended on March 7, 1984. The opportunity to request a public hearing was provided, but no hearing was requested. The public comment period was reopened on June 4, 1984, for fifteen days, to allow opportunity to comment on additional information and amendment modifications submitted by the State in response to OSM concerns.

III. Director's Findings

A. General Findings

During its review of the January 9, 1984, amendment, OSM identified several concerns which were relayed to Alabama in a letter dated April 9, 1984. In a May 3, 1984, response to OSM, Alabama submitted modifications which included draft proposed revisions to the Alabama Surface Mining Commission (ASMC) blaster certification program. The Director finds, in accordance with 30 CFR 732.17, that the program amendment submitted by Alabama on January 9, 1984, and modifications thereto submitted May 3, 1984, meet the requirements of SMCRA and the Federal regulations. Only those areas of particular interest are discussed in the specific findings which follow. Discussion of only those provisions for which findings are made does not imply any deficiency in any provision not discussed. All provisions are found to be consistent with SMCRA and no less effective than the Federal regulations. The amended provisions are cited at the end of this notice in the amendatory language for Section 901.15.

B. Findings on the Regulations

1. The amendments as submitted to OSM on January 9, 1984, did not contain a requirement similar to Federal rule 30 CFR 816.61(c)(3) and 817.61(c) (3) which require that a blaster and at least one other person be present during blasting. In a letter dated April 9, 1984 OSM notified Alabama of this deficiency. On May 3, 1984, Alabama responded by submitting draft proposed modifications to ASMC rules 880–X–10C–.30(c) and 880–X–10D–.28(3) to require that a certified blaster and at least one other person shall be present during the firing of all blasts. The Director finds that these proposed changes render the Alabama provisions concerning personnel present during firing of a blast, no less effective than the Federal provisions.

2. Proposed rule 880–X–12A–.06(2) lists five broad categories that the Alabama blaster training program will cover. Federal rule 30 CFR 850.13(b) lists topics to be covered in greater detail. Therefore, OSM examined the Alabama blaster training program itself to determine whether all topics specified in 30 CFR 850.13(b) are in fact included in the Alabama program. OSM found that all topics are covered in course outlines and examination and finds the Alabama program to be no less effective than the Federal rule in assuring that proper blaster training is available and that the written examination covers all required topics.

3. Proposed Alabama rule 880–X–12A–.07(2)(c) requires candidates for certification to have one year of "creditable blasting experience." Since Federal rule 30 CFR 850.14(a)(2) requires practical field experience that demonstrates certain knowledge and pattern of conduct, OSM requested further information from Alabama which would clarify what is meant by "creditable blasting experience." In its May 3, 1984 letter to OSM, Alabama enclosed a memorandum providing clarification concerning the amount and type of experience that would be necessary. The Director finds that this memorandum provides policy guidance which renders the Alabama rule requirement no less effective than Federal requirements.

4. Alabama proposed rules at 880–X–12Ap.07 to establish required elements of certification. In its April 9, 1984, letter to the State, OSM expressed concern that proposed ASMC rule 880–X–12A–.07(7) did not contain reasons for the regulatory authority to revoke or suspend a certification as does Federal rule 30 CFR 850.15(b)(1). Alabama responded by adding proposed revisions to the amendment that made it similar to the Federal rule. The Director finds the modified language at ASMC rule 880–X–12A.07 to be no less effective than the Federal rule.

5. OSM also expressed concern to Alabama that its proposed amendment did not contain a requirement that a blaster surrender a revoked certificate as in 30 CFR 850.15(b)(3), and that the certified blaster "take every reasonable precaution to protect" his certificate from loss, theft or unauthorized duplication, as required by 30 CFR 850.15(d). In response, Alabama has submitted draft proposed rules at 880–X–12A.07(9)(c) and 880–X–12A–.07(e) which address these concerns by adding language that is similar to the Federal language. The Director finds that these modifications render the Alabama requirements no less effective than Federal requirements.

6. Proposed rule 880–X–12A–.07 would allow individuals certified before January 1, 1982 to be recertified under the proposed new program without re-examination if certain criteria are met. In its April 9, 1984, letter to Alabama, OSM expressed concern that blasters would be certified under the new program without taking a written exam covering the required material. In its response to OSM, the State pointed out that the existing Alabama blaster certification program contains the same requirements as the proposed program and that blasters who are certified under the existing program should not be required to be re-examined and recertified "because of the technicality of the effective date for the new regulations." OSM has since examined the Alabama training program and the previous and new examinations and found them to cover the subject areas outlined in 30 CFR 850.13(b). Further, ASMC rule 880–X–12A.07(8)(b) requires re-examination every three years for all certified blasters. The Director finds, therefore, that Alabama's requirements are no less effective than the Federal requirements in assuring that certified blasters are trained and examined in accordance with the new Federal requirements.

7. Alabama has proposed provisions at 880–X–12A.08 enumerating responsibilities of a certified blaster. Although there is no Federal section which parallels this Alabama section, the Alabama provisions are consistent with responsibilities of a certified blaster that are contained or implied in the Federal rules at 30 CFR 816.61 and 817.61 and at 30 CFR Part 850. The Director finds the provisions to be no less effective than the Federal rules.

IV. Public Comments

OSM received two responses to its request for comment during the extended comment period. Both responses dealt with the issue of recertification under the proposed new program without re-examination for those certified prior to January 1, 1982. Both commenters felt that OSM should allow such recertification. One commenter stated that OSM was misreading the program and its application. The commenter said that under the proposed program all persons seeking recertification would be re-examined every three years. The other commenter said that the proposed Alabama rule would not allow "grandfathering" but rather would recognize certifications granted prior to promulgation of the new OSM regulations. The commenter stated that Alabama has had a "model Blaster Certification Program," and that the program has changed very little since it was initiated in 1978. This commenter also mentioned that Alabama requires re-examination every three years.

OSM has carefully considered these comments as well as additional information and explanation provided by the State and has concluded that the proposed Alabama blaster certification, including re-certification provisions, is no less effective than the Federal requirements. Allowing re-certification of blasters certified before January 1, 1982, without re-examination, will not render the program less effective because the Alabama program since 1978 has required examination of blasters in the topics included in the new Federal rules. Moreover, all blasters are re-examined every three years. Blasters qualifying for the January 1, 1982 exemption will soon be re-examined under the three-year requirement.

V. Director's Decision

The Director, based on the above findings, is approving the January 9, 1984, amendment to the Alabama program as modified on May 3, 1984. This approval is contingent upon the ASMC adopting this amendment and proposed revisions as submitted to OSM on January 9, and May 3, 1984. The Director is amending Part 901 of 30 CFR Chapter VII to reflect approval of the above State program modification.

IV. 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 will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule 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 901

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

Dated: September 24, 1984.

William B. Schmidt,

Acting Director, Office of Surface Mining.

PART 901—ALABAMA

30 CFR 901.15 is amended by adding a new paragraph (d) as follows:

§ 901.15 Approval of regulatory program amendments.

* * * * *

(d) The following amendment submitted to OSM on January 9, 1984 as modified on May 3, 1984 is approved effective September 27, 1984: Alabama's blaster certification program, as contained in the Alabama regulations at: 880–X–10C–.30(c), 880–X–10D–.28(3) and 880–X–12A–.01 through 880–X–12A–.08, and all other items as submitted by Alabama on January 9, 1984, and May 3, 1984.

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

[FR Doc. 84–25667 Filed 9–26–84; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 84–44]

Special Local Regulations; River Rally

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 469.4 to 470.4, Ohio River. Power boat races, sternwheeler races, tow boat pushoffs, an "Anything That Floats Parade" and a boat parade will be held at Cincinnati, Ohio. These special local regulations are needed to provide for the safety of life and property on navigable waters during the events.

EFFECTIVE DATE: These regulations will be effective on the following days; October 5 and 6, 1984.

FOR FURTHER INFORMATION CONTACT: Lt. B.J. Willis, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103, (314) 425–5971.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35, for the purpose of promoting the safety of life and property on the Ohio River between miles 469.4 and 470.4 during the "River Rally", October 5 and 6, 1984. This event will consist of power boat races, sternwheeler races, tow boat pushoffs, an "Anything That Floats Parade" and a boat parade which could pose hazards to navigation in the area.

Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 30 days from the date of publication. Following normal rule making procedures would have been contrary to the public interests under 5 U.S.C. 553(b)(3)(B) immediate action is necessary to guard against the hazards associated with this event. Therefore the Coast Guard has determined that good cause exists under 5 U.S.C 553(d)(3) to make this rule effective in less than 30 days after publication in the **Federal Register**.

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, Project Officer, Boating Technical Branch, and LCDR W.A. Cassels, USCG, Project Attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0243 to read as follows:

§ 100.35–0243 Ohio River, miles 469.4 through 470.4.

(a) *Regulated Area:* The area between Mile 469.4 and 470.4 Ohio River is designated the regatta area, and may be closed to commercial navigation or mooring during the following days and (local) times:

October 5, 10:00 a.m. to 7:00 p.m.
October 6, 11:00 a.m. to 7:00 p.m.

The above times represent a guideline for possible intermittent river closures not to exceed FOUR (4) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations:* Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event of vessels of the patrol, while they are operating in the performance of their assigned duties.

(1) The Patrol Commander may be reached on Channel 16 (156.8MHZ) when necessary, by the call sign "COAST GUARD PATROL COMMANDER".

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

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0243 will be effective on the following days and times:

October 5, 10:00 a.m. to 7:00 p.m.
October 6, 11:00 a.m. to 7:00 p.m.
ALL TIMES LISTED ARE LOCAL TIME.

(33 U.S.C. 1233–1235; 46 U.S.C 4308; 49 U.S.C. 108; 33 CFR 100.35, 100.40; 49 CFR 1.46(b), 1.46(n)(1))

Dated: September 14, 1984.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 84–25682 Filed 9–26–84; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Part 165

[COTP San Francisco Regulation 84–4]

Safety Zone Regulations; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones in San Francisco Bay on 12 and 13 October 1984. These zones are needed to provide for safety of life on navigable waters during U.S. Navy activities for the annual Navy Fleet Week. Entry into these zones is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: These regulations are effective on 12 October 1984 between 12:30 p.m. and 2:30 p.m. PDT and on 13 October 1984 between 10:00 a.m and 1:30 p.m. PDT.

FOR FURTHER INFORMATION CONTACT: LTJG S.J. Boyle, Marine Safety Office, San Francisco Bay, (415) 437–3073.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication.

Following normal rulemaking procedures would be contrary to the public's interest under 5 U.S.C. 553(b)(B) since immediate action is necessary to

protect persons and property during this event. Therefore, the Coast Guard has determined that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective in less than 30 days after publication in the **Federal Register.**

Drafting Information

The drafters of this regulation are LTJG S.J. Boyle, project officer for the Captain of the Port, and CDR W.K. Bissell, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of Regulation

The events requiring this regulation will begin at 10:00 a.m. PDT, 13 October 1984 with a parade of 21 U.S. Navy ships proceeding inbound the main bar channel led by the U.S.S. *San Francisco,* U.S.S. *Long Beach,* and U.S.S. *Constellation* in a single line followed by two parallel columns of nine ships each. The vessels will be spaced at 1000 yards intervals with 500 yards separating the two parallel columns. The vessels will proceed at a speed of 12 knots under the Golden Gate Bridge, along the San Francisco city front to a point south of the San Francisco-Oakland Bay Bridge. The column will then disperse to individual berths. The parade of ships will be followed by a U.S. Navy Blue Angels aerial demonstration beginning at 11:00 a.m. PDT and lasting until 1:30 p.m. PDT. The demonstration will center on a flight line between Fort Point and Pier 39, San Francisco with the aircraft flying as low as 100' above the water. The Blue Angels will stage a practice demonstration on 12 October 1984 between 12:30 p.m. and 2:30 p.m. PDT in the same area.

The Safety Zones established by this regulation are necessary to ensure that vessels remain safely away from the naval activities. The Blue Angels require a clear area along their flight line for navigational reference. Two Coast Guard vessels will be stationed within that clear area to serve as navigational reference points. The aircraft will fly at extremely low altitudes above the water, necessitating that vessels be kept clear for their own safety. The Navy ships proceeding through the Bay in column formation are large, relatively unmaneuverable vessels, requiring unobstructed waters for safe navigation and to maintain a column formation.

The Safety Zone established for the Blue Angels demonstration will restrict access to marinas and commercial docks. This restriction may result in some inconvenience to vessels berthed within the safety zones. All efforts have been made to minimize this inconvenience by limiting the duration and size of the zones as much as possible, consistent with safety requirements. Additionally, Captain of the Port permission has been written into the regulation to allow vessels berthed within the zones to depart their berths during the existence of the zones. Such vessels are nonetheless strongly advised to depart their berths prior to the effective times to avoid transitting the zones.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended by adding a new § 165.T12–4 to read as follows:

§ 165.T12–4 Safety zones: San Francisco Bay Fleet Week Activities.

(a) *Locations.* The following areas are safety zones: (1) The waters of San Francisco Bay between Fort Point and Pier 39, San Francisco, from the shoreline out to 1,000 yards, on 12 October 1984 from 12:30 p.m. to 2:30 p.m. PDT and on 13 October 1984 from 11:00 a.m. to 1:30 p.m. PDT.

(2) The waters surrounding the columns of U.S. Navy ships proceeding inbound at a speed of 12 knots from the Golden Gate Bridge along the San Francisco city front to the Oakland Bay Bridge, on 13 October 1984 from 10:00 a.m. to 1:00 p.m. PDT. This moving Safety Zone extends out 200 yards on either side of a line running from a point 200 yards in front of the lead ship, through each succeeding vessel, to a point 200 yards astern of the last ships in the columns, including all waters between the vessels.

(b) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into these zones is prohibited unless authorized by the Captain of the Port.

(2) Vessels berthed in the stationary zones established in paragraph (a)(1) of this section are authorized to navigate within 50 yards of the San Francisco city front in order to exit the zone towards the east.

(3) All vessels are prohibited from passing between the U.S. Navy ships in formation or otherwise entering the safety zone established in paragraph (a)(2) of this section.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: September 12, 1984.

D. Zawadzki,

Commander, U.S. Coast Guard, Alternate Captain of the Port, San Francisco Bay.

[FR Doc. 84–25604 Filed 9–26–84; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. NH 84–1030; A–1–FRL–2682–4]

Approval and Promulgation of Implementation Plans; New Hampshire—Markem Corporation Compliance Schedule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan revisions submitted by the State of New Hampshire. These revisions provide a compliance schedule for Markem Corporation which will enable the source to comply with the VOC emissions regulations required by the SIP. The intended effect of this action is to reduce VOC emissions from the source to less than 100 tons per year after July 1, 1985. The revisions are approved under Section 110 of the Clean Air Act.

EFFECTIVE DATE: October 29, 1984.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2313, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street, SW, Washington, D.C. 20460; Office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, D.C. 20408; and the New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Bridget E. McGuiness at (617) 223–4872.

SUPPLEMENTARY INFORMATION: In the May 31, 1984 **Federal Register** (49 FR 22668), EPA published a Notice of Proposed Rulemaking (NPR) for Markem Corporation's Compliance Schedule. There were no public comments on the NPR. The revisions and the rationale for EPA's proposed action are explained in that NPR and will not be restated here.

Final Action

EPA is approving Markem Corporation's Compliance Schedule to install an incinerator by July 1, 1985.

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

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 (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, and Incorporation by reference.

Authority: Sec. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: September 21, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart EE—New Hampshire

1. Section 52.1520, paragraph (c) is amended by adding paragraph (32) as follows:

§ 52.1520 Identification of plan.

* * * * *

(c)

(32) A revision submitted on December 22, 1983 which requires Markem Corporation to install an incinerator. The installation of the incinerator must be completed by July 1, 1985.

2. Section 52.1524 paragraph (a) is amended by adding the following:

§ 52.1524 Compliance schedules.

* * * * *

(a)

Source: Markem Corporation.

Location: Keene, NH.

Regulation involved: No. 1204.05.

Date of adoption: February 10, 1984.

Effective Date: February 19, 1981.

Final Compliance Date: July 1, 1985.

[FR Doc. 84-25647 Filed 9-26-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[Region II, Docket No. 38; A-2-FRL-2681-7]

Approval and Promulgation of Implementation Plans; Revision to the Commonwealth of Puerto Rico Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces that the Environmental Protection Agency is approving under the provisions of the Clean Air Act a request from the Commonwealth of Puerto Rico to revise its Implementation Plan. This approval has the effect of allowing either of two boilers operated by Bristol Alpha Corporation to burn fuel oil with a sulfur content of 2.50 percent, by weight.

EFFECTIVE DATE: This action is effective on November 26, 1984 unless notice is received within 30 days of today that someone wishes to submit adverse or critical comments.

ADDRESSES: A copy ot the Commonwealth of Puerto Rico's submittal, EPA's review of this material and comments received during EPA's public comment period are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Programs Branch, Room 1005, Region II Office, 26 Federal Plaza, New York, New York 10278

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

Office of Federal Register, Room 8401, 1100 L Street, NW., Washington, D.C. 20408

Environmental Quality Board, P.O. Box 11488, Santurce, Puerto Rico 00902-0792

All comments dealing with the sulfur assignment for the Bristol Alpha Corporation should be addressed to: Richard T. Dewling, Acting Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278 (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1983 (48 FR 48665) the Environmental Protection Agency (EPA) approved a revision to the Puerto Rico Implementation Plan concerning fuel oil sulfur content limitations (known as "sulfur assignments") applicable to 78 sources.

This action approved sulfur assignments of 2.50 and 1.94 percent, by weight, at two identical boilers at the Bristol Alpha Corporation. On May 30, 1984, the Puerto Rico Environmental Quality Board (EQB) wrote to request a further revision to its Implementation Plan to allow 2.50 percent sulfur content fuel to be burned in either (but not both) of Bristol Alpha's boilers. EQB pointed out that, on December 28, 1981, it had approved an amendment to Bristol Alpha's permit reflecting this change and prohibiting Bristol Alpha from operating both boilers simultaneously. A copy of the current permit was included with EQB's May 30, 1984 plan revision request.

As a result of EQB's original plan revision request, it was demonstrated that the operation of both boilers at Bristol Alpha using 2.50 and 1.94 percent sulfur content fuel oil would not violate ambient air quality standards or Prevention of Significant Deterioration increments. Since Puerto Rico's May 30, 1984 request would permit the use of 2.50 percent sulfur content fuel oil at only one boiler at a time, its impact on air quality would be less than the impact already found by EPA to be approvable. Therefore, EPA is approving Puerto Rico's current Implementation Plan revision request.

This notice is issued as required by Section 110 of the Clean Air Act, as amended. The Administrator's decision regarding approval of this proposed SIP revision was based on its meeting the requirements of Section 110 of the Clean Air Act and 40 CFR 51.

EPA is approving this SIP revision request without prior proposal because it is viewed as noncontroversial and no adverse comments are anticipated. The public should be advised that this action will be effective 60 days from today's date. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

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

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition

for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709). The attached rule constitutes a SIP approval under Section 110 within the terms of the January 27 certification. This action only approves an action by the Commonwealth of Puerto Rico. It imposes no new requirements.

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 and 301, Clean Air Act, as amended (42 U.S. 7410 and 7601)

Dated: September 21, 1984

William D. Ruckelshaus,

Administrator, Environmental Protection Agency.

Note.—Incorporation by reference of the Implementation Plan for the Commonwealth of Puerto Rico was approved by the Director of the Federal Register on July 1, 1982.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

Subpart BBB—Puerto Rico

1. Section 52.2720 is amended by adding new paragraph (c)(31) as follows:

§ 52.2720 Identification of plan.

* * * * *

(c) * * *

(31) Revision submitted on May 30, 1984 by the Commonwealth of Puerto Rico's Environmental Quality Board which establishes fuel oil sulfur content limitations (known as "sulfur assignments") applicable to the Bristol Alpha Corporation.

[FR Doc. 84-25646 Filed 9-26-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[EPA Action MO 1586; A-7-FRL-2682-5]

Approval and Promulgation of the Missouri State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The Missouri Department of Natural Resources submitted their Air Quality Monitoring Plan and requested that it be approved as part of the Missouri State Implementation Plan (SIP) in a letter dated June 6, 1984. The monitoring plan describes the methods used to measure levels of air pollution and reporting procedures for their air quality surveillance network. EPA has determined that the Missouri Air Quality Monitoring Plan meets all of EPA's requirements.

At this time, EPA is publishing a correction and clarification of a notice published on May 22, 1981 (46 FR 27933), pertaining to the Missouri SIP. The section of the notice that amends Title 40 of the Code of Federal Regulations 52.1320(C)(27) was in error. The sentence, "Definitions and amended start-up, shutdown and malfunction provisions in Rules 10 CSR 10–2.030, 10–3.050, 10–3.060, 10–3.080, 10–4.030, 10–4.040 and 10–4.050," should read as "Definitions and amended start-up, shutdown and malfunction provisions in Rules 10 CSR 10–2.030, 10–3.050, 10–3.060, 10–3.080, 10–4.030, 10–4.040 and 10–5.050."

EFFECTIVE DATE: This action will be effective November 26, 1984 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: A copy of the State's submission is available for review at the following addresses:

Environmental Protection Agency, Region VII, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106

Missouri Department of Natural Resources, 1101 Rear Southwest Blvd., Jefferson City, Missouri 65102

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20460.

Written comments should be sent to: Jane C. Johnson, Environmental Protection Agency, Region VII, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jane C. Johnson at the above address or call (816) 374–3791, (FTS) 758–3791.

SUPPLEMENTARY INFORMATION: Federal regulations concerning ambient air quality surveillance require states to submit plans providing for the establishment and operation of ambient air monitors. The Missouri Air Quality Monitoring Plan provides for a monitoring network that uses acceptable monitoring methods, provides for quality assurance, and provides for location of monitors according to EPA siting criteria. The Plan specifies the monitoring stations to be operated during emergency air pollution episodes, provides for annual review of the system, and provides for availability of the network description and procedures upon request. The Missouri Air Quality Monitoring Plan satisfies the requirements of 40 CFR 58.20, Air Quality Surveillance: Plan Content.

Action

EPA approves this submission as a revision to the Missouri SIP. EPA believes this action is noncontroversial and is approving it without prior proposal. The public is advised that this action is effective November 26, 1984 unless we receive written notice within 30 days from the date of publication that someone wishes to submit adverse or critical comments. In such case, this action will be withdrawn and rulemaking will commence again by announcing a proposal of this action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements.

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

Under 5 U.S.C. 605(b), I have certified that SIP approvals do not have a significant economic impact on a substantial number of small entities.

Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Office of the Federal Register on July 1, 1982.

This notice of final rulemaking is issued under the authority of section 110 of the Clean Air Act, as amended, August 1977 (42 U.S.C. 410).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: September 21, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart AA—Missouri

1. Section 52.1320 is amended by revising paragraph (c)(27) and adding a new paragraph (c)(46) as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(27) Definitions and amended start-up, shutdown and malfunction provisions in Rules 10 CSR 10–2.030, 10–3.050, 10–3.060, 10–3.080, 10–4.030, 10–4.040 and 10–5.050.

* * * * *

(46) On June 6, 1984, the Missouri Department of Natural Resources submitted the Air Quality Monitoring State Implementation Plan.

[FR Doc. 84–25648 Filed 9–26–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[Docket No. A–1–FRL 2682–6]

Approval and Promulgation of Implementation Plans; New Hampshire; Berlin TSP Attainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan revisions submitted by the State of New Hampshire. These revisions will reduce Total Suspended Particulate (TSP) emissions from an unpaved roadway and adjacent areas. The intended effect of this action is to attain the primary TSP National Ambient Air Quality Standards (NAAQS) as required under section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will be effective October 29, 1984.

ADDRESSES: Copies of the submittal are available for public inspection at the Air Management Division, Room 2313, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460; Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408; and the Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, NH 03301.

FOR FURTHER INFORMATION CONTACT: Susan Hager at (617) 223–4873.

SUPPLEMENTARY INFORMATION: On April 27, 1984 (49 FR 18128), EPA published a Notice of Proposed Rulemaking (NPR) for the Berlin, New Hampshire TSP Attainment Plan.

The proposed attainment plan demonstrated a 66% reduction in TSP emissions which is 12% greater than the State calculated as necessary to attain standards. Based on that demonstration, EPA proposed approval with the understanding that the State include with the final submittal a copy of its administrative order issued to the James River Corporation. The order makes enforceable those measures described in the plan which will be used to achieve the emissions reduction.

On May 9, 1984, New Hampshire submitted a final TSP Attainment Plan for Berlin which includes the administrative order to the James River Corporation. The order, dated May 2, 1984, requires James River to:

1. Pave .55 miles of unpaved roadway in its woodyard and seed bare areas of the woodyard by August 31, 1984.

2. Conduct investigations and submit reports on any elevated TSP concentrations occurring during the period September 1, 1984 through August 31, 1985. If exceedences of the primary TSP standards are recorded during the period, the program will be extended until standards are attained. The Air Resources Agency, after analysis, may require the James River Corporation to pave an additional .1 mile of roadway.

3. Maintain the paved and unpaved roadways and seeded areas in accordance with procedures accepted by the Air Resources Agency.

As discussed in the NPR, EPA has reviewed the New Hampshire submittal and finds it acceptable.

Final Action

EPA is approving the final TSP Plan to attain primary standards in Berlin, New Hampshire and the administrative order issued May 2, 1984 to the James River Corporation which were submitted by the State on May 9, 1984.

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

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 (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, and Incorporation by reference.

Authority: Sections 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note.—Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: September 21, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart EE—New Hampshire

1. Section 52.1520, paragraph (c) is revised by adding subparagraph (33) as follows:

§ 52.1520 Identification of plan.

* * * * *

(c)* * *

(33) The TSP plan to attain primary standards in Berlin, New Hampshire and the administrative order issued May 2, 1984 to the James River Corporation which were submitted by the Air Resources Agency on May 9, 1984.

[FR Doc. 84–25649 Filed 9–26–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 60

[A–9–FRL–2682–2]

Delegation of New Source Performance Standards (NSPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPA authority to the California Air Resources Board (CARB) on behalf of the Bay Area Air Quality Management District (BAAQMD). This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create

any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: August 20, 1984.

ADDRESS: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8236, FTS 454–8236.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS categories on behalf of the BAAQMD. Delegation of authority was granted by a letter dated August 7, 1984 and is reproduced in its entirety as follows:

Mr. James D. Boyd
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of June 6, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) Categories in 40 CFR Part 60 listed below on behalf of the Bay Area Air Quality Management District (BAAQMD). We have reviewed your request for delegation and have found the BAAQMD's programs and procedures to be acceptable.

NSPS category	40 CFR 60 subpart
Surface coating of metal furniture	EE.
Graphic arts: publication rotogravure printing	QQ.
Pressure sensitive tape and label surface coating	RR.
Industrial surface coating—large appliances	SS.
Metal coil surface coating operations	TT.
Beverage can surface coating	WW.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

cc: Bay Area Air Quality Management District

With respect to the areas under the jurisdiction of the BAAQMD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the BAAQMD at the address shown in the ADDRESS section of this notice.

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

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

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 17, 1984.

John Wise,
Acting Regional Administrator.

[FR Doc. 84–25583 Filed 9–26–84; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Parts 60 and 61

[A–9–FRL–2681–8]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAP authority to the Arizona Department of Health Services (ADHS). This action is necessary to bring the NSPS and NESHAP program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAP categories from EPA to State and local governments.

EFFECTIVE DATE: August 12, 1984.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8236, FTS 454–8236.

SUPPLEMENTARY INFORMATION:

The ADHS has requested authority for delegation of certain NSPS and NESHAP categories. Delegation of authority was granted by a letter dated July 31, 1984 and is reproduced in its entirety as follows:

Mr. Charles Anders,
Assistant Director for Environmental Health Services, Division of Environmental Health, Arizona Department of Health Services, State Health Building, 1740 West Adams Street, Phoenix, AZ 85007.

Dear Mr. Anders: In response to your request of June 26, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). We have reviewed your request for delegation and have found your present programs and procedures to be acceptable with the exception of Subpart A, General Provisions. This delegation includes authority for the following source categories:

	40 CFR Part 60 subpart
NSPS:	
Storage vessels for petroleum liquids	Ka.
Glass manufacturing plants	CC.
NESHAP:	
General provisions	A.

With regard to your Rule R9–3–801, paragraphs (1) and (3), for Subpart A, General Provisions, EPA cannot approve the substitution of "Director, Arizona Department of Health Services, for (EPA) "Administrator." This is because EPA cannot delegate certain sections of 40 CFR Part 60; namely, §§ 60.8(b)(2), 60.8(b)(3), and 60.11(e) of Subpart A. Section 60.8 applies to the approval of alternate and equivalent test methods. EPA must retain the authority to approve alternate and equivalent methods which effectively replace a reference test method. This restriction on delegation does not apply to § 60.8(b)(1) which allows for approval of minor modifications to reference methods on a case-by-case basis. This authority allows a field engineer to approve deviations to methods that are necessary due to site-specific problems or circumstances. The Administrator also cannot delegate the authority to grant an alternative opacity standard under § 60.11(e). Therefore, Rule No. R9–3–801 of the Arizona rules and regulations cannot be approved to be delegated.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the ADHS, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAP source categories should be directed to the address shown in the letter of delegation.

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

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

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 17, 1984.

John Wise,

Acting Regional Administrator.

[FR Doc. 84-25581 Filed 9-26-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-2682-1]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation of Authority.

SUMMARY: The EPA hereby places the public on notice of its delegation on NSPS and NESHAP authority to the Maricopa County Health Department (MCHD) in the State of Arizona. This action is necessary to bring the NSPS and NESHAP program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAP categories from EPA to State and local governments.

EFFECTIVE DATE: August 13, 1984.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8236, FTS 454-8236.

SUPPLEMENTARY INFORMATION: The MCHD has requested authority for delegation of certain NSPS and NESHAP categories. Delegation of authority was granted by a letter dated July 31, 1984 and is reproduced in its entirety as follows:

Mr. Robert W. Evans,

Chief Bureau of Air Pollution Control,

Maricopa County Health Department,

1825 E. Roosevelt Street, Phoenix, AZ 85006

Dear Mr. Evans: In response to your request of July 12, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). We have reviewed your request for delegation and have found your present programs and procedures to be acceptable. This delegation includes authority for the following source categories:

	40 CFR part 60 subpart
NSPS:	
Surface coating of metal furniture	EE.
Lime manufacturing plants	HH.
Metallic mineral processing plants	LL.
Graphic arts industry: publication rotogravure printing.	QQ.
Pressure sensitive tape & label surface coating operations.	RR.
Industrial surface coating: large appliances	SS.
Metal coil surface coating	TT.
Asphalt processing and asphalt roofing manufacture.	UU.
Synthetic organic chemical manufacturing industry: equipment leaks of VOC.	VV.
Beverage can surface coating industry	WW.
Bulk gasoline terminals	XX.
Equipment leaks of VOC, petroleum refineries and synthetic organic chemical manufacturing industry.	GGG.
Synthetic fiber production facilities	HHH.
NESHAP:	
Equipment Leaks (Fugitive Emission Sources) of Benzene.	J.
Asbestos	M.
Equipment Leaks (Fugitive Emission Sources) Benzene.	V.

I wish to take this opportunity to clarify the effect of EPA's delegation of Subpart A, General Provisions to your agency on April 6, 1983. EPA's delegation does not authorize your agency to approve alternate and equivalent methods which effectively replace a reference test method, unless the modification is minor and the deviation is necessary because of site-specific problems or circumstances (see § 60.8(b)(1)). The Administrator also cannot delegate the authority to grant an alternative opacity standard under § 60.11(e). Therefore, we request that you amend paragraphs (A)(2)(a) and (A)(2)(c) of your Rule 36 to indicate that EPA, rather than the District, maintains authorities identified in §§ 60.8(b)(2), 60.8(b)(3), and 60.11(e).

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judity E. Ayres,

Regional Administrator.

With respect to the areas under the jurisdiction of the MCHD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAP source categories should be directed to the NCHD at the address shown in the letter of delegation.

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

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

This Notice is issued under the authority of section 111 of the Clean air Act, as amended (42 U.S.C 1857, *et seq.*).

Dated: September 17, 1984.

John Wise,

Acting, Regional Administrator.

[FR Doc. 84-25582 Filed 9-26-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-2682-3]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation of authority.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAP authority to the Nevada Department of Conservation and Natural Resources (NDCNR). This action is necessary to bring the NSPS and NESHAP program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAP categories from EPA to State and local governments.

EFFECTIVE DATE: September 24, 1984.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8236, FTS 454-8236.

SUPPLEMENTARY INFORMATION: The NDCNR has requested authority for delegation of certain NSPS and NESHAP categories. Delegation of authority was granted by letters dated June 14, 1984, July 19, 1984, and September 7, 1984 and are reproduced in their entirety as follows:

June 14, 1984.

Mr. Richard Serdoz
Air Quality Officer, Division of Environmental Protection, Nevada Department of Conservation & Natural Resources, Capitol Complex, Carson City, NV 89710

Dear Mr. Serdoz: In response to your request of May 21, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart HH—Standards of Performance for Lime Manufacturing Plants. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

July 19, 1984.

Mr. Richard Serdoz
Air Quality Officer, Division of Environmental Protection, Nevada Department of Conservation & Natural Resources, Capitol Complex, Carson City, NV 89710

Dear Mr. Serdoz: In response to your request of June 29, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart GGG—Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries and National Emission Standards for Hazardous Air Pollutants Categories in 40 CFR Part 61: Subparts J and V—National Emission Standard for Equipment Leaks/ Fugitive Emission Sources of Benzene. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

September 7, 1984.

Mr. Richard Serdoz,
Air Quality Officer, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources, Capitol Complex, Carson City, Nevada 89710

Dear Mr. Serdoz: In response to your request of August 22, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart FFF—Standards of Performance for Flexible Vinyl and Urethane Coating and Printing. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

With respect to the areas under the jurisdiction of the NDCNR, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAP source categories should be directed to the address shown in the letter of delegation.

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

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

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1957, *et seq.*).

Dated: September 17, 1984.

John Wise,

Acting Regional Administrator.

[FR Doc. 84-25584 Filed 9-26-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF LABOR

41 CFR Part 29-70

Application of Amended Office of Management and Budget Circulars to Cost Principles for Grants and Agreements

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is amending its cost principles for grants and agreements, to make clear that they include subsequent amendments to cited Office of Management and Budget Circulars.

EFFECTIVE DATE: September 27, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore Goldberg, Director, Office of Procurement and Grant Policy, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, Room C-4311, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: 202-523-9174.

SUPPLEMENTARY INFORMATION: At 41 CFR 29-70.103, the Department of Labor (DOL) has published cost principles for determining allowable costs for grants and agreements. DOL has interpreted and applied that regulation to include the requirements of subsequent amendments to applicable cited Office of Management and Budget (OMB) Circulars.

On July 9, 1984, OMB, in its coordinating role for agency implementation of its recent "lobbying" revision to Circular A-122 ("Cost Principles for Nonprofit Organizations"), notified DOL that other agencies' cost principles state specifically that subsequent amendments to OMB Circulars apply, and has suggested that DOL amend its regulation to so specify. OMB's recommendation would clarify DOL's regulation and DOL is adopting it by this document. It would make no change in DOL's current interpretation and application of the existing regulation.

This clarifying amendment is effective on the date of publication in the **Federal Register.** After full consideration of all the relevant factors, and for good cause found, DOL has determined that it would be impracticable, unnecessary, and contrary to the public interest to delay the effective date of the amendment. 5 U.S.C. 553(d)(3). The rule clarifies existing language and specifies existing practice and application of DOL. It serves no public purpose to delay the effective date.

Regulatory Impact: The rule clarifies existing language, specifying existing practice and application by DOL. The rule does not have the financial or other impact to make it a major rule, and, therefore, the preparation of a regulatory impact analysis is not necessary. Executive Order 12291.

This document was not preceded by a general notice of proposed rulemaking, and therefore, is not a rule as defined in the Regulatory Flexibility Act. 5 U.S.C. 601(2) and 604(a).

List of Subjects in 20 CFR Part 29-70

Government contracts, Government procurement, Government property management, Grant programs—labor, Grants administration, reporting and recordkeeping requirements.

Promulgation of Final Rule

PART 29–70 [AMENDED]

§ 29–70.103 [Amended]

Accordingly, the introductory paragraph in § 29–70.103 of Part 29–70 of Chapter 29 of Title 41, Code of Federal Regulations, is amended as follows:

The phrase "Federal cost principles referenced in this section" is amended to read "Federal cost principles referenced in this section, including any subsequent amendments to the OMB Circulars cited,".

(5 U.S.C. 301; 29 U.S.C. 49 *et seq.;* 29 U.S.C. 651 *et seq.;* 29 U.S.C. 795; 29 U.S.C. 801 *et seq.;* 30 U.S.C. 801 *et seq.;* 42 U.S.C. 501 *et seq.;* 1101 *et seq.,* and 1321 *et seq.;* 42 U.S.C. 3011 *et seq.;* OMB Circular A–102; OMB Circular A–110)

Signed at Washington, D.C., this 19th day of September 1984.

Thomas C. Komarek,

Assistant Secretary for Administration and Management.

[FR Doc. 84–25416 Filed 9–26–84; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 23, 38, 50, 51b, 51d, 51f, 51g, 52, 52b, 52c, 52d, 52e, 52h, 57, 58, 59, 66, 74, 86, 87, and 110

Public Health; Update of Text; Technical amendments

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The Department is making technical amendments to the regulatory text of Public Health Service (PHS) regulations in Title 42 of the Code of Federal Regulations. This action is taken to update PHS organizational references and addresses of PHS offices, and to correct and update cross-references to provisions of the Code of Federal Regulations.

EFFECTIVE DATE: September 27, 1984.

FOR FURTHER INFORMATION CONTACT: Robert L. Spencer, PHS Regulations Officer, Office of the Assistant Secretary for Health, Room 745–G, HHH Building, 200 Independence Avenue, SW., Washington, D.C. 20201, 202–755–4884.

SUPPLEMENTARY INFORMATION: This rule makes technical amendments to correct and update organizational titles, addresses, and cross-references in PHS regulations in Title 42. In 1981, the Public Health Service reorganized several of its agencies and staff offices. As a result, several of the organizational components cited in Title 42 of the Code of Federal Regulations are obsolete. In addition, addresses cited for many of the offices have changed because of relocations.

Further, several of the cross-references within Title 42 and to Title 45 contain minor errors. Finally, cross-references to 45 CFR Part 90, Nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance, became obsolete upon the Department's publication in the **Federal Register** on December 28, 1982 (47 FR 57858) of 45 CFR Part 91, Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial asistance.

Because these amendments merely update and correct technical information and are not substantive, the Department finds that notice and comment procedures and a delayed effective date are unnecessary. Accordingly, the Department finds good cause for waiving the notive and comment and delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 553 (b) and (d)(3)).

This rule has no economic impact. Hence, in accordance with section 605(b) of the Regulatory Flexibility Act, the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule is not correct technical information and, therefore, is exempt from Executive Order 12291.

List of Subjects

42 CFR Part 23

Government employees, Health professions, Manpower.

42 CFR Part 38

Disaster Assistance, Government contracts, Grant programs—health, Mental health programs.

42 CFR Part 50

Administration practice and procedure, American Samoa, Drugs, Family planning, Grant programs—health, Guam, Northern Mariana Islands, Pacific Islands Trust Territory, Virgin Islands.

42 CFR Part 51b

Communicable diseases, Grant programs—health, Immunization, Maternal and child health, Sexually transmitted diseases, Tuberculosis, Vaccine preventable diseases, Venereal diseases.

42 CFR Part 51d

Blood diseases, Genetic diseases, Grant programs—health, Health care, Health facilities.

42 CFR Part 51f

Genetic diseases, Grant programs—health.

42 CFR Part 51g

Alcoholism, Education, Grant programs—education, Grant programs—health, Health care, Smoking.

42 CFR Part 52

Grant programs—health, Medical research.

42 CFR Part 52b

Cancer, Grant Programs—health, Heath facilities, Medical research.

42 CFR Part 52c

Educational study programs, Grant programs—health, Medical research.

42 CFR Part 52d

Cancer, Education study programs, Grant programs—health, Health professions.

42 CFR Part 52e

Blood diseases, Grant programs—health, Health care, Health professions, Heart diseases, Lung diseases, Medical research.

42 CFR Part 52h

Government contracts, Grant programs—health, Medical research.

42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Education study programs, Emergency medical services, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships, Student aid.

42 CFR Part 58

Education study programs, Grant programs—education, Grant programs—health, Health professions, Public health, Student aid.

42 CFR Part 59

Education study programs, Family planning, Grant programs—health, Grant programs—social programs, Health professions, Youth.

42 CFR Part 66

Grant programs—health, Health professions, Medical research.

42 CFR Part 74

Administrative practice and procedure, Health, Laboratories.

42 CFR Part 86

Education study programs, Grant programs—health, Health professions, Occupational safety and health.

42 CFR Part 87

Grant programs—health, Medical research, Occupational safety and health.

42 CFR Part 110

Grant programs—health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs—health.

Therefore, Title 42 of the Code of Federal Regulations is amended as follows:

Dated: August 20, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: September 13, 1984.

Margaret M. Heckler,

Secretary.

Title 42 of the Code of Federal Regulations is amended as follows:

PART 23—NATIONAL HEALTH SERVICE CORPS

1. Part 23 is amendead in § 23.13 by revising paragraph (c) to read as follows:

§ 23.13 What nondiscrimination requirements apply to National Health Service Corp sites?

* * * * *

(c) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.)* and its implementing regulations, 45 CFR Part 91 (prohibiting nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance). (Sec. 215, Public Health Service Act, 58 Stat. 690 as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 333 *et seq.*, Public Health Service Act, 90 Stat. 2272 (42 U.S.C 254(f))

PART 38—DISASTER ASSISTANCE FOR CRISIS COUNSELING AND TRAINING

2. Part 38 is amended in § 38.5 by revising paragraph (d) to read as follows:

§ 38.5 Grant assistance.

* * * * *

(d) *Other HHS regulations that apply.* Several other regulations apply to grants under this grant. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

* * * * *

(Sec. 413, Pub. L. 93–288. The Disaster Relief Act of 1974, 88 Stat. 157 (42 U.S.C. 5183) EO 11795, 39 FR 25939, as amended by EO 11910, 41 FR 15681)

PART 50—POLICIES OF GENERAL APPLICABILITY

3. Part 50 is amended as follows:

a. The authority cited at the end of the table of contents of Part 50 is removed.

b. Subpart B is amended by adding the authority for Subpart B as follows:

Subpart B—Sterilization of Persons in Federally Assisted Family Planning Projects

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); Sec. 1006, Public Health Service Act, 84 Stat. 1507 (42 U.S.C. 300a–4).

* * * * *

c. Section 50.202 is amended by revising the definition of "Public Health Service" to read as follows:

§ 50.202 Definitions.

* * * * *

"Public Health Service" means the Office of the Assistant Secretary for Health, Health Resources and Services Administration, National Institutes of Health, Centers for Disease Control, Alcohol, Drug Abuse and Mental Health Administration and all of their constituent agencies.

* * * * *

d. Subpart D is amended by adding the authority for Subpart D as follows:

Subpart D—Public Health Service Grant Appeals Procedure

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); 45 CFR 16.3(c)).

* * * * *

e. Section 50.402 is revised to read as follows:

§ 50.402 Applicability.

This subpart is applicable to all grant programs which are subject to 45 CFR Part 16 ("Procedures of the Departmental Grant Appeals Board") and which are administered by the Office of the Assistant Secretary for Health, the National Institutes of Health, the Health Resources and Services Administration, the Centers for Disease Control, Alcohol, Drug Abuse and Mental Health Administration, or the Food and Drug Administration, or by the Public Health Service Regional Offices. For the scope of 45 CFR Part 16, see Appendix A to such part.

f. Subpart E is amended by revising the authority to read as follows:

Subpart E—Maximum Allowable Cost for Drugs

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216).

* * * * *

g. Section 50.502 is amended by revising paragraph (a) to read as follows:

§ 50.502 Definitions.

* * * * *

(a) "Public Health Service" means the Office of the Assistant Secretary for Health, Health Resources and Services Administration, National Institutes of Health, Centers for Disease Control, Alcohol, Drug Abuse and Mental Health Administration, Food and Drug Administration, and all of their constituent agencies.

* * * * *

PART 51b—PROJECT GRANTS FOR PREVENTIVE HEALTH SERVICE

4. Part 51b is amended by revising § 51b.105 to read as follows:

§ 51b.105 Which other HHS Regulations apply to these grants?

Several other HHS regulations apply to grants under this part. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 76—Debarment and suspension from eligibility for financial assistance
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

(Secs. 317 and 318, Public Health Service Act, 92 Stat. 3574 and 3582 (42 U.S.C. 247b, 247c); sec. 1743 Pub. L. 97–35, 95 Stat. 763 (31 U.S.C. 1243 note))

PART 51d—GRANTS FOR SERVICE PROJECTS FOR GENETIC AND OTHER DISEASES

5. Part 51d is amended in § 51d.104 by revising paragraph (q) to read as follows:

§ 51d.104 Application for a grant.

* * * * *

(q) Evidence that all applicable requirements for review and approval under title XV of the Act have been met.

* * * * *

(Secs. 215, 1131, Public Health Service Act (42 U.S.C. 216, 300c–21); sec. 502(a), Social Security Act, as amended, 95 Stat. 819–20 (42 U.S.C. 702(a)))

PART 51f—[AMENDED]

6. Part 51f is amended in § 51f.110 by revising paragraph (a) to read as follows:

§ 51f.110 What additional information should an applicant or grantee have about a genetic disease testing or counseling grant?

(a) *Applicability of HHS Department-wide regulations.* Attention is drawn to the following HHS Department-wide regulations which apply to grants under this part:

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 74—Administration of grants
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

* * * * *

(Sec. 215, Public Health Service Act (42 U.S.C. 216); sec. 1101(a)(1), Public Health Service Act (42 U.S.C. 300b), as amended by Title II of Pub. L. 95–626, 92 Stat. 3570–3590; sec. 502(a) of the Social Security Act, as amended, 95 Stat. 819–20 (42 U.S.C. 702(a)))

7. Part 51g is amended by revising § 51g.8 to read as follows:

§ 51g.8 Which other HHS regulations apply to these grants?

Several other HHS regulations apply to grants under this part. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
42 CFR Part 122, Subpart E—Health Systems Agency reviews of certain proposed uses of Federal health funds
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

(Sec. 215, Public Health Service Act, 56 Stat. 690 (42 U.S.C. 216); sec. 1703(a), Public Health Service Act, 90 Stat. 697 (42 U.S.C. 300u–2(a)))

PART 52—GRANTS FOR RESEARCH PROJECTS

8. Part 52 is amended by revising § 52.8 to read as follows:

§ 52.8 Other HHS regulations that apply.

Several other HHS regulations apply to grants under this part. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Parts 6 and 8—Inventions and patents
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
48 FR 24556—Guidelines for Research involving Recombinant DNA Molecules, published by the National Institutes of Health

(Sec. 215, 58 Stat. 690, as amended, 63 Stat. 835 (42 U.S.C. 216); sec. 301, 58 Stat. 691, as amended, 60 Stat. 423, 62 Stat. 467, 601, 1017, 70 Stat. 490, 74 Stat. 1053, 85 Stat. 785, 86 Stat. 687, 88 Stat. 346, 360 (42 U.S.C. 241); sec. 303, 70 Stat. 929, as amended, 84 Stat. 1241, 88 Stat. 132, 346 (42 U.S.C. 242a); sec. 356, 82 Stat. 1174 (42 U.S.C. 263d); sec. 394, 79 Stat. 1062, as amended, 84 Stat. 63, 64, 66, 67, 87 Stat. 92, 88 Stat. 372 (42 U.S.C. 280b–5); sec. 1004, 89 Stat. 306, 352, as amended, 91 Stat. 389 (42 U.S.C. 300a–2); sec. 1006, 89 Stat. 308 (42 U.S.C. 300a–4); sec. 501, 90 Stat. 1038 (42 U.S.C. 4585); sec. 1205, 87 Stat. 597 (42 U.S.C. 300d–4); sec. 410, 68 Stat. 84, as amended, 90 Stat. 247, 90 Stat. 1040 (21 U.S.C. 1177); sec. 309(b), 92 Stat. 3447 (42 U.S.C. 242n); sec. 955(a), Pub. L. 97–35, 95 Stat. 589 (42 U.S.C. 300z–7(a)(1))

PART 52b—NATIONAL CANCER INSTITUTE CONSTRUCTION GRANTS

9. Part 52b is amended by revising § 52b.6 to read as follows:

§ 52b.6 Other HHS regulations that apply.

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

(Sec. 215, Public Health Service Act, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 406(b), Public Health Service Act, 92 Stat. 3428 (42 U.S.C. 286a); sec. 404(b)(9), Public Health Service Act, 92 Stat. 3427 (42 U.S.C. 285), unless otherwise noted)

PART 52c—MINORITY BIOMEDICAL SUPPORT PROGRAM

10. Part 52c is amended by revising § 52c.7 to read as follows:

§ 52c.7 Other HHS regulations that apply.

Several other regulations apply to grants under this subpart. These include, but are not limited to:

45 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
48 FR 24556—Guidelines for Research Involving Recombinant DNA Molecules published by the National Institutes of Health

(Sec. 215, Public Health Service Act, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 301(c), Public Health Service Act, 74 Stat. 1053 (42 U.S.C. 241(c)))

PART 52d—NATIONAL CANCER INSTITUTE CLINICAL CANCER EDUCATION PROGRAM

11. Part 52d is amended by revising § 52d.8 to read as follows:

§ 52d.8 Other HHS regulations that apply.

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

(Sec. 215, Public Health Service Act, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 404(a)(4), Public Health Service Act, 92 Stat. 3426 (42 U.S.C. 285))

PART 52e—NATIONAL HEART, LUNG, AND BLOOD INSTITUTE GRANTS FOR PREVENTION AND CONTROL PROJECTS

12. Part 52e is amended by revising § 52e.8 to read as follows:

§ 52e.8 Other HHS regulations that apply.

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

(Sec. 215, Public Health Service Act, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 414, Public Health Service Act, 86 Stat. 682 (42 U.S.C. 287c))

PART 52h—SCIENTIFIC PEER REVIEW OF RESEARCH GRANT APPLICATIONS AND RESEARCH AND DEVELOPMENT CONTRACT PROJECTS

13. Part 52h is amended as follows:

a. Section 52h.1 is amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 52h.1 Applicability.

* * * * *

(a) Applications for grants for biomedical and behavorial research, under the Act to the National Institutes of Health; the Alcohol, Drug Abuse, and Mental Health Administration; or any of their components; or the Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration. These regulations do not apply to applications for:

* * * * *

(b) Biomedical and behavorial research and development contract projects administered by the National Institutes of Health; the Alcohol, Drug Abuse, and Mental Health Administration; or any of their components; or the Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration.

* * * * *

b. Section 52h.3 is amended by revising paragraph (b) to read as follows:

§ 52h.3 Establishment and operation of peer review groups.

* * * * *

(b) Subject to § 52h.5 and paragraph (a) of this section, the Director of the National Institutes of Health, the Administrator of the Alcohol, Drug Abuse and Mental Health Administration, and the Administrator of the Health Resources and Services Administration will adopt procedures for the conduct of reviews and the formulation of recommendations under §§ 52h.7, 52h.9 and 52h.10 within their respective agencies.

c. Section 52h.5 is amended by revising paragraph (c) to read as follows:

§ 52h.5 Conflict of interest.

* * * * *

(c) Where permissible under the statutes, standards, and order cited in paragraph (a) of this section, the Director of the National Institutes of Health, the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Administrator of the Health Resources and Services Administration, or their designees may waive the requirements in paragraph (b) of this section if he or she determines that there is no other practical means for securing appropriate expert advice on a particular grant application, contract project, or contract proposal.

d. Section 52h.10 is amended by revising paragraph (c) to read as follows:

§ 52h.10 Contract projects involving solicited contract proposals; matters to be reviewed.

* * * * *

(c) The Director of the National Institutes of Health, the Administrator of the Alcohol, Drug Abuse and Mental Health Administration, the

Administrator of the Health Resources and Service Administration, or their designees may identify individual contracts or classes of contracts which may not be awarded unless all pertinent contract proposals have been reviewed by a peer review group in accordance with the provisions of this part and that group has made recommendations concerning the scientific merit of the proposals.

* * * * *

(Sec. 215, Public Health Service Act, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 475, Public Health Service Act, 88 Stat. 360, 89 Stat. 351, 92 Stat. 3436 (42 U.S.C. 2891–4); sec. 955(a), Pub. L. 97–35, 95 Stat. 590 (42 U.S.C. 300z–7(e)), unless otherwise noted)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

14. Part 57 is amended as follows:

Subpart B—Grants for Construction of Teaching Facilities for Health Professions Personnel

The authority for Subpart B continues to read:

Authority: (Sec. 727, Public Health Service Act, 77 Stat. 170 (42 U.S.C. 293g).

a. Section 57.106 is amended by revising paragraph (c) to read as follows:

§ 57.106 Nondiscrimination.

* * * * *

(c) *Discrimination on the basis of sex prohibited.* Attention is called to the requirements of section 704 of the Act, and to 45 CFR Part 83 which together provide that the Secretary may not make a grant, loan guarantee, or interest subsidy payment under title VII of the Act to, or for the benefit of, any school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, or public health, or any training center for allied health personnel or to any other entity unless the application for the grant, loan guarantee, or interest subsidy payment contains assurances satisfactory to the Secretary that the school, training center or other entity will not discriminate on the basis of sex in the admission of individuals to its training programs.

Subpart C—Health Professions Student Loans

The authority for subpart C continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740–744, Public Health Service Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391 (42 U.S.C. 294m–q).

b. Footnote 1 to paragraph (a) of § 57.203 is revised to read as follows:

§ 57.203 Application by school.

* * * * *

[1] Application and instructions are available from the Division of Student Assistance, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

c. Section 57.206 is amended by revising paragraph (b)(1) to read as follows:

§ 57.206 Eligibility and selection of health professions student loan applicants.

* * * * *

(b) * * *

(1) The financial resources available to the student by using one of the national need analysis systems or any other procedure approved by the Secretary of Education and published under 34 CFR 674.13 in combination with other information which the school has regarding the student's financial status. The school must take into account, regardless of the tax status of the student, the expected contribution from parents, spouse, self or other family members; and

* * * * *

d. Footnote 1 to paragraph (a) (2) of § 57.210 is revised to read as follows:

§ 57.210 Repayment and collection of health professions student loans.

* * * * *

[1] Individuals who received health professions student loans prior to July 1, 1969, remain subject to the repayment provisions of 42 CFR 57.214(a)(2) (1976) as adopted on February 7, 1974. These provisions can be found at 39 FR 4773 (Feb. 7, 1974) and a copy can be obtained by writing the Division of Student Assistance, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

e. Section 57.213 is revised to read as follows:

§ 57.213 Continuation of provisions for cancellation of loans made prior to November 18, 1971.

Individuals who received health professions student loans as students of medicine, osteopathy, dentistry or optometry prior to November 18, 1971, may still receive cancellation of these loans for practicing in a shortage area or for practicing in a rural shortage area characterized by low family income. The regulations set forth in 42 CFR 57.215(b) (1976), as adopted on February 7, 1974 remain applicable to cancellation on this basis. The provisions can be found at 39 FR 4774 (February 7, 1974) and a copy can be obtained by writing to the Division of Student Assistance, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Subpart H—Grants for Physician Assistant Training Programs

The authority for subpart H continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 783(a)(1), Public Health Service Act, 90 Stat. 214 (42 U.S.C. 295g–3(a)(1)).

f. Footnote 1 to paragraph (a) of § 57.704 is revised to read as follows:

§ 57.704 Application.

* * * * *

[1] Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Subpart K—Grants to Schools of Nursing for the Support of Their Educational Programs

The authority for Subpart K continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 810, Public Health Service Act, 89 Stat. 356 (42 U.S.C. 296e).

g. Footnote 1 to paragraph (a) of § 57.1004 is revised to read as follows:

§ 57.1004 Application.

* * * * *

[1] Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Subpart L—Grants for Residency Training in the General Practice of Dentistry

The authority for Subpart L continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 786(b), Public Health Service Act, 90 Stat. 2315 (42 U.S.C. 235g–6(b)).

h. Footnote 1 to paragraph (a) of § 57.1104 is revised to read as follows:

§ 57/1104 How must an entity apply for a grant?

* * * * *

[1] Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Subpart M—Financial Distress Grants to Health Professions Schools

The authority for Subpart M continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 788(b), Public Health Service Act, 90 Stat. 2319 (42 U.S.C. 295g–8(b)).

i. Section 57.1211 is amended by revising paragraph (a) to read as follows:

§ 57.1211 What additional Department regulations apply to grantees?

(a) Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Sections 799A and 845 of the Public Health Service Act [1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

* * * * *

Subpart O—Grants To Assist New Schools of Medicine, Osteopathy, and Dentistry

The authority for Subpart O continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended (42 U.S.C. 216); sec. 771(a), Public Health Service Act, 85 Stat. 443 (42 U.S.C. 295f–1).

j. Footnote 1 to paragraph (a) of § 57.1404 is revised to read as follows:

§ 57.1404 Application.

* * * * *

[1] Applications and instructions are available from the Grants Management Officer, Bureau of Health Professions, Parklands Building, 5600 Fishers Lane, Rockville, Maryland 20857.

[1] Section 799A of the Public Health Service Act was redesignated as Section 704 by Pub. L. 94–484; Section 845 of the Public Health Service Act was redesignated as Section 855 by Pub. L. 94–63.

k. Section 57.1409 is amended by revising paragraph (a) to read as follows:

§ 57.1409 Nondiscrimination.

(a) Attention is called to the requirements of section 704 of the Act and 45 CFR Part 83 which together provide that the Secretary may not make a grant, loan guarantee, or interest subsidy payment under title VII of the Act to, or for the benefit of, any school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, or public health or any training center for allied health personnel or any other entity unless the application for the grant, loan guarantee, or interest subsidy payment contains assurances satisfactory to the Secretary that the school, training center, or other entity will not discriminate on the basis of sex in the admission of individuals to its training programs.

* * * * *

Subpart P—Loan Guarantees and Interest Subsidies To Assist in Construction of Teaching Facilities for Health Profession Personnel

The authority for Subpart P continues to read:

Authority: Sec. 727, Public Health Service Act. 77 Stat. 170, as amended (42 U.S.C. 293g), unless otherwise noted.

l. Footnote 1 to the introductory paragraph of § 57.1504 is revised to read as follows.

§ 57.1504 Application.

* * * * *

[1] Applications and instructions are available from the Division of Facilities Conversion and Utilization, Bureau of Health Maintenance Organizations and Resources Development, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

m. Section 57.1514 is amended by revising paragraph (b)(6) to read as follows:

§ 57.1514 Loan Guarantee and interest subsidy agreements.

* * * * *

(b) * * *

(6) Where during the life of the loan with respect to which interest subsidies are to be paid, it is determined, after an opportunity for a hearing pursuant to 45 CFR Part 83, that the Assurance executed by the applicant under section 704 (or its predecessor, section 799A) of the Act, is no longer satisfactory, the Secretary's obligation with respect to the payment of interest subsidies shall cease: *Provided, however,* That the Secretary shall resume making interest subsidy payments if he determines that a subsequent Assurance submitted by the applicant is satisfactory.

* * * * *

Subpart Q—Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine

The authority for Subpart Q continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 786(a), Public Health Service Act, 90 Stat. 2316 (42 U.S.C. 295g–6(a)).

n. Section 57.1609 is revised to read as follows:

§ 57.1609 What additional Department regulations apply to grantees?

Several other regulations apply to these grants. They include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Sections 799A and 845 of the Public Health Service Act [1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

Subpart R—Grants for the Establishment of Departments of Family Medicine

The authority for Subpart R continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 780, Public Health Service Act, 90 Stat. 2311 (42 U.S.C. 295g), as amended, 95 Stat. 221 (42 U.S.C. 295g).

o. Section 57.1708 is revised to read as follows:

§ 57.1708 What additional Department regulations apply to grantees?

Several other regulations apply to grants under the subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Sections 799A and 845 of the Public Health Service Act [1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS Programs or activities receiving Federal financial assistance

Subpart S—Educational Assistance to Individuals from Disadvantaged Backgrounds

The authority for Subpart S continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 787, Public Health Service Act, 90 Stat. 2317, as amended, 95 Stat. 923 (42 U.S.C. 295g–7).

p. Section 57.1809 is revised to read as follows:

§ 57.1809 What additional Department regulations apply to grantees?

Several other Department regulations apply to grantees. They include but are not limited to:

45 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Sections 799A and 845 of the Public Health Service Act [1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

Subpart T—Nursing Special Project Grants

The authority for Subpart continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 820, Public Health Service Act, 89 Stat. 359, as amended, 95 Stat. 929 (42 U.S.C. 296k).

q. Footnote 1 to paragraph (a) of § 57.1904 is revised to read as follows:

§ 57.1904 Application.

* * * * *

[1] Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Subpart V—Grants for Training in Emergency Medical Services

The authority for Subpart V continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 789, Public Health Service Act, 90 Stat. 2243, as amended, 90 Stat. 2709 (42 U.S.C. 295g–9).

r. Section 57.2112 is revised to read as follows:

§ 57.2112 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Department Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Sections 799A and 845 of the Public Health Service Act [1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

Subpart Y—Grants for Nurse Practitioner Training Programs

The authority for Subpart Y continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 822, Public Health Service Act, 89 Stat. 361 (42 U.S.C. 296m).

s. Footnote 1 to paragraph (a) of § 57.2404 is revised to read as follows:

§ 57.2404 Application.

* * * * *

[1] Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Subpart CC—Scholarships for First Year Students of Exceptional Financial Need

The authority for Subpart CC continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 758, Public Health Service Act, 90 Stat. 2289 (42 U.S.C. 294z).

t. Section 57.2808 is revised to read as follows:

§ 57.2808 What additional Departmental regulations apply to grantees?

Several other regulations apply to these grants. They include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 74—Administration of grants
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Sections 799A and 845 of the Public Health Service Act [1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

Subpart FF—Grants for Residency Training in General Internal Medicine or General Pediatrics

The authority of Subpart FF continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 784, Public Health Service Act, 90 Stat. 2315 (42 U.S.C. 295g–4).

u. Section 57.3110 is revised to read as follows:

§ 57.3110 What additional department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Sections 799A and 845 of the Public Health Service Act [1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

Subpart JJ—Grants to Schools of Medicine, Osteopathy, Dentistry, Public Health, Veterinary Medicine, Optometry, Pharmacy, and Podiatry for the Support of Their Educational Programs

The authority for Subpart JJ continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216), secs. 770–772, Public Health Service Act, 90 Stat. 2290, as amended, 91 Stat. 391 and 1503, 92 Stat. 3456 and 3457 (42 U.S.C. 295f).

v. Section 57.3516 is revised to read as follows:

§ 57.3516 What Additional Department regulations apply to grantees?

Several other regulations apply to these grants. They include, but are not limited to:

45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and Procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Sections 799A and 845 of the Public Health Service Act [1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

Subpart MM—Area Health Education Center Program

The authority of Subpart MM continues to read:

Authority: (Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 781, Public Health Service Act, 90 Stat. 2312 (42 U.S.C. 295g–1), as amended).

w. Section 57.3811 is revised to read as follows:

§ 57.3811 What additional Department regulations apply to awardees?

Several other regulations apply to cooperative agreements under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 76—Debarment and suspension from eligibility for financial assistance
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Sections 799A and 845 of the Public Health Service Act [1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

Subpart NN—Grants for Various Health Professions Projects

The authority of Subpart NN continues to read:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 67 Stat. 631 (42 U.S.C. 216); sec. 788(b), Public Health Service Act, 95 Stat. 924 (42 U.S.C. 295g–8).

x. Section 57.3908 is revised to read as follows:

§ 57.3908 What additional Departmental regulations apply to grantees?

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Sections 799A and 845 of the Public Health Service Act [1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

PART 58—GRANTS FOR TRAINING OF PUBLIC HEALTH AND ALLIED HEALTH PERSONNEL

15. Part 58 is amended as follows:

a. Section 58.9 is revised to read as follows:

§ 58.9 What additional Department regulations apply to grantees?

Several other regulations apply to grantees. They include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title

45 CFR Part 83—Regulation for the administration and enforcement of Sections 799A and 845 of the Public Health Service Act[1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving or benefiting from Federal financial assistance

b. Section 58.213 is revised to read as follows:

§ 58.213 What additional Department regulations apply to grantees?

Several other regulations apply to grantees. They include, but are not limited to:

42 CFR Part 50—Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 80—Nondiscrimination under programs receiving Federal financial assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Sections 799A and 845 of the Public Health Service Act[1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

c. Section 58.233 is revised to read as follows:

§ 58.233 What additional Department regulations apply to grantees?

Several other Department regulations apply to grantees. They include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 83—Regulation for the administration and enforcement of Sections 799A and 845 of the Public Health Service Act[1]
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

(Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 748, 749, and 791, Public Health Service Act, 90 Stat. 2279, as amended by 91 Stat. 1505; as amended and redesignated sec. 792, Public Health Service Act by 95 Stat. 927; 2280, and 2303 (42 U.S.C. 294s, 295h, and h–1b))

PART 59—GRANTS FOR FAMILY PLANNING SERVICES

16. Part 59 is amended as follows:

a. Section 59.10 is revised to read as follows:

§ 59.10 What other HHS regulations apply to grants under this subpart?

Attention is drawn to the following HHS Department-wide regulations which apply to grants under this subpart: These include:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
42 CFR Part 122, Subpart E—Health Systems Agency review of certain proposed uses of Federal health funds
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 19—Limitations on payment or reimbursement for drugs
45 CFR Part 74—Administration of grants
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

b. Footnote 1 to paragraph (a) in § 59.204 is revised to read as follows:

§ 59.204 Application for a grant.

* * * * *

[1] Applications and instructions may be obtained from the Program Director, Family Planning Services, at the Regional Office of the Department of Health and Human Services for the region in which the project is to be conducted, or the Office of Family Planning, Office of the Assistant Secretary for Health, Washington, D.C. 20201.

(Sec. 6(c), Public Health Service Act, 84 Stat. 1506 and 1507 (42 U.S.C. 300, 300a–1, and 300a–4))

PART 66—NATIONAL RESEARCH SERVICE AWARDS

17. Part 66 is amended as follows:

a. Section 66.112 is revised to read as follows:

§ 66.112 Other HHS regulations that apply.

Several other regulations and policies may apply to individuals and institutions receiving payments under this subpart. These include, but are not limited to:

45 CFR Parts 6 and 8—Inventions and patents
45 CFR Part 46—Protection of human subjects
45 CFR Part 76—Debarment and suspension from eligibility for financial assistance
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
48 FR 24556—Guidelines for Research Involving Recombinant DNA Molecules published by the National Institutes of Health

b. Section § 66.207 is revised to read as follows:

§ 66.207 Other HHS regulations and policies that apply.

Several other regulations and policies apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 76—Debarment and suspension from eligibility for financial assistance
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title

[1] Section 799A of the Public Health Service Act was redesignated as Section 704 by Pub. L. 94–484; Section 845 of the Public Health Service Act was redesignated as Section 855 by Pub. L. 94–63.

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
48 FR 24556—Guidelines for Research Involving Recombinant DNA Molecules published by the National Institutes of Health

(Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, (42 U.S.C. 216); sec. 472, Public Health Service Act, 88 Stat. 342 (42 U.S.C. 2891–1))

PART 74—CLINICAL LABORATORIES

18. Part 74 is amended as follows:

a. Section 74.1 is amended by revising paragraphs (f), (g), and (l) to read as follows:

§ 74.1 Definitions.

* * * * *

(f) "Director" means the Director of the Centers for Disease Control, Public Health Service, Department of Health and Human Services.

(g) "Health insurance program" means the program created under Title XVIII of the Social Security Act, pursuant to which individuals are entitled to have payments made on their behalf for services performed by independent laboratories as provided in 42 CFR Part 405, Subpart M.

* * * * *

(l) "Secretary" means the Secretary of Health and Human Services or the Secretary's designee.

* * * * *

b. Section 74.2 is amended by revising paragraph (b)(1) to read as follows:

§ 74.2 Applicability.

* * * * *

(b) * * *

(1) Any laboratory with respect to any category in which it accepts no more than 100 specimens during any calendar year: *Provided*, That the laboratory holds an unrevoked and unsuspended letter of exemption for such category issued upon application submitted by such laboratory to the Director, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, GA 30333, and upon its agreement to maintain and make available such accession and other records, submit such information and reports, and comply with such provisions of this part as the Secretary may reasonably find necessary to determine its initial and continuing eligibility for exemption under this paragraph. For purposes of this paragraph, a category shall be one of the following: (i) Microbiology and serology; (ii) clinical chemistry; (iii) immunohematology; (iv) hematology; (v) pathology; (vi) radiobioassay.

* * * * *

(Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216))

PART 86—GRANTS FOR EDUCATION PROGRAMS IN OCCUPATIONAL SAFETY AND HEALTH

19. Part 86 is amended as follows:

a. Footnote 1 to paragraph (a) in § 86.12 is revised to read as follows:

§ 86.12 Application for a grant.

* * * * *

[1] Applications and instructions may be obtained from the Procurement and Grants Office, Centers for Disease Control, Atlanta, GA 30333.

b. Footnote 1 to § 86.32 is revised to read as follows:

§ 86.32 Applications for direct traineeships.

* * * * *

[1] Applications and instructions may be obtained from the Procurement and Grants Office, Centers for Disease Control, Atlanta, GA 30333.

(Sec. 8(g), Public Health Service Act, 84 Stat. 1600 (29 U.S.C. 657(g)); sec. 21(a), Public Health Service Act, 84 Stat. 1612 (29 U.S.C. 670(a)))

PART 87—NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH RESEARCH AND DEMONSTRATION GRANTS

20. Part 87 is amended by revising § 87.9 to read as follows:

§ 87.9 Which other HHS regulations apply?

Several other regulations apply to grants under this part. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearing under Part 80 of this Title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

(Sec. 8(g), Public Health Service Act, 84 Stat. 1600 (29 U.S.C. 657(g)); sec. 508, Public Health Service Act, 83 Stat. 803 (30 U.S.C. 957))

PART 110—HEALTH MAINTENANCE ORGANIZATIONS

21. Part 110 is amended by revising footnote 1 to § 110.604 as follows:

§ 110.604 Application requirements.

* * * * *

[1] Application forms and instructions may be obtained by writing the Office of Health Maintenance Organizations, Division of Qualifications, 5600 Fishers Lane, Rockville, MD 20857.

*

(Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); secs. 1301–1318, Public Health Service Act, as amended, 95 Stat. 572–578 (42 U.S.C. 300e-300e-17))

[FR Doc. 84-25595 Filed 9-26-84; 8:45 am]
BILLING CODE 4160-17-M

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42 CFR Part 59

Grants for Family Planning Projects; Parental Notification Requirement

AGENCY: Public Health Service, DHHS.

ACTION: Final rule.

SUMMARY: In 1983, the Department of Health and Human Services published regulations requiring, among other things, parental notification for the provision of prescription contraceptives to minors seeking services from family planning providers funded under Title X of the Public Health Service Act. The implementation of those regulations was subsequently enjoined by Federal District Courts. This rule removes those regulations from the Code of Federal Regulations.

EFFECTIVE DATE: This rule is effective on September 27, 1984.

FOR FURTHER INFORMATION CONTACT: Donald Underwood, (202) 245–0146.

SUPPLEMENTARY INFORMATION: On January 26, 1983, the Secretary of Health and Human Services published regulations amending the regulations applicable to the program for family planning services, Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.* 48 FR 3600. The regulations, codified at 42 CFR 59.5(a)(12), required parental notification for the provision of prescription contraceptives to minors. They also amended 42 CFR 59.2 by revoking the last sentence of the definition of "low income family."

The rules were scheduled to become effective on February 25, 1983. However, in mid-February, they were enjoined by two Federal District Courts, and both District Court decisions were upheld on appeal. *See State of New York* v.

Schweiker, Civil No. 83 CIV 0726 (S.D.N.Y., 1983), *aff'd, State of New York* v. *Heckler*, 719 F.2d 1191 (2nd Cir., 1983); *Planned Parenthood Federation of America, Inc.* v. *Schweiker*, 559 F. Supp. 658 (D.D.C., 1983), *aff'd, Planned Parenthood Federation of America, Inc.* v. *Heckler*, 712 F.2d 650 (D.C. Cir., 1983). The decisions of the Courts of Appeal were not appealed further. Consequently, the parental notification regulations never went into effect.

In order to remove the parental notification regulations from Part 59 of 42 Code of Federal Regulations, it is necessary to issue a rule removing them. Accordingly, the rule below removes 42 CFR 59.5(a)(12). Furthermore, the revocation of the last sentence of the definition of "low income family" in 42 CFR 59.2 effected by the January 26, 1983 amendment was likewise ineffective, for the reasons set out above. Thus, the rule below restores the definition of that term, as it will appear in the Code of Federal Regulations, to the one in effect prior to January 26, 1983:

"Low income family" means a family whose total annual income does not exceed 100 percent of the most recent Community Services Administration Income Poverty Guidelines (45 CFR 1060.2). "Low-income family" also includes members of families whose annual family income exceeds this amount, but who, as determined by the project director, are unable, for good reasons, to pay for family planning services. For example, unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources.

Regulatory Procedures

Regulatory Flexibility Act

Because this provision is issued as a final rule without being preceded by a general notice of proposed rulemaking, a final regulatory analysis under section 604 of the Regulatory Flexibility Act (94 Stat. 1167) is not required. In any event, the rule will not have a significant impact on a substantial number of small entities, as the recipients of most of the funds under Title X are state agencies. Further, the primary effect of the amendments below is to remove, rather than add, regulatory requirements. Accordingly, the Secretary certifies that a regulatory flexibility analysis is not required.

Executive Order 12291

There are *no* cost impacts resulting from the revocation of these regulations since the regulations have never been implemented. This is simply a technical change, intended to bring the Code of Federal Regulations into conformance with current practice. Accordingly, the Secretary certifies that there is no impact on small entities, and a regulatory flexibility analysis is not required under the Regulatory Flexibility Act of 1980. Further, this action does not constitute a major rule and a regulatory impact analysis is not required under Executive Order 12291.

Paperwork Reductions

These amendments to the Title X regulations do not require review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, as they impose no information collection requests or requirements. The sole effect of the amendments is to revoke previously approved information collection requirements.

In view of the fact that the amendments below simply make the provisions of the Code of Federal Regulations consistent with the court orders previously entered against the Department, the Secretary has determined that notice and public comment on the amendments would be impractical, unnecessary and contrary to the public interest.

List of Subjects in 42 CFR Part 59

Family planning, Grant programs—health, Youth.

PART 59—[AMENDED]

Accordingly, 42 CFR Part 59 Subpart A is hereby amended as set forth below.

1. The authority citation for Part 59 Subpart A continues to read as follows:

Authority: Sec. 6(c), 84 Stat. 1507, 42 U.S.C. 300 a–4; sec. 6(c), 84 Stat. 1506, 42 U.S.C. 300.

§ 59.5 [Amended]

2. 42 CFR 59.5(a)(12) is removed.

§ 59.2 [Amended]

3. The definition of "low income family" at 42 CFR 59.2 is amended by adding at the end thereof the following words: "For example, unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources."

Dated: August 20, 1984.

Edward N. Brandt, Jr., M.D.,

Assistant Secretary for Health.

Dated: September 14, 1984.

Approved:

Margaret M. Heckler,

Secretary.

[FR Doc. 84–25596 Filed 9–24–84; 9:29 am]

BILLING CODE 4160–17–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 1, 8, 59 and 151

Technical Amendments to Federal Emergency Management Regulations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This document makes technical amendments to sundry FEMA regulations. These technical amendments change inaccuracies in the present regulations.

EFFECTIVE DATE: September 27, 1984.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, Telephone (202) 289–0377.

SUPPLEMENTARY INFORMATION: The regulation makes technical amendments to FEMA regulations and is not substantive in nature. It is routine. Therefore, it is not subject to any of the requirements of 5 U.S.C. 553, Executive Order 12291, the Regulatory Flexibility Act, 44 CFR Part 10 relating to environmental matters, or the Paperwork Reduction Act.

List of Subjects

44 CFR Part 1

Administrative practice and procedure.

44 CFR Part 8

National security information.

44 CFR Part 59

General provisions.

44 CFR Part 151

Government property, fire prevention. Reimbusement for costs of firefighting on Federal property.

Authority: The amendments to Parts 1, 8, 59, and 151 issued under Reorganization Plan No. 3 of 1978, and E.O. 12127, 44 FR 19367, April 3, 1979, E.O. 12148, 44 FR 43239, July 24, 1979 and E.O. 12356, 44 FR 14874, April 6, 1982, and corrected at 44 FR 15557, April 12, 1982.

Accordingly, Chapter I of Title 44, Code of Federal Regulations, is amended as follows:

PART 1—RULEMAKING; POLICY AND PROCEDURES

§ 1.2 [AMENDED]

1. § 1.2(a)(2) is amended by removing the words "of allowances" and adding "or allowances" in place thereof.

§ 1.4 [Amended]

2. § 1.4(d) is amended by removing the words "forums of panels" and adding "forums or panels" in place thereof.

3. The first sentence of paragraph (f)(3) of § 1.12 is revised to read:

§ 1.12 Notice of Proposed rulemaking.

* * * * *

(f) * * *

(3) The initial regulatory flexibility analysis or a summary thereof as required by the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), or a certification that the rule, if promulgated, will not have a significant economic impact on a significant number of small entities pursuant to 5 U.S.C. 605. Such certification may be made by any FEMA official with rulemaking authority. * * *

* * * * *

PART 8—NATIONAL SECURITY INFORMATION

§ 8.1 [Amended]

4. § 8.1(b) is amended by removing the word "notice" and adding the word "regulation" in place thereof.

§ 8.4 [Amended]

5. § 8.4(g)(1) is amended by adding "/her" after "his".

PART 59—GENERAL PROVISIONS

§ 59.1 [Amended]

6. § 59.1 is amended by adding, in alphabetical sequence, after the definition of *"eligible community"* the following definition:

Elevated Building for insurance purposes, means a non-basement building which was initially designed or built to have the bottom of the lowest floor beam (or equivalent floor support) above the ground level by extended wall foundations, shear walls, posts, piers, pilings or columns such that there would be air space between the lowest floor beam and the ground.

And by deleting the last sentence of the definition of *"Start of construction"*.

PART 151—REIMBURSEMENT FOR COSTS OF FIREFIGHTING ON FEDERAL PROPERTY

§ 151.12 [Amended]

7. Section 151.12(a)(2) is amended by making the second and third sentences as separate, flush, undesignated paragraph to follow paragraph (a)(2).

Dated: September 24, 1984.

George Jett,

General Counsel.

[FR Doc. 84-25626 Filed 9-26-84; 8:45 am]

BILLING CODE 6817-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Ch. I

OMB Control Numbers

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Paperwork Reduction Act of 1980 (Pub. L. 96-511; 44 U.S.C. 3501 et seq.), requires, generally, that all regulations which contain recordkeeping or reporting requirements must be approved by the Director, Office of Management and Budget (OMB). Once approved, these regulations are assigned an OMB Control Number. This rule amends Title 46 Ch. I, Code of Federal Regulations to display OMB Control Numbers which have been assigned to Coast Guard regulations contained therein.

EFFECTIVE DATE: This rule is effective September 27, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, (202) 426-1477.

SUPPLEMENTARY INFORMATION: This final rule was not preceded by a notice of proposed rulemaking and is being made effective in less than 30 days after publication in the **Federal Register**. This rule merely displays existing OMB Control Numbers pertaining to specific Coast Guard regulations for the public's information. Therefore, the Coast Guard has determined that notice and public procedure thereon are unnecessary under 5 U.S.C. 553(b)(B). Since this rule has no substantive effect, good cause exists for making it effective in less than 30 days after publication, under 5 U.S.C. 553(d).

Drafting Information

The regulation was drafted by LT Dave Shippert, Project Attorney, Office of the Chief Counsel.

Discussion

The purpose of the Paperwork Reduction Act of 1980 (Pub. L. 96-511; 44 U.S.C. 3501 et seq.) is to reduce the burden placed upon the public by recordkeeping and reporting requirements imposed by federal agencies. To achieve this goal, the Act requires that agencies must, generally, obtain approval from the Director, Office of Management and Budget (OMB), before promulgating regulations which impose a recordkeeping or reporting requirement. Once approved an OMB Control Number is assigned to the regulations.

While the Coast Guard has continually strived to minimize the burden imposed upon the public, certain recordkeeping and reporting requirements have been imposed through many of the regulations contained in Title 46 of the Code of Federal Regulations (CFR). These paperwork requirements have been approved as necessary to fulfill the Coast Guard's roles and missions and have been assigned OMB Control Numbers. The Coast Guard has compiled a list of OMB Control Numbers which pertain to regulations within Title 46 of the CFR. This rule revises Title 46 by displaying the OMB Control Numbers in table format for each Subchapter which contains recordkeeping or reporting requirements.

The display of OMB Control Numbers in the CFR will provide assurance to the public that the paperwork requirements have been carefully reviewed and determined to be necessary. Moreover, publication in the CFR is an efficient method of displaying OMB Control Numbers as required by the Paperwork Reduction Act. (44 U.S.C. 3512.)

This display of 46 CFR cites and relevant OMB Control Numbers does not provide an exclusive list of all recordkeeping and reporting requirements within the Title. The regulatory process is an ongoing one and changes are frequent in response to current conditions. Therefore, recently assigned OMB Control Numbers may not be included in this rule. The Coast Guard also utilizes other methods to display applicable OMB Control Numbers to affected parties and many may not have been included in this compilation. As a service to the public and in an effort to achieve the goals of the Paperwork Reduction Act, the Coast Guard will revise and update the tables and individual rules when additional OMB Control Numbers are assigned and compiled.

Regulatory Analysis

This regulation is considered to be non-Major under Executive Order 12291 and non-significant under the DOT Regulatory Policies and Procedures (44 FR 11304; February 26, 1979. The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. This rule merely displays existing OMB Control Numbers for the public's information and imposes no new requirement. Since

the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

PART 1—[AMENDED]

Accordingly, Title 46, Code of Federal Regulations is revised as follows:

(1) By amending Part 1 to add a new § 1.30 to read as follows:

§ 1.30 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 2.01	2115-0007
§ 2.95-10	2115-0141
§ 3.10	2115-0053
Part 4	2115-0003
Part 6	2115-0005

PART 10—[AMENDED]

(2) By amending Part 10 to add a new § 10.01-6 to read as follows:

§ 10.01-6 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 10.25-7(3)(9)	2115-0063
§ 12.02-1	2115-0514
Part 12	2115-0063
§ 12.02-4	2115-0502
§ 12.02-5(6)	2115-0069
§ 12.02-7(a)(6)	2115-0069
§ 12.02-9	2115-0008
§ 12.02-10	2115-0502
§ 12.02-13	2115-0067
§ 12.02-14	2115-0067
§ 14.05-2	2115-0061
§ 14.05-10(6)	2115-0066
§ 14.05-20	2115-0015
§ 14.20	2115-0053

PART 30—[AMENDED]

(3) By amending Part 30 to add a new § 30.01-2 to read as follows:

§ 30.01-2 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 31.10-5(a)	2115-0131
§ 31.10-32	2115-0131
§ 31.10-33	2115-0131
§ 31.37-15	2115-0131
§ 31.40-35	2115-0131

PART 42—[AMENDED]

(4) By amending Part 42 to add a new § 42.01-5 to read as follows:

§ 42.01-5 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
Part 42	2115-0043
Part 44	2115-0043
Part 45	2115-0043
Part 46	2115-0043

PART 50—[AMENDED]

(5) By amending Part 50 to add a new § 50.01-20 to read as follows:

§ 50.01-20 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
Part 61	2115-0142
Part 63	2115-0142

PART 70—[AMENDED]

(6) By amending Part 70 to add a new § 70.01-15 to read as follows:

§ 70.01-15 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 70.01-15	2115-0136

PART 107—[AMENDED]

(7) By amending Part 107 to add a new § 107.05 to read as follows:

§ 107.05 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 107.305	2115-0505
§ 107.309	2115-0505

PART 110—[AMENDED]

(8) By amending Part 110 to add a new § 110.01-2 to read as follows:

§ 110.01-2 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 110.25	2115-0115

PART 146—[AMENDED]

(9) By amending Part 146 to add a new § 146.01-5 to read as follows:

§ 146.01-5 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 146.02-20	2115-0054
§ 146.29-13	2115-0013

PART 150—[AMENDED]

(10) By amending Part 150 to add a new § 150.105 to read as follows:

§ 150.105 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 150.01-15	2115-0016
§ 153.5	2115-0016
§ 153.905	2115-0089
§ 153.910	2115-0089
§ 153.968	2115-0089
§ 154.12	2115-0016

PART 157—[AMENDED]

(11) By amending Part 157 to add a new § 157.01-15 to read as follows:

§ 157.01-15 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 157.15	2115-0514

(12) By amending Part 159 to add a new § 159.001-9 to read as follows:

§ 159.001-9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 159.007-11.13	
§ 2115-0090	
§ 160.002-5	2115-0090
§ 160.047-5	2115-0090
§160.048-5	2115-0090
§ 160.050-5	2115-0090
§ 160.052-7	2115-0090
§ 160.053-4	2115-0090
§ 160.055-4	2115-0090
§ 160.064-6	2115-0090
§§ 161.001 through 161.010	2115-0121
§§ 162.001 through 161.018	2115-0525
§ 162.041	2115-0525
§ 162.043	2115-0525
§ 164.012-13	2115-0121

PART 175—[AMENDED]

(13) By amending Part 175 to add a new § 175.01-3 to read as follows:

§ 175.01-3 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director

of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 179.01–30	2115–0136
§ 177.05	2115–0095
§ 179.10–3	2115–0095
§ 179.20–1	2115–0095
§ 186.10	2115–0514

PART 401—[AMENDED]

(14) By amending Part 401 to add a new § 401.105 to read as follows:

§ 401.105 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pusuant to the Paperwork Reduction Act of 1980, (44 U.S.C. 3501 et seq.). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part of section where identified or descibed	Current OMB control No.
Part 401	2115–0022

Authorization: 44 U.S.C. 3507; 49 CFR 1.45.

Dated: September 24, 1984.

E.H. Daniels,

Rear Admiral, U.S. Coast Guard, Chairman, Marine Safety Council.

[FR Doc. 84–25663 Filed 9–26–84; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Amendment To Update Regulations Dealing With the Freedom of Information Act and the Privacy Act; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects an erroneous authority citation in the Order in this proceeding concerning regulations dealing with the Freedom of Information Act and Privacy Act, published in the **Federal Register** on April 4, 1984 (49 FR 13366).

FOR FURTHER INFORMATION CONTACT: Kathleen Fagan, (202) 632–6390.

SUPPLEMENTARY INFORMATION:

Erratum

In the Matter of Amendment of Part 0 of the Commission's Rules to Update Regulations dealing with the Freedom of Information Act and the Privacy Act.

Released: September 18, 1984.

On March 29, 1984, the Commission, by its Managing Director, released an Order (Mimeo #3172) in the captioned proceeding. The authority citation given for the amended rules contained several errors. The correct language should be inserted on page 13367, column one, lines 4–9 to read as follows:

"Authority for this action is contained in sections 4(i) and 303(n) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(n) and Section 0.231(d) of the Commission's rules and regulations. [47 CFR 0.231(d)]."

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–25671 Filed 9–26–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 31

[Docket No. 82–681]

Letter Regarding Declaratory Ruling To Clarify Questions Concerning Certain Amendments to the Uniform System of Accounts

AGENCY: Federal Communications Commission.

ACTION: Declaratory Ruling.

SUMMARY: In response to a request by the New York Department of Public Service, the Common Carrier Bureau under delegated authority is issuing a declaratory ruling to clarify several questions which have been raised in reference to CC Docket No. 82–681. These questions concern the amendments to the Uniform System of Accounts which relate to the installation costs associated with public telephone equipment, the costs of replacing a public telephone with an operating spare, and the costs associated with company official business equipment.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Accounting and Audits Division, Common Carrier Bureau, (202) 634–1861.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 31

Communications common carriers, Telephone, Uniform system of accounts.

William J. Tricarico,

Secretary, Federal Communications Commission.

September 20, 1984.

State of New York Department of Public Service,

Three Empire State Plaza, Albany, New York

Attention: David E. Blabey, Counsel.

Gentlemen: This is in reply to your letter of July 23, 1984, in which you request clarification of certain accounting changes ordered in the Report and Order of CC Docket No. 82–681 (Order), published in the **Federal Register** of November 2, 1983, Volume 48, No. 213. The Order amended the Uniform System of Accounts, Part 31, for telephone companies to make the accounting rules consistent with previous Commission decisions concerning the detariffing of customer premises equipment and the expensing of inside wiring. These amendments were necessary to separate certain regulated and nonregulated costs currently recorded in the same accounts and to clarify certain accounting instructions. The Order established, among other things, new account classifications and accounting instructions for coin-operated and credit card telephones (public telephone equipment), company-used station apparatus, key systems, and large private branch exchanges.

Your first question requests clarification of paragraphs 42 and 46 of the Order. You state that paragraph 42 required the investment in public telephones to be transferred to the new account 235, "Public telephone equipment," but did not specify whether both the embedded station apparatus costs in account 231, "Station apparatus," as well as the embedded installation costs recorded in account 232, "Station connections-inside wiring," are to be transferred. You further state that, on the other hand paragraph 46 required all costs of installing new public telephone equipment including premise wiring to be capitalized in account 235. You believe that the Order was unclear as to whether the installation costs associated with pay telephones and booths recorded in account 232 are to be transferred to account 235 along with the embedded public telephone equipment recorded in account 231.

In paragraph 42 of the Order, the Commission stated that since the effort to separately identify the new and embedded telephone equipment would cause extreme hardship on the carriers, the public telephone equipment transferred (reclassified) to account 235 should not be limited to only the new equipment but should include the embedded equipment. The Commission also required this reclassification to be on a flash-cut basis. Additionally, paragraph 46 of the Order stated that since the costs of installing new public telephones are recovered in future revenues from users of public telephones, it is appropriate to capitalize the costs of installing public telephones and to depreciate

these costs with the future revenues. This requires that all new public telephone investment in enclosures, mountings, directory stands or shelves, and telephone sets and the installation labor costs associated with new public telephone equipment to be capitalized to account 235. Therefore, in response to your question, the Order required the carriers to reclassify the embedded public telephone equipment in account 231 to account 235. However, the embedded inside wiring cost associated with public telephone equipment in account 232 is not to be reclassified but is to be amortized over the authorized period as ordered in CC Docket No. 79-105, *Expensing of Inside Wiring*, 85 FCC 2d 818 (1981).

Your second question requests clarification of paragraph 47 of the Order which required expensing the cost of replacing a public telephone with an operating spare. You ask what accounting treatment is to be provided the original cost of the pay station which is removed; what costs are to be included in the "cost of replacing"; and whether the "cost of replacing" includes both the cost of removing the existing pay station and the cost of installing the new one, or whether the cost of removal is to be charged to the depreciation reserve.

The Order stated that the Commission's primary objective for capitalizing operating spares was to establish the accounting that would provide carriers the ability to maintain a continuity of service for public telephones without incurring retirement accounting to cover this activity. Moreover, the Commission felt that the operating spares concept would not cause any additional hardships on the carriers since the Commission envisioned the capitalized operating spares to be located in specific locations not to exceed six months supply in terms of turnover and available to installers from locations in reasonable proximity to the location of the installed equipment. The accounting for operating spares was established so that the costs for replacing equipment which is normal maintenance would be charged to expense. The Commission also believed this action to be consistent with good accounting principles in that it provides for capitalizing the initial spare equipment purchased to support operated plant.

The disposition of the original cost of the pay station which is removed is dependent upon whether the plant is disposed of or kept as an operating spare. Should a piece of equipment be removed from service and disposed of, § 31.2-25, "Telephone plant retired," of the Commission's Rules and Regulations requires the original cost to be credited to the plant account and charged to account 171, "Depreciation reserve." Account 171 also requires a charge for cost of removal and credits for salvage value. However, if the pay station is removed for repair and replaced by an operating spare, the original cost remains in account 235 while the repair cost and labor cost of removing existing defective public telephone equipment along with the labor cost of installing the operating spare are expensed to account 607, "Repairs of public telephone equipment." Therefore, the costs of replacing defective public telephone equipment with an operating spare which are chargeable to account 607 include the cost of removing the existing equipment and the cost of installing the operating spare. If, however, a repair encompasses the replacement of a retirement unit, the original cost of the equipment will be retired while the replacement will be booked at its new cost to account 235.

An additional accounting situation may arise when a public telephone location is abandoned but the public telephone equipment is retained as an operating spare. Under this circumstance, the original costs will remain in account 235 with the exception of its embedded labor costs. The embedded labor costs associated with the public telephone equipment at this abandoned location is to be retired using § 31.2-25 accounting. However, if returning public telephone equipment to the operating spare supply would exceed the six month supply level, the original costs must be retired, but the salvaged portions of the materials would be transferred to account 122, "Material and supplies."

Your third question concerns account 262, "Other communication equipment," which is the new account for recording the investment in company official business equipment along with its installation costs (including the associated inside wiring). You state that paragraph 52 of the Order appears to require the transfer to account 262 of the company official business equipment installation costs previously recorded in account 232 which are currently being amortized over ten years by CC Docket No. 79-105. You ask if your interpretation is correct, what procedures are to be used to break out the original cost of that investment from the total balance of account 232 and to determine the unamortized balance to be transferred.

The Order established the new account 262 in order to avoid additional recordkeeping which would have been required if account 261, "Furniture and office equipment," were used as originally proposed. This approach will permit carriers to continue to maintain records for this equipment on an average unit basis. Retirement units for account 262 were also established to require all retirements of this equipment to conform with our Rules covering normal retirement accounting as prescribed in § 31.2-25.

The Commission has not altered its decision in CC Docket No. 79-105 regarding the amortization of inside wiring. Your interpretation is therefore not correct. The installation costs associated with inside wiring previously recorded in account 232 are not to be transferred out of account 232 but will continue to be amortized as ordered by this Commission. Account 262 is to be charged with only the new costs associated with installation of inside wiring of company official business equipment.

Your fourth concern relates to the Commission's decision, as stated in paragraphs 54 and 55 of our Order, to allow the amortization of certain company official station equipment having an original cost of $200 or less. You state that there appears to be some incongruity between the decision as expressed in the Order and the revised accounting instructions of account 231. You believe that the language of the revised account 231 appears to drop the qualification that the $200 limit will apply only to embedded used equipment that was not part of the initial installation of the intrasystem.

As stated previously, the Commission established in paragraph 52 of the Order a new account 262 to record the costs associated with the investment and installation of the new and embedded company official business equipment. Since all of the intrasystem equipment would be transferred to account 262, the remaining company-used telephones costing $200 or less in account 231 would be the stand along units and the spares used for replacement of repairs or intrasystems. The language for account 231 would therefore not need to indicate that amortization should apply to that equipment not part of an intrasystem since the intrasystem equipment now resides in account 262.

You also request our concurrence with your interpretation of an "intrasystem" which you define as a self-contained communication system capable of signaling and switching without passing through a central office. You state that this would exclude terminating equipment utilized with a centrex central office installation. You also define "stand alone" equipment as units possessing switching and signaling capabilities. We agree with your definitions of intrasystem and stand alone equipment.

Sincerely,

Stephen Steckler,

Chief, Accounting Branch, Accounting and Audits Division, Common Carrier Bureau.

[FR Doc. 84-25870 Filed 9-26-84; 8:45 am]

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47 CFR Parts 73 and 74

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order adopts corrective additions and updating revisions of the Alphabetical Indices to Parts 73 and 74 of the FCC's Rules.

EFFECTIVE DATE: September 27, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 73 and 74

Radio and TV broadcasting.

Order

In the Matter of Oversight of the Radio and TV Broadcast Rules.

Adopted: September 13, 1984.
Released: September 19, 1984.

By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission corrects, updates and adds listings to the Alphabetical Indices to Parts 73 and 74 of its rules. 47 CFR Parts 73 and 74.

2. Our experience in alphabetically indexing the broadcast rules in Parts 73 and 74 clearly indicates that this data makes possible the location of regulations quickly and easily. This fast access has brought about a better understanding of our rules by broadcasters and practitioners as a result of the rules' ready availability. We also perceive that providing easy access to the rules has reduced considerably the number of letters and phone calls to the FCC requesting help in rule location, thereby minimizing paperwork and administrative workload on the FCC staff, broadcasters and their legal and engineering advisors.

3. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions to Parts 73 and 74 will serve the public interest.

4. These amendments are implemented by authority designated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

5. Since general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

6. Therefore, it is ordered, That pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73 and 74 of the FCC Rules and Regulations are amended as set forth in the attached appendix, effective on the date of publication in the **Federal Register**.

7. For further information on this *Order*, contact Steve Crane, Mass Media Bureau, (202) 632-5414.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

PART 73—[AMENDED]

Appendix A

The alphabetical index appearing at the beginning of Part 73 is revised and updated to read as follows:

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PART 74—[AMENDED]

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V-W-X-Y-Z

[FR Doc. 84-25678 Filed 9-26-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 73 and 74

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast station regulations in Parts 73 and 74 of the rules of the FCC. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

EFFECTIVE DATE: September 27, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, (202) 632-5414, Mass Media Bureau.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 73 and 74

Radio and TV Broadcasting.

Order

In the matter of oversight of the radio and TV broadcast rules.

Adopted: September 13, 1984.
By the Chief, Mass Media Bureau.

Released: September 18, 1984.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV braodcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) With the adoption of the Report and Order eliminating operating and maintenance logs, § 73.69, Antenna monitors, was revised (BC Docket 82-537. 48 FR 38473. August 24, 1983.) In paragraph (b), several inapt or incorrect terms are used: "derivations" should be "deviations"; "must be determined" should be "are determined." Corrections are made herein. (See appendix item 1.)

(b) For some time the FCC has been converting its standards to the metric system. Some rule sections direct parties to use non-metric figures to certain date and after such date to use metric units. Such a "before and after date" directive is found in § 73.181(f)(1). Since the effective date to use metric data as stated in that subparagraph is long past, reference to use of non-metric in a pre-date period is excised from the rule. (See appendix item 2.)

(c) In paragraph (a) § 73.315, the symbol for microvolts (as in uV/m) is incorrectly used in place of the correct designated of millivolts (mV/m). Correction is made via this Order. (See appendix item 3.)

(d) In the Report and Order amending the FM rules concerning use of Subsidiary Communications Authorizations, § 73.319 was entirely revised and retitled FM multiplex subcarrier technical standards. BC Docket 82-536. 48 FR 28445, June 22, 1983. In subparagraph (d)(1) of § 73.319, extra, meaningless text was introduced. In pertinent part it stated ". . . . arithmetic sum of all subcarriers above 75 kHz may not exceed the *the carrier by more than* 10%, ...". The underlined is the incorrect text, and is excised from the rule herein. (See appendix item 4.)

(e) In the 2nd Report and Order adopted in Docket No. 21323, Use of Subcarrier Frequencies in the Aural Baseband on TV Transmitters, a new definition, Multichannel Television Sound was added to § 73.681. The definition is incorrectly stated in part by failing to use the word "signal" in the term". . . . video portion of the television signal. . . .". It is added herein. (See appendix item 5.)

(f) Permittees of non-directional AM and FM stations (and either directional or non-directional TV stations) may begin program tests after completion of construction upon notification to the FCC in Washington (followed, within 10 days, by filing application for license).

Permittees of AM and FM stations with directional antenna systems must file application for license requesting program test authority at least 10 days prior to the start of such tests.

The program test rule, § 73.1620, states that a proof of performance must also be filed with the program test request from an AM applicant with directional antenna. So must the directionalized FM applicant, the directive to file such proofs being part of the terms and conditions of the construction permit. Via this Order, the requirement to file the FM proof of performance is, for

purposes of clarity, stated in the rule. (See appendix item 6.)

(g) With the adoption of the Report and Order pretaining to hours of operation of daytime-only AM stations, § 73.99 was completely revised, including changing the section title to "Pre-sunrise service authorization (PSRA) and Post-Sunset service authorization (PSSA)". Report and Order in BC Docket 82–538, 48 FR 42944, September 20, 1983. Reference is made to § 73.99 in Subpart H, § 73.1735, using the old section title, and the old text which reflects the terms of § 73.99 prior to the above mentioned revisions. The section title and text of § 73.1735 are revised herein to conform to the changes in § 73.99 adopted in the Report and Order in BC Docket 82–538. (See appendix item 7.)

(h) There is a typographical error in the section title of § 73.3533. The last three words read ". . . .by construction permit." It is corrected to read ". . . . of construction permit." (See appendix item 8.)

(i) The statement "when an application for renewal of license is "designed" for hearing. . . .", is found in paragraph (e) of § 73.3594. The verb should, of course, be "designated" and is corrected herein. (See appendix item 9.)

(j) The following FCC Policy listings are added or revised in Subpart H of Part 73:

(i) Memorandum Opinion and Order regarding loud commercials.

(ii) Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting.

(iii) Report and Order regarding FCC Interpretation of 47 U.S.C. 315(a). (See appendix items 10, 11 and 12.)

(k) A requirement as stated in § 74.467, Posting of licenses [at remote broadcast pickup stations] has raised a few smiles as well as sober questions. In paragraph (c) of the rule, a required display (giving call sign, associated, etc.) must be affixed to the transmitter housing or antenna supporting structure in such a way as to be visible to a person standing on the *group* at the transmitter. We terminate such questions as, "how many must be in the *group*?"; "may it be a mixed *group*", etc., by correcting "group" to read "ground" in this Order. (See appendix item 13.)

(l) Subpart F of Part 74 pertains to TV auxiliary stations such as pickup stations; studio-transmitter links (STL's); TV relay stations and translator relay stations. Such stations are variously described as either TV Auxiliary Broadcast Stations or TV Broadcast Auxiliary Stations, the latter being correct. Some time in the past it was decided, since the stations are not broadcast stations but auxiliaries to broadcast stations, to denominate the service accurately as TV Broadcast Auxiliary Stations. Correction changes have been made within the Subpart; correcting the Subpart title has been overlooked. Such correction is effected in this Order. (See appendix item 14.)

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority designated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effecive date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

5. Therefore, it is ordered, That pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73 and 74 of the FCC Rules and Regulations are amended as set forth in the attached appendix, effective on the date of publication in the **Federal Register.**

6. For further information on this *Order*, contact Steve Crane, (202) 632–5414, Mass Media Bureau.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

Appendix

PART 73—[AMENDED]

1. 47 CFR 73.69 is amended by revising paragraph (b) to read as follows:

§ 73.69 Antenna monitors.

* * * * *

(b) In the event an antenna monitor becomes defective, the station may be operated without the monitor pending its repair or replacement for a period not in excess of 60 days without further authority from the FCC, if the base currents, their ratios, and the deviations of those ratios, in percent, from the values specified in the station authorization are determined for each radiation pattern used.

* * * * *

2. 47 CFR 73.181 is amended by revising paragraph (f)(1) to read as follows.

§ 73.181 Introduction to AM technical standards.

* * * * *

(f) * * *

(1) Parties submitting directional antenna patterns pursuant to §§ 73.150 and 73.152 (standard patterns and modified standard patterns) must submit patterns which are tabulated and plotted using units of millivolts per meter at one kilometer.

* * * * *

3. 47 CFR 73.315 is amended by revising paragraph (a) to read as follows:

§ 73.315 Transmitter location.

(a) The transmitter location shall be chosen so that, on the basis of the effective radiated power and antenna height above average terrain employed, a minimum field strength of 70 dB above one uV/m (dBu), or 3.16 mV/m, will be provided over the entire principal community to be served.

* * * * *

4. 47 CFR 73.319 is amended by revising paragraph (d)(1) to read as follows:

§ 73.319 FM multiplex subcarrier technical standards.

* * * * *

(d) * * *

(1) During monophonic program transmissions, modulation of the carrier by the arithmetic sum of all subcarriers above 75 kHz may not exceed 10%, and modulation of the carrier by the arithmetic sum of all subcarriers may not exceed 30%, referenced to 75 kHz deviation.

* * * * *

5. 47 CFR 73.681 is amended by revising the definition *Multichannel Television Sound (MTS)* to read as follows:

§ 73.681 Definitions.

* * * * *

Multichannel Television Sound (MTS). Any system of aural transmission that utilizes aural baseband operation between 15 kHz and 120 kHz to convey information or that encodes digital information in the video portion of the television signal that is intended to be decoded as audio information.

* * * * *

6. 47 CFR 73.1620 is amended by revising paragraph (a)(2) to read as follows:

§ 73.1620 Program tests.

(a) * * *

(2) The permittee of an AM or FM station with a directional antenna system must file an application for license requesting program test authority with the FCC in Washington, D.C. at least 10 days prior to the date on which it desires to begin program tests. Also, an antenna proof of performance must be filed with the request by an AM or FM station with a directional antenna.

* * * * *

7. 47 CFR 73.1735 is revised to read as follows:

§ 73.1735 Pre-sunrise service authorization (PSRA) and Post-Sunset service authorization (PSSA).

Licensees of certain classes of AM stations are eligible to request pre-sunrise service authorization and post-sunset service authorization pursuant to the requirements of § 73.99.

8. 47 CFR 73.3533 is amended by revising the section title to read as follows:

§ 73.3533 Application for construction permit or modification of construction permit.

9. 47 CFR 73.3594 is amended by revising paragraph (e) introductory text to read as follows:

§ 73.3594 Local public notice of designation for hearing.

* * * * *

(e) When an application for renewal of license is designated for hearing, the notice shall contain the following additional statements:

* * * * *

10. 47 CFR 73.4075 is revised to read as follows:

§ 73.4075 Commercials, loud.

See Memorandum Opinion and Order, BC Docket 79-168, FCC 84-300, adopted June 27, 1984. 49 FR 28077, July 10, 1984.

11. 47 CFR 73.4140 is amended by adding new paragraph (c) to read as follows:

§ 73.4140 Minority ownership; tax certificates and distress sales.

* * * * *

(c) See Policy Statement, FCC 82-523, adopted December 2, 1982. 48 FR 5943, February 9, 1983.

12. 47 CFR 73.4185 is amended by designating the present text as paragraph (a) and by adding new paragraph (b) to read as follows:

§ 73.4185 Political broadcasting and telecasting, the law of.

* * * * *

(b) See Report and Order, BC Docket 82-564, FCC 83-529 adopted November 8, 1983. 95 FCC 2d 1236; 48 FR 53166, November 25, 1983.

13. 47 CFR 74.467 is amended by revising paragraph (c) to read as follows:

§ 74.467 Posting of licenses.

* * * * *

(c) If the station is authorized to operate as an automatic relay station, and is operated at an unattended site, the call sign and location of the associated broadcast station or stations or network, together with the legend "Automatic Relay Station," shall be displayed at the relay transmitter site. The required display shall be affixed to the transmitter housing or antenna supporting structure so as to be visible to a person standing on the ground at the transmitter site, or if the transmitting facilities are installed on the roof of a building the required display must be visible to a person standing on the roof. The display shall be prepared by the licensee so as to withstand normal weathering and be legible at all times.

PART 74—[AMENDED]

14. 47 CFR Subpart F, Part 74 is amended by revising the subpart heading to read as follows:

Subpart F—Television Broadcast Auxiliary Stations

[FR Doc. 84-25680 Filed 9-26-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 83-991; FCC 84-414]

Elimination of Outdated or Unnecessary Rules in the Private Land Mobile Radio Services

Correction

In FR Doc. 84-24398 beginning on page 36373 in the issue of Monday, September 17, 1984, make the following correction:

On page 36377, third column, item 20., fifth entry under *Sections*, "90.63(a)(2)" should read "90.63(f)(2)".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175 and 178

[Docket No. HM-189B; Amdt. Nos. 171-79, 172-94, 173-178, 175-31, 178-80]

Editorial Corrections, and Clarifications

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule

SUMMARY: The purpose of these amendments to the Hazardous Materials Regulations (HMR) is to correct certain editorial errors, and to make minor regulatory changes which will not impose any new requirements on persons subject to the HMR.

EFFECTIVE DATE: September 30, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas G. Allan, Exemptions and Regulations Termination Branch, Materials Transportation Bureau, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 426-2075.

SUPPLEMENTARY INFORMATION: In its maintenance of the HMR, MTB performs an annual review of the regulations to detect errors which may be causing confusion to users. Inaccuracies detected in Title 49, Code of Federal Regulations (CFR), Parts 100-199, Revised as of November 1, 1983, include incorrect references to other rules and regulations in the CFR, and misstatements of certain regulatory requirements. Also, in response to inquiries which MTB received concerning the clarity of particular requirements specified in the HMR, changes are made which should reduce uncertainties.

Since these amendments do not impose new requirements, notice and public procedure thereon are unnecessary. For the same reason, these amendments are effective without the customary 30 day delay following publication.

The MTB has determined that this rule, as promulgated, is not a major rule under terms of Executive Order 12291 or significant under DOT implementing procedures (44 FR 11034). A final regulatory evaluation and environmental assessment was not prepared as these amendments are not substantive changes to the HMR.

Based on limited information available concerning size and nature of entities likely to be affected by these

amendments, I certify that these amendments will not, as promulgated, have a significant economic impact on a substantial number of small entities.

The following is a section-by-section summary of the amendments.

Section 171.7 is amended in paragraph (c)(23) to show the current address of the International Maritime Organization.

Section 172.101 is amended in paragraph (c)(12)(iii) to correct a reference to § 173.84(e)(1); and certain entries in the Hazardous Materials Table are amended as follows:

"*1-Bromo-2-nitrobenzene (unstable at 56°C)*" is corrected to read "*1-Bromo-3-nitrobenzene (unstable at 56°C)*".

"Cement, adhesive, n.o.s. *See* Cement, liquid, n.o.s." is corrected to indicate that the referred entry is simply "Cement".

"Coal, ground bituminous, sea coal, coal facings, *etc.*," is corrected by adding the section reference "173.165" to column (5)(b).

Section 172.102 is amended in the Optional Hazardous Materials Table to correct the following errors:

"*Chlorotrifluoroethane. See* Trifluorochloroethane" has the order of the descriptions transposed. "Chlorotrifluorethane" should appear in Roman type and follow the italicized entry "*Trifluorochloroethane*".

"Diactone alchohol" has the word "alcohol" misspelled.

"Dicetyl peroxydicarbonate *maximum concentration 42%, stable dispersion in water*" has two digits in the identification number transposed. The correct number is "UN 2895".

"Diisotridecyl peroxidicarbonate *technical pure*" is misspelled. The entry should read "Diisotridecyl peroxydicarbonate, *technical pure*".

Appendix A to Subpart B of Part 172 is amended as follows:

At "UN 1148" (102) the word "alchohol" is a misspelling.

At "UN 2889" (102) the word "peroxidicarbonate" is a misspelling.

At "UN 2985" the identification number is transposed. The correct number is "UN 2895".

Section 172.202 is amended at paragraph (c)(1) to show the current proper shipping name for "cement".

Section 172.401 is amended, at paragraph (c)(1), to remove the reference to an old edition of the "Transport of Dangerous Goods".

Section 173.182 is amended, at paragraph (a), by adding "zinc nitrate" as a specifically identified material. Until 1980, this material was described as "nitrates, n.o.s.".

Section 173.304 is amended, at paragraph (a)(2), to remove the table entry "Ethylene (36.8%)". It is a composite of the entries "Ethane (36.8%)" and "Ethylene (31.0%)" that developed through typographical errors.

Section 173.306 is amended, at paragraph (c)(5), by stating that retest requirements for fire extinguishers are specified in 29 CFR 1910.157 (e) rather than paragraph (d).

Section 173.314 is amended to make the following corrections to the table in paragraph (c):

"Chloropentafluoroethane (R–115)" and "Chlorotrifluoromethane (R–13)". Reference to "Note 23" following the DOT–105A300W tank car is erroneous. That note is applicable to tank cars used to transport a flammable gas. Each of these materials is a nonflammable gas.

"Monomethylamine, anhydrous". The prefix "Mono" is removed so that this description corresponds with the proper shipping name in the Hazardous Materials Table.

"Note 25". Reference to § 175.200 is erroneous. The correct reference is § 176.200.

Section 173.388 is amended to specify that the subject regulations are issued by the Department of Health and Human Services.

Section 173.425 is amended, in paragraph (c)(1)(iv), to specify the correct activity limits for objects of nonradioactive material externally contaminated with radioactive material. As indicated in Docket HM–169 (48 FR 10233, March 10, 1983; and 48 FR 31218, July 7, 1983), the maximum permitted activity for radionuclides for which the A_2 value is less than 0.05 is "0.0001", and "0.001" for other radionuclides.

Section 175.700 is amended, in paragraph (a)(4), to remove the reference to "§ 175.85(d)". Paragraph (d) was removed in Docket HM–184 (47 FR 54817, December 6, 1982).

Section 178.47–10 is amended, in paragraph (c), to show the correct algebraic expression for the wall stress formula.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Imports.

49 CFR Part 172

Hazardous materials transportation.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, Parts 171, 172, 173, 175 and 178 of Title 49, Code of Federal Regulations are amended as follows:

PART 171–GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.7, paragraph (c)(23) is revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(c) * * *

(23) International Maritime Organization, #4 Albert Embankment, London, SE 17SR, United Kingdom.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

§ 172.101 [Amended]

2. In § 172.101, paragraph (c)(12)(iii) is amended by removing the section reference "178.86(e)(1)" and inserting, in its place, the section reference "173.86(e)(1)"; and the Hazardous Materials Table is amended by: Removing the entry "*1-Bromo-2-nitrobenzene (unstable at 56°C)*" and inserting in its place, the entry "*1-Bromo-3-nitrobenzene (unstable at 56°C)*"; removing the entry "Cement, adhesive n.o.s. *See* Cement, liquid, n.o.s." and inserting, in its place, the entry "Cement, adhesive n.o.s. *See* Cement"; and adding to the entry "Coal, ground bituminous, sea coal, coal facings, *etc.*" the section reference "173.165" at column (5)(b).

§ 172.102 [Amended]

3. In § 172.102, the Optional Hazardous Materials Table is amended by: Removing the entry "*Chlorotrifluoroethane. See* Trifluorochloroethane", removing the entry "Diacetone alchohol" and inserting, in its place, the entry "Diacetone alcohol"; removing identification number "UN 2985" from column (4) for the entry "Dicetyl peroxydicarbonate *maximum concentration 42%, stable dispersion in water*" and inserting in its place, identification number "UN 2895"; removing the entry "Diisotridecyl peroxidicarbonate, *technical pure*"; and inserting, in its place, the entry "Diisotridecyl peroxydicarbonate, *technical pure*"; and adding the entry

"Trifluorochloroethane. See Chlorotrifluoroethane".

4. Part 172, Subpart B, Appendix A is amended by removing and adding certain entries as follows:

Appendix A—Identification Number Cross Reference to Proper Shipping Names in § 172.101 and § 172.102:

This listing is provided for information purposes only.

(1) Identification No.	(2) Source 172.***	(3) Description
REMOVE		
UN 1148	102	Diacetone alchohol.
UN 2889	102	Diisotridecyl peroxidicarbonate.
UN 2965	102	Dicetyl peroxydicarbonate.
ADD		
UN 1148	102	Diacetone alcohol.
UN 2889	102	Diisotridecyl peroxydicarbonate.
UN 2895	102	Dicetyl peroxydicarbonate.

§ 172.202 [Amended]

5. In § 172.202, paragraph (c)(1) is amended by removing the words "Cement, liquid n.o.s." and inserting, in their place, the word "Cement".

§ 172.401 [Amended]

6. In § 172.401, paragraph (c)(1) is amended by removing the reference "(1970)".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

§ 173.182 [Amended]

7. In § 173.182, the introductory text of paragraph (a) is amended by adding the material "zinc nitrate" immediately following the material "strontium nitrate".

7a. In § 173.304, paragraph (a)(2) is amended by removing an entry for Ethylene as follows:

§ 173.304 Charging of cylinders with liquefied compressed gas.

(a) * * *

(2) * * *

Kind of gas	Maximum permitted filling density (percent) (see Note 1)	Containers marked as shown in this column or of the same type with higher service pressure must be used except as provided in § 173.34(a), (b), § 173.301(j) (see notes following table)

* * * * *

(Remove)

Ethylene (see Notes 8 and 9).	36.8	DOT-3A200; DOT-3AX2000; DOT-3AA2000; DOT-3AAX1800; DOT-3; DOT-3E1800; 3T1800; DOT-39; DOT-3AL1800.

* * * * *

§ 173.306 [Amended]

8. In § 173.306, paragraph (c)(5) is amended by removing the reference "29 CFR 1910.157(d)" and inserting, in its place, the reference "29 CFR 1910.157 (e)".

§ 173.314 [Amended]

9. In § 173.314, the table in paragraph (c) is amended by: removing the reference "Note 23" associated with the materials "Chloropentafluoroethane (R-115)" and "Chlorotrifluoromethane (R-13)"; removing the prefix "Mono" from the material "Monomethylamine, anhydrous"; and removing the reference "175.200" from "Note 25" and inserting, in its place, the reference "176.200".

§ 173.388 [Amended]

10. In § 173.388, paragraph (a) is amended by removing the name "Department of Health, Education and Welfare" and inserting, in its place, the name "Department of Health and Human Services".

11. In § 173.425, paragraph (c)(1)(iv) is revised to read as follows:

§ 173.425 Transport requirements for low specific activity (LSA) radioactive materials.

* * * * *

(c) * * *

(1) * * *

(iv) Objects of nonradioactive material externally contaminated with radioactive material, if the radioactive material is not readily dispersible and the surface contamination, when averaged over one square meter, does not exceed 0.0001 millicurie per square centimeter of radionuclides for which the A_2 value is less than 0.05 or 0.001 millicurie per square centimeter of other radionuclides. Such objects must be suitably wrapped or enclosed.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

§ 175.700 [Amended]

12. In § 175.700, paragraph (a)(4) is amended by removing the section reference "175.85(d)".

PART 178—SHIPPING CONTAINER SPECIFICATIONS

§ 178.47-10 [Amended]

13. In § 178.47-10, paragraph (c) is amended by removing the formula "$S=P((1.3D^2+0.4d^2))/(D^2-d^2)$" and inserting, in its place, the formula "$S=(P(1.3D^2+0.4d^2))/(D^2-d^2)$".

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1)

Issued in Washington, D.C., on September 21, 1984.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 84-25631 Filed 9-26-84; 8:45 am]

BILLING CODE 4910-60-M

Federal Highway Administration

49 CFR Part 350

[BMCS Docket No. MC-108; Amdt. No. 83-9]

Motor Carrier Safety Assistance Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSR) to include provisions related to the FHWA issuance of grants to qualified States for the development or implementation of State programs for the enforcement of Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety and hazardous materials transportation by highway and compatible State rules, regulations, standards and orders. This program, hereinafter referred to as the "Motor Carrier Safety Assistance Program" (MCSAP) has been established pursuant to sections 401–404 of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-424). This final rule is based on a review of comments received in response to an interim final rule (August 31, 1983) (48 FR 39455) which was issued to temporarily implement sections 401 to 404.

EFFECTIVE DATE: September 27, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Curtis, Bureau of Motor Carrier Safety, (202) 426-1724; or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, 400 Seventh St., SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On August 31, 1983, a Notice of Program Implementation, interim final rule, was published in the **Federal Register** (48 FR 39455). Its purpose was to establish interim procedures for MCSAP until the final rule was promulgated and to seek public comments. The interim final rule

related the rationale of the program, selected a formula allocation as a method of distributing funds, established requirement dates for the fiscal year 1984 program and solicited public response to the interim procedure.

On January 27, 1984, an amendment to the interim final rule was published in the **Federal Register** (49 FR 3476). Its purpose was to provide for discretionary redistribution, by the Federal Highway Administrator, of appropriated funds unallocated in the first year of the MCSAP for State enforcement plans that demonstrated a particular need and to request public comments. The FHWA published a second amendment in the **Federal Register** (29 FR 10671) on March 22, 1984. This amendment provided for a waver, upon request, of the State matching share which would otherwise be required to be provided by the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas as a condition of their participation in the MCSAP and requested public comments.

A total of 20 commenters responded. All comments support the MCSAP and were received from: 2 State Governors, 11 State agencies, 3 industry associations, and 4 motor carriers.

The Governor of the State of California supports MCSAP with no further comment on any element of the interim final rule. The other 2 commenters in total support of MCSAP are Allied Van Lines, Inc., and United Parcel Service. These commenters believe that MCSAP provides one of the best opportunites to enhance highway safety and supports the endeavor of motor carriers to place safe vehicles and professional drivers on the highway.

The 17 other commenters support MCSAP with some modifications. Of those commenters, 5 question the validity of requiring registrants to declare knowledge of the regulations. For example, the North Carolina Department of Motor Vehicles believes that the "declaration of knowledge" adds unnecessary regulatory burdens on the States and is redundant to what is already required. The State of Idaho comments that a single signature is no indication of anyone understanding the regulations. Section 402(b)(1)(G) of the STAA (Pub. L. 97–424) mandates this "declaration of knowledge" requirement. Therefore, legislative action is necessary to eliminate this requirement.

Seven of the commenters expressed concerns regarding the allocation formula. Various alternatives are given to the allocation formula. The South Dakota Department of Transportation proposes that the allocation formula be based on: road mileage (all highways), number of commercial vehicles over 10,000 lbs., and special fuel consumption. It also recommends that no State be allocated less than three-fourth of 1 percent of total funds available for implementation. A number of commenters felt that $50,000 was not sufficient to fully develop a program, and the maximum development grant should be increased to $100,000 or an amount equal to a State's adjusted allocation, whichever is less. Based on prior experience of the FHWA, a $50,000 maximum development grant is deemed reasonable.

The implementation allocation formula found in Section 350.21, Distribution of funds, has been refined. Representatives from a considerable number of States have made known to FHWA their serious concerns that State agencies could be placed in a position whereby they hire manpower and staff in one fiscal year based on an allocation of funds only to be faced with a possible forced reduction in the staff in succeeding years due to a reduction in allocations. To respond to this concern, and subject to the annual appropriation of funds, implementation allocations shall be adjusted so that no State shall receive for Fiscal Year 1985 less than the total funds the State received in the first year (Fiscal Year 1984) of the program. For all other fiscal years, no State shall receive less than the basic allocation of funds of the prior year or the minimum amount set for each year, whichever is greater, provided the State Enforcement Plan continues to support that level of funding.

Three commenters suggest reviewing the Essential Elements Examination (EEE) inspection procedures to improve the efficiency of inspections or using the Commerical Vehicles Safety Alliance's (CVSA) Critical Item Inspection in lieu of the Bureau of Motor Carrier Safety's EEE procedure. The FHWA and the CVSA are taking the initial steps to develop a national driver-vehicle inspection procedure and out-of-service criteria, the target date for which is the beginning of Fiscal Year 1985.

The Vermont Department of Motor Vehicles recommends that the NCSAP should be a permanent program. It believes this would preclude a State from either eliminating an entire program or raising additional monies for the program by imposing heavier taxes on the trucking industry. It also believes that the MCSAP would lead to good safety practices with uniform procedures throughout the United States. The program is currently authorized for five years by statute. FHWA plans to review the effectiveness of the program before taking a position on any proposed extension.

Considering the comments received, the FHWA is revising Part 350 of the FMCSR entitled, Commercial Motor Carrier Safety Assistance Program. The revisions made are minimal. In addition to the revision of § 350.21, discussed above, § 350.9, Conditions for development grant approval, has been added to condense and clarify the qualifications a State must meet for development grant approval.

Another revision is a clarification of eligible costs, § 350.29. The cost of acquisition of real property, land and buildings, is not eligible as a participating cost in MCSAP.

Thus, this rule establishes the requirements for a grant program whereby States can apply for funding to develop or implement a motor carrier safety program. It specifies the type of information applications must contain and the procedures that must be followed in submitting the application and carrying out the program. The rule provides a breakdown of the funding distribution and examples of the types of costs incurred which will eligible for proportionate reimbursement.

Additional information concerning grant application forms, administrative requirements for the Federal grants, technical advisories on program activities, payment procedures, and other procedural counselling is available at the FHWA division office located in each State.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. It is anticipated that the economic impact of this rulemaking action will be minimal, since such economic impact as will occur is primarily mandated by the cited statutory provisions themselves, and not the rulemaking action. Accordingly, a full regulatory evaluation is not required. For the foregoing reasons, under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

The collection of information requirements contained in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and have been assigned OMB Control number 2125–0536 (approved through May 31, 1987).

List of Subjects in 49 CFR Part 350

Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 20.217 Motor Carrier Safety)

Issued on: September 20, 1984.

L. P. Lamm,

Deputy Federal Highway Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA is revising 49 CFR Part 350 to read as follows:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

Sec.

350.1 Purpose.
350.3 Definitions.
350.5 Policy.
350.7 Objective.
350.9 Conditions for development grant approval.
350.11 Conditions for implementation grant approval.
350.13 State Enforcement Plan (SEP) for an implementation grant.
350.15 Certification of Compliance by State.
350.17 Maintenance of effort.
350.19 Grant application submission.
350.21 Distribution of funds.
350.23 Acceptance of State plan.
350.25 Effect of failure to submit a satisfactory State plan.
350.27 Procedure for withdrawal of approval.
350.29 Eligible costs.
Appendix A—Guidelines To Be Used in Preparing State Enforcement Plan
Appendix B—Form of State Certification

Authority: Secs. 401–404, Surface Transportation Assistance Act of 1982, Pub. L. 97–424, 96 Stat. 2154, 49 U.S.C. 2301–2304; 49 CFR 1.48, and 301.60.

§ 350.1 Purpose.

To prescribe requirements for Federal assistance to States for the development or implementation of programs for the enforcement of Federal rules, regulations, standards and orders applicable to commercial motor vehicle safety or compatible State rules, regulations, standards and orders.

§ 350.3 Definitions.

As used in this part:

Administrator means the Federal Highway Administrator.

Commercial motor vehicle means any self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo—

(a) If such vehicle has a gross vehicle weight rating of ten thousand or more pounds;

(b) If such vehicle is designed to transport more than ten passengers, including the driver; or

(c) If such vehicle is used in the transportation of materials found by the Secretary of Transportation to be hazardous for the purposes of the Hazardous Material Transportation Act, as amended (49 U.S.C. 1801 et seq.).

Development means the acts of a State in preparing to qualify for or make application for an implementation grant, which acts include, but are not limited to: (a) Planning the program; (b) initiating any legislative or regulatory action necessary to comply with the requirements of this part; (c) formulating a budget for a program under this part; (d) designating the State agency responsible for administering the program; and (e) preparing a State Enforcement Plan (SEP).

Implementation means the acts of a State in carrying out an approved SEP, which acts include, but are not limited to: (a) Recruiting and training of personnel, payment of salaries and fringe benefits, the acquisition and maintenance of equipment, and reasonable overhead costs needed to operate the program; (b) commencement and conduct of new or expanded systems of inspection; (c) establishment of an effective "out-of-service" and compliance enforcement system; and (d) retraining and replacing staff and equipment.

Motor carrier means a for-hire carrier of passengers or property by motor vehicle and a private carrier by motor vehicle.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas.

Basic allocation means only those Federal funds specified in the allocation formula, or the minimum funding level specified in this part.

§ 350.5 Policy.

The Federal Highway Administration (FHWA) policy is to encourage each State to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. The requirements for compliance with safety standards in one State should be reasonably consistent with the requirements in another State. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance.

§ 350.7 Objective.

The objective of the Motor Carrier Safety Assistance Program (MCSAP) is to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles by substantially increasing the level of enforcement activity and the likelihood that safety defects, driver deficiencies and unsafe carrier practices will be detected and corrected.

§ 350.9 Conditions for development grant approval.

(a) The State shall submit its proposed development plan or update thereof to the FHWA division office. States will be permitted to apply for and receive an annual development grant for a maximum of 3 years.

(b) The development plan shall:

(1) Outline the State's plan of action to qualify it for implementation funds;

(2) Itemize the total program cost by functional categories and dedicate adequate State funds for this program;

(3) Include an estimate of when the State will meet the minimum criteria for an implementation grant;

(4) Designate the State motor carrier safety agency responsible for administering the program for the State; and

(5) Include an agreement to initiate any legislative, administrative, or regulatory action necessary to qualify for an implementation grant.

§ 350.11 Conditions for implementation grant approval.

(a) The State shall agree to adopt, and to assume responsibility for enforcing the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR Parts 390 through 399 except as may be determined by the Administrator to be inapplicable to a State enforcement program) including highway related portions of the Federal Hazardous Materials Regulations (FHMR) (49 CFR Parts 107, 171–173, 177 and 178) or compatible State rules, regulations, standards and orders applicable to motor carrier safety, including highway transportation of hazardous materials. To support a State's contention of compatibility, the State may submit opinions from the State's Attorney General or other chief legal officer as to whether existing or proposed State laws, rules, regulations, standards, or orders are compatible with the FMCSR and FHMR.

(b) The State shall submit a State Enforcement Plan (SEP) for the conduct of an effective safety program. Such plan, upon acceptance by the FHWA, will serve as the basis for monitoring

and evaluating performance of the State under the grant, and will be resubmitted, with revisions as necessary, in applications for reapproval in following years.

(c) The SEP shall designate the State motor carrier safety agency responsible for administering the plan for the State.

(d) The designated motor carrier safety agency and other agencies named to perform functions under the plan shall have the legal authority, resources, and qualified personnel necessary to enforce the FMCSR and FHMR or compatible State rules at the time the State implements the approved SEP.

(e) The State shall allocate adequate funds for the administration of the SEP and the enforcement of the FMCSR and FHMR or compatible State rules.

(f) State laws shall provide for right of entry and inspection by State personnel sufficient to enforce the FMCSR and FHMR or compatible State rules and to perform the activities set forth in the SEP.

(g) The designated State agency shall agree to prepare and submit all reports required in connection with the SEP or other conditions of the grant to the FHWA upon request.

(h) The designated State agency shall agree to adopt such uniform reporting requirements and use such uniform forms to record work activities performed under the SEP as may be established and required by the FHWA.

(i) The State shall require registrants of commercial motor vehicles to declare, at the time of registration, knowledge of the FMCSR and FHMR or compatible State rules, as applicable.

(j) The statutory authority of the State to regulate motor carriers shall extend to private motor carriers of property as well as for-hire motor carriers.

§ 350.13 State Enforcement Plan (SEP) for an implementation grant.

(a) The State shall submit its proposed SEP or update thereof to the FHWA division office.

(b) The SEP shall:

(1) Provide an assessment of the commercial motor carrier and highway hazardous materials safety problems within the State;

(2) Determine the aggregate costs of the motor carrier safety enforcement efforts incurred by the State and political subdivisions during the two full fiscal years prior to January 6, 1983, exclusive of Federal funds and State participating shares on which such funds were conditioned;

(3) Demonstrate that the State has authority to regulate and plans to enforce its regulations with respect to private carriers of property as well as for-hire motor carriers; and

(4) Describe in detail the objectives sought to be achieved, the resources to be employed, the work items to be performed, the unit costs where feasible and the methods to be used to measure effectiveness. Specifically, the SEP shall:

(i) Identify other agencies participating in the plan and describe the roles of each;

(ii) Identify the number and category of personnel employed and the specialized training provided; and

(iii) Include roadside inspection activity at such times and locations as will assure comprehensive enforcement.

(c) Guidelines for the preparation of the SEP are provided in Appendix A to this part.

(Approved by the Office of Management and Budget under OBM Control No. 2125–0536)

§ 350.15 Certification of Compliance by State.

(a) The FHWA will accept a certification, executed by the Governor, the State's Attorney General or other State official specifically designated by the Governor, in the form provided in Appendix B to this part. The certification shall accompany the SEP and be made part thereof.

(b) In the first year of the State's program, the certification shall be supplemented by the following documentation:

(1) A copy of the State law or regulation adopting the FMCSR and FHMR, or a copy of the compatible State rules, including current amendments and any State exceptions or exemptions to those rules;

(2) A copy of the State law relied upon by the State to provide right of entry and inspection sufficient to enforce the FMCSR and FHMR, or compatible State rules; and

(3) A copy of the registration form or other document used by the State to secure from commercial motor vehicle registrants a declaration of knowledge of the FMCSR and FHMR, or compatible State rules.

(c) In subsequent years, the certification shall be supplemented by a copy of any State law, regulation or forms pertaining to commercial motor carrier safety adopted since the State's last certification (if any) which bear on the items listed in the certification.

§ 350.17 Maintenance of effort.

No SEP shall be approved or grant awarded in the absence of a commitment by the State to maintain the aggregate expenditure of funds by the State and political subdivisions thereof for motor carrier and highway hazardous materials vehicle safety programs. The funds shall be maintained at a level which does not fall below the average of such expenditure during the State's last two full fiscal years preceding January 6, 1983. The aggregate expenditure of funds by the State in those preceding fiscal years shall be exclusive of Federal funds authorized and expended for motor carrier and highway hazardous materials safety purposes and any State funds required as the State's share to match such Federal funds.

§ 350.19 Grant application submission.

A State shall submit its application to the FHWA division office on or before August 1 of each year. The time for submitting a plan may be extended for a period not to exceed 30 calendar days for good cause shown. Grants are approved for the fiscal year for which application is made. Failure of a State to submit a plan for any given fiscal year will preclude consideration of grant approval for that State for that year.

§ 350.21 Distribution of funds.

(a) The Federal share payable to reimburse States for eligible costs incurred in the development or implementation of a commercial motor carrier safety program shall not exceed 80 percent.

(b) The FHWA will, upon request, waive the requirement for matching funds to be provided by the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas.

(c) The funds available to any State in any one year for development purposes shall not exceed $50,000 notwithstanding the amount available through application of the allocation formula provided in paragraph (d) of this section.

(d) The funds available to any State for implementation purposes in any one year shall be distributed according to an allocation formula based on the following factors in equal proportion:

(1) Road mileage (all highways);

(2) Vehicle miles travelled (all vehicles);

(3) Number of commercial vehicles over 10,000 lbs. (Gross Vehicle Weight Rating);

(4) Population (1980 census); and

(5) Special fuel consumption (net after reciprocity adjustment).

(e) Subject to the availability of funds, the individual allocations for implementation purposes shall be adjusted so that no State qualifying for an award shall be allocated more than a ceiling amount to be determined by

FHWA on a fiscal year basis as funds are appropriated by Congress, and not:

(1) Less than the basic allocation of funds received in the prior year, provided the SEP continues to support that level of funding; or

(2) Less than $150,000 for Fiscal Year 1985 and $225,000 for Fiscal Years 1986, 1987, and 1988, provided the SEP supports that level of funding.

(f) Notwithstanding any other provisions of this section, funds for implementation purposes which have not been awarded to States, under application of the allocation formula and the provisions for increased allocations contained in this section, may be redistributed, at the discretion of the Administrator for purposes consistent with any of the following:

(1) Innovative commercial motor carrier safety measures in addition to those involving basic roadside inspections;

(2) Increased concentration on activities identified by the Department of Transportation (DOT) as emphasis areas;

(3) Indicated ability to effectively utilize increased funding; or

(4) SEPs which include requests for allocated prior year funds not used by the State.

§ 350.23 Acceptance of State plan.

(a) Each plan will be reviewed for content, after which the State will be notified of its acceptance or rejection.

(b) The time for submitting a plan may be extended by the division office for a period not to exceed 30 calendar days for good cause shown.

(c) Except in the first year, a State's application shall include a report on the effectiveness of its prior year's plan in reaching the stated objectives. The State will be advised whether any changes are needed in the plan or in its intended objectives.

§ 350.25 Effect of failure to submit a satisfactory State plan.

(a) A State will be notified in writing that approval of the plan is being withheld along with the reasons for such action, if:

(1) It is determined that a development plan is not adequate to prepare a State for an implementation program; or

(2) It is determined that an SEP is not adequate to ensure effective enforcement of the FMCSR and FHMR, or compatible State rules.

(b) The State shall have 30 calendar days from the date of the notice to modify the plan and resubmit it for approval.

§ 350.27 Procedure for withdrawal of approval.

(a) If a State is not performing according to an approved plan or a State is not adequately enforcing the FMCSR and FHMR, or compatible State rules, the Administrator shall issue a written notice of proposed determination of nonconformity to the Governor of the State or the official designated in the plan. The notice shall state the reasons for the proposed determination and inform the State that it may reply in writing within 30 calendar days from the date of the notice. The reply should address the deficiencies cited in the notice and provide documentation as necessary.

(b) The Administrator's decision, after notice and opportunity for comment, will constitute the final decision of the FHWA. An adverse decision will result in immediate cessation of Federal participation in the plan.

(c) If the State does not respond to a notice of proposed determination of nonconformity as provided in paragraph (a) of this section, the proposed determination shall become the Administrator's final decision with the same effect as paragraph (b) of this section.

(d) Any State aggrieved by an adverse decision issued under this part may seek judicial review pursuant to Chapter 7 of Title 5 of the United States Code.

§ 350.29 Eligible costs.

(a) Work must be performed pursuant to an acceptable State plan in order for the cost of that work to be eligible for reimbursement. The eligible costs under the grant program are comprised of the allowable direct costs incident to the State's performance and its allocable portion of allowable indirect costs, less applicable credits.

(b) The primary functions to be performed under a development grant or an implementation grant are uniform roadside inspections, investigations, and terminal safety audits with follow-up enforcement actions or compliance measures. Consequently, the major cost will be compensation and expenses of the personnel required to perform these functions. Eligible personnel costs include, but are not limited to:

(1) Recruitment and screening;

(2) Training;

(3) Salaries and fringe benefits; and

(4) Supervision.

(c) Equipment and travel costs directly related to the primary functions are also eligible for proportionate reimbursement. These costs include, but are not limited to:

(1) Vehicles;

(2) Uniforms;

(3) Communications equipment;

(4) Special inspection equipment;

(5) Vehicle maintenance;

(6) Motor fuel and oil; and

(7) Travel and per diem expenses.

(d) Indirect expenses related to facilities used to conduct inspections or to house enforcement personnel, support staff, and equipment may also be eligible to the extent they are measurable and recurring, such as rent and overhead.

(e) A secondary function of the MCSAP is to develop a data base on which to coordinate resources and improve efficiency. Therefore, costs related to data acquisition, storage, and analysis that are discretely identifiable as program expenses may be eligible for reimbursement.

(f) Clerical and administrative expenses, to the extent they are necessary and directly attributable to the MCSAP, are eligible for reimbursement.

(g) The cost of acquisition of real property, land and buildings, is not eligible as a participating cost in the MCSAP. Real property does not include, for example, the installation of lights for the inspection of vehicles at night or minor modifications to existing structures.

(h) The eligibility of specific costs is subject to review, and such costs must be necessary, reasonable, allocable to the approved SEP, and allowable under this and related Federal regulations.

Appendix A—Guidelines To Be Used in Preparing State Enforcement Plan

1. *Designate the motor carrier safety agency:* The plan should include the agency responsible for administering the plan.

2. *Define the problem:* In assessing the level of commitment to be made to the enforcement of commercial motor carrier and highway hazardous materials safety regulations, the following factors should be considered:

(a) Volume of commercial motor vehicle traffic;

(b) Type of commercial motor vehicle traffic;

(c) Volume of commercial motor vehicle traffic transporting hazardous materials;

(d) Number and frequency (rate) of commercial motor carrier accidents;

(e) Severity of accidents involving commercial motor carriers:

(1) Fatalities;

(2) Injuries; and

(3) Property damage.

(f) Seasonal commercial motor carrier operational patterns within the State;

(g) Projected impact of increased enforcement (economic and operational);

(h) Ability to prevent and/or discourage commercial motor vehicle operators from circumventing inspection sites;

(i) Costs related to the elements of each State's plan.

(This information may or may not be available to the States at present. To be able to measure program effectiveness, however, States will need to compile this type of data.)

3. *Determine current enforcement efforts:* The plan should identify the activities currently engaged in by the State to address the commercial motor carrier and hazardous materials safety problems. This should include a description of existing laws, regulations and compliance activities, as well as the agencies within the State with enforcement responsibilities, the resources devoted by these agencies, and the cost to the State or local government of these efforts.

4. *Establish the objectives:* A key element in each plan is the establishment of the objectives sought to be achieved through the use of Federal funds. The objectives should be stated in terms of quantifiable measurements of results, where possible, or at least of effort. Ideally, the objectives should include a measurable reduction in highway accidents or hazardous materials incidents involving commercial motor vehicles, but may also refer to quantifiable improvements in legislative or regulatory authorities, problem identification, enforcement strategies and resource allocations. Goals should be identified as:

(a) *Short term*—the year beginning October 1 following submission of a MCSAP enforcement plan.

(b) *Medium term*—two to four years after submission of the enforcement plan.

(c) *Long term*—five years beyond the submission of the enforcement plan.

(d) Provision for review and update of the MCSAP enforcement plan.

5. *Identify the resources:* The plan should detail the resources to be used in accomplishing the objectives, and should include:

(a) State agencies involved:
(1) Lead agency; and
(2) Cooperating agencies.
(b) Personnel (from each agency involved):
(1) Line functions;
(2) Staff and supervision; and
(3) Administrative, technical and clerical.
(c) Facilities:
(1) Inspection sites regularly maintained; and
(2) Building space required.
(d) Equipment:
(1) Vehicles;
(2) Communication and ADP; and
(3) Other specialized tools.
(e) Itemization of Costs:
(1) Personnel (salaries, benefits, etc.):
(2) Equipment (purchase, rental, fuel, maintenance, depreciation, salvage, etc.); and
(3) Facilities (rent and overhead).

6. *Describe the practices:* The plan should describe how the resources are to be employed to achieve the objectives, and should discuss:

(a) Schedules of operation of inspection sites and units;

(b) Tactics for placing vehicles out of service;

(c) Projected number of annual:
(1) Roadside vehicle inspections; and
(2) Safety management audits;

(d) Methods to inspect all types of carriage;

(e) Strategy for preventing circumvention or avoidance of inspections;

(f) Procedures for handling hazardous materials carriers; and

(g) Supervision and recordkeeping.

7. *Provide for evaluation:* Each plan should include a provision for self-evaluation of its effectiveness. It is not practicable to establish objective minimums, as each State has unique characteristics and varying levels of existing enforcement activity. The FHWA will cooperate with State regulatory and enforcement agencies by gathering useful information and experience on elements of enforcement practices that produce positive results.

The bottom line objective in any safety program is a decrease in the number and severity of accidents. Motor carrier safety regulations should be designed to prescribe methods to eliminate the risks of accidents. Compliance with such regulations should, therefore, reduce accidents. The States are encouraged to design their programs to link their enforcement efforts to causes of accidents, whenever possible, and to develop the data necessary to demonstrate the results.

In assessing State Enforcement Plans, the FHWA will be particularly attentive to the methods by which effectiveness is to be evaluated, and will provide whatever assistance is feasible in developing measurement factors.

Appendix B—Form of State Certification

State certification

I (name), (title), on behalf of the State of , as requested by the Federal Highway Administrator as a condition of approval of a grant under the authority of Sec. 402 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424), do hereby certify as follows:

1. The State (has adopted) (will adopt) commercial motor carrier and highway hazardous materials safety rules and regulations, which (are) (will be) substantially similar to and consistent with the Federal Motor Carrier Safety Regulations and the Federal Hazardous Materials Regulations (a copy of the existing or proposed State rules and regulations to be attached in the first year of the program).

2. The State has designated (name of State commercial motor carrier safety agency) as the lead agency to administer the enforcement plan for which the grant is being awarded, and (name of agencies) to perform functions under the plan. These agencies (have) (will have) the legal authority, resources and qualified personnel necessary for the enforcement of the State's commercial motor carrier and highway hazardous materials safety rules and regulations.

3. The State will devote such of its own funds as may be necessary to provide its matching share to the Federal assistance provided in the grant to administer the plan it is herewith submitting, and to enforce the State's commercial motor carrier safety rules and regulations in a manner to be consistent with the approved plan.

4. The laws of the State provide the State's enforcement officers right of entry and inspection sufficient to carry out the purposes of the enforcement plan as approved (a copy of the applicable State law to be attached in the first year of the program).

5. The State shall require that all reports relating to the program be submitted to the appropriate State agency or agencies; and such reports will be made available to the Federal Highway Administration upon request.

6. The State will adopt such uniform reporting requirements and use such uniform forms for recordkeeping, inspection, and other enforcement activities as may be established by the Federal Highway Administration.

7. The State (has) (will have) in effect a requirement that registrants of commercial motor vehicles declare knowledge of the applicable Federal or State commercial motor carrier safety rules and regulations (a copy of the State form used for such purposes to be attached in the first year of the program).

8. The State will maintain the level of its expenditures for motor carrier safety programs, exclusive of Federal assistance, at least at the level of its expenditures for these purposes during the last two full fiscal years immediately prior to January 6, 1983.

Date: _____
Location: _____
(Signature) _____

[FR Doc. 84-25639 Filed 9-26-84; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Modification to the Pee Dee Migratory Bird Closed Area, North Carolina, and Revocation of the Lake St. Clair Migratory Waterfowl Closed Area, Michigan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule modifies the boundaries of an area closed to migratory bird hunting near the Pee Dee National Wildlife Refuge, North Carolina. The action removes the present administrative restrictions prohibiting the taking of migratory game birds on approximately five acres of water that are located outside of the adjusted refuge acquisition boundary. This rule also rescinds Presidential Proclamation No. 2593, thereby removing the Lake St. Clair Migratory Waterfowl Closed Area, Michigan, from the list of areas closed to migratory bird hunting. This action is being taken because this closed area has been subject to reductions in waterfowl usage due to habitat deterioration and increased recreational activities, and its

maintenance as a closed area requires Fish and Wildlife Service attention that could be used in projects more beneficial to wildlife. This rulemaking will remove Federal restrictions on migratory hunting in the lands and waters under consideration.

EFFECTIVE DATE: September 27, 1984.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th and C Streets, NW, Washington, D.C. 20240; Telephone (202) 343–4311.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act and the National Wildlife Refuge System Administration Act authorize the closure of refuges and other areas to migratory bird hunting where necessary to conserve, protect, and manage migratory birds. Designation of areas as closed to hunting is generally made on the basis of their suitability as breeding habitat. Designation of closed areas was originally made by Presidential Proclamation or Executive Order; however, Executive Order 10250 (June 7, 1951; 16 FR 5385) delegated this power to the Department of the Interior.

On September 16, 1967, certain lands and waters within and adjacent to Pee Dee National Wildlife Refuge, North Carolina, were designated as a closed area, in and on which pursuing, hunting, taking, capturing, or killing of migratory birds, or attempting to take, capture, or kill migratory birds is not permitted (32 FR 13384). Subsequently, the acquisition boundary of the refuge was adjusted. On July 10, 1984, a rule was published (49 FR 28079) that proposed the removal of the present administrative restrictions on approximately five acres of water northeast of Leak Island that are now located outside of the adjusted refuge boundary. Restrictions prohibiting the taking of migratory game birds would continue on the remaining 215 acres of the closed area. No comments were received on this proposal.

Presidential Proclamation No. 2593 (September 21, 1943) established the Lake St. Clair Migratory Waterfowl Closed Area, consisting of two discrete areas within Anchor Bay, Lake St. Clair, Michigan, in or on which pursuing, hunting, taking, capturing, or killing of migratory birds, or attempting to take, capture, or kill migratory birds is not permitted (8 FR 12921). Since that time, waterfowl use of these areas has decreased as the amount and duration of recreational boating and fishing have increased. Further, large areas of waterfowl habitat within these closed areas have been lost through sustained increases in Great Lakes water levels and growing pleasure boat traffic. These changes have resulted in a level of waterfowl use that does not justify continuation of the closure. In the absence of substantial waterfowl use, Service resources could be more beneficially used elsewhere. On July 10, 1984, a rule was published (49 FR 28079) that proposed revocation of the Lake St. Clair Closed Area, thereby removing Federal restrictions on migratory bird hunting therein. This action was proposed on the recommendation of the Michigan Department of Natural Resources for the reasons given above. The State will have the authority to establish the units as State refuges should conditions change and habitat improve to the point that waterfowl begin using the area again. No comments were received on this proposal.

Conformance With Statutory and Regulatory Authorities

This action is taken by virtue of and pursuant to sections 2 and 3 of the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755, as amended; 16 U.S.C. 703, 704). Neither the modification of the Pee Dee Closed Area nor the revocation of the Lake St. Clair Closed Area will have any appreciable effect on the distribution or abundance of migratory waterfowl. At Pee Dee National Wildlife Refuge, the action will eliminate a prohibition of hunting on certain private lands, but will not result in any additional hunting opportunities on the refuge. Accordingly, this action is taken after having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds included in the terms of this country's migratory bird treaties with Canada, Mexico, Japan and the Soviet Union. The implementation of these changes will be consistent with all applicable laws and compatible with the principles of sound wildlife management and will otherwise be in the public interest. These determinations are based on a consideration of, among other things, the Service's "Final Environmental Impact Statement on the Operation of the National Wildlife Refuge System," published in November 1976, and environmental assessments that have been prepared for each of the proposed actions.

This substantive rule relieves restrictions on the Pee Dee National Wildlife Refuge and Lake St. Clair Closed Area, as noted above. Additionally, the opening dates for the Michigan and North Carolina hunting seasons are rapidly approaching and the public interest would not be served by delaying this action unnecessarily. Therefore, the Service, in accordance with 5 U.S.C. 553 (d)(1) and (d)(3), has determined that good cause exists for making this rule effective upon publication.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions.

This rule will impose no costs on small entities. While the number of small entities affected by this rule is unknown, the number is judged to be small. When the Lake St. Clair action is accomplished, the Service will not have to spend effort and monies to maintain and enforce the closed area. Approximately $2,500 are spent annually to replace lost and stolen buoys that mark the boundaries of the closed area.

Accordingly, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Considerations

The "Final Environmental Impact Statement for the Operation of the National Wildlife Refuge System" [FES 76–59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the **Federal Register** on November 19, 1976 (41 FR 51131). Pursuant to the requirements of section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), environmental assessments and

Findings of No Significant Impact were prepared for each of these actions.

Stephen J. Lewis, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

For the reasons set out in the preamble, 50 CFR 32.4 is amended by inserting a new citation revising the boundary of the Pee Dee Migratory Bird Closed Area, in or on which the pursuing, hunting, taking, capturing, or killing of migratory birds or attempting to take, capture, or kill migratory birds is not permitted. The Pee Dee Migratory Bird Closed Area boundary description reads as follows: "All the area of the bed of the Pee Dee River, bank to bank, submerged or exposed, including the water thereof, from the confluence of Pressley Creek and the Pee Dee River to approximately 5 miles downstream to the confluence of Brown Creek and the Pee Dee River. Included also are the waters surrounding Buzzard Island, and containing, in all, a total of 215 acres."

Further, 50 CFR 32.4 is amended by removing the Lake St. Clair Migratory Waterfowl Closed Area, Michigan, from the list of closed areas in 50 CFR 32.4.

PART 32— [AMENDED]

1. The authority citation of Part 32 is revised to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, sec. 5, 45 Stat. 449, sec. 10, 45 Stat. 1224, sec 4, 48 Stat. 402, as amended, sec. 4, 48 Stat. 451, as amended, sec. 2, 48 Stat. 1270, sec. 4, 76 Stat. 654, as amended, sec. 4, 80 Stat. 927; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 703, 704, 43 U.S.C. 315a, 16 U.S.C. 460k, 668dd; sec. 2 80 Stat. 926; 16 U.S.C. 668bb, unless otherwise noted.

§ 32.4 [Amended]

2. 50 CFR 32.4 is amended as follows:

a. For the State of North Carolina, enter the date under the column headed "Date" and enter the **Federal Register** Citation under the column headed "Citation" of the description of the Pee Dee National Wildlife Refuge Closed Area as published in the **Federal Register** in final form.

b. Remove the entry for "Michigan" in its entirety.

Dated: September 6, 1984.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-25632 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 49, No. 189
Thursday, September 27, 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

Federal Grain Inspection Service

7 CFR Part 800

Supervision, Monitoring, and Equipment Testing

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS or Service) reviewed and proposes to revise the regulations under the United States Grain Standards Act (Act), as amended, concerning Supervision, Monitoring, and Equipment Testing to change the requirements for the monitoring of grain transfers by the Service into export elevators and to remove the requirements for monitoring inventories at export elevators so as to update and clarify these sections.

DATES: Comments must be submitted on or before November 26, 1984.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Management Branch (RM), FGIS, USDA, Room 0667 South Building, 14th and Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. The action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities, and this action poses no new or additional duties or obligations to business entities involved in the loading, weighing, handling, or sampling of grain.

Regulatory Review

The review of the regulations concerning Supervision, Monitoring, and Equipment Testing (7 CFR 800.215–800.219) included a determination of the continued need for and consequences of the regulations. An objective of the review was to ensure that the regulations are serving their intended purpose, the language is clear, and the regulations are consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. FGIS, however, proposes to amend § 800.216 for the following reasons:

1. On October 13, 1980, section 5 of the Act was amended by Pub. L. 96–437 (the Dole-Ashley Bill) which exempted from mandatory official weighing the transfer of grain into or out of export elevators at export locations for the following type shipments: (1) Intracompany shipments of grain into an export elevator by any mode of transportation, (2) intercompany shipments of grain transferred into an export elevator by transportation modes other than barges, and (3) grain transferred out of an export elevator by any mode of transportation to destinations within the United States.

2. By interim final rule dated June 5, 1981 (46 FR 30322) and final rule dated January 14, 1982 (47 FR 2254), § 800.15(b)(2) was revised to limit export elevator operators responsibility for complying with Class X weighing requirements for all grain, other than export grain, transferred into and transferred out of the export elevator to intercompany grain shipments received by barge. Additionally, having been made impracticable by the 1980 amendment to section 5 of the Act, the Grain Inventory Monitoring Program was ended in the October, 1981 FGIS reorganization.

3. Presently, § 800.216(c)(2) describes grain handling activities to be monitored as including transferring grain into and out of an export elevator at an export port location without Class X weighing. In § 800.216(e) provision is made for monitoring inventories at export elevators under the Grain Inventory Monitoring Program. Based upon the above, so as to update the regulations and delete obsolete references, it is proposed that § 800.216(c)(2) be amended by changing scope of grain transfer activities to be monitored by the Service to intercompany barge shipments into an export elevator at export. Further, § 800.216(e) is proposed to be amended by deleting the provision for monitoring export inventory and by renumbering the subsequent subparagraph as appropriate. These proposed changes will not in anyway adversely effect the overall monitoring program for compliance with the Act.

List of Subjects in 7 CFR Part 800

Administrative practices and procedures, Export, Grain.

PART 800—SUPERVISION, MONITORING, AND EQUIPMENT TESTING

Accordingly 7 CFR Part 800 of the regulations is proposed to be amended as follows:

§ 800.216 [Amended]

1. Section 800.216(c)(2) is revised to read as follows:

* * * * *

(c) *Grain handling activities.* * * *

(2) transferring grain from intercompany barges into an export elevator at an export port location without Class X weighing: * * *

2. Section 800.216 is amended by removing paragraph (e), and redesignating paragraph (f) as paragraph (e).

(Secs. 8 and 18, Pub. L. 90–487, 82 Stat. 761; Pub. L. 94–582, 90 Stat. 2867; Pub. L. 95–113, 91 Stat. 1024; Pub. L. 95–582, 90 Stat. 2870 and 2884 (7 U.S.C. 79b and 87e))

Dated: September 13, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84-25630 Filed 9-26-84; 8:45 am]

BILLING CODE 3410-EN-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 209, 210, 211, and 212

Railroad Retirement Annuities

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board hereby proposes to revise its regulations concerning the reporting requirements for railroad employers, the creditability of compensation, the creditability of service, and the creditability of military service. Regulations concerning these subjects are contained in several sections of the Board's regulations and this proposed action would reorganize the rules concerning these subjects in a manner that should make them easier to use and understand. In addition, the proposed rules contain provisions implementing recent amendments to the Railroad Retirement Act.

DATE: Comments must be received on or before October 29, 1984.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: George Traynere, Director of Compensation and Certification, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4876 (FTS 387-4876).

SUPPLEMENTARY INFORMATION: Benefits under the Railroad Retirement Act are computed, in part, based on an individual's creditable railroad service and compensation and the Board is authorized by the Act to require railroad employers to furnish compensation and service records for their employees. The Board currently has regulations with respect to the information to be provided by employers which are found in Part 250 of the Board's regulations. In addition, the Board has issued Instructions to Employers which provide more detail concerning the reporting requirements. The proposed regulation on employer reports would be moved to Part 209 of the regulations and would incorporate revisions of the existing regulation and include certain items from the Instructions to Employers which should be adopted as rules. The proposed Part 209 provides the basic reporting requirements for employers and contains information which explains when and how reports are to be made. In addition, the proposed Part 209 explains the penalties that may be imposed for failure to comply with the reporting requirements.

The Board proposes to replace current Part 220, Definition and Creditability of Service, with a new Part 210, Creditable Railroad Service. The proposed Part 210 provides a better explanation of the circumstances under which service will be credited under the Railroad Retirement Act and should be easier to use than the current Part 220.

The proposed Part 211, Creditable Railroad Compensation, would replace the current Part 222, Definition and Creditability of Compensation. The proposed Part 211 explains the various types of payments that may be credited as compensation under the Railroad Retirement Act and how and when they are to be credited.

Finally, the proposed Part 212, Military Service, would replace the current part 209, Military Service. The proposed Part 212 explains the conditions under which military service may be credited as service under the Railroad Retirement Act and used in determining eligibility for and the railroad retirement benefits.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory analysis is required. The information collections associated with this rule have been approved by the Office of Managment and Budget.

List of Subjects

20 CFR Part 209

Railroad employees, Railroad retirement, Railroads.

20 CFR Part 210

Railroad employees, Railroad retirement.

20 CFR Part 211

Railroad employees, Railroad retirement.

20 CFR Part 212

Railroad employees, Railroad retirement.

Title 20 CFR Chapter II, is amended as follows:

1. The table of contents for Title 20, Chapter II, Railroad Retirement Board, Subchapter B, is amended as follows:

(a) The title of Part 209, Military Service, is revised to read "Railroad Employers Reports and Responsibilities".

(b) The title of new Part 210 is "Creditable Railroad Service".

(c) The title of new Part 211 is "Creditable Railroad Compensation".

(d) The title of new Part 212 is "Military Service".

(e) Part 220 is [Reserved].

(f) Part 222 is [Reserved].

(g) Part 250 is [Reserved].

2. Part 209, Military Service is redesignated as Part 212.

3. Part 250, Reports and Information to be filed by Employers, is redesignated as Part 209, and is revised as follows:

PART 209—RAILROAD EMPLOYERS REPORTS AND RESPONSIBILITIES

Sec.

209.1 General.
209.2 Duty to furnish information and records.
209.3 Information regarding change in status.
209.4 Employers' notices of death of employees.
209.5 Employers' supplemental reports of service and compensation.
209.6 Employers' annual reports of creditable service and compensation.
209.7 Employers' adjustment reports.
209.8 Employers' quarterly summary reports of compensation adjustments.
209.9 Terminated employers' reports.
209.10 Employee representative reports.
209.11 Certificates of service months and compensation.
209.12 Employers' gross earnings reports.

Authority: Sec. 7(b) (5) and (6), Pub. L. 93-445, 88 Stat. 1339, 1340 (45 U.S.C. 231f(b) (5) and (6)); Sec. 9, Pub. L. 93-445, 88 Stat. 1343, (45 U.S.C. 231h); Sec. 13(a), Pub. L. 93-445, 88 Stat. 1345 (45 U.S.C. 2311).

§ 209.1 General.

Benefits under the Railroad Retirement Act are based in part upon an individual's years of service and amount of compensation credited to the individual under the Act. It is the duty of the Board to gather, keep and compile such records and data as may be necessary to assure proper administration of the Act. This part sets forth the types of reports employers are required to make to the Board and states the penalties that the Board may impose upon employers and employees who fail or refuse to make required reports.

§ 209.2 Duty to furnish information and records.

In the administration of the Railroad Retirement Act of 1974, the Board may require any employer or employee to furnish or submit any information, records, contracts, documents, reports or other materials within their possession or control, that, in the judgment of the Board, may have any bearing upon:

(a) The employer status of any individual, person or company,

(b) The employee or pension status of any individual,

(c) The amount and creditability of service and compensation, or

(d) Any other matter arising which involves the administration of the Railroad Retirement Act. Any person who knowingly fails or refuses to make any report or furnish any information required by the Board, may be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

§ 209.3 Information regarding change in status.

It is the duty of each employer to promptly notify the Board of:

(a) Any change in the employer's operations, ownership or control of the employer which affects its status as an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act;

(b) Any change in the ownership or control by the employer in any company which may affect the status of the company as an employer under the Railroad Retirement Act or Railroad Unemployment Insurance Act; and

(c) The gain of ownership or control by the employer of any company which may give that company status as an employer under the Railroad Retirement Act and Railroad Unemployment Insurance Act. The notice must fully advise the Board of the type of change in ownership, the date of the change, the number of employees affected by the change and any other information pertinent to the change.

§ 209.4 Employers' notices of death of employees.

Each employer shall notify the Board immediately of the death of an employee who, prior to the employee's death, performed compensated service which has not been reported to the Board. The notice of death shall be made on the form prescribed by the Board and mailed to the Director of Compensation and Certification.

§ 209.5 Employers' supplemental reports of service and compensation.

Each employer shall furnish the Board a report of the current year service and compensation of each employee who ceases work for the purpose of retiring under the provisions of the Railroad Retirement Act. The reports are to be made on the form prescribed by the Board and mailed to the address shown on the reverse side of the form.

§ 209.6 Employers' annual reports of creditable service and compensation.

(a) Each year, on or before the last day of February, each employer is required to make an annual report of the creditable service and compensation of employees who performed compensated service in the preceding calendar year. The annual report shall include service and compensation previously furnished in supplemental reports and notices of death. Annual reports are to be prepared in accordance with the instructions issued by the Director of Compensation and Certification mailed directly to that office. The reports may be made on magnetic tape, punchcards or the form prescribed by the Board as described in § 200.2 of this chapter. The reports must be accompanied by a report indication/specification sheet prescribed by the Board as described in § 200.2 of this chapter.

(b) Employers who do not have creditable service and compensation to report shall advise the Director of Compensation and Certification in writing, that they have no creditable service and compensation to report for the previous calendar year.

§ 209.7 Employers' adjustment reports.

(a) The Board may request employers to submit adjustments to correct employee accounts when:

(1) Errors are detected in processing employers' annual report;

(2) An employee shows that the amount of service or compensation reported by the employer to the employee's account was not correct; or

(3) An employee shows that he or she should have been credited with service and compensation for a period for which the employer reported no service and compensation.

(b) Employers may submit adjustment reports to:

(1) Correct service and compensation previously reported; and

(2) Report service and compensation that was omitted from a previous report.

(c) Employers submitting adjustment reports covering pay for time lost as an employee shall report this compensation as provided for in § 211.3 of this chapter. Adjustment reports are to be prepared in accordance with the instructions issued by the Director of Compensation and Certification and mailed directly to that office. The reports may be made on magnetic tape, punchcards or the form prescribed by the Board as described in § 200.2 of this chapter. Adjustment reports may be submitted to the Board each month but shall be summarized quarterly on the form prescribed by the Board as provided for in § 209.8.

§ 209.8 Employers' quarterly summary reports of compensation adjustments.

Each employer submitting compensation adjustment reports shall, on or by the last day of each quarter in which a compensation adjustment report is made, submit a summary report of the adjustments on the form prescribed by the Board as described in § 200.2 of this chapter. Employers who do not make any adjustment reports in any month of a quarter shall not submit a summary report for that quarter.

§ 209.9 Terminated employers' reports.

When an employer's status as an employer is terminated, a final report of creditable service and compensation shall be made. The final report shall be submitted to the Director of Compensation and Certification on or before the last day of the month following the final month for which there was compensated service. The report shall be completed as prescribed in § 209.6 for annual reports and shall be marked Final Compensation Report.

§ 209.10 Employee representatives' reports.

Individuals claiming status as an employee representative shall describe their duties as an employee representative on the form prescribed by the Board and submit the form to the Director of Compensation and Certification. If the duties described in the status report are approved by the Director of Compensation and Certification status as an employee representative is granted. The individual is then advised that he or she is required to make an annual report of creditable Railroad Retirement Act compensation. The compensation report shall be made on the form prescribed by the Board and is to be mailed to the Director of Compensation and Certification each year, on or before the last day of February. When the employee representative's status is terminated, the last report of service and compensation shall be marked Final Compensation Report.

§ 209.11 Certificates of service months and compensation.

(a) Each year the Board prepares certificates of service months and compensation, as described in § 200.2 of this chapter, for employees who performed compensated service in the preceding calendar year. This certificate is the employee's record of the service and compensation credited to his or her account. The certificates are either mailed directly to employees or forwarded to employers for delivery to their employees. Certificates mailed directly to employees and returned to the Board as undeliverable, are forwarded to employers for distribution to emloyees. Employers are to distribute

the certificates within 30 days after they are received, and those certificates which are undeliverable within 30 days are to be returned to the Board. Employees who for any reason do not receive a certificate may obtain one from the nearest Board district office or may write to the Director of Compensation and Certification requesting one. Employers may also obtain certificates from the Director of Compensation and Certification for their employees.

(b) Employers currently receiving certificates for distribution to their employees, but who wish the Board to mail the certificates directly to the employees, shall each year, before May 1, submit the current addresses of all employees to the Director of Compensation and Certification. The address reports shall be submitted on magnetic tape or punchcards only, prepared in accordance with the instructions issued by the Director of Compensation and Certification.

§ 209.12 Employers' gross earnings reports.

(a) Each employer is required to report the gross earnings of a one-percent sample group of railroad employees. The gross earnings sample is based on the earnings of employees whose social security numbers end with the digits 30. This report is used to determine:

(1) Tax and benefit amounts involved in the Financial Interchange with the Social Security Administration; and

(2) Estimated tax income accruing to the railroad retirement system in future periods.

(b) Employers shall report as gross earnings the employee's earnings up to $100,000 a year which includes both taxable and non-taxable compensation for the year. All employers shall submit reports annually, or they may submit such reports more frequently if they desire. Employers with 5,000 or more employees shall provide a monthly or quarterly breakdown of the year's earnings. Employers with less than 5,000 employees may submit an annual amount only, although a monthly or quarterly breakdown is preferable. Gross earnings are to be counted for the same time period as used in determining the employer's annual report of creditable compensation. The reports are to be prepared in accordance with prescribed instructions and mailed to: U.S. Railroad Retirement Board, Bureau of Research, Division of Labor Studies.

4. Part 220, Definition and Creditability of Service, is redesignated as Part 210, and is revised as follows:

PART 210—CREDITABLE RAILROAD SERVICE

Sec.

210.1 General.
210.2 Definition of service.
210.3 Month of service.
210.4 Year of service.
210.5 Creditability of service.
210.6 Service credited for creditable military service.
210.7 Verification of service claimed.

Authority: Sec. 1 (d), (e) and (f), Pub. L. 93–445, 88 Stat. 1307 and 1308 (45 U.S.C. 231 (d), (e) and (f); Sec. 3(i), Pub. L. 93–445, 88 Stat. 1325 and 1326 (45 U.S.C. 231(i)); Sec. 7(b)(5), Pub. L. 93–445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)).

§ 210.1 General.

An individual's entitlement to benefits and the amount of benefits payable under the Railroad Retirement Act are determined based, in part, on the individual's years of service. This part defines what the term service means under the Railroad Retirement Act and sets forth what types of service are creditable under the Act.

§ 210.2 Definition of service.

Service means a period of time for which an employee receives payment from a railroad employer for the performance of work; or a period of time for which an employee receives compensation which is paid for time lost as an employee; or a period of time credited to an employee for creditable military service as defined in Part 212 of this chapter. Service shall also include the month in which an employee is credited with compensation under § 211.12 of this chapter based on benefits paid under Title VII of the Regional Rail Reorganization Act of 1973.

§ 210.3 Month of service.

A month of service is any calendar month or any part of a calendar month for which an employee receives compensation for services performed for an employer; or receives pay for time lost as an employee; or is credited with compensation for a period of creditable military service; or is credited with compensation under § 211.12 of this chapter based on benefits paid under Title VI of the Regional Rail Reorganization Act of 1973.

§ 210.4 Year of service.

(a) A year of service is twelve months of service consecutive or not consecutive. A fraction of a year of service is taken at its actual value.

(b) The term years of service means the total number of years an employee is credited with service as defined in § 210.2.

§ 210.5 Creditability of service.

(a) *Service before January 1, 1937.*

(1) Service performed before January 1, 1937, is called prior service. Prior service is creditable under the Railroad Retirement Act if the employee had an employment relation with a railroad employer on August 29, 1935. Prior service may be combined with creditable service performed after December 31, 1936, to make the employee's total years of service equal, but not exceed, 30 years (360 months).

(2) An employee is considered to have an employment relation on August 29, 1935, if:

(i) The employee was on that date in active railroad service for an employer; or

(ii) The employee was on that date on a leave of absence expressly granted by the employer or the employer's authorized representative, but only if such leave of absence was established to the satisfaction of the Board before July 1947; or

(iii) The employee had 6 months of active railroad service for an employer during the period August 29, 1935, through December 31, 1945; or

(iv) The employee was not in the service of an employer by reason of a mental or physical disability from which the employee was continuously disabled until the employee attained age 65 or until August 1945; or

(v) Solely for the reason stated in subsection (a)(2)(iv) of this section the employee was not recalled to active service before August 1945; or

(vi) If the employee was recalled, the employee was unable to perform 6 months of service during the period August 29, 1935, through December 31, 1945, solely for the reason stated in subsection (a)(2)(iv) of this section.

(b) *Service after December 31, 1936.* All service performed after December 31, 1936, is creditable. If an employee has service both before January 1, 1937, and after December 31, 1936, all service after December 31, 1936, is first credited; if this service totals less than 30 years (360 months), then the service before January 1, 1937, is included but only up to the amount sufficient to make the total years of service equal 30. Where the years of service include only part of the service performed before January 1, 1937, the part included is taken in reverse order beginning with the last calendar month of the service.

(c) *Service after December 31, 1936, to a local lodge or division.* Services performed for a local lodge or division of a railway labor organization is creditable if the employee is credited

with compensation as defined in § 211.2 of this chapter.

(d) *Service based on time lost.* Any month or any part of a month during which an employee performed no active service but received pay for time lost as an employee is counted as a month of service. Service for time lost as an employee shall be credited as provided for in § 211.3 of this chapter.

(e) *Place of performance of service.*

(1) Service performed for an employer who conducts the principal part of its business within the United States is creditable. However, service performed for an employer who conducts the principal part of its business outside the United States is creditable only when the service is performed in the United States. If an employer, other than a local lodge or division or a general committee of a railway labor organization, does not conduct the principal part of its business within the United States, the service performed outside the United States for that employer is not creditable.

(2) Service performed outside the United States by an employee who is not a citizen or resident of the United States is not creditable if the employer is required under the laws of that place to hire, in whole or in part, only citizens or residents of that place.

(f) *Service as employee representative.* Service performed as an employee representative is creditable in the same manner and to the same extent as though the organization by which the employee representative was employed were an employer.

(g) *Service performed after the beginning date of an annuity.* Service performed after the beginning date of an annuity shall be used in the annuity recomputation.

§ 210.6 Service credited for creditable military service.

Any calendar month in which an employee performed creditable military service, as defined in Part 212 of this chapter, shall be counted as a month of service and shall be included in the employee's years of service, as provided for in § 210.4, provided that the employee has not been credited for services performed to an employer for the same month(s).

§ 210.7 Verification of service claimed.

Service claimed by an employee, which is not credited in the records of the Board, must be verified to the satisfaction of the Board before it may be credited. Verification of the service claimed shall be as follows:

(a) Service claimed will be verified from the payroll or other detailed records of the employer.

(b) If the payroll or other detailed records are incomplete or missing, the service claimed and not established by these records will be verified from the personnel records of the employer.

(c) If the payroll, personnel and detailed records are incomplete or missing, the service claimed and not established by these records will be verified from any other books and records of the employer.

(d) If the employer's records do not establish the service claimed, the employee may submit affidavits and other evidence in support of the service claimed in either of the following instances:

(1) When there are no employer records available to show whether or not the service claimed was performed; or

(2) When there are employer records available which do not verify the service claimed and do not establish that the service claimed was not performed.

(e) When service is verified as to over-all dates, but is not supported in detail by employer records, and when there are no employer records showing in detail absences from service, a deduction shall be made to cover an average amount of the absences. The deduction shall be the absences shown by the applicant or 5 percent of the total period in question, whichever is greater. However, where the employee submits detailed records of the service claimed, properly identified and established as having been made at the time the employee performed the service for which detailed records of the employer are not available, full credit may be allowed for the service as may be verified from the records. Also, the employee may be permitted to establish in any other manner satisfactory to the Board the actual amount of his or her absences.

(f) For the purpose of verifying service before 1937, employers shall preserve through 1986, in accessible form, the original records of the service and compensation.

(g) For the purpose of verifying service after 1936, employers shall preserve in accessible form the original records of service and compensation for a period of five calendar years after the due date of the report.

5. Part 222, Definition and Creditability of Compensation, is redesignated as Part 211, and is revised as follows:

PART 211—CREDITABLE RAILROAD COMPENSATION

Sec.

211.1 General.
211.2 Definition of compensation.
211.3 Compensation paid for time lost.
211.4 Vacation pay.
211.5 Employee representative compensation.
211.6 Compensation based on waiver or refund of organization dues.
211.7 Compensation credited for creditable military service.
211.8 Displacement allowance.
211.9 Dismissal allowance.
211.10 Separation allowance.
211.11 Back pay.
211.12 Compensation credited for Title VII benefits.
211.13 Monthly maximum creditable compensation.
211.14 Verification of compensation claimed.

Authority: Sec. 1(h), Pub. L. 93–445, 88 Stat. 1310 (45 U.S.C. 231(h)); Sec. 7(b)(5), Pub. L. 93–445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)).

§ 211.1 General.

Benefits under the Railroad Retirement Act are based in part on the individual's years of service and amount of compensation credited to the individual under the Act. This part defines what the term compensation means and sets forth the criteria applied in determining what payments are creditable as compensation under the Railroad Retirement Act.

§ 211.2 Definition of compenstion.

(a) The term compensation means any form of payment made to an individual for services rendered as an employee for an employer; services performed as an employee representative; and any separation or subsistence allowance paid under any benefit schedule provided in conformance with Title VII of the Regional Rail Reorganization Act of 1973 and any termination allowance paid under section 702 of that Act. Compensation may be paid as money, a commodity, a service or a privilege. However, if an employee is to be paid in any form other than money, the employer and employee must agree before the service is perfomed upon the following:

(1) The value of the commodity, service or privilege; and

(2) That the amount agreed upon to be paid may be paid in the form of the commodity, service or privilege.

(b) Compensation includes, but is not limited to, the following:

(1) Salary, wages and bonuses;

(2) Pay for time lost as an employee;

(3) Cash tips of $20 or more received in a calendar month;

(4) Vacation pay;

(5) Military pay as determined in § 211.7;

(6) Displacement allowances as provided for in § 211.8;

(7) Dismissal allowances as provided for in § 211.9;

(8) Separation allowances as provided for in § 211.10;

(9) Back pay as provided for in § 211.11;

(10) Payments made under Title VII of the Regional Rail Reorganization Act of 1973 as provided for in § 211.12.

(c) Compensation does not include:

(1) Tips, except as provided in paragraph (b)(3) of this section;

(2) Amounts voluntarily paid by an employer without deducting from the employee's salary the taxes imposed by law;

(3) Payments for services performed by a nonresident alien individual for the period the individual is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 1101(a)(15) of Title 8, U.S.C. and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be;

(4) Remuneration paid in certain cases, as described below, for services performed for a local lodge or division of a railway labor organization.

(i) Remuneration for services rendered for a local lodge or division of a railway labor organization which was earned after 1936 and prior to April 1, 1940, shall not be creditable as compensation in a month unless taxes with respect to such remuneration were paid under the Railroad Retirement Tax Act prior to July 1, 1940.

(ii) Remuneration for services rendered for a local lodge or division of a railway labor organization which was earned after March 31, 1940, and prior to January 1, 1975, shall not be creditable as compensation in a month if the amount of such remuneration earned in the month is less than $3.00.

(iii) Remuneration for services rendered for a local lodge or division of a railway labor organization which was earned after December 31, 1974, shall not be creditable as compensation in a month if the amount of such remuneration earned in the month is less than $25.00.

(5) Payments for service as a delegate to a national or international convention of a railway-labor-organization employer if the individual rendering the service has not previously rendered service, other than as a delegate, which may be included in the individual's years of service;

(6) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer which makes provisions for employees generally (or for employees generally and their dependents), or for a class or classes of employees (or for a class or classes of employees and their dependents), on account of sickness or accident disability, or medical, or hospitalization expenses in connection with sickness or accident disability; and

(7) Any amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred, or reasonably expected to be incurred in the business of the employer, provided the payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

§ 211.3 Compensation paid for time lost.

(a) A payment made to an employee for a period during which the employee was absent from the active service of the employer is considered to be pay for time lost and is, therefore, creditable compensation. Pay for time lost as an employee includes:

(1) Pay received for a crrtain period of time due to personal injury, or

(2) Pay received for loss of earnings for a certain period of time, resulting from the employee being placed in a position or occupation paying less money. In reporting compensation which represents pay for time lost, employers shall allocate the amount paid to the employee to the month(s) in which the time was actually lost. The entire amount of any payment made to an employee for personal injury is considered pay for time lost unless, at the time of payment, the employer states that a particular amount of the payment was for reasons other than pay for time lost.

(b) Where pay for time lost is allocated to the month(s) in which the time was actually lost, the Board will accept the allocation made by the parties involved if it relates to the employee's normal monthly pay. A reasonable relationship to an employee's normal monthly pay is ordinarily no less than ten times the employee's daily pay rate.

§ 211.4 Vacation pay.

(a) *Employee deceased or retired.* Where an employee has died, or ceased work for the purpose of retiring, the vacation pay due the employee shall be reported as compensation for the last day of service or as compensation for a period immediately after the last day of service, and during the employee's life, depending on whether the vacation pay is intended to make the employee's termination date effective on or after the last day of service. Vacation pay shall not be reported for a period after the date of death or date of termination.

(b) *Employee terminated.* Where an employee resigns his or her position or is discharged by the employer, any vacation pay due the employee shall be reported as compensation for the period prior to the effective date of the resignation or discharge. Vacation pay shall not be reported for a period after the date of termination.

(c) *Employee takes vacation.* Where an employee takes a vacation, the vacation pay shall be reported as compensation for the period the vacation is taken regardless of when the payment is made.

(d) *Employee does not take vacation.* Where an employee receives pay for vacation but does not take the vacation, the vacation pay shall be reported as compensation for the period it is covered by the employer's payroll except for payments made in December of the vacation year, or thereafter. Vacation payments made in the month of December of the year, or thereafter, shall be reported as compensation for December of the vacation year.

§ 211.5 Employee representative compensation.

All payments made to an individual who occupies the position or office of employee representative are creditable compensation, including compensation paid for services not connected with the representation of employees provided the payments do not exceed the monthly amounts shown in § 211.13.

§ 211.6 Compensation based on waiver or refund of organization dues.

A waiver or refund of organization dues which were based solely on consideration for membership in the organization is considered creditable compensation if there is proof that the waiver or refund was intended to be, and was accepted as, a dismissal of an obligation of the organization to compensate the employee for services rendered.

§ 211.7 Compensation credited for creditable military service.

In determining the monthly maximum creditable compensation of an employee, the following amounts shall be credited for each month of military service, provided the employee's combined monthly railroad and military compensation does not exceed the limits shown in § 211.13:

(a) $160 for each calendar month before 1968;

(b) $260 for each calendar month after 1967 and before 1975;

(c) For years after 1974, the amount to be credited, up to the monthly maximum creditable amount, is the actual earnings reported as wages under the Social Security Act.

§ 211.8 Displacement allowance.

A displacement allowance paid to an employee is creditable as compensation and shall be added to the employee's regular earned compensation for the month(s) the allowance is payable, regardless of when the actual payment is made.

§ 211.9 Dismissal allowance.

Dismissal allowance paid to an employee under a protective labor agreement that covers the amounts paid for a specific period of time are creditable as compensation under the Railroad Retirement Act, provided the employee has not severed his or her employee-employer relationship. Subject to the proviso in the preceding sentence, dismissal allowances are to be reported as compensation in the month(s) for which the employee is paid the allowance.

§ 211.10 Separation allowance.

A lump sum separation allowance paid to an employee is creditable as compensation under the Railroad Retirement Act. A separation allowance is to be reported as compensation for the month last worked or as compensation for the month the employee-employer relationship terminated.

§ 211.11 Back pay.

Employers may report back pay as creditable compensation for the month the compensation is paid or for the period earned. If the back pay is reported as creditable to the month paid, the employee may, within the four year period defined in § 211.14(b), request that the back pay be allocated to the month(s) in which earned. The employer will submit the necessary adjustment giving the employee the proper credits.

§ 211.12 Compensation credited for Title VII benefits.

Payments made to an employee under Title VII of the Regional Rail Reorganization Act of 1973 are creditable as compensation only for the month in which the employee first filed for benefits under that Act. The compensation to be credited cannot exceed the monthly creditable amounts shown in § 211.13.

§ 211.13 Monthly maximum creditable compensation.

The amount of compensation that may be creditable under the Railroad Retirement Act with respect to an employee's service is subject to monthly limits. The monthly maximum for any month is one-twelfth of the maximum annual taxable wage base as defined in section 3121 of the Internal Revenue Code of 1954 that would be applicable to the period which includes the month. The maximum annual taxable wage base is defined in section 3121 of the Internal Revenue Code of 1954 as the amount of the contribution and benefit base determined under section 230 of the Social Security Act. Section 230(c) of the Social Security Act provides, with respect to the computation of annuities under the Railroad Retirement Act, for two separate annual maximum amounts for years beginning with 1979. For purposes of computing the amount of an annuity under the Railroad Retirement Act, except the Tier I annuity component provided by section 3(a), 4(a), or 4(f) of the Railroad Retirement Act or in computing the social security guaranty amount under section 3(f)(3) of the Railroad Retirement Act, the annual maximum wage base is determind without regard to the increases in the annual amounts specified in clause (2) of subsection (c) of section 230. Those increases are, however, applicable in computing the Tier I component of an annuity or in computing the social security guaranty amount under section 3(f)(3) of the Railroad Retirement Act. The table below lists the maximum monthly creditable amounts beginning with 1937. The maximum monthly creditable amounts for purposes of computing the Tier I annuity component and the social security guaranty amount is, for the years beginning with 1979, shown in parentheses.

January 1937 through June 1954	$300
July 1954 through May1959	350
June 1959 through October 1963	400
November 1963 through December 1965	450
January 1966 through December 1967	550
January 1968 through December 1971	650
January 1972 through December 1972	750
January 1973 through December 1973	900
January 1974 through December 1974	1,100
January 1975 through December 1975	1,175
January 1976 through December 1976	1,275
January 1977 through December 1977	1,375
January 1978 through December 1978	1,475
January 1979 through December 1979	1,575 (1,908.33)
January 1980 through December 1980	1,700 (2,158.33)
January 1981 through December 1981	1,850 (2,475.00)
January 1982 through December 1982	2,025 (2,700.00)
January 1983 through December 1983	2,225 (2,975.00)

§ 211.14 Verification of compensation claimed.

Compensation claimed by an employee, which is not credited in the records of the Board, must be verified to the satisfaction of the Board before it may be credited. An employee's claim to compensation not credited shall be processed as follows:

(a) If the compensation claimed is in excess of the monthly maximum creditable amounts shown in § 211.13, the Director of Compensation and Certification shall inform the employee that the compensation claimed is not creditable.

(b) If the compensation is claimed within four years from the date the compensation was required to be reported to the Board as prescribed in § 209.6 of this chapter, the Director of Compensation and Certification shall contact the employer requesting a review of their records, and if the employee's claim is correct, the employer will submit an adjustment crediting the employee with the compensation claimed. If the employer states that the employee's claim is incorrect, the employee will be requested to submit check stubs that show railroad retiremenet taxes withheld from the compensation claimed. Upon receipt of the check stubs, the proof will be sent to the employer along with a request for the employer to submit an adjustment crediting the employee with the compensation claimed.

6. The former Part 209, Military Service, is redesignated as Part 212, and is revised as follows:

PART 212—MILITARY SERVICE

Sec.

212.1 General.
212.2 Military service defined.
212.3 Crediting of military service.
212.4 Periods of creditable military service.
212.5 Verification of military service.
212.6 Board's determination for use of military service.

Authority: Sec. 1(g), Pub. L. 93–445, 88 Stat. 1309 (45 U.S.C.231(g)); Sec. 3(i)(2), Pub. L. 93–445, 88 Stat. 1325 (45 U.S.C. 231b(i)(2)); Sec. 7(b)(5), Pub. L. 93–445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)).

§ 212.1 General.

In determining an individual's entitlement and amount of benefits under the Railroad Retirement Act, an individual's military service creditable under the Railroad Retirement Act is used. This part defines military services as used under this Act and sets forth the criteria to determine the creditability of military service.

§ 212.2 Military service defined.

Military service is the performance of active service by an individual in the armed forces of the United States. An individual is considered to be in active military service when commissioned or enrolled in the land, naval or air forces of the United States until resignation or discharge therefrom. The service of an individual in any reserve component of the land, naval or air forces of the United States, during any period in which ordered to active duty, even though less than thirty days, is also considered active service. However, service in the Army Specialist Corps and the Merchant Marine is not creditable under the Railroad Retirement Act.

§ 212.3 Crediting of military service.

In determining an individual's entitlement to an annuity and the amount of annuity to be paid under the Railroad Retirement Act, a calendar month or part of a calendar month during which the individual was in the active military service of the United States in a war service period, or period of national emergency, as determined in § 212.4, may be included in the individual's years of service. Military service is credited as though the individual had performed service for a railroad employer as provided for in Part 210 of this chapter, provided that the individual is credited with railroad service in the year of or the year before entrance into active military service. Compensation for creditable military service shall be credited as provided for in § 211.7 of this chapter.

§ 212.4 Periods of creditable military service.

In order for military service to be considered to be creditable under the Railroad Retirement Act, it must have been performed during one of the following periods:

(a) April 21, 1898 through August 13, 1898—Spanish American War;

(b) February 4, 1899 through April 27, 1902—Philippine Insurrection;

(c) May 9, 1916 through February 5, 1917—Mexican Border Disturbances;

(d) April 6, 1917 through November 11, 1918—World War I;

(e) September 8, 1939 through June 14, 1948—National Emergency and World War II. Individuals required to continue in service after this period may be credited with the service if:

(1) They were in military service on December 31, 1946, or

(2) They were required to remain in military service involuntarily after December 31, 1946;

(f) June 24, 1948 through December 15, 1950. This service is creditable only if entered into involuntarily;

(g) December 16, 1950 through September 14, 1978—National Emergency.

§ 212.5 Verification of military service.

Military service may be verified by the following proof:

(a) The original certificate of discharge or release to inactive duty from a branch of the armed forces that shows the beginning and ending dates of the individual's active military service; or a certified copy of the original certificate made by the Federal, State, county or municipal agency or department in which the original certificate is recorded; or

(b) A certificate from a branch of the armed forces that shows the beginning and ending dates of the individual's active military service; or

(c) A photocopy of the document described in (a) or (b) of this section.

§ 212.6 Board's determination for use of military service.

(a) Military service may be creditable under both the Railroad Retirement and Social Security Acts, but there are provisions under those Acts to prevent duplicate use of the service. The Railroad Retirement Board will determine whether an employee's military service should be used as railroad service or as social security service. The Board's determination is intended to be to the employee's advantage; however, if the employee does not agree with the Board's determination for use of the employee's military service, the employee may request that it be changed.

(b) Generally, it is to the employee's advantage for the employee's military service to be creditable as railroad service where any of the following conditions may be met with the use of the employee's military service as railroad service:

(1) It gives the employee 10 years of service (120 months), which is the minimum needed to qualify for an annuity based on age and service or total disability, as provided for in Part 216, Subpart B; or

(2) It gives the employee 20 years of service (240 months), which is the minimum needed to qualify for an occupational disability annuity, as provided for in § 216.6 of this chapter; or

(3) It gives the employee 25 years of service (300 months), which is the minimum needed to qualify for a supplemental annuity, as provided for in Part 216, Subpart C; or

(4) It gives the employee 30 years of service (360 months), which would allow the employee to retire at age 60 with a full annuity and will also provide a full annuity to a qualified spouse at age 60, as provided for in Part 216, Subpart B and D; or

(5) It gives the employee sufficient railroad service to entitle the employee to vested dual benefit payments, as provided for in Part 216, Subpart H.

(c) In certain cases it may be to the employee's advantage for the employee's military service to be credited under the Social Security Act. This is generally true under the following conditions:

(1) Crediting the military service under the Social Security Act would entitle the employee and any eligible children to social security benefits, since direct benefits are not payable to children of retired employees under the Railroad Retirement Act; or

(2) Crediting the military service under the Social Security Act would entitle the employee to vested dual benefit payments.

PART 220—[RESERVED]

7. Part 220, Definition and Creditability of Service is redesignated as Part 210, Creditable Railroad Service; therefore, Part 220 is reserved.

PART 222—[RESERVED]

8. Part 222, Definition and Creditability of Compensation, is redesignated as Part 211, Creditable Railroad Service; therefore, Part 222 is reserved.

PART 250—[RESERVED]

9. Part 250, Reports and Information to be Filed by Employers, is redesignated as Part 209, Railroad Employers Reports and Responsibilities; therefore, Part 250 is reserved.

10. In order to enable users to check the completeness, accuracy, and reasoning behind these revised regulations, a Derivation Table follows:

DERIVATION TABLE

New section and name	Current section and name
Part 209—Railroad Employers Reports and Responsibilities.	Part 250—Reports and information to be filed by employers.
209.1 General—New	
209.2 Duty to furnish information and records.	250.1(a) Duty to furnish information and records.—General.
209.3 Information regarding change in status.	250.1(b) Duty to furnish information and records—information concerning change of status.
209.4 Employers' notices of death of employees.	250.2 Employer to notify of death of employee.
209.5 Employer's supplemental reports of service and compensation.—New.	
209.6 Employers' annual reports of creditable service and compensation.	250.3 Employers' reports of compensation of employees.
(a)	(a)(i).
(b)	(b).
209.7 Employers' adjustment reports.	250.3 Employers' reports of compensation of employees.
(a) New	
(b)	(a)(1).
(c) New	
209.8 Employers' quarterly summary reports of compensation adjustments.	250.3(a)(2) Employers' reports of compensation of employees.
209.9 Terminated employers' reports.	250.3(c) Employers' reports of compensation of employees.
209.10 Employee representative's reports.	250.6 Reports of employee representatives.
209.11 Certificates of service months and compensation.	250.5 Employers to transmit annual statements of compensation.
(b) New	
209.12 Employers' "gross earnings" reports.—New.	
Part 210—Creditable Railroad Service.	Part 220—Definition and Creditability of Service.
210.1 General—New	
210.2 Definition of service. (Title VII service added).	220.1 Meaning of service.
210.3 Month of service. (Title VII service added).	220.2 What constitutes a month and a year of service.
210.4 Year of service	220.2 What constitutes a month and a year of service.
210.5 Creditability of service.	220.3 Creditability of service.
(a)	(d) Service prior to Jan. 1, 1937.
(i)	(e) Service prior to Jan. 1, 1937, where individual was employee on Aug. 29, 1935.
(ii)—New	
(iii)—New	
(iv)—New	
(v)—New	
(vi)—New	
(b)	(f) Service subsequent to Dec. 31, 1936.
(c)	(i), (j) Service after Dec. 31, 1936, to a local lodge or division.
(d)	(c) Service based on time lost.
(e)	(b) Place of performance of service.
(f)	(h) Service as employee representative.
(g)	(g) Service performed subsequent to the beginning date of an annuity.
NOTE.—Use of service after ABD furnished by BRC in revised Part 218.16.	
210.6 Service credited for creditable military service.	209.4 Crediting of military service
NOTE.—Use of military service in annuity computation will be furnished by BRC in revised Part 226.	
210.7 Verification of service claimed.	220.4 Verification of service claimed.
(g)—New	

DERIVATION TABLE—Continued

New section and name	Current section and name
NOTE.—Section 220.3(a) was omitted as the term "employer" is defined in Part 202.	
Part 211—Creditable Railroad Compensation.	Part 222—Definition and Creditability of Compensation.
211.1 General—New	
211.2 Definition of compensation.	222.2 Definition of compensation.
(a) (plus additions)	222.2(a)(1)(2).
(b) (plus additions)	222.1 Statutory provisions.
(c) (plus additions)	222.1 Statutory provisions.
211.3 Compensation paid for time lost.	222.2(b) Renumeration paid for time lost.
211.4 Vacation pay	222.3(h) Allowances in lieu of vacation.
(c)—New	
(d)—New	
211.5 Employee representative compensation.	222.3 Employee representative compensation.
211.6 Compensation based on waiver or refund of organization dues.	222.2(c) Waiver and refund of organization dues.
211.7 Compensation credited for creditable military service.	222.4 Amount of compensation attributable to each month of military service creditable.
(b)—New	
(c)—New	
211.8 Displacement allowance.	222.2(b)(2) Renumeration paid for time lost.
211.9 Dismissal allowance.—New.	
211.10 Separation allowance.—New.	
211.11 Back pay.—New	
211.12 Compensation credited for title VII benefits.—New.	
211.13 Monthly maximum creditable compensation.	222.3(a) Maximum creditable compensation for one month.
211.14 Verification of compensation claimed.	222.5 Verification of compensation claimed.
(a)—New	
(b)—New	
NOTE.—Section 222.3(b), Use of compensation after the ABD is furnished by BRC in revised Part 218.16 and § 222.3(f) was deleted.	
Part 212—Military Service	Part 209—Military Service.
212.1 General	209.1(a) Statutory provisions.
	(b) Statutory provisions.
212.2 Military service defined.	
212.3 Crediting of military service.	209.4(a) Crediting of military service.
	(b) Covered by BRC in revised Part 226.
	(c).
212.4 Periods of creditable military service.	209.13 War period.
(a)	(a).
(b)	(b).
(c)—New	(c).
(d)	(d).
(e)	
(f)—New	
(g)—New	
212.5 Verification of military service.	209.14 Verification of military service claimed.
212.6 The Board's determination for use of military service.—New.	
NOTE.—Use of military service in the annuity computation and Notices to SSA to be furnished by BRC in revised Part 226.	

Date: September 21, 1984.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary of the Board.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Reopening and Extension of Public Comment Period on Proposed Amendment to the Iowa Permanent Regulatory Program

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

ACTION: Reopening and extension of public comment period.

SUMMARY: On May 8, 1984, the Iowa Department of Soil Conservation (DSC) submitted to OSM proposed amendments consisting of changes to the Iowa regulations concerning subsidence notification, performance bond amounts, and special permit application requirements for prime farmland. OSM published a notice in the **Federal Register** on June 8, 1984, announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments (49 FR 23872). The public comment period ended July 9, 1984.

OSM's review of Iowa's proposed amendments identified concerns relating to the methodology for determining bond amounts and a proposed maximum bond amount. OSM notified DSC about its concerns on July 24, 1984, and on August 30, 1984, DSC responded by submitting an explanation regarding its methodology and the reasons for the maximum bond amount.

Accordingly, OSM is reopening and extending the comment period on Iowa's May 8, 1984 proposed amendment as modified on August 30, 1984. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendments.

DATE: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:00 p.m. October 15, 1984 will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to: Richard Rieke, Director, Kansas City Field Office, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.

Copies of the Iowa program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters office and the office of the

State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240.

Iowa Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Richard Rieke, Director, Kansas City Field Office, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION: The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5885). The approval was made effective April 10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in January 21, 1981 **Federal Register.**

By letter dated May 8, 1984, Iowa submitted proposed amendments consisting of:

(1) An amendment to Iowa subrule 4.523(63), *subsidence control; public notice,* to adopt by reference 30 CFR 817.122, as promulgated June 1, 1983. The rule concerns notice to surface owners of underground mining activities;

(2) An amendment to Iowa subrules 4.41(1), 4.42, 4.322(3), and 4.332(3), to provide revised provisions on the amount and duration of performance bonds including a methodology for determining bond amounts; and

(3) An amendment to Iowa subrule 4.322(14) to delete the 10-acre prime farmland exemption which was inadvertently retained when the Iowa program was approved in 1981.

OSM announced receipt of the amendments and initiated a public comment period on June 8, 1984 (49 FR 23872). The comment period ended July 9, 1984.

During review of the amendments, OSM identified two concerns:

(1) Iowa's proposed methodology for determining bond amounts does not explicitly demonstrate that it represents a good approximation of actual reclamation costs; and

(2) Iowa's proposed maximum bond amount of $10,000 per acre might not be sufficient to assure completion of reclamation in the event of bond forfeiture.

OSM notified Iowa about these concerns by letter dated July 24, 1984, and Iowa responded by submitting clarifying information on August 30, 1984. The clarifying information identifies the reasons why the specific methodology was chosen for Iowa and explains why the maximum bond amount will be sufficient.

The full text of the proposed program amendments and of the subsequent material is available for review at the locations listed above under **ADDRESSES.** Accordingly, OSM is now seeking public comment on the adequacy of Iowa's May 8, 1984 amendments in light of the State's August 30, 1984 modification.

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

Dated: September 21, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84–25666 Filed 9–26–84; 8:45 am]

BILLING CODE 4310–05–M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

Federal Information Resources Management Regulation (FIRMR); Publication of Integrated Provisions

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking and availability of drafts of Block "D" segment.

SUMMARY: This notice announces the availability of the Block D portion of the proposed integrated text to be published as Amendment 1 to the FIRMR. No changes will be made in authorities, policies, or procedures from those contained in codified portions of the Federal Procurement Regulations (FPR) and Federal Property Management Regulations (FPMR) from which the provisions are derived. Nevertheless, users may desire to become acquainted with the manner in which the integration is made. While comment and review is not solicited, all comments and suggestions received will be considered.

DATES: Any comments on the proposed provisions should be submitted in writing to the Policy Branch, OIRM at the address shown below on or before October 29, 1984. FIRMR Block D and the applicable FIRMR Part number must be cited in all correspondence related to this notice.

ADDRESS: Comments should be submitted to the General Services Administration, KMPP, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Leticia Boddie, Policy Branch, Office of Information Resources Management, telephone 202 566–0194 or FTS, 566–0194. A single copy of any of the parts comprising Block D is available upon request; please specify the part(s) desired.

SUPPLEMENTARY INFORMATION: GSA has established (49 FR 20994, May 17, 1984) the FIRMR to provide a single regulation for use by Federal agencies governing certain of their information activities. Text was published for only Part 201–1. An amendment to the FIRMR is under development to publish an integrated FIRMR text for codified Federal Procurement Regulations (41 CFR Subparts 1–4.11, 1–4.12, and 1–4.13) and Federal Property Management Regulations (41 CFR Parts 101–35, 101–36, 101–37). The fourth and final block of integrated FIRMR text has been drafted. Block D consists of five FIRMR parts. Derivation and distribution tables relating FIRMR sections to FPR/FPMR sources are included. Block D also includes the last of eight temporary regulation drafts which present existing temporary provisions changed to be consistent with the integrated text.

The parts in Block D are—

Part 201–23—Delegations of Authority
Part 201–26—Reporting Requirements
Part 201–31—Sharing of ADP Resources
Part 201–33—Reuse of ADP Equipment
Part 201–34—Supporting ADP Activities

The proposed temporary regulation in Block D is—

Proposed Temp. Reg. *5CITE* (Reissue of FPMR Temp. Reg. 64 provisions)

List of Subjects in 41 CFR Ch. 201

Goverment information resources activities, Government procurement.

Authority: 201(c), 63 Stat. 390; 40 U.S.C. 486(c).

Dated: September 14, 1984.

Francis A. McDonough,

Deputy Assistant Administrator for Federal Information Resources Management.

[FR Doc. 84–25616 Filed 9–26–84; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 159 and 160

[CGD 83–030]

Lifesaving Equipment

AGENCY: Coast Guard, DOT.

ACTION: Proposed rules.

SUMMARY: This proposal would substitute independent laboratory inspection for Coast Guard factory inspection of approved inflatable liferafts, lifeboats including disengaging apparatus and hand propelling gear, lifeboat davits and winches. The Coast Guard's marine inspection responsibilities have steadily increased. Independent laboratory inspection is a way for the Coast Guard to determine that approved equipment meets Coast Guard requirements, while reducing the commitment of Coast Guard resources to these functions. This substitution would free Coast Guard inspectors for other duties that the Coast Guard is obligated by law to perform.

DATES: Comments must be submitted on or before December 26, 1984.

ADDRESSES: (1) Comments should be mailed to the Commandant (G–CMC/44) (CGD 83–030), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593. Between the hours of 7:00 A.M. and 4:00 P.M. Monday through Friday, except holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council (G–CMC/44) Room 2110 U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC, (202) 426–1477.

(2) The Draft Evaluation has been included in the public docket for this rulemaking and may be examined at the Marine Safety Council (G–CMC/44) at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Office of Merchant Marine Safety (G–MVI–3/24), Room 2412, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593, (202) 426–1444. Normal office hours are between 7 a.m. and 5 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: On October 23, 1978, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (43 FR 49440) that proposed a new Part 159 that would contain procedures for approval of equipment, for production inspections and tests of approved equipment, and for acceptance of independent laboratories that would conduct certain inspections and tests for approved equipment. The final rules were published on December 17, 1979 in the **Federal Register** (44 FR 73038). The proposals in this notice would apply Part 159 to approved inflatable liferafts, lifeboats including disengaging apparatus and hand propelling gear, lifeboat davits, and winches.

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this Notice (CGD 83–030) and the specific section to which each comment applies, and give reasons for the comments. If an acknowledgement is desired, a stamped, self-addressed postcard should be enclosed. The proposal may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if a written request for a hearing is received from an interested person raising a relevant issue and it is determined that the opportunity to comment orally at a public hearing will aid in the rulemaking process.

Drafting Information

The principal persons involved in drafting these regulations are: Mr. Robert Markle, Project Manager, Office of Merchant Marine Safety, and Mr. Stanley M. Colby, Project Counsel, Office of Chief Counsel.

Discussion of the Proposed Regulations and Major Issues

This proposal would amend the specification regulations for Coast Guard approved inflatable liferafts, lifeboats, lifeboat disengaging apparatus, lifeboat hand propelling gear, lifeboat davits, and lifeboat winches by applying the approval and inspection rules of Part 159 to this equipment. These changes would remove Coast Guard marine inspectors and Coast guard District Commanders from the approval and production process by substituting inspectors from accepted independent laboratories as the supervisors of required inspections and tests.

Over the years, the Coast Guard's marine inspection responsibilities have increased. Among the many demands on Coast Guard marine inspection personnel were tests and inspections for approval of equipment and materials and production inspection and testing of approved equipment and materials. While the number of man-hours devoted to each individual inspection was not great, these approval and production tests and inspections created a significant drain on the Coast Guard's limited personnel resources. The rules published in Part 159 provided a procedure for determining that approved equipment met Coast Guard requirements and continued to meet the requirements as it was produced, while reducing the commitment of Coast Guard resources to these functions.

Since Part 159 was published, inspection and test procedures in Part 160 have been gradually converted to incorporate the Part 159 procedures. The preamble to the October 23, 1978 NPRM stated, "The procedures under this program would eventually affect all the lifesaving equipment specifications in Part 160 except those for lifeboats, including disengaging apparatus and hand propelling gear, inflatable liferafts, winches, and davits, which may be considered by the Coast Guard at a later date." Since the conversion to Part 159 procedures for all equipment in Part 160 which require Coast Guard factory inspection is complete or is now underway, the Coast Guard is now considering extending those procedures to the lifeboats, liferafts, and launching equipment, as referred to in the October 23, 1978 NPRM.

The Coast Guard had planned to effectuate the independent laboratory procedures for the equipment under this NPRM by direct notification allowed under § 159.001–7. Following this plan, the Coast Guard advised each affected manufacturer by letter in 1982 that the independent laboratory procedures under Part 159 would become mandatory over a period of time between October 1982 and October 1983 for inflatable liferafts, and between October 1983 and October 1984 for the other equipment. A number of the manufacturers objected to this change claiming that the wording of the October 23, 1978 NPRM required the Coast Guard to proceed with another rulemaking before manufacturers could be required to use independent laboratories. As a result, the Coast Guard notified affected manufacturers that the earlier notifications was suspended and has undertaken this rulemaking.

Coast Guard inspectors have not been available for factory inspections of lifesaving equipment produced outside of the United States, because of a limited number of inspectors. This has resulted in a *de facto* prohibition on the approval of foreign produced equipment. This prohibition is not consistent with the objectives of Title IV of the Trade Agreements Act of 1979 (93 Stat 242, 19 U.S.C. 2531) which implemented the Agreement on Technical Barriers to Trade (also known as the "Standards Code"), done in Geneva, April 12, 1979; entered into force for the United States on January 1, 1980 (TIAS 9616). The Standards Code is an international agreement related to the General Agreement on Tariffs and Trade. The

U.S. strongly supported adoption of the Standards Code as a way to eliminate non-tariff trade barriers in other countries which effectively excluded certain U.S.-made equipment from some foreign markets. In order to comply with the objectives of the Standards Code, the Coast Guard has begun inspections of certain inflatable liferafts produced in Canada, Denmark and the United Kingdom. Other foreign manufacturers are also interested in Coast Guard approval of their liferafts, lifeboats, and launching equipment. The increasing number of requests makes timely response to the inspection needs of these manufacturers very difficult, and adversely affects the ability of the Coast Guard to perform other marine safety inspections. Adoption of these proposed rules would relieve these problems.

Some U.S. manufacturers of Coast Guard approved liferafts, lifeboats and launching equipment have expressed the opinion that Part 159 is not adequate to ensure that foreign-manufactured equipment inspected by foreign independent laboratories fully complies with the Coast Guard approval requirements. The Coast Guard has accepted 11 foreign organizations for inspection of certain Coast Guard approved equipment under Subpart 159.010 of Part 159 and marine sanitation devices under the criteria for recognition of facilities in 33 CFR 159.205. The Coast Guard has found these recognized foreign organizations to be just as effective as U.S.-based organizations or Coast Guard inspectors in fulfilling their inspection duties.

The rules proposed in this notice would not change any of the technical requirements of the specification regulations in Part 160. For the most part, the changes in this notice would result in the independent laboratory witnessing tests and inspections in place of Coast Guard marine inspectors. Functions formerly performed by the Commander of the Coast Guard District would now be performed by the Commandant (G–MVI–3). Certain discretionary authorities of the Coast Guard marine inspector would now be exercised by the Commandant (G–MVI–3). A number of other incidental changes are being proposed as well. Other than editorial changes, these are:

a. New sections 159.005–9(b) and 159.007–9(d) are being proposed to provide for any inspections or tests that may be necessary to resolve questions about an unusual design, the suitability of materials and arrangements, or to resolve problems that arise during approval inspections and tests. Since Part 159 is generally applicable to all approved equipment, the effect of these sections would not be limited to liferafts, lifeboats and launching equipment.

b. Responsibilities of the manufacturer are listed in §§ 160.015–5(a) (1) and (2), 160.015–6(a), 160.032–5(a) (1) and (2), 160.032—6(a), 160.033–4(a) (1) and (2), 160.033–5(a), 160.034–3a (a) and (b), 160.035–11(a) (1) and (2), 160.035–11(e), 160.035–13(a). 160.051–5(a) (1) and (2), and 160.051–9(a).

c. Inspections or tests that must be done by the independent laboratory inspector are listed in §§ 160.015–5(a) (3) and (4), 160.015–6(b), 160.032–5(a) (3) and (4), 160.032–6(b), 160.033–4(a) (3) and (4), 160.033–5(b), 160.034–3a (c) and (d), 160.034–5(b), 160.035–11(a) (3) and (4), 160.035–13(b), 160.051–5(a) (3) and (4), and 160.051–9(b).

d. Under present production inspection practice, Coast Guard inspectors periodically visit the manufacturer to inspect the device during fabrication. The present regulations do not reflect the frequency of these inspections because Coast Guard inspectors are regulated by internal instructions. In the rules proposed in this notice, the inspector from the independent laboratory would be required to inspect the device during each fabrication stage. The proposed requirement is intended to ensure that the frequency of these inspections now conducted by the Coast Guard would be continued by the independent laboratory.

e. Sections 160.033–1, 160.034–1, and 160.035–1(b) would be revoked to eliminate obsolete information and addresses.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and non-significant under "Department of Transportation Policies and Procedures for Simplification, Analysis, and Review of Regulations", (DOT Order 100.5 of May 22, 1980). A draft evaluation has been prepared and placed in the docket and may be inspected or copied at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593.

The costs to equipment manufacturers would be those fees charged by an independent laboratory to witness or perform approval tests as well as periodic production tests. As discussed in the draft evaluation, the total annual cost to manufacturers of the equipment affected by this notice would be approximately $614,750.

The cost burden of these rules would be approximately the same per unit produced for both large and small entities. Five small entities that are small businesses as defined by the Small Business Administration were identified that now hold Coast Guard approvals for the affected equipment. Nine other manufacturers that are not small entities also hold approvals for the affected equipment. Under the Regulatory Flexibility Act, Pub. L. 96–354, September 19, 1980 (5 U.S.C. 603), it is certified that this rule will not have a significant economic impact on a substantial number of small entities. An Environmental Assessment has been prepared and a Finding of No Significant Impact has been placed in the public file.

The Coast Guard anticipates that manufacturers would pass the cost of inspections on to the purchasers of the equipment, and that these costs would ultimately be borne by consumers and recipients of marine products and services. The Coast Guard is presently performing inspections and tests at public expense. One of the effects of this change in procedure is that the manufacturer of the equipment and ultimately the users of marine products and services would bear the expense of performing these inspections and tests rather than the general taxpayer. This is one of the principal benefits of these proposals.

Another principal benefit is that Coast Guard inspectors would be available for other duties. The Coast Guard's inspection responsibilities have increased in recent years because of new laws and regulations concerned with environmental protection and occupational safety. The use of independent laboratories for some of the inspection functions would enable the Coast Guard to avoid some of the increases in budget and personnel that would otherwise be necessary. There is no effect on federal state, and local governments except in their capacities as consumers of maritime services.

Effective Date

If these rules are adopted as final rules, the Coast Guard anticipates that manufacturers of the affected equipment could begin using the independent laboratory procedures immediately. It is proposed that all manufacturers should be required to convert their inspection and test procedures to the independent laboratory system within 180 days after publication of the final rules.

Recordkeeping Requirements

This proposed rulemaking contains information collection and recordkeeping requirements. These items have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.) and have been approved by OMB. The section numbers and the corresponding OMB approval numbers are as follows:

a. § 160.015–5(a)(2)(ii)	2115–0141
b. § 160.015–6(a)	2115–0141
c. § 160.032–5(a)(2)(ii)	2115–0141
d. § 160.032–5(a)(2)(iii)	2115–0141
e. § 160.032–6(a)	2115–0141
f. § 160.033–4(a)(2)(ii)	2115–0141
g. § 160.033–5(a)	2115–0141
h. § 160.035–11(a)(2)(ii)	2115–0141
i. § 160.035–11(a)(2)(iv)	2115–0141
j. § 160.035–13(a)(1)	2115–0141
k. § 160.035–13(a)(2)	2115–0141
l. § 160.051–5(a)(2)(ii)	2115–0141
m. § 160.051–9(a)(1)	2115–0141

List of Subjects

46 CFR Part 159

Business and industry laboratories, Marine safety.

46 CFR Part 160

Marine safety.

In consideration of the foregoing, it is proposed to amend Title 46 of the Code of Federal Regulations as follows.

PART 159—APPROVAL OF EQUIPMENT AND MATERIALS

1. By revising the authority citation for Part 159 to read as follows:

Authority: R.S. 46 U.S.C. 3306(a); 49 CFR 1.46(b).

Subpart 159.005—Approval Procedures

2. By adding paragraph (b) to § 159.005–9 to read as follows:

§ 159.005–9 Approval inspections and tests.

* * * * *

(b) The manufacturer must conduct any additional inspections and tests that the Commandant may request to resolve questions about an unusual design, the suitability of materials and arrangements, or to resolve problems that arise during approval inspections and tests.

3. By adding paragraph (d) to § 159.007–9 to read as follows:

§ 159.007–9 Production inspections and tests.

* * * * *

(d) The manufacturer must conduct any additional inspections and tests that the Commandant may request to resolve questions about the suitability of materials or to resolve problems that arise during production inspections and tests.

PART 160—LIFESAVING EQUIPMENT

4. By revising the Authority citation for Subparts 160.015, 160.032, 160.033, 160.034, 160.035, and 160.051 to read as follows:

Authority: 46 U.S.C. 3306(a); 49 CFR 1.46(b).

Subpart 160.015—Lifeboat Winches for Merchant Vessels

5. By amending § 160.015–5 by revising the title of the section, by removing the title of the paragraph and adding introductory text to paragraph (b), by removing and reserving paragraph (b)(1), by removing paragraphs (c) and (d), and by revising paragraphs (a) and (b)(10) to read as follows:

§ 160.015–5 Approval procedure.

(a) In conjunction with the procedure in § 159.005 of this subchapter, the procedure for approving a lifeboat winch is as follows:

(1) As required in § 159.005–5(a)(2), the manufacturer must submit two sets of general plans and specifications including—

(i) The bill of materials with identification of the materials used; and

(ii) The strength calculations for each load carrying part.

(2) After receiving the Coast Guard acceptance under §159.005–7(a)(1), the manufacturer must—

(i) Produce a prototype winch; and

(ii) Have certifications of the physical and chemical properties of the materials used in construction of the winch that are provided by the foundry or mill supplying the materials.

(3) During each fabrication stage, an inspector from an independent laboratory accepted by the Coast Guard must be present and must determine whether or not the—

(i) Materials meet the requirements of this subpart and the plans stamped "EXAMINED" by the Commandant, as verified by the certifications required in paragraph (a)(2)(ii) of this section; and

(ii) Welders and electrodes meet § 160.015–3(o).

(4) After the assembly of the prototype winch is complete, the independent laboratory inspector must determine that the prototype winch—

(i) Meets this subpart and the plans and specifications marked "EXAMINED" by the Commandant; and

(ii) Is tested under paragraph (b) of this section.

(b) Each of the following tests must be conducted by or under the supervision of the independent laboratory with the prototype winch arranged to simulate its intended shipboard installation. If the winch has non-grooved drums, each drum must be built-up or filled with wire to simulate the maximum number of wraps for which the winch is intended. If an arrangement of the falls differing from a shipboard installation is used to facilitate testing, the test weights and arrangements must compensate for the differences so that the velocities and breaking distances can be compared to the shipboard installation.

(1) [Reserved]

* * * * *

(10) After the tests in paragraphs (b)(2)(10) of this section have been completed, the winch must be completely disassembled and the parts examined by the inspector from the independent laboratory. There must be no evidence of damaging stress or wear of any part.

6. By revising § 160.015–6 to read as follows:

§ 160.015–6 Production inspections and tests.

In conjunction with the procedures in Subpart 159.007 of this subchapter, the following is the procedure for determining whether or not each production winch is approved:

(a) The manufacturer must have certifications of the physical and chemical properties of the materials used in construction of the winch that are provided by the foundry or mill supplying the materials.

(b) During each fabrication state and test, an inspector from an independent laboratory accepted by the Coast Guard must be present and must determine whether or not—

(1) Materials meet the requirements of this subpart and the plans approved under § 159.005–13(a), as verified by the certifications required in paragraph (a) of this section;

(2) Each production winch meets the applicable requirements of this subpart and the plans and specifications approved under § 159.005–13(a);

(3) Welders and electrodes meet § 160.015–3(o);

(4) Each production winch passes the test in paragraph (c) of this section; and

(5) Each production winch has a nameplate that meets § 160.015–9.

(c) Each production winch must be tested in accordance with § 160.015–5(b)(2), except that the pull must equal 1.1 times the working load.

7. By adding a new § 160.015–9 to read as follows:

§ 160.015–9 Nameplate.

(a) The manufacturer must permanently affix to each production winch a corrosion-resistant nameplate permanently marked with the—

(1) Name of the manufacturer;

(2) Serial number;

(3) Type or model number;

(4) The words "Coast Guard approved (insert approval number)" or "USCG approved (insert approval number)";

(5) Maximum working load at the drums, in pounds;

(6) Maxium working load for each fall, in pounds; and

(7) Date of manufacture.

(b) After the inspector from the independent laboratory accepted by the Coast Guard determines that the production winch meets the inspection requirements under § 160.015–6(b) and passes the test in § 160.015–6(c), the inspector permanently affixes the identification or inspection mark of the independent laboratory to the nameplate to indicate that the winch is Coast Guard approved and meets the requirements of this subpart.

Subpart 160.032—Davits for Merchant Vessels

8. By amending § 160.032–5 by revising the title of this section, by removing the title of this paragraph and adding introductory text to paragraph (b), by removing and reserving paragraphs (b)(1) and (b)(5), by removing paragraphs (c) and (d), and by revising paragraph (a) to read as follows:

§ 160.032–5 Approval procedure.

(a) In conjunction with the procedure in § 159.005 of this subchapter, the procedure for approving a davit is as follows:

(1) As required in § 159.005–5(a)(2), the manufacturer must submit two sets of general plans and specifications including—

(i) The bill of materials with identification of the materials used;

(ii) The strength calculations for each load carrying part; and

(iii) Stress diagrams for each load carrying part.

(2) After receiving the Coast Guard acceptance under § 159.005–7(a)(1), the manufacturer must—

(i) Produce a prototype davit;

(ii) Have certifications from the foundry showing whether or not the steel casting material complies with the requirements of the ASTM specification in § 160.032–3(c)(2) or § 160.032–3(c)(3); and

(iii) Have certifications from the mill showing whether or not the structural steel complies with the requirements of the ASTM specification in § 160.032–3(c)(1).

(3) An inspector from an independent laboratory accepted by the Coast Guard must—

(i) Be present during the fabrication of each steel casting for arms or frames of the prototype davit;

(ii) Be present during the testing required by ASTM A 27 or A 216;

(iii) Stamp each casting that meets ASTM A 27 or A 216 with the identification of the independent laboratory, the letters "F.T.", and the date of the inspection;

(iv) Determine whether or not the materials meet the requirements of this subpart and the plans stamped "EXAMINED" by the Commandant, as verified by the certifications required in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section;

(v) Determine whether or not the welders and electrodes meet § 160.032–3(f); and

(vi) Be present during each fabrication stage and determine whether or not the prototype davit meets this subpart and the plans and specifications marked "EXAMINED" by the Commandant.

(4) After the assembly of the prototype davit is complete, the independent laboratory inspector must ensure that the prototype davit is tested under paragraph (b) of this section.

(b) Each prototype mechanical davit must pass the tests and inspections under paragraphs (b)(2) through (b)(4) of this section. Each prototype gravity davit must pass the tests and inspections under paragraphs (b)(6) through (b)(8) of this section. Each test must be conducted by or under the supervision of the independent laboratory with the prototype davit arranged to simulate its indended shipboard installation.

(1) [Reserved]

* * * * *

(5) [Reserved]

* * * * *

9. By revising § 160.032–6 to read as follows:

§ 160.032–6 Production inspections and tests.

In conjunction with the procedures in Subpart 159.007 of this subchapter, the following is the procedure for determining whether or not each production davit is approved:

(a) The manufacturer must have certifications from—

(1) The foundry showing whether or not the steel casting material complies with the requirements of the ASTM specification in § 160.032–3(c)(2) or § 160.032–3(c)(3); and

(2) The mill showing whether or not the structural steel complies with the requirements of the ASTM specification in § 160.032–3(c)(1).

(b) During each fabrication stage and test, an inspector from an independent laboratory accepted by the Coast Guard must be present and must determine whether or not—

(1) Materials meet the requirements of this subpart and the plans approved under § 159.005–13(a), as verified by the certifications required in paragraph (a) of this section;

(2) Each production davit meets the applicable requirements of this subpart and the plans and specifications approved under § 159.005–13(a);

(3) Welders and electrodes meet § 160.032–3(f);

(4) Each production davit passes the test in paragraph (c) of this section; and

(5) Each production davit has a nameplate that meets § 160.015–9.

(c) Each mechanical davit must pass the test under § 160.032–5(b)(2). Each gravity davit must pass the test under § 160.032–5(b)(7), except that the swing test may be eliminated if the Commandant finds it to be impracticable.

10. By adding a new § 160.032–9 to read as follows:

§ 160.032–9 Nameplate.

(a) The manufacturer must permanently affix to each production davit arm and frame a corrosion-resistant nameplate permanently marked with the—

(1) Name of the manufacturer;

(2) Serial number;

(3) Type;

(4) The words "Coast Guard approved (insert approval number)" or "USCG approved (insert approval number)";

(5) Maximum working load for each arm, in pounds; and

(6) Date of manufacture.

(b) After the inspector from the independent laboratory accepted by the Coast Guard determines that the production davit meets the inspection requirements under § 160.032–6(b) and passes the test in § 160.032–6(c), the inspector permanently affixes the identification or inspection mark of the independent laboratory to the nameplate to indicate that the davit is Coast Guard approved and meets the requirements of this subpart.

Subpart 160.033—Mechanical Disengaging Apparatus, Lifeboat, for Merchant Vessels

§ 160.033–1 [Removed]

11. By removing § 160.033–1.

12. By amending § 160.033–4 by revising the title of the section, by removing the title of the paragraph and adding introductory text to paragraph (b), by revising paragraph (b)(1), by removing paragraphs (c), (d) and (e), and by revising paragraph (a) to read as follows:

§ 160.033–4 Approval procedure.

(a) In conjunction with the procedure in § 159.005 of this subchapter, the procedure for approving a lifeboat disengaging apparatus is as follows:

(1) As required in § 159.005–5(a)(2), the manufacturer must submit—

(i) Two sets of general plans and specifications including—

(A) The bill of materials with identification of the materials used;

(B) The strength calculations for each load carrying part; and

(C) Stress diagrams for each load carrying part; and

(ii) Two sets of plans for the test jig required in paragraph (b)(1) of this section.

(2) After receiving the Coast Guard acceptance under § 159.005–7(a)(1), the manufacturer must—

(i) Produce a prototype disengaging apparatus; and

(ii) Have certifications of the physical and chemical properties of the materials used in construction of the disengaging apparatus that are provided by the foundry or mill supplying the materials.

(3) During each fabrication stage, an inspector from an independent laboratory accepted by the Coast Guard must be present and must determine whether or not the—

(i) Materials meet the requirements of this subpart and the plans stamped "EXAMINED" by the Commandant, as verified by the certifications required in paragraph (a)(2)(ii) of this section; and

(ii) Welders and electrodes meet § 160.033–3(e).

(4) After the assembly of the prototype disengaging apparatus is complete, the independent laboratory inspector must determine that the prototype disengaging apparatus—

(i) Meets this subpart and the plans and specifications marked "EXAMINED" by the Commandant; and

(ii) Is tested under paragraph (b) of this section.

(b) Each of the following tests must be conducted by or under the supervision of the independent laboratory:

(1) The prototype mechanical disengaging apparatus must be tested to destruction by using a test jig that duplicates the load vectors on the apparatus when it is installed in a lifeboat.

* * * * *

13. By revising § 160.033–5 to read as follows:

§ 160.033–5 Production inspections.

In conjunction with the procedures in Subpart 159.007 of this subchapter, the following is the procedure for determining whether or not each production disengaging apparatus is approved:

(a) The manufacturer must have certifications of the physical and chemical properties of the materials used in construction of the disengaging apparatus that are provided by the foundry or mill supplying the materials.

(b) During each fabrication stage, an inspector from an independent laboratory accepted by the Coast Guard must be present and must determine whether or not—

(1) Materials meet the requirements of this subpart and the plans approved under § 159.005–13(a), as verified by the certifications required in paragraph (a) of this section;

(2) Each production disengaging apparatus meets the applicable requirements of this subpart and the plans and specifications approved under § 159.005–13(a);

(3) Welders and electrodes meet § 160.033–3(e); and

(4) Each production disengaging apparatus has a nameplate that meets § 160.033–9.

14. By adding a new § 160.033–9 to read as follows:

§ 160.033–9 Nameplate.

(a) The manufacturer must permanently affix to each production disengaging apparatus a corrosion-resistant nameplate permanently marked with the—

(1) Name of the manufacturer;

(2) Type of model number;

(3) The words "Coast Guard approved (insert approval number)" or "USCG approved (insert approval number)"; and

(4) Working load.

(b) After the inspector from the independent laboratory accepted by the Coast Guard determines that the production disengaging apparatus meets the inspection requirements under § 160.033–5(b), the inspector permanently affixes the identification or inspection mark of the independent laboratory to the nameplate to indicate that the disengaging apparatus is Coast Guard approved and meets the requirements of this subpart.

Subpart 160.034—Hand Propelling Gear, Lifeboats, for Merchant Vessels

§ 160.034–1 [Removed]

15. By removing § 160.034–1.

16. By adding a new § 160.034–3a to read as follows:

§ 160.034–3a Approval procedure.

In conjunction with the procedures in § 159.005 of this subchapter, the procedure for approving hand propelling gear is as follows:

(a) As required in § 159.005–5(a)(2), the manufacturer must submit two sets of general plans and specifications including the bill of materials with identification of the materials used.

(b) After receiving the Coast Guard acceptance under § 159.005–7(a)(1), the manufacturer must produce a prototype hand propelling gear.

(c) During each fabrication stage, an inspector from an independent laboratory accepted by the Coast Guard must be present and must determine whether or not the materials meet the requirements of this subpart and the plans stamped "EXAMINED" by the Commandant.

(d) After the assembly of the prototype hand propelling gear is complete, the independent laboratory inspector must determine that the prototype hand propelling gear—

(1) Meets this subpart and the plans and specifications marked "EXAMINED" by the Commandant; and

(2) Is tested under § 160.034–4.

17. By amending § 160.034–4 by revising the title of the section, by removing and reserving paragraph (a)(1) and (b), by removing paragraph (c), and by removing the title and adding introductory language paragraph (a) to read as follows:

§ 160.034–4 Approval testing.

(a) Each of the following tests must be conducted by or under the supervision of the independent laboratory with the prototype hand propelling gear installed in a lifeboat:

(1) [Reserved]

* * * * *

(b) [Reserved]

18. By revising § 160.034–5 to read as follows:

§ 160.034–5 Production inspections and tests.

In conjunction with the procedures in Subpart 159.007 of this subchapter, the following is the procedure for determining whether or not each production hand propelling gear is approved:

(a) During each fabrication stage and test, an inspector from an independent laboratory accepted by the Coast Guard must be present and must determine whether or not—

(1) Materials meet the requirements of this subpart and the plans approved under § 159.005–13(a);

(2) Each production hand propelling gear meets the applicable requirements of this subpart and the plans and specifications approved under § 159.005–13(a);

(3) Each production hand propelling gear passes the test in paragraph (b) of this section; and

(4) Each production hand propelling gear has a nameplate that meets § 160.034–9.

(b) Each production hand propelling gear must operate in the "ahead", "neutral", and "astern" positions.

19. By adding a new § 160.034–9 to read as follows:

§ 160.034–9 Nameplate.

(a) The manufacturer must permanently affix to each production hand propelling gear a corrosion-resistant nameplate permanently marked with the—

(1) Name of the manufacturer;

(2) Serial number;

(3) Type or model number;

(4) The words "Coast Guard approved (insert approval number)" or "USCG approved (insert approval number)"; and

(5) Date of manufacture.

(b) After the inspector from the independent laboratory accepted by the Coast Guard determines that the production hand propelling gear meets the inspection requirements under § 160.034–5(a) and passes the test in § 160.034–5(b), the inspector permanently affixes the identification or inspection mark of the independent laboratory to the nameplate to indicate that the hand propelling gear is Coast Guard approved and meets the requirements of this subpart.

20. By adding a new § 160.034–10 to read as follows:

§ 160.034–10 Lubrication data plate.

The manufacturer must permanently affix to the gearbox of each production hand propelling gear a corrosion-resistant plate permanently marked with the recommended lubricant.

Subpart 160.035—Lifeboats for Merchant Vessels

§ 160.035–1 [Amended]

21. By removing and reserving § 160.035–1(b).

22. By amending § 160.035–3 by removing and reserving paragraph (u)(7)(iii) and revising paragraph (u)(7)(iv) to read as follows:

§ 160.035–3 Construction of steel oar-propelled lifeboats.

* * * * *

(u) * * *

(7) * * *

(iii) [Reserved]

(iv) Each independent buoyancy unit must have nameplate that is—

(A) Corrosion-resistant;

(B) Permanently affixed in a location that allows it to be read from inside the lifeboat; and

(C) Permanently marked with the following words and the appropriate entries in the indicated spaces:

Lifeboat Buoyancy Unit
for U.S. Coast Guard Approved
Lifeboats
(insert type or model)
(insert type of buoyancy material)
Cu. Ft. *(insert cu. ft.)*, Weight *(insert weight), Date (insert date)*
Inspected by *(insert identification of independent laboratory)*
(insert name and address of manufacturer)

* * * * *

23. By amending § 160.035–5 by revising paragraphs (a)(2) and revising paragraphs (a)(3)(ii)(A) through (a)(3)(ii)(D) and adding paragraphs (a)(3)(ii)(E) and (a)(3)(ii)(F) to read as follows:

§ 160.035–5 Construction of steel motor-propelled lifeboats with and without radio cabin.

(a) * * *

(2) The engine must be enclosed in an engine box that—

(i) Is made of steel, aluminum, or other fire retardant material;

(ii) Is watertight on the bottom and sides;

(iii) Has a top with a screw-down mushroom vent or other means to admit air and to prevent spray from entering the engine box;

(iv) Has a drain;

(v) Has sufficient space for maintenance and removal of engine accessories, but an access plate may be provided to allow for removal of accessories; and

(vi) Has a plate that is—

(A) Corrosion-resistant;

(B) Permanently marked with the engine starting and operating instructions; and

(C) Permanently affixed in a location that allows it to be read by a person operating the engine.

(3) * * *

(ii) * * *

(A) Manufacturer's name and address.

(B) Date of construction.

(C) Name or inspection mark of the independent laboratory.

(D) Wall thickness that is stated in decimals of one inch.

(E) Capacity that is stated in U.S. gallons.

(F) The following words: "Material of construction: Polyester-Glass".

* * * * *

24. By revising the title of the section, revising paragraph (a), revising the introductory text of paragraph (b), adding a new paragraph (b)(6), and adding a new paragraph (e) to § 160.035–11 to read as follows:

§ 160.035–11 Approval procedure.

(a) In conjunction with the procedure in § 159.005 of this subchapter, the procedure for approving a lifeboat is as follows:

(1) As required in § 159.005–5(a)(2), the manufacturer must submit two sets of general plans and specifications including—

(i) General arrangement drawings;

(ii) Construction details for each major component, including construction of F.R.P. laminates;

(iii) Identification of materials used;

(iv) Lines drawing;

(v) Equipment stowage arrangement; and

(vi) Seating arrangement.

(2) After receiving the Coast Guard acceptance under § 159.005–7(a)(1), the manufacturer must—

(i) Produce a protype lifeboat;

(ii) Have certifications for steel and aluminum components;

(iii) Inspect aluminum welds in accordance with § 160.035–6(e)(1);

(iv) Have certifications for fibrous glass reinforcement used in F.R.P. construction;

(v) Use polyester resin meeting MIL–R–21607 that is accepted by the Commandant; and

(vi) Use polyurethane buoyancy material meeting MIL–P–21929 that is accepted by the Commandant.

(3) During each fabrication stage, an inspector from an independent laboratory accepted by the Coast Guard must be present and must determine whether or not the—

(i) Materials meet the requirements of this subpart and the plans stamped "EXAMINED" by the Commandant, as verified by the certifications and acceptances required in paragraphs (a)(2)(ii) through (a)(2)(v) of this section; and

(ii) Welders and electrodes meet §§ 160.035–3(e)(1) and 160.035–6(3)(1).

(4) After the assembly of the prototype lifeboat is complete, the independent laboratory inspector must determine that the prototype lifeboat—

(i) Meets this subpart and the plans and specifications marked "EXAMINED" by the Commandant;

(ii) Is tested under paragraph (b) of this section, except lifeboats made of F.R.P. are not required to be tested under paragraph (b)(1);

(iii) If motor propelled, also passes the test in paragraph (c) of this section;

(iv) If hand propelled, also passes the test in paragraph (d) of this section; and

(v) If made of F.R.P., also is tested under § 160.035–12(b).

(b) Each of the following tests and inspections must be conducted by or under the supervision of the independent laboratory:

* * * * *

(6) *Engine box inspection.* The engine box is inspected to determine if it complies with § 160.035–5(a)(2). Each accessory in a restricted location must be removed using any access plates provided for this purpose.

* * * * *

(e) After passing the approval tests, the manufacturer must submit the following:

(1) The final plans submitted under paragraph (a)(1) of this section that meet § 159.005–12 of this subchapter. Minor details are not required, but the plans must include:

(i) Hydrostatics curves.

(ii) Construction plans of each hydraulic, pneumatic, electrical, or fire-protecting sprinkler system.

(iii) Construction plans of the propulsion system of a motor-propelled lifeboat, including identification of engine and transmission, complete fuel system plans, details of engine mounting, and details of propeller, shafting and seals.

(iv) Equipment and provision lockers and tanks.

(v) Steering system for a lifeboat with an auxiliary remote steering station.

(2) Any other plans that show compliance with this subpart.

25. By removing and reserving paragraph (a), and by deleting the title of the paragraph, and adding introductory text to paragraph (b) of § 160.035–12(a) to read as follows:

§ 160.035–12 Additional approval test required for F.R.P. lifeboats.

(a) [Reserved]

(b) The following tests are additional approval tests for F.R.P. lifeboats:

* * * * *

26. By revising § 160.035–13 to read as follows:

§ 160.035–13 Production inspections and tests.

In conjunction with the procedures in Subpart 159.007 of this subchapter, the following is the procedure for determining whether or not each production lifeboat is approved:

(a) The manufacutrer must—

(1) Have certifications from the mill or foundry of the physical and chemical properties of the steel and aluminum components;

(2) Have certifications from the producer of fibrous glass reinforcement stating what specification the reinforcement meets;

(3) Inspect aluminum welds in accordance with § 160.035–6(e)(1);

(4) Use polyester resin meeting MIL–R–21607 that is accepted by the Commandant;

(5) Use polyurethane buoyancy material meeting MIL–P–21929 that is accepted by the Commandant;

(6) Test samples of F.R.P. hulls, inner hulls, canopies, and other load-carrying laminates to ensure that they meet the mechanical property requirements for the appropriate grade, in MIL–P–17549;

(7) Inspect each major component of the hull, canopy, inner hull, or buoyancy unit that is constructed of F.R.P. to determine that—

(i) Thicknesses are in accordance with the approved plans and specifications;

(ii) Laminate appearance and workmanship meets § 160.035–8(b)(3); and

(iii) Weights meet § 160.035–8(b)(4);

(8) Determine that the pre-formed buoyancy material meets the approved plans;

(9) Determine that foam-in-place buoyancy material meets the approved plans by verifying the amount used in the lifeboat and by determining its density by testing a sample foamed outside the lifeboat;

(10) Leak test each hydraulic engine cranking system by pressurizing it to its operating pressure; and

(11) Determine that the scantlings meet the approved plans.

(b) During each fabrication stage and test, an inspector from an independent laboratory accepted by the Coast Guard must be present and must determine whether or not—

(1) Materials meet the requirements of this subpart and the plans approved under § 159.005–13(a), as verified by the certifications and acceptances required in paragraph (a) of this section;

(2) Each production lifeboat meets the applicable requirements of this subpart and the plans and specifications approved under § 159.005–13(a);

(3) Welders and electrodes meet § 160.035–3(e)(1) and § 160.035–6(e)(1);

(4) Each production lifeboat passes the tests in paragraph (c) of this section; and

(5) Each production lifeboat has a nameplate that meets § 160.035–14.

(c) Each production lifeboat must be tested as follows:

(1) Each motor-propelled and each hand-propelled lifeboat must operate in the "ahead," "neutral," and "astern" positions.

(2) Each lifeboat equipped with mechanical disengaging apparatus must be—

(i) Suspended with the lifeboat clear of the ground or water;

(ii) Loaded so that the suspended weight of the lifeboat is 110% of the condition "B" weight as determined under § 160.035–14(a)(9);

(iii) Released by one person who operates the disengaging apparatus and any additional means of activation, such as semi-automatic operation or hydrostatic lock, to determine whether or not it operates freely without the use of any additional equipment or assistance; and

(iv) After the release test, if an F.R.P. lifeboat tested under paragraph (c)(3)(ii) of this section, undamaged where the lifeboat is connected to the disengaging apparatus.

(3) Each lifeboat with an F.R.P. hull must pass one of the following tests:

(i) The lifeboat must be suspended by the disengaging apparatus and filled with water until the suspended load is 50 percent greater than the weight of the fully equipped and loaded lifeboat. The hull must not leak or have any damage. After the lifeboat is drained, the area where the lifeboat is connected to the disengaging apparatus and the interior and exterior of the hull must not be damaged.

(ii) The lifeboat must be floated in water for at least two hours and the motor or hand-propelling gear operated. While the lifeboat is in the water, the hull must not leak or have any damage. After the lifeboat is out of the water, the hull must not have any damage.

(4) Each fuel tank must be pressurized to a static head of ten feet of water above the tank top without leaking or being permanently deformed.

(5) Each F.R.P. provision tank must be pressurized to a static head of two feet of water above the tank without leaking or being permanently deformed.

27. By revising § 160.035–14 to read as follows:

§ 160.035–14 Nameplate.

(a) The manufacturer must permanently affix to the bow of each production lifeboat a corrosion-resistant nameplate permanently marked with the—

(1) Name of the manufacturer;

(2) Serial number;

(3) Words "Coast Guard approved (insert approval number)" or "USCG approved (insert approval number)";

(4) Dimensions of the lifeboat;

(5) Cubic capacity;

(6) Buoyancy volume;

(7) Number of persons the lifeboat is intended to accommodate, which must not be greater than the number determined under § 160.035–10;

(8) Date of manufacture; and

(9) Net weight of the lifeboat in condition "A" and condition "B". Condition "A" is the weight of the lifeboat without equipment, provisions, water, or persons. Condition "B" is the weight of the lifeboat fully loaded with the number of persons marked on the nameplate, assuming a weight of 165 lb. per person, and all the equipment under § 94.20–10 of this chapter for ocean and coastwise service, other than seagoing barges.

(b) After the inspector from the independent laboratory accepted by the Coast Guard determines that the production lifeboat meets the inspection requirements under § 160.035–13(b) and passes the tests in §160.035–13(c), the inspector permanently affixes the identification or inspection mark of the independent laboratory to the nameplate to indicate that the lifeboat is Coast Guard approved and meets the requirements of this subpart.

Subpart 160.051—Inflatable Liferafts

28. By amending § 160.051–5 by revising the title of the section, by revising paragraph (a), and by deleting the title of the paragraphs and revising the introductory text of paragraphs (c) and (e), to read as follows:

§ 160.051–5 Approval procedure.

(a) In conjunction with the procedure in § 159.005 of this subchapter, the procedure for approving an inflatable liferaft is as follows:

(1) As required in § 159.005–5(a)(2), the manufacturer must submit two sets of general plans and specifications including the bill of materials with identification of the materials used.

(2) After receiving the Coast Guard acceptance under § 159.005–7(a)(1), the manufacturer must—

(i) Produce a prototype inflatable liferaft; and

(ii) Have certifications and invoices provided by the supplier for the materials used in construction of the inflatable liferaft.

(3) During each fabrication stage, an inspector from an independent laboratory accepted by the Coast Guard must be present and must determine whether or not the materials meet the requirements of this subpart and the plans stamped "EXAMINED" by the Commandant, as verified by the certifications and invoices required in paragraph (a)(2)(ii) of this section.

(4) After the assembly of the prototype inflatable liferaft is complete, the independent laboratory inspector must determine that the prototype inflatable liferaft—

(i) Meets this subpart and the plans and specifications marked "EXAMINED" by the Commandant; and

(ii) Is tested under paragraphs (c) and (e) of this section.

* * * * *

(c) Each of the following inspections and tests must be conducted by or under the supervision of the independent laboratory on each inflatable liferaft:

* * * * *

(e) In addition to the inspections and tests in paragraph (c) of this section, each of the following inspections and tests must be conducted by or under the supervision of the independent laboratory on each prototype inflatable liferaft:

* * * * *

29. By revising § 160.051–8 to read as follows:

§ 160.051–8 Nameplate, inspection plate, and marking.

(a) The manufacturer must permanently mark on the inflatable liferaft in colors that contrast with the background, the—

(1) Instructions for righting the inflatable liferaft if it inflates in an inverted position;

(2) Instructions for boarding; and

(3) Location and use of items stowed outside the equipment containers.

(b) The manufacturer must permanently mark on the inflatable liferaft container in colors that contrast with the background—

(1) The instructions for inflating the inflatable liferaft;

(2) The instructions for righting the inflatable liferaft that inflates in an inverted position;

(3) The instructions for boarding;

(4) The location and use of items stowed outside the equipment containers; and

(5) A warning against tampering with the inflatable liferaft.

(c) The manufacturer must permanently mark on the hull or buoyancy tubes of each production inflatable liferaft the—

(1) Name of the manufacturer;

(2) Serial number;

(3) Type or model number;

(4) The words "Coast Guard approved (insert approval number)" or "USCG approved (insert approval number)";

(5) Lot number;

(6) Number of persons for which the liferaft is approved; and

(7) Date of manufacture.

(d) The manufacturer must permanently affix a corrosion resistant nameplate to the inflatable liferaft container permanently marked with the information required under paragraph (b) of this section and the words "Ocean Service Equipment", or "Limited Service Equipment", as applicable.

(e) After the inspector from the independent laboratory accepted by the Coast Guard determines that the production inflatable liferaft meets the inspection and test requirements under § 160.051–9(b), the inspector permanently affixes the identification or inspection mark of the independent laboratory to the labeling required in paragraphs (c) and (d) of this section to indicate that the inflatable liferaft is Coast Guard approved and meets the requirements of this subpart.

30. By revising § 160.051–9 to read as follows:

§ 160.051–9 Production inspections and tests.

In conjunction with the procedures in Subpart 159.007 of this subchapter, the following is the procedure for determining whether or not each production inflatable liferaft is approved:

(a) The manufacturer must—

(1) Have certifications and invoices provided by the supplier for the materials used in construction of the inflatable liferaft;

(2) Record the number of each lot of inflatable liferafts with—

(i) Identification of the material used;

(ii) Supplier of the material;

(iii) Supplier's lot number; and

(iv) Manufacturer's order number; and

(3) Ensure that production inflatable liferafts meet the approved plans and specifications and the requirements of § 160.051–4 by a quality control program of inspections and tests.

(b) During each fabrication stage and test, an inspector from an independent laboratory accepted by the Coast Guard must be present and must determine whether or not—

(1) Materials meet the requirements of this subpart and the plans approved under § 159.005–13(a), as verified by the certifications and invoices required in paragraph (a)(1) of this section;

(2) Each production inflatable liferaft meets the applicable requirements of this subpart and the plans and

specifications approved under § 159.005–13(a);

(3) Each production inflatable liferaft passes the tests in § 160.051–5(c) of this section; and

(4) Each production inflatable liferaft has nameplates, inspection plate, and markings that meet § 160.051–8.

Dated: September 24, 1984.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 84–25665 Filed 9–26–84; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–752]

Changes in AM Technical Rules To Reflect New International Agreements; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: This action extends the time for filing comments and reply comments in response to the Notice of Proposed Rule Making concerning Changes in AM Technical Rules to Reflect New International Agreements. The Association of Federal Communications Consulting Engineers sought the additional time so that they could provide technical information on the important topics raised in this proceeding.

DATE: Comments in the above noted proceeding must be filed on or before October 4, 1984, and reply comments must be filed on or before October 19, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan David, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Order Extending the Time for Filing Comments and Reply Comments in Response to Notice of Proposed Rule Making

In the Matter of Changes in AM Technical Rules to Reflect New International Agreements; MM Docket No. 84–752 (8–17–84; 49 FR 32876).

Adopted: September 18, 1984.
Released: September 19, 1984.

By the Chief, Policy and Rules Division.

1. Comments were invited on a series of rule making proposals which are an outgrowth of new international AM agreements which have been or are being negotiated. Comments are due on September 20, 1984, and reply comments on October 5, 1984.

2. On September 17, 1984, the Association of Federal Communications Consulting Engineers ("AFCCE") filed a request for extension of the filing dates in this proceeding. According to AFCCE, several of the technical matters raised in the proceeding are of such importance as to require detailed consideration by the AFCCE membership before comments could be filed. On this basis it seeks a two-week extension.

3. As indicated in the *Notice,* members of AFCCE played a key role in providing support for the ongoing AM negotiations. Operating through the technical subgroup of the Industry Advisory Committee, AFCCE members did engineering studies and provided extensive data which importantly advanced the process of developing new AM agreements. Similar asistance was expected in regard to the issues raised in this proceeding. Moreover, the comments of AFCCE can be expected to provide a useful focus for other parties to use in developing their reply comments. AFCCE is prepared to continue its supportive role but apparently needs a brief extension in order to complete its work.

4. The Commission has received no objection from any other interested party to AFCCE's request. It appears that the circumstances noted justify the extension, especially since no other party would be adversely affected by the extension.

5. Accordingly, it is orderded, that the dates for filing comments and reply comments in response to the Notice of Proposed Rule-Making are extended, respectively, to and including October 4, 1984, and October 19, 1984.

6. This action is taken pursuant to authority found in sections (i), 5(d)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules.

Federal Communications Commission.

Charles G. Schott, III,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 84–25679 Filed 9–26–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 78

[MM Docket No. 84–886; RM–4328; FCC 84–432]

Amendment of the Commission's Rules Concerning Licensing Procedures and Reporting Requirements in the Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to consolidate the current construction permit and license application requirement into a single-step process and to eliminate several reporting requirements for CARS licensees. Single-step licensing has been adopted for remote pickups, aural studio-to-transmitter links, intercity relays, TV auxiliary stations, and ITFS facilities. Adopting a similar process for CARS and eliminating unnecessary reporting requirements is intended to increase processing efficiency and reduce burdens for CARS licensees and the Commission.

DATES: Comments must be filed on or before November 13, 1984, and reply comments on or before November 28, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Sharon Briley, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 78

Cable television.

Proposed Rule Making

In the matter of amendment of Part 78 of the Commission's rules concerning licensing procedures and reporting requirements in the cable television relay service (MM Docket No. 84–886; RM 4328).

Adopted: September 13, 1984.
Released: September 20, 1984.

By the Commission: Commissoners Rivera and Patrick absent.

1. In this *Notice of Proposed Rule Making,* we propose to modify our rules to institute a combined construction permit-license application process and eliminate certain reporting requirements for stations in the Cable Television Relay Service (CARS).

Background

2. On January 7, 1983, Westinghouse Broadcasting and Cable, Inc. (Westinghouse) filed a "Petition for Rulemaking" to modify the current

licensing procedures and reporting requirements for CARS fixed and mobile facilities. In addition, Westinghouse requested that the following matters be addressed: (1) The assignment of additional spectrum to CARS, (2) the necessity of certain technical and operational regulations, and (3) the eligibility of master antenna television (MATV) systems for CARS licenses. Westinghouse contends that its proposed licensing and reporting requirement changes will reduce the administrative and procedural burdens associated with the current rules. A number of cable operators and other parties filed comments in support of the petition.[1] The National Association of Broadcasters and M/A-COM, Inc. filed comments suggesting that the frequency and other related technical and operational issues be addressed in General Docket No. 82-334.

Licensing and Reporting Requirements

3. *Consolidation of application procedures.* In its petition, Westinghouse requests several rule modifications to streamline the CARS application process. The petitioner suggests combining the present construction permit (CP) and station license procedures into a one-step process. Specifically, Westinghouse proposes that the present requirement for separate CP and station license applications be replaced with a requirement for a single application followed by written notification that authorized construction has been completed. Westinghouse notes that the information requested on the CP and station license application forms is unnecessarily duplicative and burdensome. Westinghouse states that the streamlined procedure it proposes would reduce processing delays and decrease the number of CARS applications requiring processing by almost one-half.

4. We agree with the petitioner that the current CARS licensing process may be unnecessarily duplicative and burdensome. We note that section 319(d) of the Communications Act has been amended to eliminate the requirement for construction permits for certain types of stations (including privately owned fixed microwave stations such as CARS) if the grant of a separate CP does not serve the public interest.[2] At present, we use a combined CP-license process for a number of different types of stations including remote pickups, aural studio-to-transmitter links, intercity relays, and TV auxiliary stations.[3] We now believe that a similar combined CP-license process for CARS would be in the public interest. We propose that under this one-step licensing process licensees are required to be operational within one-year from the date of the license grant.[4] In addition, we propose that if construction is not completed within this period of time, and if no request for extension of time is filed, the license is invalid and will be deleted from the Commission's records. Comment is requested on whether this period of time is sufficient to complete construction. Comments are also requested on whether Commission notification should be required upon completion of station construction as Westinghouse suggests. If notification is required, what form should it take?

5. *Transfer of control procedure modifications.* Westinghouse proposes certain changes in the filing of consent to transfer control applications. At the present time, an FCC Form 327 must be filed for each consent to transfer control of a CARS authorization held by an entity. Westinghouse proposes that the processing procedure require only one schedule for all affected authorizations as is the practice for earth station transfers and assignments. Westinghouse further urges that applications for consent to transfer control of CARS authorizations be required only where there is a change in the identity of the licensee or the ultimate controlling entity of the licensee. These changes, the petitioner claims, would further reduce processing delays and the number of applications filed.

6. We agree with the petitioner that our procedures for CARS should be streamlined. Thus, we propose to permit an entity to file one form which will list each CARS authorization affected by the transfer of control. We request, however, that the entity file duplicate copies of the form and its accompanying information for the total number of CARS licenses affected. Second, we are interested in exploring the suggestion that the filing requirements can be eliminated when there are changes in intermediate corporate entities controlling a licensee but no change in either the licensee itself or the ultimate corporate parent. The definitions and guidelines contained in § 76.501 of the Rules shall be used in determining the final controlling entity. Comments on this approach are requested. Specifically, we invite comments to address any implication this may have with regard to the requirements of section 310(d) of the Communications Act. In addition, we question whether notification should be required for any other type of change, for example, a change in the name of the licensee. If so, in what manner should this information be submitted?

7. *Indentification of communities served.* Westinghouse also requests that the information required by Schedule E of FCC Form 327 be modified to eliminate the requirement that applicants for CARS station authorizations identify all cable television community units to be served from each receive site of the proposed CARS station. Westinghouse believes that this requirement is unnecessarily broad to show compliance with § 78.11 of the Commission's rules. Accordingly, the petitioner proposes that CARS applicants be required to identify only one cable television community unit to be served on each Schedule E.[5]

8. We agree with the petitioner that the listing of each community is unnecessary to indicate compliance with Section 78.11 of the Commission's rules. Section 78.11 provides that CARS stations are authorized to relay signals "intended for use by one or more cable television systems." We believe that the listing of one cable television community is sufficient to show compliance with this rule. We are concerned, however, that situations could arise that require specific community information. Accordingly, comments are requested on this proposal particularly as they relate to the burden of requiring more detailed information. In addition, if the proposal to list a specific community is chosen, what cable community should be designated on the application? For example, should the largest community served, the community serving the most subscribers, or some other community be listed?

[1] Colony Communicatins, Inc.; U.S. Cablevision Corp.; Dynamic Cablevision of Florida, Inc.; Sammons Communications, Inc.; Televents, Inc.; Newchannels Corp.; Metrovision, Inc. and Cox Cable Communications, Inc. filed joint comments. American Television and Communications Corp. and the National Cable Television Association each filed in support. Hughes Aircraft Co. (Microwave Communications Products) and the Society for Private and Commercial Earth Stations filed in partial support.

[2] 47 U.S.C. 319(d), as amended by Pub. L. 97-259.

[3] Recently, we also instituted one-step licensing for stations in the Instructional Television Fixed Service (ITFS). *See Report and Order,* MM Docket NO. 83-253, 49 FR 32950 (1984).

[4] It should be noted that this proposal would not alter the present license term of five years and that the construction period would be contained within this term.

[5] The petitioner notes that there are cases where as many as 10 to 15 communities are served on a single CARS path.

9. *Annual reporting requirement.* The petitioner also proposes that the Commission eliminate the requirement of § 78.11(f) that annual reports be filed for all facilities shared by CARS operators with other users. Petitioner states that the filing of annual reports is not necessary for the Commission to determine whether licensees are acting in conformance with § 78.11(d)(2), which provides that a CARS licensee may provide program material to a cable television system or translator station on a not-for-profit basis only.

10. We agree with the petitioner that this reporting requirement is not necessary for the Commission to determine that CARS licensees act in conformance with § 78.11(d)(2) of our Rules. In particular, we note that our rules currently require CARS licensees to maintain records showing that CARS service costs are on a nonprofit, cost-sharing basis and to make these records available for inspection by the Commission. We believe that this record keeping requirement adeqately meets our needs and thus we propose to eliminate § 78.11(f). The rules, § 78.11(e), also require advance notice to the Commission when program matrial delivered over a CARS facility is to be provided to other cable television system operators or other systems. We no longer believe it is necessary to have advance notice of this type of information and would propose to delete the 30-day waiting period. Moreover, some of the information formerly required, e.g., a copy of the contract between parties, may no longer be required.

Additional Matters

11. *Frequency allocation and other technical matters.* Westinghouse requests that the Commission assign additional frequencies for CARS use. The petitioner also suggests that CARS licensees be permitted to share excess capacity with other users. Westinghouse cites increasing congestion of microwave frequencies and growing complexities of CARS systems as the rationale for its requests. Westinghouse also requests that several technical and operational rules applicable to CARS stations be modified.

12. The Commission has recently undertaken a comprehensive review of its spectrum utilization policies for all fixed and mobile operations in the bands between 947 MHz and 40 GHz.[6] We believe that many of the petitioner's concerns have been addressed or are currently under consideration in the proceeding in General Docket No. 82–334. For example, we allocated additional CARS channels in the 18 GHz band.[7] In addition, many of the tenchical and operational aspects of the microwave services are being addressed. Accordingly, we believe that the spectrum allocation and technical issues are more appropriately evaluated as part of a comprehensive spectrum utilization policy for terrestrial microwave services. Changes in the internal administrative processes covering this service (i.e. whether processing should be merged with other microwave services) is also appropriately considered at the conclusion of General Docket 82–334.

13. *Eligibility for CARS license.* The CARS rules provide that only cable television operators may become licensees of CARS facilities.[8] Westinghouse requests that we address the question of whether a series of MATV systems may qualify as a cable television system, and consequently qualify as a CARS licensee. Petitioner believes that such a system should not qualify. The petitioner claims that the use of CARS frequencies by MATV adds to congestion in the CARS frequency band. Moreover, MATV systems, unlike cable, do not need microwave to pick up distant signals, do not offer local origination or access programming, and do not use public rights of way. Westinghouse requests clarification, particularly regarding interconnection as a qualification for CARS licenses.

14. Although raised as a microwave frequencey use issue, Group W is essentially seeking revisions in the cable system definition. We addressed the general question of the cable system definition in our *Report and Order in Docket 20561,* 63 FCC 2d 956 (1977), and its specific application to microwave served systems in *Cable Dallas, Inc.*[9] In *Cable Dallas Inc.*, the system operator was eligible for a CARS license because it qualified as a cable television system within the meaning of § 76.5(a) of the Commission's rules. In particular, the system operator served several clusters of apartment buildings, each of which was composed of buildings not under common ownership, control or management. Thus, the system met the definition of a cable television system and was thereby eligible to be a CARS licensee. We believe that our prior opinion sufficiently addresses this issue. In any case we do not believe that these types of systems should be regulated as cable systems but refused access to microwave service frequencies nor do we believe a case has been made here for generally changing the definition.

Conclusion

15. By this *Notice,* we propose to institute a combined CP-license process for CARS applications, streamline the filing requirements for transfer of control, eliminate the requirement of Schedule E of FCC Form 327 to list all community units served, and delete the annual reporting requirements for CARS licensees. We believe that the changes we are proposing here will lessen the present burdens on the public and permit more efficient processing of CARS applications.

Regulatory Flexibility Act Initial Analysis

I. *Reason for Action.* The Commission seeks by this action to increase processing efficiency, decrease costs, and reduce delays associated with CARS licensing. The proposed changes are expected to reduce burdens for both licensees and the Commission staff.

II. *The Objective.* The Commission proposes to combine the separate construction permit and station license application process for the Cable Television Relay Service into a combined CP-station license process. The Commission also proposes to reduce the filing requirements for transfer of control applicants, eliminate the requirement to list all cable community units served, and delete the annual reporting requirements for CARS licensees.

III. *Legal Basis.* The legal basis for changing the CP and licensing process as proposed is contained in section 319(d) of the Communications Act of 1934, as amended. This section states that construction permits are no longer required for certain stations, including privately owned fixed microwave stations. General authority for licensing of radio stations is contained in section 303(1) of the Communications Act.

IV. *Description, Potential Impact and Number of Small Entities Affected.* The proposal would require a single application to be filed for a CARS license. The grant of a license would imply the grant of a construction permit for a period of one year.

All CARS licensees would benefit from the proposed modifications. We would expect, however, that small cable

[6] *See First Report and Order,* General Docket No. 82–334, 48 FR 50722 (1983).

[7] *Id.* at para. 53 *et seq.*, and Appendix B.

[8] 47 CFR 78.13. Cooperative enterprises wholly owned by cable television owners or operators may also, upon certain showing, receive licenses.

[9] Cable Dallas, Inc., CAR 19062–01, adopted May 18, 1982, *review denied,* FCC 83–86, 53 RR 2d 651 (1983).

operators and other CARS licensees would derive even greater benefit than larger systems from reduced delay and cost.

V. *Recording, Record Keeping the Other Compliance Requirements.* None.

VI. *Federal Rules which Overlap, Duplicate or Conflict with this Rule.* None.

VII. *Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objective.* The alternative, to maintain the two-step licensing process and current reporting requirements, would not accomplish any of the benefits described in this notice.

16. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that substantial disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve s copy of tnat presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission's offical receiving the oral presentation. Each *ex parte* presentation described above must state on its fact that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1201 of the Commission's Rules.

17. Pursuant to procedures set out in § 1.415 of the Commission's Rules, interested parties may file comments on or before November 13, 1984, and reply comments on or before November 28, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

18. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, an original and 5 copies of all comments, replies, or other documents filed in this proceeding shall be furnished to the Commission. Participants filing the required copies who also wish each Commissioner to have a personal copy of the comments may file an additional 6 copies. Members of the general public who wish to express their interest by participating informally in the rule making proceeding may do so by submitting one copy of the comments, without regard to form, provided only that the Docket Number is specified in the heading. Responses will be available for public inspection during regular business hours in the Commission's Dockets Reference Room (Room 239) at its headquarters in Washington, D.C. (1919 M Street, Northwest).

19. For further information concerning this proceeding, contact Sharon Briley, Mass Media Bureau, (202) 632–6302.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 78—[AMENDED]

Appendix

It is proposed that Part 78 of Title 47 of the Code of Federal Regulations be amended as follows:

1. 47 CFR 78.11 would be amended by revising the introductory text of paragraph (e) and paragraph (e)(6), and by removing paragraph (f) in its entirety and marking it reserved as follows:

§ 78.11 Permissible service.

* * * * *

(e) A CARS licensee shall file a notification with the Commission prior to supplying program material to any cable television system or any television translator that has not been specified in its license application or in prior notification to the Commission containing the following information:

* * * * *

(6) Name of at least one community to be served;

* * * * *

(f) [Reserved].

* * * * *

2. 47 CFR 78.15 would be amended by revising paragraphs (b) and (c) as follows:

§ 78.15 Contents of applications.

* * * * *

(b) An application for a CARS studio to headend link or LDS station license shall contain a statement that the applicant has investigated the possibility of using cable rather than microwave and the reasons why it was decided to use microwave rather than cable.

Note: * * *

(c) CARS applicants must follow the procedures prescribed in Subpart I of Part I of this chapter (§§ 1.1301 through 1.1319) regarding the filing of environmental impact narrative statements, unless Commission action authorizing construction of a CARS station would be a minor action within the meaning of Subpart I of Part 1 of this chapter.

3. 47 CFR 78.20 would be amended by revising paragraph (a) as follows:

§ 78.20 Acceptance of applications; public notice.

(a) Applications which are tendered for filing in Washington, D.C., are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Applications found to be complete or substantially complete are accepted for filing and are given a file number. In case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications which are not substantially complete will be returned to the applicant.

* * * * *

4. 47 CFR 78.22 would be amended by revising paragraph (c) as follows:

§ 78.22 Objections to applications.

* * * * *

(c) Notwithstanding the provisions of paragraph (a) of this section, before Commission action on any application for an instrument of authorization, any person may file informal objections to the grant. Such objections may be submitted in letter form (without extra copies) and shall be signed by the objector. The limitation on pleadings and time for filing pleadings provided for in § 1.45 of this chapter shall not be applicable to any objections duly filed pursuant to this paragraph.

5. 47 CFR 78.23 would be amended by revising paragraphs (a), (b), and (d), and by removing paragraph (c) in its entirety and marking it reserved as follows:

§ 78.23 Equipment tests.

(a) Following the grant of a license, the license may, without further authority of the Commission, conduct equipment tests for the purpose of such adjustments and measurements as may be necessary to assure compliance with the terms of the authorization, the technical provisions of the application therefore, the rules and regulations, and the applicable engineering standards.

(b) The Commission may notify the licensee to conduct no tests or may cancel, suspend, or change the date for the beginning of equipment tests as and when such action may appear to be in the public interest, convenience, and necessity.

(c) [Reserved]

(d) The tests authorized in this section shall be conducted only as a necessary part of construction.

§ 78.25 [Removed]

6. 47 CFR 78.25 would be removed in its entirety.

7. 47 CFR 78.27 would be revised by marking the existing paragraph as (a) and adding new paragraph (b) as follows:

§ 78.27 License conditions.

(a) Authorizations (including initial grants, modifications, assignments or transfers of control, and renewals) in the Cable Television Relay Service to construct or operate fixed or mobile stations to relay television and related audio signals, signals of standard and FM broadcast stations, signals of instructional television fixed stations, and cablecasting to cable television systems, either directly or indirectly, shall contain the condition that such cable television systems shall operate in compliance with the provisions of Part 76 (Cable Television Service) of this chapter.

(b) In case of failure to commence operation of a CARS station licensed under this subpart within one year from the date of the license grant, authority to operate is forfeited and the licensee shall forward the station license to the Commission.

8. 47 CFR 78.35 would be amended by revising paragraph (a) as follows:

§ 78.35 Assignment or transfer of control.

(a) No assignment of the license of a cable television relay station or transfer of control of a CARS licensee shall occur without prior Commission authorization.

* * * * *

9. 47 CFR 78.51 would be amended by revising paragraph (c) as follows:

§ 78.51 Remote control operation.

* * * * *

(c) The Commission may notify the licensee not to commence remote control operation, or to cancel, suspend, or change the date of the beginning of such operation as and when such action may appear to be in the public interest, convenience, or necessary.

10. 47 CFR 78.53 would be amended by revising paragraph (c) as follows:

§ 78.53 Unattended operation.

* * * * *

(c) The Commission may notify the licensee not to commence unattended operation, or to cancel, suspend, or change the date of the beginning of such operation as and when such action may appear to be in the public interest, convenience, or necessity.

11. 47 CFR 78.63 would be amended by revising the introductory text as follows:

§ 78.63 Inspection and maintenance of tower marking and associated control equipment.

The licensee of any CARS station which has an antenna structure required to be painted or illuminated pursuant to the provisions of section 303(q) of the Communications Act of 1934, as amended, and/or Part 17 of this chapter, shall operate and maintain the tower marking and associated control equipment in accordance with the following:

* * * * *

12. 47 CFR 78.69 would be amended by revising the introductory text as follows:

§ 78.69 Station records.

Each licensee of a CARS station shall maintain records showing the following:

* * * * *

13. 47 CFR 78.113 would be amended by revising paragrah (a) as follows:

§ 78.113 Frequency monitors and measurements.

(a) The licensee of each CARS station shall employ a suitable procedure to determine that the carrier frequency of each transmitter is maintained within the tolerance prescribed in § 78.111 at all times. This determination shall be made, and the results thereof entered in the station records: When a transmitter is initially installed; when any change is made in a transmitter which may affect the carrier frequency or the stability thereof; or in any case at intervals not exceeding one year.

* * * * *

[FR Doc. 84-25669 Filed 9-26-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, and 173

[Docket HM-126D; Notice No. 84-11]

Odorization of LPG, and Miscellaneous Proposals

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice consists of three main elements.

First: The Hazardous Materials Regulations contain requirements, and exceptions, for the odorization of liquefied petroleum gas (LPG) offered for transportation in a portable tank and a cargo tank. However, there are no requirements for communicating the lack of odorization of LPG during transportation. Since LPG is odorless, it is proposed to require communication of this fact in those instances where odorization has not been added.

Second: Five minor revisions pertaining to marking are necessary to correct, clarify and enhance compliance with the communication regulations.

Third: The regulations do not contain marking requirements for bulk packagings and bulk transport vehicles that are not portable tanks, cargo tanks or tank cars because they have not been defined. Definitions and marking requirments for these bulk packagings and bulk transport vehicles are proposed.

DATE: Comments must be received no later than December 28, 1984.

ADDRESSES: Comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. It is requested that the docket number be identified and that five copies be submitted. The Dockets Branch is located in room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C. Public Dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Lee E. Metcalfe, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Washington, D.C. 20590, (202) 426–2075.

SUPPLEMENTARY INFORMATION:

Problem A

Odorization of LPG. In January 1980, a petition (P–769 was received from the National LP-Gas Association for updating the LPG odorization requirements as contained in 49 CFR 173.315. As stated in Note 2 to § 173.315(b)(1), 1.0 pound of ethyl mercaptan, 1.0 pound of thiophane, or 1.4 pounds of amyl mercaptan are considered sufficient to effectively odorize 10,000 gallons of LPG. Petition P–769 states that the level of thiophane should be increased to 6.4 pounds and that amyl mercaptan is no longer in production.

A petition received from a Denver, Colorado fire chief on January 31, 1979, and another petition, P–804, received from a New Jersey firemen's association on January 26, 1981, requested LPG either be odorized in transportation or the lack of odorization be visually communicated.

The term "LPG" is defined as any hydrocarbon gas or gas mixture which has a vapor pressure of less than 155 psig at 70 °F. Included in this group are gases composed predominantly of the following either by themselves or as mixtures: propane, propylene, butane (normal butane or iso-butane) and butylenes.

In addition to the petitions MTB has received pertaining to LPG odorization or warnings about the absence of odorization, the General Accounting Office of the Controller General of the United States (GAO) made a recommendation concerning the odorization of LPG in it's July 1978 Report to Congress on *Liquefied Energy Gases Safety.* The GAO Report recommended that vehicles transporting LPG display a sign indicating whether or not the LPG being transported is odorized. MTB believes that if odorization or a warning sign is required, the warning should be used only to indicate that the LPG is not odorized.

MTB contacted LPG carrier representatives and National LP-Gas Association representatives and determined that there are between 250 and 300 cargo tanks being used nationwide to deliver LPG that is not odorized. It was also determined that between 500 and 600 tank cars, approximately 3500 cylinders, and approximately 100 portable tanks are being used to deliver nonodorized LPG. Information provided by LPG carrier representatives and a National LP-Gas Association member indicates that less than 1 percent of the LPG transported by motor vehicle is not odorized, and approximately 94 percent of the LPG transported is transported by motor vehicle.

Available information indicates that odorization processes currently in use leave residual odorization (contamination) on the interior walls of the packagings. Under MTB's proposal, packagings used exclusively for nonodorized LPG would be marked NON-ODORIZED, and the assumption could be made that any packaging displaying only the LPG proper shipping name (or common name), as required by §§ 172.328 and 172.330, contains odorized LPG. Therefore, MTB concludes that the cost for marking NON-ODORIZED on cylinders, portable tanks, cargo tanks, and tank cars used to transport LPG that is not odorized will provide the least expensive, positive warning to emergency service personnel or anyone who approaches an LPG package that is leaking.

MTB believes that markings with ½-inch letters on cylinders and 2-inch letters on portable tanks will be adequate, while 4-inch markings on cargo tanks and tank cars will provide the needed warning.

A cost evaluation for marking the cylinders, portable tanks, cargo tanks, tank cars and multi-unit tank car tanks, used for transporting unodorized LPG indicates the annual cost would approximate $5,500.

These cost estimates are for "permanent", pressure sensitive, vinyl markings that have a 5 to 7 year life expectancy, but do not include a cost estimate for affixing the markings to the packagings.

There is a requirement in § 173.315(b)(1) for LPG to be odorized in portable tanks and cargo tanks, unless odorization would be harmful to any further processing of the LPG; however, there are no requirements for marking a portable tank or cargo tank to indicate that the LPG is not odorized. Also, there is no odorization requirement for LPG in cylinders or tank cars. MTB believes the petitions from the National LP-Gas Association and the firefighters have merit and MTB proposes to amend the odorization provisions and to establish odorization requirements by amending §§ 172.325; 172.326; 172.328; 172.330; 173.304; 173.314, and 173.315 accordingly.

Problem B

Source of markings for portable tank not visible in transportation. Section 172.326 contains the marking requirements for portable tanks and paragraph (d) of that section contains a requirement for marking a transport vehicle or a freight container on each side and each end with the identification number of any portable tank being transported in such a manner that the markings are not visible. Under § 174.3 and § 177.823, a carrier may not move a transport vehicle unless it is properly marked for the hazardous materials being transported. There is, however, no requirement in the regulations for the person offering a portable tank for transportation to provide to the carrier the required identification number display if the numbers on the portable tank will not be visible in transportation. On October 15, 1981, the American Trucking Associations petitioned MTB (P–836) to correct this inconsistency. MTB is proposing such a requirement in paragraph (d)(1) of § 172.326.

Problem C

Inconsistency between § 172.328(e) and § 172.336(c). Section 172.328(e) specifies that an identification number must be removed, or changed to identify the hazardous materials loaded in a cargo tank that had previously contained another material. However, paragraphs (c)(4) and (c)(5) of § 172.336 contain special provisions for transporting different liquid distillate fuels under one identification number. This inconsistency had lead to requests for clarification. MTB is proposing to revise § 172.328(e) to recognize the special provisions in § 172.336(c).

Problem D

Identification numbers prohibited on certain placards. Section 172.334(a) prohibits the display of an identification number on a POISON GAS, RADIOACTIVE and an EXPLOSIVES A and EXPLOSIVES B placard. This listing is incomplete and, therefore, misleading because it does not include the DANGEROUS and BLASTING AGENTS placards. MTB is proposing to revise § 172.334(a) to add the names of these two placards for clarification. Also, MTB is proposing to add paragraph (g) to § 172.334 which would prohibit the addition of any color, number, letter or word to an identification number display. This prohibition is needed to assure standardization and readability of the display.

Problem E

Alternative identification number display method. Paragraph (b) of § 172.336 authorizes, under certain

conditions, the display of identification numbers on a plain white square-on-point configuration. As written, some persons subject to the regulations have interpreted the word "may" to mean that identification numbers may be displayed but the display is not required. Numerous requests for interpretation of this requirement have been received. The regulations (§ 172.300(a), § 172.326, § 172.328 and § 172.330) require the display of identification numbers on portable tanks, cargo tanks and tank cars. Section 172.332 specifies the procedure for displaying identification numbers on orange panels and placards. Section 172.336(b) authorizes the display on the white square-on-point configuration as an alternative to the orange panel when display on a placard is not authorized. MTB proposes to revise § 172.336(b) to clarify the requirement for display of identification numbers.

Problem F

Replacing lost, damaged or destroyed identification number displays. Section 172.338 contains a requirement for replacing lost, damaged or destroyed identification number displays. The requirement does not include the plain white square-on-point display as one that must be replaced. MTB is proposing a correction and a revision of the section to require replacement if any of the identification numbers is lost, damaged or destroyed. This would improve the hazard communication system and would make the placarding and marking requirements consistent. Replacement identification numbers may be entered by hand within the white rectangle on appropriate placards, white square-on-configurations or orange panels.

Problem G

Defintion of liquefied petroleum gas. Liquefied petroleum gas (LPG) is not defined in the Hazardous Materials Regulations. MTB proposed to define LPG as any petroleum gas that is liquid at 70°F. having a vapor pressure of less than 155 psia and composed predominantly of the following hydrocarbons: propane, propylene, butane, (normal butane or iso-butane) and butylenes, either by themselves or as mixtures.

Problem H

Hazardous warning markings on bulk packagings. Soon after the May 22, 1980, and November 10, 1980, dockets (45 FR 34560 and 45 FR 74640) were published MTB discovered that several vehicles and packagings were not covered by the identification number marking regulations. This resulted from the fact that EPA established the hazardous waste manifest system in February 1980 an MTB supporting hazardous waste regulations were published in the May 22, 1980 docket. Much of the EPA regulated hazardous waste consists of materials in the ORM–E category which can be transported in non-DOT specification packagings and transport vehicles. Some of these are identified as dump trucks, hopper cars, roll-on-roll-off containers, open top freight containers, and hopper type motor vehicles.

On September 30, 1983, petition number P–921 was received from the Louisiana State Department of Public Safety requesting these bulk hazardous waste transporters be made subject to the regulations pertaining to the display of the hazardous materials identification number.

MTB believes this petition has merit and proposes to define bulk packagings to include transport vehicles and exclude vessels and barges. MTB also proposes to prescribe marking requirements.

Problem I

Placarding of rail car transporting class A explosives containing poison A. Section 174.25(a) contains a placarding requirement in the placard notation table for displaying the EXPLOSIVES A and POISON GAS placards on a rail car transporting ammunition containing a class A explosive and a poison A. Through an oversight this placarding requirement was not put in § 172.510 when the regulations were consolidated in the May 22, 1980, rulemaking (45 FR 34560). MTB proposes to correct this omission.

Classification of Rule; Reporting Requirements; and Impact on Small Entities.

A. *Non-Major Rule.* MTB has determined that this document will not result in a major rule under terms of Executive Order 12291 or a significant regulation under DOT's regulatory policy and procedures (44 FR 11034), or require an environmental impact statement under the National Environmental Policy Act. This determination is made on the basis that a final rule consistent with this proposal: (1) Will have an annual effect on the economy that will not exceed $100 million, (2) will cause no major increase in costs or prices for consumers, individual industries, Federal, State, or Local governmental agencies, or geogrphic regions, (3) will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets, and (4) it is not anticipated to have a significant environmental impact. A regulatory analysis is available for review in the docket.

B. *Paperwork Reduction Act.* There are no information collection requirements in this proposed rulemaking.

C. *Impact on Small Entities.* Based on the limited information available concerning size and nature of entities likely to be affected, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This determination is based on the fact that the estimated cost of implementation would be relatively insignificant.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions, Labeling, and Packaging.

49 CFR Part 172

Hazardous materials transportation, Labeling, Marking, and Placarding.

49 CFR Part 173

Hazardous materials transportation, Packaging, and Containers.

In consideration of the foregoing, 49 CFR Parts 171, 172 and 173 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.8 the definitions for "bulk packaging", "liquefied petroleum gas" and "non-bulk packaging" would be added in the appropriate sequence to read as follows:

§ 171.8 Definition and abbreviations.

* * * * *

"Bulk packaging" means a packaging, other than a vessel or barge, but including a transport vehicle, (1) having an internal volume greater than 118.88 gallons (450 liters) as a containment unit for a liquid, (2) having a capacity greater than 881.84 pounds (400 kilograms) as a containment unit or a solid, or (3) having a water capacity greater than 1000 pounds (453.59 kilograms) as a containment unit for a compressed gas.

* * * * *

"Liquefied petroleum gas" is any hydrocarbon gas that has a vapor pressure of less than 155 psia at 70°F. and is composed predominantly of propane, propylene, butane (normal and

iso-butane) and butylene, separately or as a mixture.

* * * * *

"Non-bulk packing" means a packaging (1) having an internal volume of 118.88 gallons (450 liters) or less as a containment unit for a liquid; (2) having a capacity of 881.84 pounds (400 kilograms) or less as a containment unit for a solid, or (3) having a water capacity of 1000 pounds (453.59 kilograms) or less as a containment unit for a compressed gas.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

2. Section 172.325 would be added to read as follows:

§ 172.325 Cylinders.

Each specification cylinder, except a Specification 2P, 2Q and 39, that contains a nonodorized liquefied petroleum gas as authorized in § 173.304(d)(5) of this subchapter shall be legibly marked NON-ODORIZED in letters not less than ½-inch in height on a contrasting background near the marked proper shipping name.

3. In § 172.326, paragraph (d) would be amended by changing the comma at the end of the existing text to a period and adding a sentence to follow it as set forth below. Paragraphs (d)(1) and (f) would also be added to read as follows:

§ 172.326 Portable tanks.

* * * * *

(d) * * * Also, if the marking required in paragraph (f) of this section is not visible, a transport vehicle or freight container used to transport a portable tank containing nonodorized liquefied petroleum gas must be marked on each side and each end near the identification number display with the NON-ODORIZED marking prescribed in § 172.328(c)(3).

(1) A person who offers a motor carrier a properly marked portable tank for transportation in a transport vehicle or freight container in such a manner that the markings will not be visible must provide the motor carrier the required identification numbers on placards or the white square-on-point configuration, as appropriate, and the NON-ODORIZED marking disaply, if required.

* * * * *

(f) Each portable tank that contains a nonodorized liquefied petroleum gas as authorized in § 173.315(b)(1) of this subchapter shall be legibly marked NON-ODORIZED in letters not less than 2-inches in height on a contrasting background near the marked proper shipping name.

4. In § 172.328, paragraphs (c)(3) would be added and paragraph (e) would be revised to read as follows:

§ 172.328 Cargo tanks.

* * * * *

(c) * * *

(3) The word NON-ODORIZED in black letters not less than 4-inches in height on a white display panel near the proper shipping name or identification numbers whenever liquefied petroleum gas is shipped in a cargo tank without odorizatin as authroized in § 173.315(b)(1) of this subchapter. The white display panel shall be 6-⅜-inches in height and 22-½-inches wide with a ¾-inch black border included in the measurements.

* * * * *

(e) A cargo tank marked with the name or identification number of a hazardous material may not be used to transport material rquiring any other marking unless that marking is: (1) removed, (2) changed to identify the hazardous material in the cargo tank or cargo tank compartments, or (3) in conformance with § 172.336 (c)(4) or (c)(5) of this subchapter, whichever is appropriate.

5. In § 172.330, paragraphs (a)(1)(iii) and (c)(3) would be added to read as follows:

§ 172.330 Tank cars.

(a) * * *

(1) * * *

(iii) The word NON-ODORIZED in letters not less than 4-inches in height on a contrasting background near the marked name of contents whenever liquefied petroleum gas is transported in a tank car without odorization as authorized in § 173.314(f)(3) of this subchapter.

* * * * *

(c) * * *

(3) The word NON-ODORIZED in letters not less than 2-inches in height near the marked name of contents whenever liquefied petroleum gas is transported in a multi-unit tank car tank without odorization as authorized in § 173.314(f)(3) of this subchapter.

* * * * *

6. Section 172.331 would be added to read as follows:

§ 172.331 Bulk packagings.

(a) No person may offer for transportation or transport a bulk packaging containing a hazardous material unless the bulk packaging is marked as required by § 172.332 on each side and each end with the identification number specified for the material in §172.101 or § 172.102 (when authorized).

(1) A person who offers a motor carrier a hazardous material for transportation in a bulk packaging shall provide the motor carrier the required identification numbers on placards or plain white square-on-point configurations, as appropriate, or shall affix orange panels containing the required identification numbers, prior to or at the time the material is offered for transportation unless the bulk packaging is already marked with the identification number required by this subpart in accordance with paragraph (c) of this section and § 173.29(e) of this subchapter.

(2) A person who offers a bulk packaging containing a hazardous material for transportation shall affix the required identification numbers on panels, square-on-point configurations or placards prior to or at the time the bulk packaging is offered for transportation unless it is already marked with identification numbers as required by this subpart.

(b) A bulk packaging marked with the name or identification number of a hazardous material may not be used to transport any other material unless the marking is removed, or changed to identify the hazardous materials in the bulk packaging, whichever is appropriate.

(c) A bulk packaging that is required to be marked with the name or identification number of a hazardous material must remain marked when empty unless it is—

(1) Reloaded with a material that requires another marking or no marking, or

(2) Sufficiently cleaned of residue and purged of vapor to remove any potential hazard.

7. Section 172.334 would be amended by revising paragraph (a) and adding paragraphs (g) and (h) to read as follows:

§ 172.334 Identification numbers; prohibited display.

(a) An identification number may not be displayed on a POISON GAS, RADIOACTIVE, EXPLOSIVES A, EXPLOSIVES B, BLASTING AGENTS or DANGEROUS placard.

* * * * *

(g) No identification number may be displayed on a placard, orange panel or white square-on-point configuration unless—

(1) The identification number displayed is associated with the proper shipping name to which it is assigned in

§ 172.101 or 172.102 (when authorized), and

(2) The identification number on a placard is displayed on the placard assigned to the material or the hazard class of the material in § 172.504 and is an authorized display.

(h) No identification number marking display which is required, authorized, or specified in this subchapter may contain any color, number, letter, symbol or word other than that authorized or specified in this subchapter.

8. In § 172.336, the introductory text of paragraph (b) would be revised to read as follows:

§ 172.336 Identification numbers; special provisions and exceptions.

* * * * *

(b) For hazardous materials in hazard classes for which placards are not specified (e.g., ORM–A, B, C, D, or E), identification numbers, when required, must be displayed on either orange panels (see § 172.332(b)) or on plain white square-on-point configurations having the same outside dimensions as placards. For materials in hazard classes for which placards are specified and identification number displays are required, but for which identification numbers may not be displayed on the placards authorized for the material (e.g., Irritating materials or Poison A), identification numbers must be displayed on orange panels in association with the required placards. An identification number displayed as authorized or required by this paragraph is not considered to be a placard.

* * * * *

9. Section 172.338 would be revised to read as follows:

§ 172.338 Replacement of identification numbers.

If any of the identification number markings on a placard, orange panel, or white square-on-point configuration that is required to be displayed are lost, damaged or destroyed during transportation, the carrier shall replace all the missing identification number(s) as soon as practicable. However, in such a case, the numerals may be entered by hand on the appropriate placard, white square-on-point configuration or orange panel providing the correct identification numbers are entered legibly using an indelible marking material. When entered by hand, the identification numbers must be located in the white display area as shown in § 172.332. This section does not preclude required compliance with the placarding requirements of this subchapter.

10. Section 172.510 would be amended by adding paragraph (e) to read as follows:

§ 172.510 Special placarding provisions: Rail

* * * * *

(e) *Placarding of rail car transporting an Explosive A containing Poison A.*

Each rail car used for transporting class A explosive ammunition and having an additional hazard of Poison A must be placarded EXPLOSIVES A and POISON GAS.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

11. In § 173.29 the section title would be revised and paragraph (e) would be added to read as follows:

§ 173.29 Empty packagings, portable tanks, cargo tanks, tank cars, and bulk packagings.

* * * * *

(e) No person may offer for transportation and no carrier may transport an empty bulk packaging containing the residue of a hazardous material unless each opening is securely closed and free from leaks.

12. In § 173.304 paragraph (d)(5) would be added to read as follows:

§ 173.304 Charging of cylinders with liquefied compressed gas.

* * * * *

(d) * * *

(5) All liquefied petroleum gas offered for transportation in cylinders, except Specifications 2P, 2Q and 39, must be odorized as indicated in Note 1 by the addition of a warning agent of such character as to be detectable, by a distinct odor, down to a concentration in air of not over one-fifth the lower limit of flammability as indicated in Note 2: Provided, however—

(i) That odorization is not required if harmful in the use or further processing of the liquefied petroleum gas, or if odorization will serve no useful purpose as a warning agent in such use or further processing.

(ii) That if odorization is not used, each cylinder containing liquefied petroleum gas shall be marked as specified in § 172.325 of this subchapter.

Note 1: Odorants must be determined to be in conformance with § 173.304(d)(5) by tests or experience. The use of 1.0 pound ethyl mercaptan, or 6.4 pounds of thiophane per 10,000 gallons of liquefied pertoleum gas shall be considered sufficient to meet the requirements of § 173.304(d)(5). This note does not exclude the use of any other odorant (or mixture of odorants) in sufficient quantity to meet the requirements of § 173.304(d)(5).

Note 2: The lower limits of flammability of the more commonly used liquefied petroleum gases are: Propane, 2.1 percent; Butane, 1.5 percent; Propylene, 2.0; Butylene, 1.6. These figures represent volumetric percentages of gas-air mixture in each case.

* * * * *

13. In § 173.314, paragraph (f)(3) would be added to read as follows:

§ 173.314 Requirements for compressed gases in tank cars.

* * * * *

(f) * * *

(3) *Odorization.* When offered for transportation by tank cars or multi-unit tank car tanks, all liquefied petroleum gas must be odorized as indicated in Note 1 by the addition of a warning agent of such character as to be detectale, by a distinct odor, down to a concentration in air of not over one-fifth the lower limit of flammability as indicated in Note 2:

Provided, however—

(i) That odorization is not required if harmful in the use or further processing of the liquefied petroleum gas, or if odorization will serve no useful purpose as a warning agent in such use of further processing.

(ii) That if odorization is not used, each tank car and mult-unit tank car tank containing liquefied petroleum gas shall be marked as specified in § 172.330 (a) and (c) respectively of this subchapter.

Note 1: Odorants must be determined to be in conformance with § 173.314(f)(3) by test or experience. The use of 1.0 pound of ethyl mercaptan, or 6.4 pounds of thiophane per 10,000 gallons of liquefied petroleum gas shall be considered sufficient to meet the requirements of § 173.314(f)(3). This note does not exclude the use of any other odorant (or mixture of odorants) in sufficient quantity to meet the requirements of § 173.314(f)(3).

Note 2: The lower limits of flammability of the commonly used liquefied petroleum gases are: Propane, 2.1 percent; Butane, 1.5 percent; Propylene, 2.0; Butylene, 1.6 These figures represent volumetric percentages of gas-air mixture in each case.

* * * * *

14. In § 173.315, the heading and paragraph (b)(1) would be revised to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(b) * * *

(1) *Odorization.* All liquefied petroleum gas offered for transportation in cargo tanks or portable tanks must be odorized as indicated in Note 1 by the addition of a warning agent of such character as to be detectable, by a distinct odor, down to a concentration in air of not over one-fifth the lower limit

of flammability as indicated in Note 2: Provided, however—

(i) That odorization is not required if harmful in the use or further processing of the liquified petroleum gas, or if odorization will serve no useful purpose as a warning agent in such use or futher processing.

(ii) That if odorization is not used, each portable tank and cargo tank containing liquefied petroleum gas shall be marked as specified in § 172.326(f) and 172.328(c) respectively of this subchapter.

Note 1: Odorants must be determined to be in conformance with § 173.315(b)(1) by tests or experience. The use of 1.0 pound of ethyl mercaptan, or 6.4 pounds of thiophane per 10,000 gallons of liquefied petroleum gas shall be considered sufficient to meet the requirements of § 173.315(b)(1). This note does not exclude the use of any other odorant (or mixture of odorants) in sufficient quantity to meet the requirements of § 173.315(b)(1).

Note 2: The lower limit of flammability of the commonly used liquefied petroleum gases are: Propane, 2.1 percent; Butane, 1.5 percent; Propylene, 2.0; Butylene, 1.6. These figures represent volumetric percentages of gas-air mixture in each case.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1, and Paragraph (a)(3) of App. A to Part 106.)

Issued in Washington, D.C., on September 21, 1984.

Thomas J. Charlton,

Acting Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-25644 Filed 9-26-84; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

50 CFR Part 628

[Docket No. 40781-4081]

Bluefish Fishery

AGENCY: National Marine Fisheries Service (NMFS) NOAA, Commerce.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: NOAA withdraws the proposed rule to implement the fishery management plan (FMP) for the bluefish fishery which addressed problems that could occur if the commercial fishery in the fishery conservation zone were to expand significantly. The proposed rule appeared in the **Federal Register** of Wednesday, July 11, 1984 (49 FR 28276). The FMP was disapproved by the Regional Director, Northeast Region, National Marine Fisheries Service, under section 304(b)(3) of the Magnuson Fishery Conservation and Management Act on September 7, 1984, because it is not consistent with the national standards for fishery conservation and management of the Magnuson Act, and fails to meet the requirements of Executive Order 12291 and the Regulatory Flexibility Act.

FOR FURTHER INFORMATION CONTACT: Peter Colosi, Bluefish Management Coordinator, 617-281-3600, ext. 272.

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

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

NOAA by this document withdraws the proposed rule that appeared at page 28276 in the **Federal Register** Wednesday, July 11, 1984 (49 FR 28276).

Dated: September 20, 1984.

[FR Doc. 84-25731 Filed 9-26-84; 8:45 am]

BILLING CODE 3510-22

Notices

Federal Register
Vol. 49, No. 189
Thursday, September 27, 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

Forest Service

Pacific Crest National Scenic Trail Advisory Council, Northern California Sub-Committee; Meeting

The Southern California Sub-Committee of the Pacific Crest National Scenic Trail Advisory Council will meet on November 29, 1984, at the Angeles National Forest Headquarters, 150 Lost Robles Street, Pasadena, California. The meeting will begin at 9:30 a.m. in the 2nd floor conference room.

The purpose of the meeting is to discuss and develop recommendations for the Advisory Council and Secretary of Agriculture on broad questions policy, programs, and procedures affecting the northern California portion of the Pacific Crest Trail. The Sub-Committee will discuss rights-of-way acquisition status and needs to complete the trail as well as other matters relating to completion of the trail.

The meeting will be open to the public. Persons who wish additional information, should contact Dick Benjamin, Recreation Staff Director, Pacific Southwest Region, Forest Service, 630 Sansome Street, San Franciso, California 94111, phone (415) 556–6986.

Dated: September 20, 1984.

Zane G. Smith, Jr.,

Chairman, Pacific Crest National Scenic Trail Advisory Council.

[FR Doc. 84–25660 Filed 9–26–84; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–007]

Carbon Steel Wire Rod From Argentina: Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that carbon steel wire rod from Argentina is being, or is likely to be, sold in the United States at less than fair value, and that "critical circumstances" exist with respect to the merchandise under investigation. We have notified the U.S. International Trade Commission (ITC) of our determinations, and the ITC will determine, within 45 days of publication of this notice, whether a U.S. industry is materially injured, or is threatened with material injury, by imports of this mechandise. We have directed the U.S. Customs Service to continue to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: September 27, 1984.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, 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) 377–0161.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that carbon steel wire rod from Argentina is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act) and that "critical circumstances" exist with respect to exports of carbon steel wire rod from Argentina.

We have found that the foreign market value of carbon steel wire rod exceeded the United States price on all sales compared. These margins ranged from 24.85 percent to 151.66 percent. The overall weighted-average margin on all carbon steel wire rod sales compared is 119.11 percent.

Case History

On November 23, 1983, we received a petition from counsel for Atlantic Steel Company, Continental Steel Company, Georgetown Steel Corporation, North Star Steel Co.—Texas, and Raritan River Steel Company on behalf of the domestic producers of carbon steel wire rod. In accordance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleged that imports of carbon steel wire rod from Argentina 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 material injury to, a United States industry. Petitioners also alleged that "critical circumstances" exist, as defined in section 733(e) of the Act.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated the investigation on December 13, 1983 (48 FR 57578). On January 3, 1984, the ITC found that there is a reasonable indication that imports of carbon steel wire rod are materially injuring, or are threatening material injury to, a United States industry.

We presented a questionnaire to Acindar Industria Argentina de Aceros S.A. (Acindar) on January 13, 1984. In accordance with our normal practice, we requested a response within 30 days. Due to the large number of sales transactions, we instructed Acindar to report its home market sales transactions in hard copy and on computer tape in the format outlined in our questionnaire. At respondent's request, we agreed to extend the response period until March 5, 1984. On April 2, 1984, in a letter to counsel for Acindar, we outlined several deficiencies in the response, and requested that the company submit an amended response in proper format no later than April 10, 1984. We received Acindar's amended response, including a new computer tape, on April 12, 1984. We determined that Acindar's new computer tape was in an incorrect format and therefore was unusable. In view of the respondent's failure to compy with our request for a computerized response in proper format, and the lack of time available to obtain and analyze a new computer tape, we used the best information available for purposes of our preliminary determination, in accordance with section 776(b) of the Act (19 U.S.C. 1677e(b)). In this case, the best information available was certain information submitted by respondent. On May 1, 1984, we preliminarily

determined that carbon steel wire rod from Argentina was being sold at less than fair value (49 FR 19542). We also preliminarily determined that "critical circumstances" did not exist.

On March 13, 1984, counsel for the respondent requested an extension of our final determination date of July 10, 1984. We granted an extension until September 20, 1984 (49 FR 22121). Also at the request of counsel for the respondent, we held a hearing on August 1, 1984, to allow the parties an opportunity to address the issues arising in this investigation.

Scope of Investigation

The merchandise covered by this investigation is carbon steel wire rod. Carbon steel wire rod is classified under item number 607.17 of the *Tariff Schedules of the United States* (TSUS), which covers wire rods of iron or steel; other than alloy iron or steel, not tempered, not treated, and not partly manufactured; valued over 4 cents per pound.

This investigation covers the period from June 1 to November 30, 1983.

Fair Value Comparisons

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, as explained below.

United States Price

As provided for in section 772 of the Act, we used purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price on the basis of the F.O.B. or C&F packed price to unrelated U.S. customers. We made deductions, where appropriate, for ocean freight and stowing costs. We made an addition to purchase price for import duties assessed upon the importation of raw materials used in the manufacture of carbon steel wire rod, and for indirect taxes, which were later rebated by reason of exportation of the merchandise under investigation to the United States, pursuant to sections 772(d)(1) (B) and (C) of the Act.

Foreign Market Value

We based foreign market value on the delivered packed prices of Acindar's home market sales. Since we found that the Argentine home market prices were constantly adjusted upward to reflect the high rate of inflation in Argentina during the period of investigation, we calculated foreign market values for each month within the period of investigation. We then made our fair value comparisons using the appropriate foreign market value.

We made comparisons of "such or similar" merchandise based on AISI grade categories selected by Commerce Department industry experts, in accordance with section 771(16)(B) of the Act. In calculating foreign market value, we made currency conversions from Argentine pesos to U.S. dollars in accordance with § 353.56(a)(1) of our regulations using the revised certified daily exchange rates. We made deductions, where appropriate, for foreign inland freight, standard and supplemental discounts, and stowing costs. Since wire rod sold in both the United States and the home market was sold in the identical packed conditions, no adjustments were made for packing.

The following adjustments claimed by Acindar were disallowed. The company claimed an adjustment to foreign market value for commissions paid on home market sales. While we allowed the adjustment in our preliminary determination, information obtained subsequently indicates that the commissions were paid to company employees, and as such are considered intra-company transfers of funds which do not qualify as the basis for a circumstance of sale adjustment. Acindar also claimed a level of trade adjustment to compensate for differences in levels of trade existing between the United States market and the home market for sales of wire rod. Pursuant to § 353.19 of our regulations, we disallowed this adjustment because Acindar did not establish that the pricing differentials are due to differences in selling costs associated with sales at different levels of trade in the home market. In addition, Acindar claimed an adjustment for bad debt expenses. This adjustment was disallowed because we consider bad debt expenses to be indirect in nature, not bearing a direct relationship to the sales under investigation, as required by § 353.15 of our regulations. Finally, we disallowed Acindar's claimed cash discount adjustment because there was insufficient information on the record establishing the basis for the claim.

Final Affirmative Determination of Critical Circumstances

Counsel for the petitioners alleged that imports of carbon steel wire rod from Argentina present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of carbon steel wire rod from Argentina in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries, and found no past antidumping determinations on carbon steel wire rod from Argentina.

We then considered whether the person by whom, or for whose account, this product was imported knew or should have known that the exporter was selling this product at less than its fair value. It is the Department's position that this test is met where margins calculated on the basis of responses to the Department's questionnaire are sufficiently large that the importer knew or should have known that prices for sales to the United States (as adjusted according to the antidumping law) were significantly below home market sales prices. In this case, the margins calculated on the basis of the response to the Department's questionnaire are sufficiently large, even though there is no corporate relationship between the exporters and importers, that the importer knew or should have known that the merchandise was being sold in the United States at less than fair value. Therefore, we determine that this test is met.

We generally consider the following concerning massive imports: (1) Recent trends in import penetration levels, (2) whether imports have surged recently, (3) whether the recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over

that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on imports from Argentina, and all countries combined for the periods immediately preceding and subsequent to the petition filing. The analysis indicates that while imports from all countries increased 5.55 percent, imports from Argentina increased 110.08 percent. In addition, import penetration (calculated as the ratio of imports to total U.S. shipments) increased 104.05 percent for Argentina, but only 2.72 percent for all countries combined.

Normally, we would also analyze imports from prior years in order to determine whether increased imports over a short period could be attributable to factors such as seasonal flows and, therefore, may not constitute massive imports over a short period of time for the purposes of section 735(a)(3) of the Act. In this case, we have not done so because Argentina is a comparatively new entrant in the U.S. market with consequently low levels of exports of carbon steel wire rod to the United States in 1981 and 1982.

Based on our comparison of the data for the periods set forth above, we find that there have been massive imports of carbon steel wire rod from Argentina over a relatively short period of time.

Therefore, for the reasons described above, we determine that critical circumstances exist with respect to carbon steel wire rod from Argentina.

Petitioners' Comments

Comment 1: Acindar's terms of sale to its U.S. customers are F.O.B. stowed. Accordingly, counsel for petitioners contend that deductions should be made to purchase price for costs incurred by Acindar in: (a) moving the wire rod from the factory to the dock, and (b) in stowing the wire rod on ship. If information on these costs is not provided in a timely manner, they submit the Department should use information developed in the antidumping investigation of *Carbon Steel Wire Rod from Trinidad and Tobago* (48 FR 43206), where they claim a comparable situation exists.

In reply, counsel for Acindar states that what petitioners are suggesting is for the Department to calculate Acindar's internal costs for handling the product between the time it comes off the production line and the time it is taken off the dock. That, counsel claims, would be contrary to the Department's normal practice of not requiring internal cost calculations. If the Department does consider these costs, however, Acindar's counsel asserts that we must compare the handling costs on both export and domestic sales, and then adjust for differences.

DOC Position: When determining United States price, we deduct the amounts included in those prices attributable to any costs, charges and expenses incident to bringing the merchandise from the place of shipment to the place of delivery in order to arrive at the ex-factory price.

(a) With respect to the costs incurred in moving wire rod from the mill to the dock, the factual situations in the Trinidad and Tobago case and the instant case are not comparable. In the Trinidad and Tobago case, ISCOTT (the wire rod producer) transported the wire rod from its production facility to a dock it did not own, and therefore, making deductions from purchase price for those inland freight costs was warranted. In this case, Acindar's dock is part of the mill and constitutes the place of shipment. Therefore, we do not consider the cost of moving the merchandise within the mill to be a cost, charge or expense incident to bringing the merchandise from the place of shipment to the place of delivery.

(b) Acindar submitted data on labor costs incurred in stowing wire rod onto ships for export, and onto trucks for domestic sales. These charges were deducted from both purchase price and foreign market value, in accordance with the Commerce Regulations.

Comment 2: Using the criteria established by the Department in its final affirmative determination of critical circumstances in *Certain Carbon Steel Products From Brazil* (49 FR 17988), imports of wire rod from Argentina have been massive over a relatively short period of time. In addition, the level of dumping margins of 176.10 percent found in the preliminary determination indicates knowledge on the part of the importers that the wire rod was being sold at less than fair value. As such, the Department should find that critical circumstances exist in this case.

DOC Position: We agree. See the section of this notice entitled "Final Affirmative Determination of Critical Circumstances".

Comment 3: Counsel for petitioners assert that the upward adjustment to U.S. price on sales of high carbon wire rod for the reembolso rebate be limited to that amount of the rebate which covers taxes directly imposed on inputs which are physically incorporated in the exported product. Specifically, the Department should not allow the 10 percent adjustment claimed by Acindar, but should only allow an adjustment of 7.6 percent, the non-countervailable amount established in *Carbon Steel Wire Rod from Argentina, Suspension of Investigation* (47 FR 42393). To support their assertion, counsel references section 772(d)(1)(C) of the Act, which allows an addition to the U.S. price for "the amount of any taxes imposed in the country of exportation direclty upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of exportation of the merchandise to the United States". This section of the Act, they claim, is merely the "flip side" of section 771(5)(A) and paragraph (h) in Annex A to the Subsidies Code, which allows as non-counter-vailable the rebates of indirect taxes imposed on components physically incorporated in the exported product.

In its post-hearing brief, counsel for respondent rebuts petitoners' argument by referencing *Senate Report No. 96–249 96th Cong., 1st Sess. 94 (1979),* which states that "the principle behind adjustments to U.S. price and FMV is to achieve comparability between the prices which are being compared." In this case, the price that Acindar receives on export sales to the U.S. includes an addition of 10 percent for the high carbon wire rod reembolso rebate, which the home market price does not. Accordingly, to achieve price comparability, the Department should allow the full 10 percent rebate as an addition to U.S. price.

DOC Position: In deciding this issue, the Department was guided by the legislative history of this provision. In *House Report No. 93–571 93rd Cong., 1st Sess. 69 (1973),* The House Ways and Means Committee recomended an amendment dealing with the treatment of certain types of tax rebates in computing purchase price which would "conform the standard in the Antidumping Act to the standard under the countervailing duty law, thereby harmonizing tax treatment under the two statutes." In *Senate Report No. 93–1298 93rd Cong., 2nd Sess. 172 (1974),* the Senate Finance Committee addressed the same issue and recommended an amendment, the standard of which "parallels that standard employed by the Treasury Department under the countervailing duty law in determining whether tax rebates and remissions constitute bounties or grants."

It is our determination that the intent of Congress generally was to provide comparable treatment of indirect tax rebates in both antidumping and countervailing duty investigations. Therefore, for purposes of this case, we have limited the addition to purchase

price on sales of high carbon wire rod to 7.6 percent, the amount established in the countervailing duty investigation as representing the tax incidence on components physically incorporated in the exported product.

Respondent's Comments

Comment 1: The Department should use the revised currency rates certified by the Federal Reserve Bank when converting Argentine pesos to U.S. dollars.

DOC Position: We agree and have used the revised rates.

Comment 2: The Department's methodology used for the preliminary determination did not result in the calculation of foreign market values (FMV) which were sufficiently correlated in product type and time with the U.S. sales to afford proper price to price comparisons. Counsel for respondent suggests that FMV be calculated based upon sales of identical merchandise in the home market which are close in time to the sale made in the U.S., and that the Department adjust for the differential in the value of the Argentine peso between the day of the home market sale and the day of the U.S. sale.

DOC Position: At the time of preliminary determination, Acindar's computer tape listing home market sales transactions was found to be in an improper format, and unusable. As a result, we were unable to perform discrete price to price comparisons. Subsequent to the preliminary determination, a tape in proper format was submitted. For the final determination, whenever possible, we compared U.S. sales with sales in the home market of wire rod having identical steel grade. If there were no sales of such merchandise, we used sales of the next most similar merchandise to determine foreign market value. In those instances, no adjustments for differences in merchandise were made because: (a) Our analysis reveals no differences in price between the such and next most similar steel grade used for comparison, and (b) there is know information on the record to support differences in merchandise adjustments based on differences in costs. We made currency conversions from Argentine pesos to U.S. dollars using the revised exchange rate in effect on the date of the U.S. sale, in accordance with Commerce Regulations.

Comment 3: Counsel for respondent contends that supplemental data provided by Acindar now supports the basis for its claimed cash discount adjustment. Accordingly, the Department should make an adjustment to foreign market value to reflect the discount.

DOC Position: At verification, company officials were asked to compile information on the amount of the cash discount and the number of days payment was outstanding for each home market sale. Based on the data subsequently provided by Acindar, we were unable to link the information to specific home market sales of the products under investigation. While we understand the mechanism of Acindar's cash discount system, information on the record does not support the claimed adjustment, and therefore the adjustment was not made.

Verification

In accordance with section 776(a) of the Act, we verified all data used in reaching this determination by using standard verification procedures, including on-site inspection of the manufacturer's operations and examination of accounting records and selected documents containing relevent information.

Suspension of Liquidation

In accordance with section 733(d) of the Act, on May 1, 1984, we directed the U.S. Customs Service to suspend liquidation of all entries of carbon steel wire rod from Argentina. As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption will continue to be suspended, and is ordered retroactively to February 8, 1984. The U.S. Customs Service will continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average margin of 119.11 percent. The security amount established in our preliminary determination of May 1, 1984 is no longer in effect. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making availble to the ITC all non-privileged 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.

The ITC will make its determination whether these imports are materially injuring or threaten material injury to a U.S. industry, within 45 days of the publication of this notice. If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess an antidumping duty on carbon steel wire rod from Argentina equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-25715 Filed 9-26-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-008]

Carbon Steel Wire Rod From Spain; Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

SUMMARY: We have determined that carbon steel wire rod from Spain is being, or is likely to be, sold in the United States at less than fair value, and that "critical circumstances" exist with respect to the merchandise under investigation. We have notified the U.S. International Trade Commission (ITC) of our determinations, and the ITC will determine, within 45 days of publication of this notice, whether a U.S. industry is materially injured, or is threatened with material injury, by imports of this merchandise. We have directed the U.S. Customs Service to continue to suspend liquidation on all entries of the subject merchandise as described in the **"Suspension of Liquidation"** section of this notice.

EFFECTIVE DATE: September 27, 1984.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, 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) 377–2830.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that wire rod from Spain is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The concerned firms are indicated in the "Suspension of Liquidation" section of this notice.

We have found that the foreign market value of wire rod exceeded the United States price on 96.28 percent of the sales compared. These margins ranged from 4.59 percent to 69.68 percent. The overall weighted-average margin on all sales compared is 34.05 percent. The weighted-average margins for individual companies investigated are listed in the "Suspension of Liquidation" section of this notice. We also found that critical circumstances exist with respect to exports of wire rod from Spain.

Case History

On November 23, 1983, we received a petition from Atlantic Steel Company, Continental Steel Co., Georgetown Steel Corp., North Star Steel Co.—Texas, and Raritan River Steel Company, on behalf of the domestic producers of wire rod. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.360), the petition alleged that imports of wire rod from Spain 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 causing material injury, or threaten material injury, to a United States industry. Petitioners also alleged that critical circumstances exist, as defined in section 735(a)(3) of the Act.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on December 13, 1983 (48 FR 57580). On January 9, 1984, the ITC determined that there is a reasonable indication that imports of wire rod are materially injuring a U.S. industry.

On February 11, 1984, questionnaires were received by NMQ, ENSIDESA, and FASA. On March 21, 26, and 28, 1984, we received NMQ's response. ENSIDESA's response was received on March 23, 26, and 28, 1984, and FASA's response was received on March 23 and 30, 1984.

On May 1, 1984, we preliminarily determined that wire rod from Spain is being sold in the United States at less than fair value (49 FR 19547).

On May 10, 1984, we received a letter from respondents requesting that our final determination be extended until not later than September 20, 1984. In accordance with section 735(a)(2) of the Act, we extended our final determination until that date (49 FR 23208).

On June 5–12, 1984, we verified the responses of NMQ, ENSIDESA, and FASA at the offices of the Spanish Iron and Steel Federation in Madrid, Spain. On August 13, 1984, we held a hearing to address the issues arising in the investigation.

Scope of Investigation

The merchandise covered by this investigation is carbon steel wire rod. The term "carbon steel wire rod" covers wire rods of iron or steel other than alloy iron or steel, not tempered, not treated and not partly manufactured, and valued over 4 cents per pound, as currently provided for in item 607.17 of the *Tariff Schedules of the United States*.

Because NMQ, ENSIDESA, and FASA accounted for virtually all exports of this merchandise to the United States, we limited our investigation to these firms. We investigated all sales of wire rod by the three firms during the period June 1 through November 30, 1983.

Fair Value Comparisons

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 of the Act, we used the purchase price of wire rod to represent the United States price for sales by NMQ, ENSIDESA, and FASA because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the c.&f., c.i.f., or f.o.b. packed price to unrelated purchasers. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, customs brokerage, ocean freight, and marine insurance.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value based on home market sales. We compared identical merchandise where possible. Where no identical merchandise was sold in the home market, in accordance with section 771(16) of the Act, we made comparisons based on quality and dimensional categories selected by a Commerce Department industry expert.

We calculated the home market prices on the basis of delivered, packed prices to unrelated purchasers. Where appropriate, we made deductions for inland freight, discounts and rebates. We made adjustments for differences between United States and home market credit costs, and where appropriate, for commissions. We disallowed NMQ's claim for an adjustment for bad debt because we consider bad debt expenses to be indirect in nature, not bearing a direct relationship to the sales under consideration, as required by § 353.15 of our regulations.

We disallowed FASA's claimed circumstance of sale adjustments for interest costs related to warehousing inventory and their claimed adjustments to United States and home market prices for indirect selling expenses because they are not directly related to the sales under consideration as required by § 353.15 of our regulations.

Final Affirmative Determination of Critical Circumstances

Counsel for the petitioners alleged that imports of carbon steel wire rod from Spain present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of carbon steel wire rod from Spain in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries, and found no past antidumping determinations on carbon steel wire rod from Spain.

We then considered whether the person by whom, or for whose account, this product was imported knew or should have known that the exporter was selling this product at less than its fair value. It is the Department's position that this test is met where margins

calculated on the basis of responses to the Department's questionnaire are sufficiently large that the importer knew or should have known that prices for sales to the United States (as adjusted according to the antidumping law) were significantly below home market sales prices. In this case, the margins calculated on the basis of the response to the Department's questionnaire are sufficiently large, except with respect to FASA, even though there is no corporate relationship between the exporters and importers, that the importer knew or should have known that the merchandise was being sold in the United Sates at less than fair value. Therefore, we determine that this test is met, except with respect to FASA.

We generally consider the following concerning massive imports: (1) Recent trends in import penetration levels, (2) whether imports have surged recently, (3) whether the recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on imports from Spain, and all countries combined for the periods immediately preceding and subsequent to the petition filing. The analysis indicates that while imports from all countries increased 5.55 percent, imports from Spain increased 50.41 percent. In addition, import penetration (calculated as the ratio of imports to total U.S. shipments) increased 46.59 percent for Spain, but only 2.72 percent for all countries combined.

Based on our comparison of the data for the periods set forth above, we find that there have been massive imports of carbon steel wire rod from Spain over a relatively short period of time.

Therefore, for the reasons described above, we determine that critical circumstances exist with respect to carbon steel wire rod from Spain, except with respect to FASA.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making this determination by using standard verification procedures, including examination of records and selection of original source documentation containing relevant information.

Petitioners' Comments

Comment 1: Petitioners state that the 4.3 percent Impuesto General de Trafico de Emprese (IGTE) tax collected on home market sales but not on export sales does not appear to be reflected in the home market prices reported in the questionnaire responses. Therefore, if the home market prices that are used to determine foreign market value do not include the IGTE tax, then no adjustment to U.S. prices for the amount of that tax is permitted.

DOC Position: We agree. We found that home market gross prices as shown on respondents' invoices correspond to the gross prices as shown on respondents' questionnaire responses. However, these prices do not include the 4.3 percent IGTE tax and, therefore, no adjustment to U.S. price is warranted under section 772(d)(1)(C) of the Act.

Comment 2: Petitioners state that the 14.5 percent Desgravacion Fiscal a la Exportacion (DFE) is a program under which indirect taxes are rebated upon exportation of goods, and that section 772(d)(1)(C) of the Act limits the adjustment for rebated taxes to those levied directly on the merchandise or components thereof. Petitioners state that there is no evidence that the DFE rebate covers taxes on components used in the production of wire rod and that no substantiation of the actual incidence of the indirect taxes that are alleged to be rebated has been made.

Respondents state that the DFE is clearly a rebate of taxes imposed in the country of exportation by reason of the exportation of wire rod to the U.S. and has been recognized as such by the Department in prior determinations. Respondents further state that the taxes rebated under the DFE are included in the home market price and have, therefore, been appropriately included in the U.S. value.

DOC Position: In a recent countervailing duty finding on the same product (49 FR 19551), we determined on the basis of best information available that the entire export rebate constitutes a subsidy. Therefore, we are unable to conclude, on the basis of information presently available, that the DFE payment constitutes a rebate of taxes which were directly imposed upon this product or its components. However, as explained in the "Suspension of Liquidation" section of this notice, since the DFE rebate has already been determined to be an export subsidy in the final countervailing duty determination referenced above, the amount of the export subsidy has been subtracted from the dumping margin for deposit or bonding purposes.

Respondents' Comments

Comment 1: Respondents state that the Department should calculate foreign market value for NMQ and ENSIDESA based on sales to its largest customers if the quantities involved are to be considered comparable. Sales to the largest home market customers receive substantial discounts and are about one-half the size of the sales to its smallest U.S. customer. Davis Walker Corporation, an interested party to the investigation, made a similar comment in regard to sales by NMQ.

Petitioners state that there is no clear dividing line between NMQ and ENSIDESA's large and small volume home market purchases. Further, respondents have made no showing that the magnitude of the discounts received were directly related to the volume of specific sales.

DOC Position: It is clear that sales volume to the U.S. is much greater than Spanish home market sales. Respondents have not demonstrated, however, that the standards for allowance of a quantity discount under § 353.14(b)(1) of the Commerce Regulations have been met, nor have they shown that the discounts provided to home market customers are warranted on the basis of savings specifically attributable to the production of the different quantities involved, in accordance with § 353.14(b)(2) of those regulations. Therefore, no adjustments are warranted and foreign market value is based on all sales during the period of investigation.

Comment 2: Respondents state that the Department should calculate the fair value margins for ENSIDESA on the basis of appropriate comparisons on the quality and dimensions of wire rod sold in the home market and to the U.S. rather than "best information available" as was done for the preliminary determination.

DOC Position: Using information provided by the respondent and subsequently verified, we made comparisons based on quality and dimensional categories as selected by a Commerce Department industry expert.

Comment 3: Respondents state that we should adjust our product groupings for NMQ so as to avoid distortions resulting from certain products not being sold to the U.S. but being included in the foreign market value calculation.

Petitioners state that the product groupings were made on the advice of a Department commodity expert and that any alteration would skew the comparison.

DOC Position: We reviewed the comparison groups and deleted similar groups where identical merchandise existed. Where comparisons were based on similar merchandise, all similar home market merchandise was included.

Comment 4: Respondents state that NMQ's credit expenses on U.S. sales should be reduced by an amount equivalent to 30 days credit in order to account for the fact that home market prices reflected 30 days net terms, while export prices to the U.S. did not.

DOC Position: During verification we verified that credit expenses for NMQ's home market sales were overstated by an amount equivalent to 30 days of such expenses. Therefore, we made an adjustment to foreign market value to reflect accurate credit expenses.

Suspension of Liquidation

In accordance with section 733(d) of the Act, the suspension of liquidation is ordered retroactively for all manufacturers/producers/ exporters with the exception of FASA of all entries of wire rod from Spain that are entered, or withdrawn from warehouse, for consumption, on or after February 8, 1984. With regard to entries of wire rod from FASA, we are directing the Customs Service to suspend liquidation of all entries of wire rod 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 wieghted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States prices. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-average margin percentage
NMQ	37.45
ENSIDESA	34.62
FASA	0.73
All Other Manufacturers/Producers/Exporters	34.05

Articles VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies (as determined in the final affirmative countervailing duty determination on carbon steel wire rod from Spain (49 FR 19551)) has been substracted from the dumping margin for deposit or bonding purposes.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential 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.

The ITC will determine whether these imports are causing material injury, or threaten material injury, to a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess an antidumping duty on wire rod from Spain entered, or withdrawn, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: September 20, 1984.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-25714 Filed 9-26-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammal Permits; Issuance of Permit; Marineland Cote d'Azur

On July 26, 1984, Notice was published in the **Federal Register** (49 FR 30087) that an application had been filed with the National Marine Fisheries Service by Marine Cote d'Azur, Avenue Mozart, 06600 Antibes, France, for a Permit to take five (5) Atlantic bottlenose dolphins *(Tursiops truncatus)* for public display.

Notice is hereby given that on September 17, 1984, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Public Display Permit for the above taking to Marineland Cote d'Azur subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702.

Dated: September 17, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-25633 Filed 9-26-84; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Notice of Intent To Grant Exclusive Patent License; Calcol, Inc.

The National Technical Information Service (NTIS), a U.S. Department of Commerce, intends to grant to Calcol, Inc., having an office in Shaker Heights, Ohio 44122, an exclusive right to practice the invention embodied in U.S. Patent 3,734,930, "Direct Synthesis of (−) Trans-Δ^9-Tetrahydrocannabinol from Olivetol and (+)-Trans-Δ^2-Carene Oxide." The patent rights in 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 licenses would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 84-25659 Filed 9-26-84; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Proposed Flood Control Project for Kingfisher and Uncle John's Creeks, Kingfisher, OK

AGENCY: U.S. Army Corps of Engineers, DOD, Tulsa District.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The primary purpose of this project is to provide local flood protection for Kingfisher and Uncle John's Creeks, Kingfisher, Oklahoma.

2. Reasonable Alternative: The alternatives evaluated included no action, overflow diversion channel, channel modifications, upstream lakes, and levee.

3. Scoping Process: Public Involvement. A comprehensive public involvement program was developed as a means of disseminating information and soliciting public views. A variety of techiques including formal public meetings, meetings with local interest, and local news media were employed to involve Federal, State, and local agencies, citizen committees, organizations, and the interested public in the planning studies.

a. *Significant Issue Requiring In-Depth Analysis:* None.

b. Assignments: U.S. Fish and Wildlife Service is preparing a Fish and Wildlife Coordination Act Report.

c. *Environmental Review and Consultation Requirements:* The draft environmental impact statement will be circulated for review and all comments will be incorporated into the final environmental impact statement.

4. A separate scoping meeting will not be held.

5. Estimated date when the DEIS will be available: March 1985.

ADDRESS: Mr. Buell O. Atkins, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, Tulsa District, P.O. Box 61, Tulsa, OK 74121-0061, (918) 581-7857, FTS 745-7857.

Dated: September 19, 1984.

Franklin T. Tilton,

Colonel, CE, District Engineer.

[FR Doc. 84-25654 Filed 9-26-84; 8:45 am]

BILLING CODE 3710-39-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 29, 1984.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Request for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that the public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information requests prior to the submission of these requests to the OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting Burden; and/or (7) Recordkeeping Burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 24, 1984.

Ralph J. Olmo,

Acting Deputy Under Secretary for Management.

Office of Elementary and Secondary Education

Type of Review Requested: New
Title: Chapter 1 of the Education Consolidation and Improvement Act of 1981, Section 554(a) Migrant Education Interstate and Intrastate Coordination Progam Financial Status and Performance Report
Agency Form Number: ED 362-3
Frequency: Annually
Affected Public: State or Local Governments
Reporting Burden: Responses: 15; Burden Hours: 75
Recordkeeping Burden: Recordkeepers: 15; Burden Hours: 15

Abstract: State educational agencies are required to file financial status and performance report under the provisions of the Education Department General Administrative Regulations (EDGAR). The information will be used for future program decisions regarding program planning or management.

Type of Review Requested: New
Title: Chapter 1 of the Education Consolidation and Improvement Act of 1981 Recognition Nomination Form
Agency Form Number: ED 2474
Frequency: Annually
Affected Public: State and Local Governments
Reporting Burden: Responses: 255; Burden Hours: 1,275
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Information will be used to select outstanding Chapter 1 projects to receive a national award. Each State educational agency may nominate up to five projects. The submission of nominations is voluntary and does not affect program funding or eligibility.

Type of Review Requested: Extension
Title: Application for Law-Related Education Program
Agency Form Number: ED 740
Frequency: Annually
Affected Public: State and Local Governments; Institutions of Higher Education; Other Public and Private, Non-Profit Agencies, Organization, and Institutions.
Reporting Burden: Responses: 120; Burden Hours: 4800
Recordkeeping Burden: Recordkeepers: 10; Burden Hours: 0

Abstract: This package is used by applicants to apply for Law-Related Education grant awards. The Department uses the information

collected to determine grant eligibility and amount of awards.

Type of Review Requested: Reinstatement
Title: Financial and Performance Reports for Follow-Through Program CFDA 84–014
Agency Form Number: ED 4473–1 (OE 376)
Frequency: Annually
Affected Public: Local Educational Agencies; Other Public and Private, Non-Profit Agencies, Organizations, and Institutions
Reporting Burden: Responses: 93; Burden Hours: 2,790
Recordkeeping Burden: Recordkeepers: 93; Burden Hours: 1,116

Abstract: Grantees are required under the Education Department General Administrative Regulations (EDGAR) to submit financial and performance reports on project expenditures and the extent to which project objectives are achieved as described in the application.

Type of Review Requested: New
Title: Financial and Performance Reports for Law-Related Education
Agency Form Number: ED 740–1;–2
Frequency: Annually
Affected Public: State and Local Governments; Institutions of Higher Education; Other Public and Private, Non-Profit Agencies, Organizations, and Institutions
Reporting Burden: Responses: 12; Burden Hours: 72
Recordkeeping Burden: Recordkeepers: 12; Burden Hours: 48

Abstract: Grantees are required under the Education Department General Administrative Regulations (EDGAR) to report on project expenditures and the extent to which project objectives are achieved as described in the application.

Type of Review Requested: Extension
Title: Preapplication for Federal Assistance (Construction) Under Pub. L. 81–815 (ED 355); Application for Federal Assistance (Construction) Under Pub. L. 81–815 (ED 355–1)
Agency Form Number: ED 355–1
Frequency: (Determined by Applicant)
Affected Public: State or Local Governments
Reporting Burden: Responses: 38; Burden Hours: 380
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Local educational agencies in federally impacted areas use the preapplication to provide data needed for departmental evaluation and determinations as to eligibility, extent of need, and amount of entitlement.

Type of Review Requested: Extension
Title: Application for grants for the Migrant Education Interstate and Intrastate Coordination Program under Chapter 1 of the Education Consolidation and Improvement Act of 1981.
Agency Form Number: ED 362–2
Frequency: Annually
Affected Public: State and Local Governments
Reporting Burden: Responses: 40; Burden Hours: 1600
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: State educational agencies may apply individually or cooperatively for grants to plan and implement special projects designed to improve the interstate and intrastate coordination activities of migrant education program. Information on the projects and application packages will be distributed to all states serving migrant children, the District of Columbia, and Puerto Rico.

Office of Special Education and Rehabilitation Services

Type of Review Requested: New
Title: Report of Handicapped Children and Youth Receiving: (a) Special Education and Related Services and (b) Related Services
Agency Form Number: ED 869–5
Frequency: Annually
Affected Public: State and Local Governments
Reporting Burden: Responses: 58; Burden Hours: 638
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This package provides instructions and forms necessary for States and local educational agencies to report the number of handicapped children and youth receiving services and serves as the basis for allocating Federal funds; and for monitoring, implementation, and reporting information.

[FR Doc. 84–25634 Filed 9–26–84; 8:45 am]
BILLING CODE 4000–01–M

National Advisory Council on Vocational Education; Meeting

AGENCY: National Advisory Council on Vocational Education.

ACTION: Notice of Public Meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Advisory Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: October 9, 1984.

ADDRESS: National Advisory Council on Vocational Education, 425 13th Street, NW., Suite 412, Washington, D.C. 20004.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90–576. The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and published and distribute the results thereof.

The meeting of the National Advisory Council on Vocational Education, as announced, is open to the public, and the proposed Agenda will include: Briefing on new vocational education legislation; Review and Discussion of new Council mandate; Finalize program of work for coming year.

Records are kept of the Council's proceedings, and are available for public inspection at the office of the National Advisory Council on Vocational Education from 9:00 am to 5:00 pm, 425 13th Street, NW., Suite 412, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Edwards, NACVE Staff at above address. Telephone (202) 376–8873.

Signed at Washington, D.C., on September 24, 1984.

George Wallrodt,

Deputy Executive Director, National Advisory Council on Vocational Education.

[FR Doc. 84–25707 Filed 9–26–84; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER84-673-000]

Alabama Power Co.; Filing

September 24, 1984.

The filing Company submits the following:

Take notice that on September 10, 1984, Alabama Power Company (Alabama) tendered for filing a Notice of Cancellation. Alabama states that at the request of Wiregrass Electric Cooperative, it is terminating service to their Bay Springs delivery point. The termination of this service becomes effective on August 29, 1984. From that date service will be provided to this delivery point directly from the electric system of Alabama Electric Cooperative.

Copies of this filing were served upon Wiregrass Electric Cooperative.

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 October 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25692 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-671-000]

Boston Edison Co.; Filing

September 24, 1984.

The filing Company submits the following:

Take notice that on September 10, 1984, Boston Edison Company (Boston) tendered for filing a supplemental Exhibit A to a Service Agreement for Cambridge Electric Light Company (CEL), under its FERC Electric Tariff, Original volume III, Non-Firm Transmission Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by CEL under the Tariff.

Edison requests an effective date of June 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Cambridge Electric Light Company and the Massachusetts Department of Public Utilities.

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 October 9, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25693 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-674-000]

Central Vermont Public Service Corp.; Filing

September 24, 1984.

The filing Company submits the following:

Take notice that on September 10, 1984, Central Vermont Public Service Corporation (Central Vermont tendered for filing a proposed contract applicable to the Vermont Electric Generation and Transmission Cooperative, Inc. (the G&T). Pursuant to the contract, Central Vermont constructed facilities to connect a G&T hydro electric project at North Hartland, Vermont to Central Vermont's transmission system. The Company has asked that the contract be allowed to become effective as a rate schedule on November 7, 1984 although the contract charges, which relate to the facilities especially constructed for the North Hartland service and to a transformer which will be jointed use by the G&T and Central Vermont, will not commence until the first day of the month during which the G&T commences utilization of the facilities. That date is currently estimated to be December 1, 1984.

Central Vermont states that it has served copies of the filing on the G&T and on the Vermont Public Service Board.

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 October 9, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25694 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-676-000]

Empire District Electric Co.; Filing

September 24, 1984.

The filing Company submits the following:

Take notice that on September 13, 1984, Empire District Electric Company (EDE) tendered for filing a proposed change in its FPC Electric Service Tariff, Volume 1. The proposed changes would increase revenues from jurisdictional sales and service by $44,520 based on the 12 month period ending December 31, 1984.

EDE states that the changes are proposed in order that the rates better reflect the Cost of Service. The charge for transmission shall be changed from $0.927 to $0.980 per KW of contract demand and the energy charge shall remain $0.85 per Mwh.

Copies of this filing were served upon the Kansas Corporation Commission, the Missouri Public Service Commission, the Oklahoma Corporation Commission, the Public Service Commission of Arkansas, and Kansas Electric Power Cooperative.

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, NW., 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 October 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25695 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-679-000]

Florida Power Corp.; Filing

September 24, 1984.

The filing Company submits the following:

Take notice that on September 14, 1984, Florida Power Corporation (Florida Power) tendered for filing rate schedule revisions to its FERC Electric Tariff and partial-requirements service contracts which would increase its revenues from wholesale service in two steps. The first step, reflecting the cost of service after commercial operation of the 171 megawatt Crystal River No. 5 generating unit now under construction, is in the amount of $10.5 million or 9.78%. Florida Power requests that the first step increase be permitted to become effective on November 15, 1984. The second step, reflecting only the inclusion of 50% of construction work in progress (CWIP) in rate base in accordance with the Commission's CWIP regulations, involves a further increase of $1.1 million, for a total increase of $11.6 million or 10.81%. Florida Power requests that the second step increase be permitted to become effective on January 1, 1984, in accordance with the terms of the settlement agreement in Florida Power's last wholesale rate case. Florida Power states that it will inform the Commission and the affected customers if there is any change in that date.

Florida Power states that the filing also contains provisions for changes in the surcharge for spent nuclear fuel disposal costs, the recovery of the Florida Gross Receipts Tax, the fuel cost adjustment clause, and several terms and conditions of service in the tariff and contract rate schedules.

Florida Power states that it has served copies of its filing on the affected customers and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 October 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25696 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-675-000]

Idaho Power Co.; Filing

September 24, 1984.

The filing Company submits the following:

Take notice that on September 11, 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 July, 1984, along with the cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement 33
Sierra Pacific Power Company—Supplement 31
Montana Power Company—Supplement 30
Portland General Electric Company—Supplement 26
Southern California Edison Company—Supplement 20
San Diego Gas & Electric Company—Supplement 16
Washington Water Power Company—Supplement 21
Pacific Gas & Electric—Supplement 14

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 October 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25697 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-670-000]

Iowa Electric Light and Power Co.; Filing

September 24, 1984.

The filing company submits the following:

Take notice that on September 7, 1984, Iowa Electric Light and Power Company (Iowa Electric) tendered for filing an executed Resale Contract with the City of Maquoketa to provide wholesale electric power to serve loads previously served at retail by Iowa Electric. This filing is made pursuant to 18 CFR 35.13 (a)(2)(ii) for rate schedule changes other than rate increases and is in addition to the currently filed resale agreement with the City of Maquoketa.

Iowa Electric has been serving various customers in Maquoketa under retail rates subject to state jurisdiction and has sold its retail facilities and related property to the City of Maquoketa. The related portion of the load will be transferred from retail to wholesale service under the Resale Contract tendered for filing and served under Iowa Electric's effective RES-1 Rate Schedule. The Resale Contract is for a 20 year term and contains termination and minimum purchase provisions unique to the sale agreement with Maquoketa.

Iowa Electric requests an effective date of October 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the City of Maquoketa and the Iowa State Commerce 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 October 5, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25698 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-677-000]

Kansas Gas and Electric Co.; Filing

September 24, 1984.

The filing Company submits the following:

Take notice that on September 13, 1984, Kansas Gas and Electric Company (KG&E) tendered for filing proposed changes in its FERC Electric Service Tariff No. 133.

KG&E states that the filing assures continued full requirements service to the City of Erie, Kansas (City).

KG&E further states that this filing is necessary because the City desires to cancel its existing Agreement for Wholesale Electric Service but has not yet decided how it will supply its customers with electric service. This filing will assure continuity of service to Erie until such decision is made.

KG&E requests an effective date of November 10, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the City of Erie, Kansas and the Utilities Division of the Kansas 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, 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 October 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25700 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-359-002]

Montana Power Co.; Order Accepting for Filing and Suspending Rates, Granting Requests for Making Rate Increase Effective in Stages, Granting Interventions, Denying Requests for Rejection, Summary Judgment and Expedited Procedures, and Establishing Procedures

Issued: September 21, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On March 30, 1984, as completed on July 24, 1984,[1] Montana Power Company (MPC) tendered for filing proposed Rate Schedule REC-84 applicable to sales to Bighorn County Electric Cooperative, Inc. (Bighorn) and Central Montana Electric Generation and Transmission Cooperative, Inc. (Central Montana).[2] The proposed rates would increase revenues by about $10.5 million (168%) based on the calendar 1984 test period. MPC's cost of service study reflects two new 700 MW coal-fired generating units and the installation of additional 500 kV transmission lines.[3]

Notice of the original filing was published in the **Federal Register** with responses due on or before May 19, 1984. By letter dated April 16, 1984, Senator Max Baucus requested that the time for filing comments be extended for at least thirty days and that hearings be held in Montana to allow direct comment by those affected by the proposed rates. By notice dated April 19, 1984, the comment period was extended to and including May 4, 1984.

On May 7, 1984, Senator John Melcher and the Northern Plains Resource Council (Northern Plains) filed untimely motions to intervene but raised no specific issues for investigation. In a second motion filed on May 16, 1984, Senator Melcher specifically requested late intervenor status and wavier of the May 4, 1984 comment deadline.

On May 4, 1984, as supplemented on June 22, and August 15, 1984, Central Montana filed a timely motion to intervene alleging that the proposed rates are unjust, unreasonable, and unduly discriminatory. Central Montana has sought rejection of the filing or issuance of a further deficiency letter on the grounds that MPC has failed to satisfy the filing requirements of Part 35 of the Commission's regulations. The intervenor contends that the data supplied are insufficient and that the Period I data are stale and require updating. Absent rejection, Central Montana requests that the Commission order summary disposition with respect to MPC's proposal to incorporate a penalty charge clause (a 500% penalty charge applied to each kW taken in excess of contract demand) on the basis that: (1) MPC has provided no cost support; (2) no such charge is included in the rates of retail or other wholesale customers; (3) the charge will prohibit the cooperative customers from competing with MPC for new large loads; and (4) the charge is unnecessary for planning in light of MPC's reserve situation. If the filing is not rejected, Central Montana also requests a five month suspension and local hearings, citing numerous cost of service issues, including: (1) the requested return on common equity; (2) the appropriate date on which to include Colstrip Unit No. 3 in rate base; (3) introduction of a rate tilt and seasonal rate design; (4) the support for deferred tax amounts related to unfunded tax liability; (5) amortization of investment tax credits; (6) recovery of fuel costs incurred under a contract with a coal subsidiary; (7) the stated level of off-system sales; (8) calculation of cash working capital; (9) subtraction of deferred tax balances from rate base; (10) inclusion of CWIP in rate base; and (11) the possible effects of state commission disallowance of Colstrip No. 3 costs on MPC's operational decisions and test period costs. [4]

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[1] By letters dated May 4, and June 25, 1984, the Director of the Commisson's Office of Electric Power Regulation advised the company that its submittal was deficient. The deficiency letters indicated that a new subdocket would be assigned upon completion of the filing.

[2] *See* Attachment for rate schedule designations.

[3] MPC owns a 30 percent interest in the new generating units, Colstrip Unit Nos. 3 and 4. Colstrip Unit No. 3 began commercial operation in January, 1984, and has been included in the company's rate base for Period II. MPC has also included in its rate base a portion of the construction work in progress associated with Colstrip Unit No. 4, in accordance with our regulations. 18 CFR 35.26.

[4] According to Central Montana, in a decision issued on August 3, 1984, the Montana Public Service Commission disallowed the costs of Colstrip No. 3 in MPC's retail rates. As a result of that decision, Central Montana's August 15 supplemental motion suggests the possibility that a price squeeze may exist, although the intervenor has not requested that price squeeze procedures be initiated at this time. Central Montana also postulates that the retail rate decision may have other effects on MPC's costs as projected for wholesale rate purposes, asserting that: (1) MPC has announced plans to defer construction of various facilities which are allegedly reflected in MPC's Period II projections; and (2) MPC is considering selling all of its interest in Colstrip No. 3. In an August 30, 1984 response, MPC notes that it is appealing the state commission decision, that the possibility of a sale of Colstrip No. 3 is entirely speculative, that these contingencies should have no bearing on our suspension decision, and that, in any event, the state commission's decision has had a substantial detrimental effect on MPC's cost of capital.

On April 26, 1984, as supplemented on July 2, 1984, Bates Ranch, Inc. (Bates), a retail customer served by Central Montana, moved to intervene. In its July 2 pleading, Bates adopted substantial portions of Central Montana's stated position. Bates also requests that all hearings and preliminary proceedings be held in Montana. On May 3, 1984, the Montana Consumer Counsel (MCC) filed a timely motion to intervene expressing its concern that MPC has included the Colstrip Unit 3 and related transmission facilities in its rate base. In addition, numerous protests have been filed by individual rural electric consumers.

On May 21, July 9, and August 30, 1984, MPC filed responses to Central Montana's motions. Specificaly, MPC stated that it would respond to the Commission's deficiency letter in a timely and appropriate manner, that a five month suspension is not warranted, that summary rejection of the proposed penalty for excessive demand is inappropriate, that requests for field hearings should be denied, and that recent actions of the Montana Public Service Commission should not affect the suspension period in this docket.[5]

On September 11, 1984, MPC filed a motion requesting that the Commission order that the proposed rates be implemented in stages, subject to refund, and that an expedited procedural schedule be ordered which would result in the issuance of an Initial Decision by February 24, 1985. MPC proposes to implement the proposed rates on the following dates: Phase I, an increase of $5,011,098 (86%) or 50% of the proposed rate increase effective, after a one month suspension, on October 24, 1984; Phase II, effective upon the issuance of an Initial Decision, not later than February 24, 1985, and incorporating rates, terms and conditions of service found by the Administrative Law Judge to be lawful; and Phase III, effective upon issuance of a Commission decision and incorporating rates, terms and conditions of service found by the Commission to be lawful.

With regard to Central Montana's claim that the proposed rates should be rejected or that a third deficiency letter should be issued, we find that MPC's submittal, as completed on July 24, substantially complies with our filing regulations (18 CFR Part 35),[6] and that no other basis for rejection has been shown.[7] Therefore, we shall deny the request for rejection.

The proposed Phase I rate is based on an equal percentage increase in each component of the currently effective rate schedule and thus retains the existing rate design. MPC also agrees to defer, during Phase I, implementation of the 500% penalty charge for excess demand.

Also on September 11, 1984, Central Montana filed a statement of position stating its approval of MPC's motion with the following "clarifying points": First, Central Montana states that it had only seen a draft of the motion; second, Central Montana reserves the right to object to the proposed Phase I rates and revenue calculations if found to be inaccurate; third, Central Montana still asserts that the original filing, as amended, should be rejected or that a third deficiency letter should be issued; fourth, the proposed rates are subject to refund, with interest, if the rate level determined to be just and reasonable is lower than the Phase I or Phase II rates; and fifth, Central Montana may need to request additional time to prepare testimony if problems arise in the discovery phase of the case.

Discussion

Pursuant to rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene of Bates, MCC, and Central Montana serve to make them parties to this proceeding. Also, given the fact that MPC's filing was not completed until well after the original comment deadlines, and in light of the early stage of this proceeding, we find that the late interventions should result in no undue delay or prejudice. We shall therefore grant the interventions of Senator Melcher and Northern Plains.

We shall also deny Central Montana's request for summary disposition with respect to the proposed penalty charge for demands in excess of those specified in the customers' contract. We note that MPC has agreed not to implement the proposed penalty provision during Phase I. In any event, however, while we question the appropriateness of so substantial a charge as a load planning tool, we cannot conclude that it is *per se* unlawful. Thus, the matter should be pursued during the hearing which we shall order below. Central Montana has requested an expedited hearing on this issue, given the potential anticompetitive consequences. It may be appropriate to phase such a question if the customers can demonstrate that refund protection will not suffice; on the other hand, the company's voluntary deferral of the penalty provision may mitigate the intervenor's perception of urgency. We leave this question to the discretion of the presiding judge.

As to the requests that hearings and preliminary proceedings be held in Montana, we note that the administrative law judge assigned to this proceeding is empowered to order such field hearings if they are deemed necessary and in the public interest.

Our preliminary review of MPC's filing and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept MPC's rates for filing and suspend the phase-in rates as ordered below.

Under our *West Texas* suspension rationale,[8] our preliminary review indicates that MPC's originally filed rates may not be substantially excessive and would normally be suspended for one day (or one month because of the settlement provision, below). Although we might otherwise consider whether the relative size of the 168% rate increase which would result from MPC's originally proposed rates would constitute extraordinary circumstances justifying a longer suspension, MPC's motion eliminates the need to consider that question. We shall grant the motion insofar as it requests three different effective dates, and, pursuant to terms that MPC agreed to in a settlement reached in a prior docket,[9] we shall suspend the proposed Phase I rates, to become effective on October 24, 1984, subject to refund.

As noted by MPC, the Chief Administrative Law Judge has recently adopted expedited procedural schedules in other proceedings. We are reluctant, for both administrative and due process reasons, to bargain with utilities over procedural schedules and to interfere

[5] *See* footnote 4, *supra.*

[6] *See Municipal Light Boards of Reading and Wakefield, Mass. v. FPC,* 450 F.2d 1341 (D.C. Cir. 1971), *cert. denied,* 405 U.S. 989 (1972).

[7] Central Montana challenges MPC's Period I data as being stale, given the length of time that has passed since MPC's original tender in March of this year. The intervenor acknowledges that, under our regulations, Period I data are tied to the tender date rather than the date on which a filing is completed.

However, the intervenor attempts to distinguish the instant docket because of the alleged inordinate amount of time taken by MPC to cure the various deficiencies. Central Montana further states that historic 1983 data are now readily available. We are not persuaded by these attempts to distinguish the current filing and find no reason to require MPC to substitute entirely new Period I data.

[8] *West Texas Utilities Company,* 18 FERC ¶ 61,189 (1982).

[9] The settlement agreement (Docket No. ER83-438-000) provided that MPC would request a one month suspension from the proposed effective date and that such date would be at least sixty days after the filing date.

with the schedules found to be appropriate by the Chief Judge. Instead, we hereby direct the Chief Judge to order a procedural schedule in this docket which will result in the issuance of an initial decision as close to the requested February 24, 1985 date as is deemed appropriate while meeting both discovery and resource allocation requirements.[10] If, because of this directive, MPC chooses to withdraw its motion, MPC must notify the Commission of such requested withdrawal within five days of the issuance of the procedural schedule in this docket. In the event that MPC files such a withdrawal request, we will at that time reconsider our suspension decision.

The Commission Orders

(A) Central Montana's motion to reject MPC's filing and its request for summary disposition of the proposed penalty charge are hereby denied.

(B) MPC's rates are hereby accepted for filing and suspended so that the Phase I rates become effective, subject to refund, on October 24, 1984. Upon the issuance of an initial decision in this proceeding, the rate level and terms and conditions of service approved by the presiding administrative law judge shall become effective, subject to refund. Upon issuance of a Commission decision, the rates, terms and conditions of service found lawful by the Commission shall become effective.

(C) The motions to intervene of Senator Melcher and Northern Plains are hereby granted, subject to the Commission's Rules of Practice and Procedure.

(D) MPC's request for an expedited procedural schedule is hereby denied.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of MPC's rates.

(F) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(G) A presiding administrative law judge, to be designated by the Chief Administative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in Commission's Rules of Practice and Procedure.

(H) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25701 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[10] We note that Counsel for MPC has advised our staff by telephone that a one or two month departure from the February 24, 1985 date would be considered as being within the parameters of MPC's request.

[Docket No. ER84-668-000]

Niagara Mohawk Power Corp.; Filing

September 24, 1984.

The filing Company submits the following:

Take notice that on September 7, 1984, Niagara Mohawk Power Corporation (Niagara) tendered for filing as a supplement to an existing rate schedule, an agreement between Niagara, the Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO) dated May 23, 1984.

Niagara presently has on file an agreement with CL&P and WMECO dated January 19, 1981 last amended May 17, 1983. This amendment is designated as Niagara Power Corporation Rate Schedule FERC No. 115. This new agreement is being transmitted as a supplement to the existing agreement.

Niagara states that this supplement revises the transmission rate as provided for in the terms of the original agreement.

Niagara requests an effective date of September 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon Connecticut Light and Power Company, Western Massachusetts Electric Company and the 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 October 5, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25702 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-669-000]

Niagara Mohawk Power Corp.; Filing

September 24, 1984.

The filing Company submits the following:

Take notice that on September 7, 1984, Niagara Mohawk Power Corporation (Niagara) tendered for filing as a supplement to an existing rate schedule, an agreement between Niagara, the Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO), collectively called the NU Companies, dated May 23, 1984.

Niagara presently has on file an agreement with CL&P and WMECO dated October 1, 1981, last amended May 17, 1983. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 117. This new agreement is being transmitted as a supplement to the existing agreement.

Niagara requests an effective date of September 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the Connecticut Light and Power Company, Western Massachusetts Electric Company, and the 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, DC. 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 October 5, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25703 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-678-000]

Niagara Mohawk Power Corp.; Filing

September 24, 1984.

The filing Company submits the following:

Take notice that on September 14, 1984, Niagara Mohawk Power Corporation (Niagara) tendered for filing as a rate schedule, an agreement between Niagara and the Power Authority of the State of New York (PASNY) dated June 15, 1984.

Niagara presently has on file an agreement with PASNY dated January 15, 1963. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 22. This new agreement is being transmitted as a supplement to the existing agreement.

Niagara states that the original January 15, 1963 agreement states that Niagara will provide backup power when requested by PASNY so that PASNY can maintain an uninterrupted supply of interruptible power and energy to its aluminum reduction customers in the St. Lawrence Area. Niagara will supply the energy at a power rate not to exceed 80,000 kilowatts at any time prior to January 1, 1993 and at the rate of 40,000 kilowatts for the remainder of the agreement when and if Niagara can supply the power and energy from its generating facilities, contract resources or its interconnection without necessitating an interruption to its customers. This supplement revises the rate for emergency power as provided for in terms of the original agreement.

Niagara requests an effective date of September 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Power Authority of the State of New York and the 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 acordance 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 October 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25704 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-672-000]

Public Service Company of Indiana, Inc.; Filing

September 24, 1984.

The filing Company submits the following:

Take notice that on September 10, 1984, Public Service Company of Indiana, Inc. (PSCI) tendered for filing pursuant to the Interconnection Agreement between PSCI and Northern Indiana Public Service Company (Northern Company) an Eighth Supplemental Agreement, to become effective November 6, 1984.

Said Supplemental Agreement provides for the following:

(1) Amends Service Schedule A—Emergency Service and Service Schedule C—Coordination of Scheduled Maintenance of Generating Facilities to incorporate the parties' Order 84 language.

(2) Inserts a new Service Schedule B—Interchange Power, which supersedes the existing Service Schedule B, as amended.

(3) Inserts a new Service Schedule E—Short Term Power, which supersedes the existing Service Schedule E, as amended.

Copies of the filing were served upon Northern Indiana Public Service Company 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 October 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25705 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-681-000]

Puget Sound Power & Light Co.; Filing

September 24, 1984.

The filing Company submits the following:

Take notice that on September 17, 1984, Puget Sound Power & Light Company (Puget) tendered for filing a change in rates applicable to electric service rendered to nine wholesale customers under its existing Wholesale for Resale power Contracts. Puget's filing would change both of its wholesale rate schedules, one for large customers and the other for small customers. Puget Power states that the proposed changes would increase revenues from the nine wholesale customers by $216,430 based on the twelve-month period ending June 30, 1983.

Puget states that the proposed rate increase is necessary in order to recover a portion of the $657,570 overall revenue deficiency which exists at the present revenue level authorized in ER84-170-000.

Puget requests an effective date of November 16, 1984.

Copies of the filing were served upon Puget's wholesale customers.

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 October 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25706 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-472-000]

John G. Pless, Sr.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 24, 1984.

On August 28, 1984, John G. Pless, Sr., (Applicant), Post Office Box 517, Galax, Virginia 24333 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 550 kW Stewarts Creek Hydropower Project (P. 7465) will be located at the confluence of the North and South Fork Creeks in Carroll County, Virginia. The facility will consist of: two concrete box intake structures; two 2500-foot penstocks; a powerhouse with two turbine-generator sets; two trailraces; a 1500-foot transmission line that will connect to an existing Duke Power Company powerline; and appurtenant facilities. No other small power production facilities owned by the Applicant and using water power as an energy source are located within one mile of the facility. No electric utility or electric utility holding company has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25699 Filed 9-26-84; 8:45 am]

BILLING CODE 6717-01-M

Southwestern Power Administration

Extension of Integrated System Power Rates; Order Confirming and Approving Extension of Integrated System Power Rates on an Interim Basis

Correction

In FR Doc. 84-24345, beginning on page 36146 in the issue of Friday, September 14, 1984, make the following corrections:

(1) On page 36148, in column three, line four, the last word should read "capabilities".

(2) On page 36151, column one, in the last paragraph the issue date should read "29th day of August 1984".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-9-FRL-2681-4]

Reconsideration of EPA's Approval of the Nevada SIP for the Lake Tahoe Air Basin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of Petition for Reconsideration.

SUMMARY: This notice denies the State of California's petition for reconsideraton of EPA's approval of the Nevada State Implementation Plan (SIP) for carbon monoxide for the Lake Tahoe Air Basin.

EFFECTIVE DATE: This action is effective September 27, 1984.

ADDRESS: Copies of the technical support document and the State of California's comments are located at the EPA Region 9 office. The address for Region 9 office is listed under the caption "For Further Information Contact".

FOR FURTHER INFORMATION CONTACT: Wallace Woo, Chief, State Liaison Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7634; FTS 454-7634.

SUPPLEMENTARY INFORMATION:

Background

In response to the requirements specified in Part D of the Clean Air Act Amendments of 1977, the states of California and Nevada submitted nonattainment area plans designed to demonstrate attainment of the carbon monoxide (CO) standard in the Lake Tahoe Interstate Air Basin. EPA conditionally approved these plans on June 23, 1982 (47 FR 27065).

Because the Nevada SIP was conditionally approved, EPA allowed Nevada to rescind its Indirect Source Review (ISR) Regulations. Rescission of ISR rules is permitted if a state can satisfactorily demonstrate attainment and maintenance of the federal standards without such programs.

The June 23, 1982 final rulemaking required California and Nevada to correct certain plan deficiencies no later than December 20, 1982. For California, these deficiencies involved emission reduction estimates for the control strategies, evidence of legally adopted measures and further analysis of transportation controls. California requested and received an extension until 1987 for attaining the CO standard. Nevada was required to correct deficiencies relating to its 1982 attainment demonstration, including emission reduction estimates, documentation for the modeling analysis and evidence of adoption and implementation of the required control strategies.

SIP revisions for both states were submitted by the December deadline. Nevada submitted additional plan revisions on January 30 and May 5, 1983. EPA proposed approval of the California plan on February 3, 1983 (48 FR 5047) and the Nevada plan revisions on November 16, 1983 (48 FR 52093). For detailed evaluations of these plans, please refer to those Federal Register notices and their technical support documents.

On December 30, 1983 (9 days after the public comment period closed), the California Air Resources Board (CARB) commented that approval of the Nevada plan would have an adverse impact on California air quality and that Nevada had not met the conditions of approval. More detailed comments explaining this general concern were to be submitted later. EPA proceeded to final rulemaking approving both the California and Nevada Lake Tahoe SIPs without having received or considered California's supplemental comments. That notice, published on February 24, 1984 (49 FR 6897), specified that if California submitted any additional information to

document its concern, its comments would be treated as a petition for reconsideration. The CARB submitted supplementary comments on January 24, 1984. These comments have been evaluated by EPA and are the subject of this notice.

EPA Evaluation of California's Supplementary Comments

Most of the arguments raised in the CARB's January 24, 1984 comments were addressed in EPA's proposed or final rulemaking notices on the Nevada plan, particularly in the responses to comments received from the League to Save Lake Tahoe. The main points of both the League and the CARB are three-fold:

1. The Nevada plan did not adequately demonstrate attainment and maintenance of the CO standard.

Assumptions included in the plan's modeling analysis underestimated CO emissions in the area of predicted highest concentration.

2. EPA's approval of the Nevada plan was inconsistent with similar federal action taken on the California SIP for Lake Tahoe. The California SIP did not demonstrate attainment of the CO standard until 1987.

3. EPA did not consider the impact of emissions generated in Nevada on the attainment of the CO standard in California.

EPA believes the Nevada plan adequately demonstrates attainment and maintenance of the CO standard. The Nevada 1982 attainment demonstration contained in the May 5, 1983 submittal to EPA is based on the EPA approved Caline 3 model. It was verified by an ambient air and traffic monitoring study conducted during the winter season when the highest concentrations of carbon monoxide are expected. This monitoring provided the most recent data available for validating the model.

The CARB contends that Nevada's inputs to the model (involving stability classes, mobile source emission factors, roadway widths and conversion factors for 8 hour values) severely underestimate the CO values. EPA's analysis indicates that the CARB's contentions are not correct. Nevada employed stability classes which were determined by the EPA approved Pasquill method. Use of the meteorological data recorded during the 1983 special monitoring study for determining stability classes and a mixing zone for roadways would have resulted in lower expected concentrations. EPA also found that the May 5, 1983 conversion factors were consistent with monitored data from the 1983 special study and were appropriate (California critiqued factors included in an earlier modeling analysis). Nevada's use of low altitude emission factors did not invalidate the 1982 attainment demonstration and the technical support document to this notice describes in more detail EPA's analysis of these model inputs.

Maintenance of the CO standard was addressed by Nevada through the inclusion of control strategies in the SIP beyond those needed to show attainment. Nevada has also committed to a regular assessment of both growth and the effectiveness of the adopted strategies to ensure continued maintenance of the standards.

With respect to California's second point challenging the approval of the Nevada SIP because it is inconsistent with action taken on the California SIP for Lake Tahoe, EPA approved the California plan as it pertained only to that portion of the Lake Tahoe Basin. California employed different modeling inputs than Nevada. In its final rulemaking action, EPA noted that it would not find fault with California's interpretation of what are worst case conditions for the California portion of the nonattainment area. The use of conservative factors in estimating the required emission reductions would only result in attainment earlier than expected. While Nevada's modeling assumptions are different than California's, EPA approved their use since they are based on 1983 monitoring data.

The February 24, 1984 final rulemaking notice further discusses how violations of the CO standard on the California side do not discredit Nevada's attainment demonstration. Differences in source characteristics and traffic configurations can well account for the differences in CO emissions. Nevada employed a higher average traffic speed than did California. The figure was adequately documented by a traffic survey during the period of expected high concentrations. In summary, because carbon monoxide is the most localized of all criteria pollutants and because of the difference in traffic conditions in the Basin, EPA believes that its actions on the California and Nevada plans are not inconsistent.

With respect to California's third point regarding the impact of Nevada's emissions on attainment in California, EPA has taken into account interstate pollution effects to the extent required by section 110(a)(2)(E) and the regulations and case law interpreting and implementing that subsection, including *Connecticut* v. *EPA*, 696 F.2d 147 (2d Cir. 1982). Section 110(a)(2)(E) requires that a SIP submission contain adequate provisions prohibiting any *stationary source* within a state from emitting any air pollutant in amounts which interfere with the attainment or maintenance of ambient standards, prevention of significant deterioration, or visibility requirements in a neighboring state. The SIP must also insure compliance with section 126, which requires notification to neighboring states of new and existing major *stationary sources* which will have a significant effect on the air quality in neighboring states, and establishes additional permitting procedures for such major stationary sources.

There are no major stationary sources of carbon monoxide located in the Nevada portion of the Tahoe Basin. Nevada's New Source Review rules, approved by EPA on April 14, 1981 (46 FR 21758), ensure that new stationary sources will meet the section 110(a)(2)(E) requirements. In any event, the emissions that appear to concern the CARB are emissions from mobile sources, some of which do not even occur in Nevada. As stated above, the coverage of section 110(a)(2)(E) is limited to stationary sources. Under applicable EPA regulations, emissions from mobile sources that indirectly result from a facility are not counted in determining the emissions of the facility.

California also objected to EPA's original conditional approval of the Nevada SIP for Lake Tahoe. While EPA believes that it satisfactorily addressed these concerns in the June 23, 1982 final rulemaking notice, the fact that Nevada has since submitted SIP Revisions which were fully approved as meeting the requirements of the Act negates this California argument.

EPA Action

Based on a review of the CARB's supplementary public comments on February 24, 1984 (49 FR 6897) approval of the Nevada carbon monoxide SIP for Lake Tahoe, EPA finds that there is no justification to reverse its decision of approval. California's petition for reconsideration is denied.

Regulatory Process

The Administrator has certified that SIP approvals do not have a significant impact on a substantial number of small entities (See 46 FR 8709). The Office of Management and Budget has exempted this revision from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is

available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(Sec. 110, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410, 7501 to 7508 and 7601(a)))

Dated: September 19, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-25518 Filed 9-26-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 20, 1984.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Doris Peacock, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on this information collection should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-4814.

Title: Certification by Competent Engineer of Part 18 Devices

Action: Approval for existing collection in use without an OMB control number

Respondents: Businesses (including small businesses)

Estimated Annual Burden: 650 Recordkeepers; 1,950 Hours

Descriptions: Sections 18.80, 18.105(c)-(d), 18.141(d), 18.142(b), 18.182, and 18.183 of the Commission's Rules require certification by a competent engineer of compliance with established technical standards for certain industrial, scientific, or medical equipment. Technical data is gathered and a certification of compliance is posted or a log entry is made for each device operated under the applicable rule section.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-25673 Filed 9-26-84; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee); Working Group Meeting; SWAC-DBS

September 19, 1984.

Chairman: E. E. Reinhart (202) 863-4398

Date: Wednesday, September 26, 1984

Time: 11:00 A.M.—5:00 P.M.

Location: Satellite Television Corporation 955 L'Enfant Plaza, SW. 5th Floor A-V Conference Room

Agenda: Brief Organizational Meeting of Full Working Group with Sub-group Meetings to follow:

Sub-group A: Approval of RARC-83 Decisions

Sub-group B: Feeder Links for Regions 1 and 3

Sub-group C: Other BSS Bands for Planning

Sub-group D: DBS for Portable and Automobile Radios

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-25677 Filed 9-26-84; 8:45 am]

BILLING CODE 6712-01-M

[PR Docket Nos. 84-887 et al. (File Nos. 195-M-L-14, et al.)]

Applications; Murray Cohen, et al. Coast Stations, Local Services; Hearing Designation Order

In the matter of application of Murray Cohen for a new local service (VHF) coast station at Bethany Beach, Delaware (PR Docket No. 84-887; File No. 195-M-L-14); application of Niagara Communications, Inc. for a new local service (VHF) coast station at Avalon, New Jersey (PR Docket No. 84-888; File No. 290-M-L-113); application of Murray Cohen for a new local service (VHF) coast station at Ventnor City, New Jersey (PR Docket No. 84-889; File No. 137-M-L-93); application of Niagara Communications, Inc. for a new local service (VHF) coast station at Salisbury, Maryland (PR Docket No. 84-890; File No. 292-M-L-113).

Adopted: September 13, 1984.

Released: September 17, 1984.

1. The application of Murray Cohen (Cohen) to serve Ventnor City cleared public notice December 19, 1983. The application of Niagara Communications, Inc. (Niagara) to serve Salisbury cleared public notice February 27, 1984. Analysis of the coverage areas of the proposed stations by the Licensing Division of the Private Radio Bureau indicated the applications were mutually exclusive because of electrical interference in accordance with § 81.303 of the rules as computed under Subpart R of Part 81 of the rules. The applications were placed on public notice as mutually exclusive on March 9, 1984. Since no other frequencies were available, the licensing staff attempted to resolve the frequency conflict by an exchange of correspondence in April of 1984. Because the conflict could not be resolved these applications must be designated for comparative hearing.

2. The application of Cohen to serve Bethany Beach cleared public notice February 27, 1984. The application of Niagara to serve Avalon cleared public notice January 16, 1984. These applications are also mutually exclusive for the same reason the Salisbury and Ventnor City applications are mutually exclusive. Accordingly, they were put on public notice as mutually exclusive on January 27, 1984.

3. No petitions to deny were filed against any of the four applications. Because of the commonality of applicants and issues, all four of these applications are being consolidated for comparative hearing in a single proceeding pursuant to § 1.227 of the rules.

4. The four captioned applications propose to establish new local service (VHF) public coast stations on the mid-Atlantic coast of the United States. These stations provide ship/shore VHF radiotelephone service which is primarily of a local nature rather than of a regional or high seas nature.[1]

5. The Cohen and Niagara applications raise conflicting claims regarding the best way to serve the public interest, convenience and necessity. Based on filings associated with the applications, it appears that Cohen proposes a continuous service from "New York to the Virginia area."[2] Niagara, on the other hand, emphasizes local, toll-free coast station locations which would minimize land line charges for the service. Consequently, it is necessary to determine which applications will provide the best service option to mid-Atlantic users in this service.

[1] *See* § 81.3 (i), (k) and (l) of the rules, 47 CFR 81.3 (i), (k) and (l).

[2] *See* Cohen letter dated February 23, 1984, File No. 137-M-L-93 (file).

6. In view of the foregoing, it is ordered, That pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, and § 0.331 of the Commission's rules, the above-captioned applications are hereby designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order on the following comparative issues:

a. To determine the facts with respect to the facilities, rates, practices, interconnection with land line facilities and services of each applicant, including the geographical area proposed to be served by each.

b. To determine the nature and amount of traffic to be handled by each of the proposed stations, and from what sources such traffic will be derived.

c. To determine the proposed methods of operating local service public coast stations by Cohen and Niagara.

d. To determine, in light of the evidence adduced on issues (a), (b) and (c) above in light of existing service available which applications or combination of applications should be granted in the public interest, convenience and necessity.

7. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to §1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

Federal Communications Commission.

Robert S. Foosaner,

Chief, Private Radio Bureau.

[FR Doc. 84-25682 Filed 9-26-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 84-896; (File No. BPCT-840426KH) and MM Docket No. 84-897; (File No. BPCT-840628KJ)]

Ralph W. Gabbard and Hobart C. Johnson for Construction Permit for New TV Station Pikeville, KY; Hearing Designation Order

Adopted: September 14, 1984.
Released: September 20, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Ralph W. Gabbard (Gabbard) and Hobart C. Johnson for authority to construct a new commercial television station on Channel 51, Pikeville, Kentucky.

2. Section II, Page 3, Item 7(d), FCC Form 301, inquires whether an applicant or any party to the application had any interest in a broadcast application in any Commission proceeding which left unresolved character issues against that applicant. Gabbard has not answered Item 7(d). Gabbard will be required to submit his response to Item 7(d) to the presiding Administrative Law Judge within 20 days of the date of the release of this Order.

3. No determination has been made that the tower heights and locations proposed by the applicants would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

a. To determine whether there is a reasonable possibility that the tower height and location proposed by each applicant would constitute a hazard to air navigation.

b. To determine which of the proposals would, on a comparative basis, better serve the public interest.

c. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, That Gabbard shall submit a response to Section II, Page 3, Item 7(d), FCC Form 301, to the presiding Administrative Law Judge within 20 days of the date of the release of this Order.

7. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to Issue 1.

8. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

9. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-25681 Filed 9-26-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Inter Community Bancorp, 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 (12 CFR 225.14) 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 October 18, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Inter Community Bancorp,* Springfield, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Inter

Community Bank, Springfield, New Jersey.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Paintsville Bancshares, Inc.*, Paintsville, Kentucky; to become a bank holding company by acquiring 83 percent of the voting shares of The First National Bank of Paintsville, Paintsville, Kentucky.

2. *Northern Kentucky Trust Corp., Inc.*, Alexandria, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of Northern Kentucky Bank & Trust, Inc., Alexandria, Kentucky.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Elmore County Banchares, Inc.*, Tallassee, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Tallassee, Tallassee, Alabama.

2. *The Mildred Weedon Blount Educational & Charitable Foundation, Inc.*, Tallassee, Alabama; to become a bank holding company by acquiring 41.11 percent of the voting shares of Elmore County Bancshares, Inc., Tallassee, Alabama, thereby indirectly acquiring The Bank of Tallassee, Tallassee, Alabama.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Mid-Illinois Bancshares, Inc.*, Mattoon, Illinois; to acquire 100 percent of the voting shares of State Bank of Sullivan, Sullivan, Illinois.

E. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Sheridan Bancshares, Inc.*, Sheridan, Arkansas; to become a bank holding company by acquiring at least 56 percent of the voting shares of First National Bank of Sheridan, Sheridan, Arkansas.

2. *Marshall Financial Corporation*, Byhalia, Mississippi; to become a bank holding company by acquiring 80 percent or more of the voting shares of Citizens Bank, Byhalia, Mississippi. Comments on this application must be received not later than October 12, 1984.

F. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Carlos Bancshares, Inc.*, Carlos, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Carlos, Carlos, Minnesota. Comments on this application must be received not later than October 12, 1984.

G. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Congress National Bancshares, Inc.*, Austin Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Congress National Bank, Austin, Texas.

2. *Hodge Bancshares, Inc.*, Hodge, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Hodge Bank & Trust Company, Hodge, Louisiana.

Board of Governors of the Federal Reserve System, September 21, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25610 Filed 9-26-84; 8:45 am]

BILLING CODE 6210-01-M

Norstar Bancorp Inc. et al., Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 18, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Norstar Bancorp Inc.*, Albany, New York, and *Northeast Bancshares Corporation*, Portland, Maine; to acquire 21.6 percent of Maine Information Systems, Inc., Bangor, Maine, thereby engaging in data processing activities for financial institutions.

Board of Governors of the Federal Reserve System, September 21, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25611 Filed 9-26-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Report on New System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of new system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to set up a new system of records that will be kept by GSA. The system of records, Debarred, Suspended, and Ineligible Contractors, GSA/OAP-1, is being established to assemble information on ineligible firms and individuals. Information regarding such contractors is presently available in GSA's Consolidate List of Debarred, Suspended, and Ineligible Contractors. This consolidated list was not previously reported as a system of records as individuals on the list were considered acting in the capacity of an entrepreneur or a sole proprietorship. However, this consolidated list is being computerized, allowing access to current information through a data search. Access can be obtained to information on either a company or an individual or to a cross-reference to individuals associated with a company. Because of this type of access, we are now considering this system subject to the provisions of the Privacy Act. A new system report was filed with the President of the Senate, the Speaker of

the House, and the Office of Management and Budget on September 17, 1984. A waiver of the 60-day advance notice requirements of OMB Circular A-108 has been requested from the Office of Management and Budget.

DATES: Any interested party may submit written comments about this proposed system. Comments must be received on or before October 29, 1984. The new system of records shall become effective without further notice on October 29, 1984 unless comments are received that would result in a contrary decision.

ADDRESS: Address comments to General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. William Hiebert, GSA Privacy Act Officer, telephone (202) 535-7647.

Background

The purpose of this system is to assemble information to ensure that Federal contracts are awarded to responsible firms and individuals.

The purposed new system of records is as follows:

GSA/OAP-1

SYSTEM NAME:

Debarred, Suspended, and Ineligible Contractors.

SYSTEM LOCATION:

This system of records is located in the Office of GSA Acquisition Policy and Regulations at 18th and F Streets, NW, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals and firms excluded from the Federal procurement process by any Federal executive agency.

b. Individuals and firms referred to the Office of GSA Acquisition Policy and Regulations by GSA offices for consideration to debar or suspend under current procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include lists of individuals and firms who have been excluded from the Federal procurement process; correspondence from Federal agencies identifying excluded individuals and firms and the cause for exclusion from the Federal procurement process; and case files on individuals and firms referred to the Office of GSA Acquisition Policy and Regulations for consideration to suspend and/or debar.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act of 1949, as amended, 41 U.S.C. 253(b); Federal Acquisition Regulation (FAR) 9.4; Office of Federal Procurement Policy letter 82-1, June 24, 1982.

PURPOSE(S):

To assemble information to ensure that Federal contracts are awarded to responsible firms and individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine use statements C and E described in the appendix following the GSA notices apply to this system of records. In addition, the following statements apply:

a. To disclose information to contracting officers and other Federal, State, and local employees involved in procuring goods and service with Federal funds.

b. To disclose information to a Federal, State, or local agency responsible for investigating, prosecuting enforcing, or carrying out a statute, rule, regulation, or order, where the General Services Administration becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to another Federal agency or a court when the Government is party to a judicial proceeding.

d. To disclose information to an expert, consultant, or contractor in the performance of a Federal duty.

e. To disclose information to an appeal or hearing examiner, equal employment opportunity investigator, arbitrator, or other official engaged in investigating or settling a grievance, complaint, or appeal filed by a contractor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and machine listings in file folders; disc storage in automated electronic system.

RETRIEVABILITY:

File by case number, then name of firm and/or individual.

SAFEGUARDS:

When not in use by an authorized person, these records are stored in lockable file cabinets or in secured rooms. Access to electronic records is controlled through an I.D./password security system.

RETENTION AND DISPOSAL:

Disposal of records is described in the HB, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of GSA Acquisition Policy and Regulations, General Services Administration (VP), 18th and F Streets, NW, Washington, DC 20405.

NOTIFICATION PROCEDURE:

Firms and individuals may obtain information by contacting the system manager at the above address.

RECORD ACCESS PROCEDURE:

Requests from firms and individuals for access to records should be addressed to the system manager as noted above. For identification requirements see the agency regulations outlined in 41 CFR 105-64.

CONTESTING RECORD PROCEDURES:

GSA rules for contesting the contents and appealing initial decisions are issued in 41 CFR 105-64.

RECORD SOURCE CATEGORIES:

Federal agencies and State and local law enforcement officials.

Dated: September 19, 1984.

William W. Hiebert,

Acting Director, Information Management Division.

[FR Doc. 84-25620 Filed 9-26-84; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84D-0313]

Prescription Drugs Marketed Without Approved New Drug Applications; Revised Compliance Policy

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised FDA Compliance Policy Guide (CPG) 7132c.02. This CPG, as revised, establishes FDA enforcement priorities and policies with respect to all marketed unapproved prescription drug products. FDA has revised this CPG to improve public health protection in light of recent infant deaths that appear to have been associated with the use of E-Ferol, a previously marketed, unapproved prescription vitamin E drug product.

DATE: The revisions to CPG 7132c.02 will become effective after November 13, 1984.

ADDRESSES: Written comments on or requests for single copies of revised CPG 7132c.02 should be identified with

Docket No. 84D-0313 and directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

Requests for an opinion of the applicability of revised CPG 7132.c02 to a specific product should be addressed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, Rm. 216, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION:

I. Background

A. FDA's Compliance Policy For Unapproved Prescription Drug Products Under the Federal Food, Drug, and Cosmetic Act

FDA's compliance policy regarding unapproved prescription drug products reflects various legislative changes in the statutory authority for the Federal regulation of drugs and the agency's implementation of these changes. The Food and Drugs Act of 1906 first brought drug regulation under Federal law. Under that statute, the government did not have authority to evaluate a drug before it could be marketed. Instead, the government had to initiate court proceedings to remove a drug product from the market if it was adulterated or misbranded.

In 1938, the Federal Food, Drug, and Cosmetic Act was enacted. This act established a premarket review procedure for new drugs. The act defined a new drug as one not generally recognized as safe for its intended uses, or, if so recognized on the basis of investigations, one that had not been marketed to a material extent or for a material time for such uses. The act required a manufacturer to obtain an effective new drug application (NDA) before marketing a new drug. The NDA was required to contain data to show that the drug was safe for its intended uses and it became effective if, after a certain period of time, FDA did not issue a finding that the safety of the drug had not been demonstrated. However, the 1938 act exempted certain drug products from the new drug definition if they were marketed under the 1906 act and their conditions of use remained unchanged (1938 grandfather exemption; section 201(p)(1) of the act (21 U.S.C. 321(p)(1))).

Under the 1938 act, FDA originally required all new products to be cleared for marketing through the NDA procedures. This policy led to a growing number of NDA's requiring agency review. To deal with this problem, which was aggravated by wartime staff shortages, the agency developed a policy of providing advice on the need for NDA's for certaion products. Consequently, many products were introduced to the market without effective NDA's because FDA advised the manufacturers that the products were generally recognized as safe (i.e., not new drugs). Such advice was often based on a determination that the products were identical, similar, or related to one or more drug products with effective NDA's. Many other products were marketed without effective NDA's because their manufacturers concluded, without FDA advice, that the products were generally recognized as safe or subject to the grandfather exemption.

In 1962, the new drug provisions of the 1938 act were amended in several important ways. First, the 1962 amendments required that new drugs be shown to be effective, as well as safe, for their intended uses. Under the 1962 amendments, a new drug was defined as one not generally recognized as both safe and effective for its intended uses, or, if so recognized on the basis of investigations, one that had not been marketed to a material extent or for a material time for such uses. However, the 1962 amendments exempted certain previously marketed products from the new effectiveness provisions of the new drug definition (1962 grandfather exemption; section 107(c)(4) of the act, see note following 21 U.S.C.A. 321).

Second, the 1962 amendments required that the manufacturer of a new drug obtain affirmative approval of an NDA before marketing. Approval was required to be supported by substantial evidence of the drug's effectiveness for its intended uses, as well as evidence of the drug's safety for its intended uses. NDA's that became effective solely on the basis of safety between 1938 and 1962 were "deemed approved" for at least 2-year transitional period, after which FDA was required to withdraw approval of those NDA's for drug products that the agency found lacking substantial evidence of effectiveness.

Under the definition of a new drug as established by the 1962 amendments, most marketed unapproved drug products were required to be regarded as new drugs because these products were not generally recognized as effective. For this reason, FDA in 1968 revoked all of its prior opinions that certain drug products were not new drugs.

The 1962 amendments required that FDA evaluate the effectiveness of drug products cleared for marketing through the NDA procedures prior to 1962. With respect to prescription drugs, this review became known as the Drug Efficacy Study Implementation (DESI) project. Under DESI, the agency has been evaluating approximately 3,500 pre-1962 prescription drug products with NDA's. In addition, the DESI review has addressed an even larger number of unapproved prescription drug products that are considered identical, similar, or related to the pre-1962 products with NDA's. The DESI review is nearing completion. Once completed, all prescription drug products first marketed between 1938 and 1962 on the basis of effective NDA's, including identical, similar, or related unapproved prescription drug products, will either be approved as safe and effective, or removed from the marketplace.

FDA's compliance policy regarding the marketing of unapproved prescription drug products that are covered by the DESI review was set forth in CPG 7132c.02. FDA announced the availability of this CPG in the Federal Register of September 23, 1976 (41 FR 41770). This CPG recognized that all unapproved prescription drug products covered by the DESI review are new drugs. This CPG established priorities for regulatory action on these products once final determinations were made regarding their effectiveness. Enforcement action was generally deferred on these products until the relevant final determinations were made. However, the CPG provided for immediate enforcement action under exceptional circumstances, as, for example, when FDA received significant new information questioning the safety or efficacy of a drug.

With respect to marketed pre-1962 unapproved prescription drugs not covered by the DESI review, FDA has evaluated particular products in this class on an as needed basis (e.g., when significant new information raises questions about the safety or effectiveness of such a drug). In the future, FDA intends to develop a DESI-like program, consistent with its resources, to evaluate these products to ensure their compliance with the new drug provisions of the act.

Although not covered by CPG 7132c.02, FDA has followed a similar compliance policy for marketed unapproved pre-1962 prescription drugs not covered by the DESI review. These products were scheduled for regulatory action, if appropriate, once a determination was made regarding their

effectiveness, new drug status, or grandfather status. Enforcement action was generally deferred on these products until the relevant determinations were made, unless new information indicated that particular products should be immediately removed from the market or more closely regulated.

With respect to new drug products first marketed after 1962 and not identical, similar, or related to a pre-1962 drug product, FDA has required that these products have approved NDA's before being marketed. Therefore, FDA has initiated immediate enforcement action against such products marketed without approved NDA's. FDA has also initiated immediate enforcement action against any unapproved product that is identical or related to a product approved on the basis of safety and efficacy after 1962.

These compliance policies have permitted manufacturers to market new unapproved products or to change existing unapproved products after 1962 as long as the new or changed products were identical, similar, or related to a pre–1962 drug product of unresolved regulatory status. These policies were designed to provide equitable treatment among competing firms and were believed to be adequate, as interim policies, because the new or changed products were presumed to be safe by virtue of their similarity to known products without reported safety problems. These policies, however, when formulated some years ago, did not anticipate the significant technological changes the drug industry is now undergoing in regard to drugs being used in significantly different doses, different routes of administration, and in very high risk patients, such as neonates. Based on the recent E-Ferol incident, described below, it no longer appears reasonable to presume the safety of a new drug product simply on the basis of its being related to an unapproved pre-1962 prescription drug currently on the market.

B. The E-Ferol Incident

E-Ferol, a single active ingredient vitamin E aqueous solution intended for intravenous use, was first marketed in November 1983. The distributor labeled and promoted the product for use in premature infants to help prevent blindness that could result from excess oxygen adminstration and to prevent any conditions associated with vitamin E deficiencies. Neither the manufacturer nor the distributor of E-Ferol sought FDA approval before marketing the product.

FDA first learned of E-Ferol's existence in November 1983 due to outside inquiries concerning the drug product's regulatory status. At that time FDA concluded that the product, although different, was related to other pre-1962 vitamin drug products of unresolved regulatory status and, thus, not yet scheduled for enforcement action under current compliance policies (described above). The agency, therefore, responded to inquiries by stating that E-Ferol had not been approved by FDA and that the distributor was marketing the product under its own responsibility. At the time of these inquiries, FDA had not received any reports of adverse reactions associated with the use of E-Ferol.

On April 2, 1984, the Centers for Disease Control of the Department of Health and Human Services informed FDA that it had recently received reports from hospitals in Ohio and Tennessee suggesting a possible association between the use of E-Ferol and the deaths of premature infants. FDA promptly investigated this matter and, within days, obtained the distributor's agreement to recall all stocks of E-Ferol. The recall, in turn, was conducted expeditiously with 100 percent accountability of the recalled product.

Because of this incident, FDA has reevaluated its policies for regulating unapproved pre-1962 drugs. Based upon this reevaluation, the agency has concluded that its previous policy of deferring regulatory action on new or changed versions of unapproved prescription drug products that are similar or related to, but different from, a pre-1962 product whose regulatory status is unresolved, is not adequate to protect the public health. Accordingly, the agency is revising its compliance policy to indicate that FDA may take immediate enforcement action against such products.

II. Revised Compliance Policy

The agency has revised CPG 7132c.02 by adding statements specifying that the guide applies to all marketed unapproved prescription drug products (not just those covered by DESI) and by adding two new exceptions to permit FDA to take enforcement action ahead of established priorities.

Under the two new exceptions, the agency may immediately initiate regulatory action against any marketed unapproved prescription drug product as an unapproved new drug, and against those persons who cause the marketing of such a product, if:

(1) The drug product is first marketed after November 13, 1984, (new product) or the drug product is changed after November 13, 1984, (changed product); and

(2) The new product or changed product differs, as described below, from a prescription drug product that is marketed on or before November 13, 1984, and for which FDA has deferred enforcement action pending a determination regarding its effectiveness, new drug status, or grandfather status (existing product of unresolved regulatory status); and

(3) The differences in the new product or the changed product are not the result of complying with a compendial standard or a requirement of FDA.

The new product or changed product will be considered different if the new product or changed product differs from an existing product of unresolved regulatory status in: (1) Formulation (as described below); (2) dosage or strength; (3) dosage form; (4) route of administration; (5) indications for use; or (6) intended patient population.

A formulation will be considered different if:

(1) The product contains a different active ingredient;

(2) The product contains a different quantity of an active ingredient;

(3) The product is a nonoral dosage form other than a topical preparation and it contains one or more different inactive ingredients, different amounts of inactive ingredients, or different proportions of inactive ingredients to the extent that the names, amounts, or proportions of inactive ingredients are required by regulation to be disclosed in labeling (see 21 CFR 201.100(b)(5)); or

(4) The product is an oral dosage form or a topical preparation and it contains one or more inactive ingredients not customarily used in such a product.

Dosage or strength will be considered different if the individual recommended dose is different or if the frequency of administration of each individual dose is different. Examples of different dosage forms include, but are not limited to, capsules, tablets, syrups, oral suspensions, solutions for intramuscular injections, suspensions for intramuscular injections, solutions for intravenous injections, suppositories, ointments, creams, and aerosols. Examples of product types that use different routes of administration include, but are not limited to, oral products, topical products, inhalation products, suppositories, intramuscular injectables, and intravenous injectables.

Differences in indications for use or intended patient population may arise from statements made in any section of the labeling. For example, statements

made in the ACTIONS or CLINICAL PHARMACOLOGY sections may render the drug different if these statements suggest use for a different purpose or a different patient population, even if the specific use or patient population is not identified in the INDICATIONS section. Similarly, statements made in the DOSAGE AND ADMINISTRATION section can render the drug different if they recommend a particular dosage for a different purpose or a different patient population.

The agency has also made several technical revisions to the CPG. These technical revisions update the CPG and clarify existing enforcement policy.

Revised CPG 7132c.02 is available for public examination in the Dockets Management Branch (address given above) between 9 a.m. and 4 p.m., Monday through Friday. Single copies of revised CPG 7132c.02 may also be obtained from the Dockets Management Branch.

Interested persons may submit written comments on the revised CPG to the Dockets Management Branch. Comments will be considered in determining the need for amending the CPG. Comments should be in two copies except that individuals may submit single copies. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under 21 CFR 10.85 (d)(3) and (g).

Dated: September 19, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 84-25612 Filed 9-26-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82D-0164]

New Animal Drugs for Use in Poultry Feeds for Pigmentation; Availability of Revised Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised guidelines prepared by the Center for Veterinary Medicine (CVM). The guidelines, revised March 1984, describe the type of data required to establish effectiveness of drugs used in poultry feed for pigmentation. Comments submitted in response to the notice of availability of the March 1982 draft revised guidelines were considered in the development of the March 1984 revision.

ADDRESS: The March 1984 revised guidelines and related materials are available for public examination at, additional written comments may be submitted to, and requests for single copies may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: The Federal Food, Drug, and Cosmetic Act (the act) requires that a new animal drug be the subject of an approved new animal drug application (NADA) before it may be marketed in interstate commerce. Section 512(b)(1) of the act (21 U.S.C. 360b(b)(1)) requires that each NADA include full reports of investigations that show that the drug is safe and effective for use. Section 512(d) of the act (21 U.S.C. 360b(d)) describes the criteria that must be met before a new animal drug may be approved, including that it be safe and effective for use as labeled. Section 514.1(b)(8) of the animal drug regulations (21 CFR 514.1(b)(8)) describes the effectiveness requirements for an NADA.

In the **Federal Register** of July 20, 1982 (47 FR 31429), FDA published a notice of availability of the March 1982 draft revised guidelines for effectiveness evaluation of new animal drugs used in poultry feeds for pigmentation. Comments were received from three persons. Following evaluation of the comments, the guidelines were revised. CVM's responses to the comments have been filed with the Dockets Management Branch. The revised guidelines (dated March 1984) supersede the 1975 Preclearance Guidelines for Production Drugs as regards uses for new animal drugs in poultry feeds to enhance carcass or egg yolk pigmentation.

The notice of availability is issued under § 10.90(b) (21 CFR 10.90(b)), which provides for use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. If an applicant believes that alternative procedures also apply, a guideline does not preclude the applicant from pursuing those alternative procedures. Under such circumstances, however, the agency encourages applicants to discuss the alternative procedures in advance with CVM to prevent the expenditure of money and effort for work that may later be found to be unacceptable.

The guidelines are available for public examination at, and requests for single copies may be sent to, the Dockets Management Branch (HFA-305) (address above).

Interested persons may, at any time, submit additional written comments on the guidelines to the Dockets Management Branch. Such comments will be considered in determining if further revisions of the guidelines are required. Respondents should submit two copies (except that individuals may submit single copies) identified with Docket No. 82D-0164. Comments and all related materials may be seen in the Dockets Management Branch from 9 a.m. to 4 p.m., Monday through Friday.

Dated: September 20, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-25613 Filed 9-26-84; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing: Reconsideration of the Disapproval of an Illinois State Plan Amendment

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

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on November 6, 1984, in Chicago, Illinois, to reconsider our decision to disapprove Illinois State Plan Amendment 83-26.

Closing Date: Requests to participate in the hearing as a party must be received by October 12, 1984.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Illinois State Plan Amendment 83-26.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Illinois's proposal to limit medical bills which an individual is permitted to apply toward his spenddown violates section 1902(a)(17) and 1902(f) of the Social Security Act and Federal regulations at 42 CFR 435.831 and 435.732(c).

HCFA has interpreted regulations at 42 CFR 435.831 and 435.732 which implement Federal law at sections 1902(a)(17) and 1902(f) of the Social Security Act as requiring States to apply any incurred medical expenses which are a current liability of the individual and which have not previously been used in meeting a spenddown liability toward spenddown. Under this interpretation, this is regardless of when the expenses were incurred. Thus, a medical bill that is a current liability cannot be excluded from spenddown strictly because it was incurred more than 6 months prior to the month of application of Medicaid. Illinois' proposal would apply a strict cutoff period for the application of medical expenses. Therefore, HCFA has determined preliminarily that Illinois SPA 83-26 violates Federal statute at sections 1902(a)(17) and 1902(f) of the Social Security Act and Medicaid regulations at 42 CFR 435.831 and 435.73(d).

The notice to Illinois announcing an administrative hearing to reconsider our disapproval of the State Plan Amendment reads as follows:

Mr. Gregory L. Coler,
Director, Department of Public Aid 316, South Second Street, Springfield, Illinois 62726

Dear Mr. Coler: This is to advise you that your request for reconsideration of the decision to disapprove the Illinois State Plan Amendment 83-26 was received on August 23, 1984. You have requested a reconsideration of the disapproval of whether this plan amendment, which would change the budget period from 6 months to 1 month and would also limit medical bills which an individual is permitted to apply toward his spenddown, conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on November 6, 1984, at 10 a.m., in the 6th Floor Conference Room, 175 West Jackson Boulevard, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: September 20, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 84-25710 Filed 9-26-84; 8:45 am]

BILLING CODE 4120-03-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration (SSA). Section SW of the SSA statements, as published in the **Federal Register** on August 9, 1984, describe the organization and functions of SSA's Office of Supplemental Security Income.

Notice is given that section SW.20, Item D. 3. is amended to remove the word "disability."

The revised material reads as follows:

D. The Division of Program Requirements Policy ( ):

3. Develops, evaluates and maintains the eligibility requirements for other eligibility factors including citizenship and residency, dependents, other resources and programs to achieve self-support.

Dated: September 18, 1984.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 84-25666 Filed 9-26-84; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Notices of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise three notices describing systems of records maintained by the Bureau of Reclamation. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the publication of the material in the **Federal Register** on May 2, 1979 (44 FR 25703) and September 29, 1983 (48 FR 44662). The three revised notices are published in their entirety below.

New compatible routine disclosures are being added to the system notices. Disclosures relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit to Federal agencies that have requested such information, or to Federal, State, or local agencies to obtain such information have been added to system notices numbered WBR-2 and WBR-36. Disclosures to Federal agencies to collect, through administrative or salary offset, debts owed the Federal government are added to system notices numbered WBR-2 and WBR-36. A new routine disclosure to the General Services Administration to document problems with contract movers is being added to system notice number WBR-5.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. Therefore, written comments on these proposed changes can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), U.S. Department of the Interior, Washington, D.C. 20240. Comments received within 30 days of publication in the **Federal Register** will be considered. The notices shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: September 20, 1984.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/WBR-2

SYSTEM NAME:

Accounts Receivable—Interior, Reclamation-2.

SYSTEM LOCATION:

Bureau of Reclamation Headquarters Offices, Engineering and Research Center, Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, Southwest, Upper Missouri, Lower Missouri. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals owing monies to the Bureau. Records in this system pertaining to individuals contain principally proprietary information concerning sole proprietorships, but may also reflect personal information. System also maintains records concerning corporations and other business entities, which may contain personal information. Only those records reflecting personal information are subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statements of account, bills for collection, and records related to amounts owed to the Bureau.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3701, et. seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to document Bureau accounts receivable. Disclosures outside the Department of the Interior may be made: (1) To the Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; (4) to non-Federal auditors under contract with the Department of Interior or Energy or water user and other organizations with which the Bureau of Reclamation has written agreements permitting access to financial records to perform financial audits; (5) where relevant or necessary to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit, information may be disclosed: (a) To a Federal agency that has requested the information, or (b) to a Federal, State, or local agency to enable the Department of the Interior to obtain information from such agency; (6) to a Federal agency for the purpose of collecting a debt owed the Federal Government through administrative or salary offset.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

In accordance with requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

The records are maintained for 6 years and 3 months after close of the fiscal year, unless involved in litigation. Disposal is in accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officers. Bureau of Reclamation Headquarters Offices, Engineering and Research Center, Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, Southwest, Upper Missiour, Lower Missouri. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of a record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURE:

Written petitions for amendment should be addressed to the System Manager at the appropriate office listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals having contracts or agreements with the Bureau to repay monies owed the Bureau.

INTERIOR/WBR-5

SYSTEM NAME:

Claims—Interior, Reclamation—5.

SYSTEM LOCATION:

Bureau of Reclamation Headquarters Offices, Engineering and Research Center, Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, Southwest, Upper Missouri, Lower Missouri. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed tort, employee, or appropriation act claims,and claims under the Teton Dam Disaster Assistance Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include claims and supporting documents submitted, information developed during investigations of claims, and final disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, 28 U.S.C. 2671–2680; Military Personnel and Civilian Employees' Claims Act, 31 U.S.C. 3701, 3721; Public Works for Water and Power Development and Energy Research Appropriation Act, 1977, Pub. L. 94–355, 90 Stat. 889; Teton Dam Disaster Assistance Act, Pub. L. 94–400, 90 Stat. 1211; Supplemental Appropriation Act, 1977, Pub. L. 94–438, 90 Stat. 1415; and annual Energy and Water Development Appropriation Acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to establish the facts and circumstances of each claim, compile statistical data, and evaluate claims. Disclosures outside the Department of the Interior may be made: (1) To Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; (4) where relevant or necessary to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit, information may be disclosed: (a) To a Federal agency that has requested the information, or (b) to a Federal, State, or local agency to enable the Department of the Interior to obtain information

from such agency; (5) to the Soil Conservation Service, Farmers Home Administration, and Agricultural Stabilization and Conservation Service of the Department of Agriculture; Federal Emergency Management Agency, Army Corps of Engineers, and Department of Housing and Urban Development to assure that benefits to claimants have not been duplicated by the several agencies involved in disaster programs; (6) to the Department of Treasury (IRS) and State revenue and taxation departments relative to compensation for loss of salary or income; (7) to the Small Business Administration, Farmers Home Administration (USDA), and Department of Housing and Urban Development regarding loans secured through those agencies; (8) to GSA to document problems with GSA contract movers which result in claims against Reclamation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By claimant's name.

SAFEGUARDS:

In accordance with requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Claims Officers. Bureau of Reclamation Headquarters Offices, Engineering and Research Center, Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, Southwest, Upper Missouri, Lower Missouri. See appendix for addresses.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of a record(s) should be written to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Claimants. Investigations conducted by Reclamation officials and contractors, officials of the Department of the Interior, and State and local governments.

INTERIOR/WBR-36

SYSTEM NAME:

Travel Vouchers—Interior, Reclamation—36

SYSTEM LOCATION:

Bureau of Reclamation Headquarters Offices, Engineering and Research Center, Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, Southwest, Upper Missouri, Lower Missouri. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual Reclamation employees who have traveled on official business.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payment data for official travel performed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is for payment of travel and transportation expenses. Disclosures outside the Department of the Interior may be made: (1) To the Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; (4) where relevant or necessary to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit, information may be disclosed: (a) To a Federal agency that has requested the information, or (b) to a Federal, State, or local agency to enable the Department of the Interior to obtain information from such agency; (5) to a Federal agency for the purpose of collecting a debt owed the Federal Government through administrative or salary offset.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

In accordance with requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

Records are maintained for 6 years and 3 months after the close of the fiscal year, unless involved in litigation. Disposal is in accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Finance Officers. Bureau of Reclamation Headquarters Offices, Engineering and Research Center, Regional Office: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, Southwest, Upper Missouri, Lower Missouri. See appendix for addresses

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of a record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be addressed to the appropriate office listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained.

[FR Doc. 84-25615 Filed 9-26-84; 8:45 am]
BILLING CODE 4310-09-M

Preliminary Determination To Extend Certification of No Adverse Impact on Theodore Roosevelt National Park and Lostwood National Wildlife Refuge Under Section 165(d)(2)(C)(iii) of the Clean Air Act

AGENCY: Office of the Secretary, Interior.

ACTION: Request for comments regarding the preliminary determination to extend the Federal Land Manager's September 1982 certification of no adverse impact under section 165(d)(2)(C)(iii) of the Clean Air Act with respect to two Prevention of Significant Deterioration permits under consideration for extension by the North Dakota State Department of Health.

SUMMARY: On September 20, 1982 (47 FR 41480), the Department of the Interior announced the final determination made by the Federal Land Manager of Theodore Roosevelt National Park and Lostwood National Wildlife Refuge that five proposed sources in North Dakota subject to Prevention of Significant Deterioration of air quality requirements (PSD) would not adversely affect the resources of the park and refuge (wilderness portion). The Federal Land Manager made the final determination after full consideration of the best available information and the public comments received on the issues involved. On January 12, 1983, the North Dakota State Department of Health (NDSDH) issued Air Pollution Control Permits to Construct to the five sources. The Nokota Company (Nokota) and Basin Electric Power Cooperative (Basin Electric), two of the sources, have recently requested that the NDSDH grant an eighteen-month extension of the permits issued for their respective proposed coal-to-methanol plant in Dunn County, North Dakota and electric generating unit in Mercer County, North Dakota. The purpose of this notice is to notify the interested public of the Federal Land Manager's preliminary determination to extend the certification of no adverse impact with respect to these two sources and to request public comments regarding this preliminary determination.

DATE: Comments must be received on or before October 29, 1984.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Chief, Permit Review and Technical Support Branch, National Park Service-AIR, P.O. Box 25287, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Mark A. Scruggs, Air and Water Quality Division, National Park Service-AIR, P.O. Box 25287, Denver, CO 80225, telephone number (303) 234-6620.

SUPPLEMENTARY INFORMATION: The Federal Land Manager (FLM) has the affirmative responsibility under section 165(d)(2)(B) of the Clean Air Act (CAA) to protect the air quality related values of any lands within an area designated as a PSD class I area. A review by the FLM in 1982 of Nokota's proposed coal-to-methanol project and Basin Electric's generating unit indicated that the projects would not adversely affect the air quality related values of Theodore Roosevelt National Park or Lostwood National Wildlife Refuge (widerness portion), which are both designated as PSD class I areas. Therefore, based on this review, on September 15, 1982, the FLM certified under section 165(d)(2)(C)(iii) of the CAA that the Nokota and Basin Electric projects would not adversely affect the class I areas (47 FR 41480 (September 20, 1982)). The NDSDH issued PSD permits to Nokota and Basin Electric on January 12, 1983. The permits were to expire on July 11, 1984, if construction of the projects did not commence on or before that date. Nokota and Basin Electric informed the NDSDH that, due to circumstances beyond their control, they could not commence construction of the projects by July 1984. Subsequently, on March 16, 1984, and June 1, 1984, respectively, Nokota and Basin Electric formally requested an eighteen-month extension of their PSD permits.

Under the North Dakota air regulations, the NDSDH may extend a PSD permit upon a satisfactory showing that the extension is justified. The NDSDH has developed a policy paper entitled "Procedures and Requirements for the Consideration of Time Extensions to PSD Permits," which states that the permittee must submit a written request that makes such a showing and must include specific supporting information so the NDSDH can make its decision. Among other things, the supporting documentation should include information documenting that there will be no change in the determination that there will be no adverse impacts on class I air quality related values if the extension is granted. Nokota and Basin Electric informed the NDSDH that they are not aware of any changes relating to the FLM's 1982 certification of no adverse impact.

Nokota and Basin Electric as well as the NDSDH have requested the FLM to comment on the permit extension requests and the permittees' assertion that the previous certification of no adverse impact is still valid.

The FLM concurs preliminarily (subject to public comment) with Nokota and Basin Electric that no new technical information has become available that would alter the conclusions of the FLM's original review of the Nokota and Basin Electric projects. Assuming the Nokota and Basin Electric projects are constructed and operated in accordance with the conditions of the original permits, the conclusions of the FLM's previous review are still valid. This assessment is supported by the FLM's more recent preliminary certification of no adverse impact on Theodore Roosevelt National Park. On May 23, 1984, the Department of the Interior pulished a notice in the **Federal Register** announcing its preliminary determination that Northern Gas Products' proposed natural gas processing facility, in conjunction with all other sources in the area including the proposed Nokota and Basin sources, will not cause an unacceptable, adverse impact on the park (47 FR 21802).

Because no new information has become available since May 1984 that would alter the FLM's previous conclusions regarding the Nokota and Basin Electric projects, and because recent analyses support the FLM's original determination, the Department of the Interior does not object to the proposed eighteen-month extension of the Nokota and Basin Electric PSD permits and proposes to extend the certification of no adverse impact for the same time period. Public comments are requested on this preliminary decision to extend the original FLM certification of no adverse impact for the Nokota and Basin Electric projects.

Dated: September 18, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks, Federal Land Manager of Theodore Roosevelt National Park and Lostwood Wildlife Refuge.

[FR Doc. 84-25689 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-70-M

Final Certification of No Adverse Impact on Theodore Roosevelt National Park Under Section 165(d)(2)(C)(iii) of the Clean Air Act

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of final determination under section 165(d)(2)(C)(iii) of the Clean Air Act.

SUMMARY: This notice announces the final determination by the Federal Land Manager of Theodore Roosevelt National Park that a proposed source in North Dakota, subject to Prevention of Significant Deterioration (PSD) of air quality requirements under the Clean Air Act, will not adversely affect the

resources of the park. The Department of the Interior has made the final determination after full consideration of the best available information and the public comments received on the issues involved. The intent of this notice is to announce the final determination of no adverse impact, provide a statement of reasons supporting it, and inform interested persons of the availability of supporting documentation, including a detailed "Response to Public Comments," for inspection and copying.

DATE: The certification of no adverse impact is effective as of September 18, 1984.

ADDRESSES: Copies of the supporting documentation and response to public comments are available for public inspection and copying between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following locations: National Park Service, Main Interior Building, Room 3031, 18th and C Streets NW., Washington, D.C.; Air and Water Quality Division, 11011 W. Sixth Avenue, Room 306, Denver, CO; and Theodore Roosevelt National Park Headquarters, Medora, ND. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mark A. Scruggs, Air and Water Quality Division, National Park Service—AIR, P.O. Box 25287, Denver, CO 80225, telephone number (303) 234–6620.

SUPPLEMENTARY INFORMATION: The PSD section of the Clean Air Act (CAA) deals with a complex problem. It concerns major new facilities which wish to locate in relatively unpolluted areas of the country ("clean air regions"), where the new pollution might affect certain federal conservation areas ("class I areas") which were set aside for their pristine air quality or other natural, scenic, recreational, or historic values and which are vulnerable to air pollution. In this situation, the CAA imposes special requirements on the proposed facilities to insure that the pollution from them will be minimal. In addition, the CAA imposes special responsibilities on the managers of the federal class I areas to insure that no new facility will have an unacceptable impact on the areas' protected resources.

The Clean Air Act establishes several "standards" or "tests" for analyzing a proposed facility's impact on the clean air regions in general, and on the class I areas in particular. These standards or tests include, among others, National Ambient Air Quality Standards (NAAQS); PSD classes I, II, and III air pollution increments; and the "adverse impact" determination for class I areas. An explanation of the relationship among these standards or tests is particularly relevant to the action which is the subject of this notice.

In brief, NAAQS, which a proposed facility must not violate under any circumstances, are standards applicable to the entire country. These standards represent those pollution levels acceptable for protecting the public health and national welfare. Attainment and maintenance of these NAAQS constitute one of the fundamental purposes of the CAA. All areas presently not in compliance with the standards must improve their air quality to meet them, and all areas cleaner than the standards must not deteroriate so as to violate them.

The two remaining standards or tests—classes I, II, and III increments and adverse impact determinations—are the primary tools of the PSD provisions which govern the permitting of proposed major new sources of pollution in clean air regions. The class I increments apply to clean air regions of the country containing areas such as national parks and wilderness areas. Under the CAA, Congress designated 158 natural, scenic, or historic areas of special national significance as class I. The class I increments represent the extremely small amount of additional pollution that Congress thought, as a general rule, should be allowed in class I areas. The class I increments also represent the restriction on additional pollution which Congress thought necessary in most cases for protection of the resources in federal class I areas. Typically, therefore, a proposed facility must not violate the class I increment.

The "adverse impact" determination, however, provides the possible exception to the general rule that a proposed facility must not violate the class I increment described above. The adverse impact determination, which is the subject of this notice, is a site specific test which examines whether a proposed facility will in fact, unacceptably affect the resources of a class I area. If the manager of the federal class I area determines that a proposed facility will not adversely affect the class I area, then the permitting authority may authorize the facility even though the facility's emissions may cause or contribute to a violation of the class I increment. In this situation, the facility must nevertheless not exceed a revised set of class I increments established by the Act. Conversely, if the Federal Land Manager (FLM) determines and convinces the permitting authority that a proposed facility will adversely affect the class I area, even though it will not cause a violation of the class I increment, then the permitting authority may not authorize the facility. Thus, the adverse impact determination is a critical test for a proposed facility desiring to located near a class I area.

The action which is the subject of today's notice concerns Theodore Roosevelt National Park (NP), a mandatory class I area. Northern Gas Products Company is proposing to locate a source in the vicinity of the class I area. The source would meet the NAAQS, but would apparently significantly contribute to violations of the class I 24-hr increment for sulfur dioxide (SO_2). Therefore, the adverse impact determination of the FLM may be the determining factor in the State of North Dakota's pending permit decision of the proposed facility.

Prevention of Significant Deterioration New Source Application

A PSD permit application has been submitted to the State of North Dakota by Northern Gas Products Company. The application is for a natural gas processing facility to be located two miles south of Rawson, McKenzie County, North Dakota. This location is approximately 20 kilometers northwest of the North Unit of Theodore Roosevelt NP.

The State of North Dakota, which has been delegated complete PSD authority, has performed regional scale modeling to determine the cumulative air pollution concentrations in Theodore Roosevelt NP resulting from all sources subject to PSD. The results indicate the proposed source would significantly contribute to total SO_2 concentrations higher than the allowed class I 24-hour increment in only the North Unit of Theodore Roosevelt NP. A significant contribution in this case is defined as 1.0 micrograms per cubic meter (ug/m^3) 3-hour average, 0.2 ug/m^3 24-hour average, and 0.1 ug/m^3 annual average. The estimates show concentrations as high as 1.4 times the 24-hour SO_2 increment (when the proposed source makes a significant contribution). The proposed source would no significantly contribute to exceedances of the 3-hour or annual allowable SO_2 increments in any unit of the park. Also, the proposed source would not significantly impact the wilderness portion of Lostwood National Wildlife Refuge, the only other class I area in the vicinity of the proposed project. Northern Gas Products has several options available for obtaining a permit. One option is requesting certification from the Federal Land Manager under section 165(d)(2)(C)(iii) of the Clean Air Act that

the project will have no adverse impact on the resources of Theodore Roosevelt NP even though the maximum allowable 24-hour class I SO_2 increment will be exceeded. Other options include reducing emissions or choosing a site more distant from the park, such that the source would not significantly contribute to the 24-hour increment exceedance. Northern Gas Products has chosen to request FLM certification from the Department of the Interior.

Discussion of Public Comments

On May 23, 1984 (47 FR 21802), the FLM announced the preliminary determination that the source proposed by Northern Gas Products would not adversely affect the resources of the class I area and provided for a 30-day public comment period. Because the technical analysis supporting the preliminary determination was not readily available from the beginning of the comment period, the Department of the Interior reopened the public comment period on July 12, 1984 (47 FR 28468), to allow interested parties additional time to review the technical analysis on which the preliminary determination was based.

One public response was received during the comment period and one additional response was received after the comment period ended. The letters contained a total of nine comments. These comments and the FLM's responses are summarized below. A document entitled "Response to Public Comments on the Federal Land Manager's Determination of No Adverse Impact on Theodore Roosevelt National Park for Northern Gas Products" which contains detailed responses to the comments is available for inspection and copying (see **ADDRESS** section above).

Objection to Proposed Decision.

One commenter objected to the proposed certification decision, alleging that the administrative record does not contain an adequate demonstration of no adverse impact. The commenter added that the analysis should err on the side of protecting the resources of the park, not in favor of the development.

The FLM disagrees with the opinion that the FLM's analysis has not erred on the side of protecting the park resources. We cannot find, nor has anyone else discovered, any evidence to show that the emissions from the proposed source would harm the values of Theodore Roosevelt NP. The analysis employed conservative assumptions at every level, so that actual impacts on sources will probably be even less than the impacts estimated. The final analysis concludes, with confidence, that the proposed source will not cause or contribute to, an adverse impact on the air quality related values (AQRv's) of the park.

Visibility Impairment

The Technical Assessment document states that the proposed source could result in a seven percent reduction in visual range from 318 km to 297 km and that this could occur as frequently as 0.3 percent of the time. One commenter stated that the FLM is agreeing to potentially preclude Theodore Roosevelt NP from experiencing days when visual range is 318 km, and the top of the scale for determining visual range in subsequent analyses becomes 297 km rather than 318 km, thereby holding each new applicant to a lesser standard.

The commenter apparently has misinterpreted the results of the visibility analysis. The FLM is not stating that every time the visual range of 318 km would occur it will be reduced by seven percent. Our assertion is that the probability of occurrence of a concentration sufficient to cause a perceptible change in the visual range when the visual range is 318 km or greater (1 percent of the time) is 0.003 (0.3 percent). Therefore, the probability of these two events not occurring at the same time is 0.997 and, hence, the seven percent reduction is not likely to ever occur. Also, the visibility degradation will not impair the preception of the features of this particular park and therefore is not adverse. In addition, the estimated maximum possible reduction (seven percent) is very near the human perceptibility threshold for reduction in visual range (five percent).

As a final point of clarification, the FLM does not allow the background distribution of SVR to which incremetal changes are added to "shift" with succeeding permit reviews. Any available visibility data from the first permit application in the area or from any other available monitoring data provides the benchmark from which to calulate subsequent reduction in SVR. First, all increment consuming sources are analyzed with each new applicant. Second, insofar as possible, the contribution of all increment consuming sources is added to observed background conditions that do not contain contributions of any of the increment consuming sources.

Adverse Impact Discussion

One commenter stated that the FLM's proposed definition of adverse impact is too ambiguous and subjective. The commenter recommended that the FLM develop a precise standard for certifications which details at what level the FLM believes adverse effects will occur.

The FLM considers that any effects on resources in class I areas caused by air pollution that:

—Diminish the national significance of the area; and/or
—Impair the structure and functioning of ecosystems; and/or
—Impair the quality of the visitor experience;

constitute an unacceptable, adverse impact. Admittedly, this definition contains an element of subjectivity, but an element of subjectivity cannot be avoided when placing a value on park resources and experience. The FLM has not found "numerical level" adverse impact criteria capable of protecting the resources of all the parks. Therefore, the FLM has felt most confident basing each determination on a case-by-case approach using the most current information available on the sensitivities of the particular park resources, the importance of park features, and the concentration of pollutants expected to occur in the park. However, the FLM recognizes the desirability of eliciting comments from all interested persons on the significant philosophical, legal, and factual questions inherent in defining what impacts are adverse with respect to park resources. Consequently, the FLM is preparing an Advance Notice of Proposed Rulemaking to initiate a separate interpretive rulemaking on the definition and determination of "adverse impact."

Reversibility

One commenter stated that it is inappropriate for the FLM to consider the potential reversibility of possible effects. Each visitor to the park has as much right to enjoy the park's wonders unimpaired as do future generations.

The FLM would not accept an impact as nonadverse which would create an impairment to present day visitor enjoyment just because it could be reversed in the future. The reason for including the discussion of reversibility was to point out the resiliency of some ecosystems under low level stress.

Certainty

One commenter stated that since none of the several research studies identified in the July 1982, Technical Review concerning Theodore Roosevelt NP has been completed, it is improbable that the FLM can state with any certainty that there will be no adverse impact.

The status of the referenced studies is detailed in the FLM's "Response to

Public Comments" document mentioned above. The results of the studies which have been completed indicate that the resources of Theodore Roosevelt NP are not presently under sulfur dioxide stress. This fact, coupled with worst-case estimates of sulfur dioxide levels, and analysis of the most sensitive park resources, support our determination of no adverse impact on park biological resources.

Best Available Control Technology (BACT)

One commenter supported the FLM's recommendation of Shell Claus Off-gas Treating (SCOT) technology or equivalent as BACT. The commenter pointed out that all efforts should be made to avoid adverse impact on Theodore Roosevelt NP and the use of SCOT would be a strong step in that direction.

The FLM agrees that SCOT or equivalent technology is BACT, and has so recommended to the North Dakota State Department of Health (NDSDH). The NDSDH, as the permitting agency, has the responsibility of specifying BACT for the proposed project.

Flaring Wells

One commenter was concerned with the FLM's failure to mention the use of flaring wells. The commenter contends that flaring wells should be used as a product source for the proposed plant.

The FLM agrees that flared gas in the area contributes to the relatively high sulfur dioxide concentrations and that processing this gas would eliminate a large portion of this contribution. Northern Gas Products, as indicated in their application, does intend to process some of the gas that is presently being flared.

The FLM includes impacts of the flaring wells in the background ambient monitoring data used as a basis for the FLM certification. Since the technical analysis does not assume any reductions in flaring well emissions, and still shows no adverse effects on Theodore Roosevelt NP, any consideration of reductions in flaring emissions would make impacts on the park all the more unlikely.

Certification Expiration

One commenter stated that the certification of no adverse impact should have a set time table with a specific closing date. The closing date should be tied to the permit closing date, with each permit extension requiring a new certification.

Although no specific expiratio date exists for a certification of no adverse impact, the FLM certification is tied to the State permit. Since the certification is source specific, if the State permit expires and the project is not constructed, the certification would be void. For permit extensions, the FLM would have an opportunity to re-evaluate the no adverse impact certification. If the FLM, based on new information, determines that the previous certification is not valid, the State would deny the extension request.

Findings and Determination

The findings of the Federal Land Manager's review of Northern Gas Products Company's proposed facility are as follows:

1. Emissions from the proposed project alone should not cause a perceptible plume in the class I area. An estimate of the effect of the proposed emissions on visibility indicates that there would be no perceptible change in visual air quality in the South Unit and, that in the North Unit a seven percent reduction in standard visual range could occur, but infrequently (about once in 100 Years).

2. Plant and animal species known to be sensitive to low levels of SO_2, ozone, and particulate matter, i.e., air quality related values (AQRVs), are present in Theodore Roosevelt NP. Pollutant levels perdicted to occur from all increment consuming sources when added to highest observed concentrations appear to be below the threshold values for adverse effects

3. Soils in the park are buffered and are therefore unlikely to be affected by acidic rainfall events. Similarly, the streams, ponds, and rivers are also unlikely to be affected.

4. A field evaluation of sensitive species in the park found no symptoms of visible injury due to ambient air pollution.

5. Many factors exist in this analysis that tend to overpredict effects on AQRVs (i.e., the actual impact on the resources from the proposed sources will probably be even less than the analysis assumes).

6. The only effects predicted in Theodore Roosevelt NP are a potential increase in sulfur content in lichens and the potential for very infrequent, marginally perceptible visibility impairment.

7. The review indicates that predicted SO_2 concentrations are not of sufficient magnitude to diminish the rules of lichens in the park. Thus, it does not appear that the structure and functioning of ecosystems would be impaired, nor would there be any impairment to the visitor experience, or diminution of the national significance of the park.

Based on the above findings, and the overall analysis, the Federal Land Manager concludes that the proposed Northern Gas Products Company source would not cause an unacceptable, adverse impact on the natural resources of Theodore Roosevelt NP.

These findings and review are based on emissions as proposed by the applicant. However, we do not consider the proposed emission control technology as best available control technology (BACT). The Federal Land Manager has recommended to the permitting agency, the North Dakota State Department of Health, that a Claus sulfur recovery unit (Claus) with treatment of tail gas by a Shell Claus off-gas treating (SCOT) unit, or equivalent, be utilized on this project as BACT. This recommendation is made for the following reasons:

1. The use of SCOT, or equivalent, would reduce SO_2 emissions by 939 tons per year, or 86 percent over the SO_2 control technology proposed by Northern Gas Products Company.

2. SCOT, or equivalent, is proven technology and is required by permitting authorities in other areas of the country.

3. We believe the cost of employing SCOT (an additional $1579/ton of additional SO_2 removed), or equivalent, should be weighed against the project's proximity to Theodore Roosevelt National Park, a mandatory class I area. One of the primary purposes of the PSD requirements established by Congress is to preserve, protect, and enhance the air quality in national parks. Because we are approaching threshold limits for adverse effects in the park, as much of the increment as possible should be preserved or recovered, so that there will be opportunities for future growth and certification requests.

4. The proposed project would significantly contribute to class I increment violations in Theodore Roosevelt National Park. Use of SCOT would reduce Northern Gas Products contributions in the park below the significance level.

5. Minimizing emissions will reduce the potential for cumulative effects of acid deposition thereby minimizing the potential for future adverse impacts.

The conclusion reached in this review should not be extrapolated to any future permit applications in the vicinity of Theodore Roosevelt NP. Each future appliation must be revised on a case-by-case basis, because a source's emission parameters, such as stack height, gas temperature, and geogriphic location, determine its interaction with other sources and hence, the potential for effects. New applicants must

demonstrate to the Federal Land Manager's satisfaction that the proposed source will not cause or contribute to an adverse impact on the resources of Theodore Roosevelt NP.

This certification is based on, and therefore is limited to, concentrations at or below those specified in the State of North Dakota's pollution modeling and used in the Federal Land Manager's Technical Review. This certification specifically does not apply to any higher concentrations, such as the alternate concentrations set forth in section 165(d)(2)(C)(iv) of the Clean Air Act.

Dated: September 18, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks, Federal Land Manger of Theodore Roosevelt National Park.

[FR Doc. 84-25688 Filed 9-26-84; 8:45 am]

BILLINGS CODE 4310-70-M

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 1, 1984, a notice was published in the **Federal Register** (Vol. 49, No. 149 FR 30805) that applications had been filed with the Fish and Wildlife Service by (1) Matsushima Aquarium APP #2248BM for a permit (PRT 682207) to take 4 Northern sea otters (*Enhydra lutris*) from Prince William Sound or Green Island, Alaska, for public display and (2) Sunshine International Aquarium APP #2250BM for a permit (PRT 682196) to take 4 Northern sea otters (*Enhydra lutris*) from Prince William Sound or Green Island, Alaska, for public display.

Notice is hereby given that on September 4, 1984, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's office in Room 605, 1000 N. Glebe Road, Arlington, VA

Dated: September 19, 1984.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84-25594 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-55-M

Issuance of Permit for Marine Mammals

On August 17, 1984, a notice was published in the **Federal Register** (Vol. 49, No. 161) that an application had been filed with the Fish and Wildlife Service by Detroit Zoological Parks Department (APP# 2956BM and 2794BM) for permits to import one captive-born female bear *(Ursus maritimus)* from Kolmarden Zoo, Sweden and one captive-born female polar bear *(Ursus maritimus)* from Ruhr Zoo, West Germany for public display and enhancement of propagation.

Notice is hereby given that on September 17, 1984, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's office in Room 605, 1000 N. Glebe Road, Arlington, VA.

Dated: September 21, 1984.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84-25593 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-55-M

Alaska Peninsula National Wildlife Refuge Comprehensive Conservation Plan; Environmental Impact Statement and Wilderness Review, Alaska; Availability and Public Hearings; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public hearings; correction.

SUMMARY: This document corrects a notice of availability and public hearings that appeared on page 31778 in the **Federal Register** of Wednesday, August 8, 1984 (49 FR 31778). This action is necessary to correct the date by which comments should be submitted.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, Telephone (907) 786–3399.

The following correction is made in FR Doc. 84–20607 appearing on 31778 in the issue of August 8, 1984.

1. On page 31778 column one, second paragraph, first sentence, **DATES** is corrected to read "Comments on the draft CCP/EIS must be submitted on or before December 3, 1984 to receive consideration in the preparation of the final CCP/EIS.

Dated: September 20, 1984.

Robert Jacobsen,

Acting Regional Director.

[FR Doc. 84-25629 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[Serial No. I-18302]

Idaho; Exchange of Public and Private Lands Bannock and Caribou Counties

The United States has issued an exchange conveyance document to Kent L. and Emilee M. Yost, Pocatello, Idaho; Gordon R. and Sherry A. Yost and Gladys Call, Bancroft, Idaho, for the following-described lands under Section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 6 S., R. 35 E.,
Sec. 7, SE¼SE¼;
Sec. 8, W½W½SW¼SW¼;
Sec. 17, W½W½NW¼NW¼;
Sec. 18, NE¼NE¼.
Comprising 100.00 acres of public land.

In exchange for these lands, the United States acquired the following described lands:

Boise Meridian, Idaho

T. 8 S., R. 38 E.,
Sec. 23, SW¼NE¼, S½NW¼, NW¼SE¼;
Sec. 24, SE¼SW¼;
Sec. 25, N½NW¼;
Sec. 26, NE¼NE¼.
T. 9 S., R. 39 E.,
Sec. 17, E½SW¼.
Comprising 400.00 acres of public land.

The purpose of this exchange was to acquire the non-Federal land which will provide wildlife habitat and recreational values. The public interest was well served through completion of the exchange.

Dated: September 21, 1984.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 84-25600 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-GG-M

[Serial No. I-18932]

Idaho; Exchange of Public and Private Lands, Elmore and Owyhee Counties

The United States has issued an exchange conveyance document to Robert S. and Myra L. Rich, 458 Grape Street, Denver, CO 80220, for the following-described lands under Section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 6S., R. 8 E.,
Sec. 4, W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 5, lot 4, S½NW¼, S½;
Sec. 6, lot 1, SE¼NE¼;
Sec. 7, S½NE¼, SE¼, E½SW¼;
Sec. 8, all;
Sec. 9, all;
Sec. 10, SW¼NW¼, SW¼, W½SE¼;
Sec. 15, W½;
Sec. 16, all;
Sec. 17, E½, N½NW¼, SE¼NW¼, SW¼.

Comprising 4,127.99 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian, Idaho

T. 1 S., R. 8 E.,
Sec. 8, lots 4 to 8 inclusive;
Sec. 15, lots 7 and 8;
Sec. 17, lots 1 to 6 inclusive, lots 9 and 10, SE¼NW¼, NW¼SE¼;
Sec. 18, lot 7;
Sec. 20, NE¼NE¼;
Sec. 21, NE¼NE¼, NW¼NW¼.

Comprising 640.86 acres of private land.

The purpose of this exchange was to acquire the non-Federal land which has high public value for recreational use. The public interest was well served through completion of the exchange.

Dated: September 21, 1984.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 84-25601 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-GG-M

[S 581, S 582, S 1263, S 1353, and S 2185]

California; Partial Termination of Classifications for Multiple use Management

September 19, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates five classifications of public land for multiple use management insofar as they affect approximately 29,693 acres located in areas of the Ukiah District of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office (916) 484-4431.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated January 3, 1983, the following Bureau of Land Management classifications for multiple use management are hereby terminated insofar as they affect the following described lands:

Mount Diablo Meridian

S 581 dated December 27, 1967.
33 FR 156 ((Jan 5, 1968) FR Doc. 68-143), as amended October 2, 1970 (35 FR 16058 (Oct. 13, 1970, FR Doc. 70-13708)).

T. 33 N., R. 6 W.,
Sec. 32, all.
T. 34 N., R. 6 W.,
Sec. 31, lots 5 to 16, inclusive.

The areas described aggregate 1,000.55 acres of public land in Shasta County.

S 582 dated December 27, 1967.
33 FR 156 ((Jan. 5, 1968) FR Doc. 68-143)
T. 30 N., R. 1 W.,
Sec. 12, NE¼, SE¼NW¼, and S½.

The area described contains 520 acres of public land in Shasta County.

S 1263 dated April 23, 1968.
33 FR 6670 ((May 1, 1968) FR Doc. 68-5193).
T. 25 N., R. 1 E.,
Sec. 14, NW¼NE¼ and NW¼.

The area described contains 200 acres of public land in Tehama County.

S 1353 dated June 12, 1968.
33 FR 9119 ((June 20, 1968) FR Doc. 68-7259).

All public lands in:
T. 16 N., R. 5 W.,
Secs. 3 to 10, inclusive, partly unsurveyed;
Secs. 16 and 17.
T. 17 N., R. 5 W.,
Secs. 5 to 8, inclusive;
Secs. 17 to 20, inclusive;
Secs. 28 to 33, inclusive.
T. 18 N., R. 5 W.,
Sec. 29, S½;
Sec. 30, S½;
Sec. 31, all;
Sec. 32, all.
T. 16 N., R. 6 W.,
Secs. 3, 4, 9, 10, 15, and 16.
T. 17 N., R. 6 W.,
Secs. 5, 6, 8, 17, 21, 24, 25, 28, and 33.
T. 18 N., R. 6 W.,
Sec. 25, S½;

The areas described aggregate approximately 26,553 acres of both public and nonpublic land in Colusa County.

S 2185 dated December 16, 1968.
33 FR 19201 ((Dec. 24, 1968) FR Doc. 68-15279).

All public lands in:
T. 32 N., R. 9 W.,
Sec. 6, lot 3, lots 15 and 16 (formerly S½ lot 4), lot 5, lot 19 (formerly lot 8), lots 20, 21, 22, 24 and SE¼NE¼SW¼ (formerly SW¼ lot 11 and lot 12);
Sec. 18, lot 6 (formerly lot 4);
Sec. 28, SW¼SW¼;
Sec. 30, E½ lot 2;
Sec. 32, lots 1, 2, 3, 16, 17, 18, SW¼NW¼NE¼NE¼, and NW¼SW¼N E¼NE¼ (formerly E½NE¼);
Sec. 33, lots 6 and 7 (formerly W½NW¼).
T. 33 N., R. 9 W.,
Sec. 20, all.
T. 33 N., R. 10 W.,
Sec. 18, lot 12;
Sec. 28, E½SW¼ and W½SE¼.
T. 34 N., R. 11 W.,
Sec. 25, NE¼NE¼;
Sec. 26, NE¼NW¼ and NW¼NE¼.

The areas described aggregate approximately 1,419 acres of public and nonpublic land in Trinity County.

The above-referenced classifications segregated the described public lands from appropriation under the agricultural land laws (43 U.S.C. Chs. 7 and 9; 25 U.S.C. 334) and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171), including approximately 3,125 acres from mining (affecting S 581, S 582, S 1263, and S 2185). The lands have been and remain open to mineral leasing.

At 10:00 a.m. on November 1, 1984, the segregative effect imposed by the classifications will terminate insofar as they affect the above described public lands.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

Ron Hoffman,

Acting State Director.

[FR Doc. 84-25604 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-40-M

[CA-15903]

Leasing of Public Lands in Imperial County, CA; Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Proposed Leasing of Public Lands in Imperial County, California.

SUMMARY: This Notice of Realty Action involves a proposed long term lease of public lands administered by the BLM in Imperial County, California. This proposed lease is to Gold Fields Mining Corporation, 200 Union Boulevard, Suite 500, Lakewood, Colorado 80228. The lease, if approved, is intended to authorize construction and operation of leach pads for gold extraction and storage of waste piles in conjunction with their Mesquite mining operation.

The site proposed for leasing under the provisions of Section 302 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579), and 43 CFR Part 2920, is about 5 miles east of the townsite of Glamis, California. The general legal description of the proposed site is as follows:

T. 13 S., R. 19 E., SBM
Sec. 7, S½
Sec. 8, SW¼
Sec. 17, W½
Sec. 18, E½
Sec. 19, E½

The above described lands total approximately 1445 acres. These lands are part of an area which was

segregated from appropriation under the General Mining Laws by BLM order R-702, dated September 28, 1967. This order was issued under the authority of the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411–18).

A more detailed description of the lands will be provided at the time of lease issuance. These lands will be leased on a non-competitive basis to Gold Fields Mining Corporation, and other applications will not be accepted. The decision to authorize a non-Federal use of this land is made after evaluation of the application in accordance with BLM Manual Section 2063—Land Report. Rental will be based upon the appraised value in accordance with the provisions of 43 CFR 2920.8. In addition, Gold Fields Mining Corporation shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing this lease and for monitoring construction, operation, maintenance, and rehabilitation of the facilities authorized. The reimbursement of costs shall be in accordance with the provisions of 43 CFR 2920.6.

FOR FURTHER INFORMATION CONTACT: For information concerning this proposed lease contact Peter G.D. Ertman at the BLM El Centro Resource Area Office, 333 South Waterman Avenue, El Centro, California 92243 or call (619) 352–5842.

For a period of 30 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507.

Any adverse comments will be evaluated in the Land Report and the decision to issue a land use authorization affirmed, modified, or the proposed lease rejected.

Dated: September 19, 1984.

Gerald E. Hillier,

District Manager.

[FR Doc. 84–25606 Filed 9–26–84; 8:45 am]

BILLING CODE 4310–40–M

[INT Final MFP Amendment/EIS 83]

Roswell Resource Area; Final Management Framework Plan Amendment; Environmental Impact Statement

AGENCY: Bureau of Land Management (BLM), Roswell District, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM has prepared a Final Management Framework Plan Amendment/Environmental Impact Statement (MFPA/EIS) for the Roswell Resource Area in east central New Mexico. The MFPA/EIS proposes to implement a rangeland management program for the seven County Area (Quay, Guadalupe, Curry, DeBaca, Roosevelt, Lincoln, and most of Chaves County). The Final MFPA/EIS contains the Proposed Plan for the Roswell Resource Area. The Proposed Plan was drafted following public input on the draft document, using most of the preferred alternative with additional portions of the industry preferred alternative, the maximization alternative and the decreased livestock grazing alternative as they were presented in the draft MFPA/EIS published in April 1984. The Proposed Plan is BLM's proposed action. All parts of the Proposed Plan may be protested. The protest should include the following information: (1) The name, mailing address, telephone number, and interest of the person filing the protest; (2) a statement of the issue or issues being protested; (3) a statement of the part or parts being protested; (4) a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records; and (5) a concise statement explaining why the BLM New Mexico State Director's decision is wrong. At the end of the 30-day protest period, the Proposed Plan, excluding any portions under protest, shall become final. Approval shall be withheld on any portion of the plan under protest until final action has been completed on such protest. The approval process and the final plan will be published with the Record of Decision in January 1985.

DATE: Protests on the Proposed Plan must be received no later than 30 days from this notice.

ADDRESS: Protests should be sent to the Director, Bureau of Land Management, 18th and C Streets NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Linda Rundell MFPA/EIS Team Leader, BLM Roswell District Office, P.O. Drawer 1857, Roswell, New Mexico 88201, (505) 624–1790 or FTS 476–9204.

SUPPLEMENTARY INFORMATION: Copies of the Final MFPA/EIS have been distributed to a mailing list of identified interested parties. A limited number of copies are available at the Roswell District Office, 317 N. Main, P.O. Drawer 1857, Roswell, New Mexico 88201. Public reading copies are available for review at the BLM State Office, Office of Public Affairs, Joseph M. Montoya Federal Building and U.S. Post Office, Santa Fe, New Mexico. A short Final was prepared for this statement; therefore, the Draft and the short Final constitute the Final MFPA/EIS.

Charles W. Luscher,

State Director.

[FR Doc. 84–25628 Filed 9–26–84; 8:45 am]

BILLING CODE 4310–84–M

[Oregon 22545B]

Oil and Gas Leases; Proposed Reinstatement, Oregon

Notice is hereby given that a petition for reinstatement of oil and gas lease OR 22545B for lands in Wheeler County, Oregon, was timely filed and was accompanied by all the required rentals and royalties accruing from May 1, 1984, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to David E. Sinclair of the Oregon State Office at (503) 231–6911.

Dated: September 17, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–25603 Filed 9–26–84; 8:45 am]

BILLING CODE 4310–33–M

[Oregon 22545J]

Oil and Gas Leases; Proposed Reinstatement, Oregon

Notice is hereby given that a petition for reinstatement of oil and gas lease OR 22545J for lands in Wheeler County, Oregon, was timely filed and was accompanied by all the required rentals and royalties accuring from May 1, 1984, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to David E. Sinclair of the Oregon State Office at (503) 231–6911.

Dated: September 17, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–25602 Filed 9–26–84; 8:45 am]

BILLING CODE 4310–33–M

[OR–36068 (WASH)]

Washington; Conveyance of Public Land; Order Providing for Opening of Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 159.90 acres of public land out of Federal ownership. This action will also open 203.63 acres of reconveyed land to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: November 6, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr. (Telephone 503–231–6905), Oregon State Office, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 159.90 acres of land in Benton County, Washington from Federal to private ownership.

2. In the exchange, the following land has been reconveyed to the United States:

Willamette Meridian

T. 9 N., R. 26 E.,
Sec. 30 lots 1 and 2, N½NE¼, and NE¼NW¼

The area described contains 203.63 acres in Benton County, Washington.

3. At 8:30 a.m., on November 6, 1984, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on November 6, 1984, will be considered as simultaneously filed at that time. Those received therafter will be considered in the order of filing.

4. At 8:30 a.m., on November 6, 1984, the land described in paragraph 2 will be open to location under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not interevene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on November 6, 1984, the land described in paragraph 2 will be open to application and offers under the mineral leasing laws.

Dated: September 20, 1984.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–25607 Filed 9–26–84; 8:45 am]

BILLING CODE 4310–33–M

[OR–23995]

Oregon; Conveyance of Public Lands; Order Providing for Opening of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 460.16 acres of public lands out of Federal ownership. This action will also open 400.00 acres of reconveyed land to surface entry and 280.00 acres to mining and mineral leasing.

EFFECTIVE DATE: November 5, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr. (Telephone 503–231–6905), Oregon State Office, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 400.00 acres of lands in Harney County, Oregon from Federal to private ownership. All minerals in the following described land have been reserved to the United States:

Willamette Meridian

T. 26 S., R. 31 E.,
Sec. 31, SE¼SE¼.

The area described contains 40.00 acres in Harney County, Oregon.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 29 S., R. 29 3/4 E.,
Sec. 35, NE¼SW¼ and NW¼SE¼.

T. 27 S., R. 31 E.,
Sec. 5, S½SW¼ and SW½SE¼;
Sec. 8, NE¼ and NE¼SE¼.

The areas described aggregate 400.00 acres in Harney County, Oregon.

3. The mineral estate in the following described land has been and continues to be in United States ownership. The land has been and continues to be open to operation of the United States minining laws and mineral leasing laws:

Willamette Meridian

T. 27 S., R. 31 E.,
Sec. 5, S½SW¼ and SW¼SE¼.

The area described contains 120.00 acres in Harney County, Oregon.

4. At 8:30 a.m., on November 5, 1984, the lands described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on November 5, 1984, will be considered as simultaneoulsly filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m., on November 5, 1984, the lands described in paragraph 2, except as provided in paragraph 3, will be open to location under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 8:30 a.m., on November 5, 1984, the lands described in paragraph 2, except as provided in paragraph 3, will

be open to applications and offers under the mineral leasing laws.

Dated: September 19, 1984.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-25599 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-33-M

Road Closure; Fergus County, MT

AGENCY: Bureau of Land Management, Lewistown District, Interior.

ACTION: Road Closure in Fergus County, Montana.

SUMMARY: Notice is hereby given that the Judith Peak Road is closed to motor vehicle travel in T. 17 N., R. 20 E., Sec. 30, PMM. The closure is required to protect the public from safety hazards created by the demolition of abandoned military facilities on Judith Peak and Red Mountain. The closure will remain in effect until demolition work is complete and safety hazards no longer exist. Revocation of the closure will be announced in the **Federal Register**.

Persons holding valid land use permits may be exempted from this closure by contacting BLM at the address below.

FOR FURTHER INFORMATION CONTACT: Roy Montgomery, Area Manager, Judith Resource Area, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: This closure is in accordance with and will be enforced under the provisions of 43 CFR 8364.01.

Dated: September 20, 1984.

David E. Little,

Acting District Manager.

[FR Doc. 84-25597 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-84-M

[N-39383]

Nevada; Cancellation of Realty Action; Competitive Sale of Public Land in Nye County

The Notice of Realty Action—Competitive Sale—lands in Nye County, Nevada, published in the **Federal Register**, Volume 49, No. 131 on July 6, 1984, at page 27828 is hereby canceled in its entirely by the decision of the Ely District Manager.

The decision was based on comments to the Notice of Realty Action from local residents and the limited interest in the purchase of the land. Other factors considered were the truck stops at Lund and Crystal Springs, economic impact on a new business trying to get started, and the fact that a small store and campground exist in the area.

Merrill L. DeSpain,

District Manager.

[FR Doc. 84-25605 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-HC-M

New Mexico; Filing of Plat of Survey

September 18, 1984.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10 a.m. on August 22, 1984.

New Mexico Principal Meridian

The survey of lots 50 through 57 and 59 in section 1, lots 69, 70, 72 and 73 in section 2, and lot 48 in section 11, T. 2 S., R. 1 W., NMPM, NM, under Group 768, was accepted August 24, 1984.

The survey of lots 34 through 40 in section 6, T. 4 S., R. 1 E., NMPM, NM, under Group 768, was accepted August 31, 1984.

The supplemental plat of section 24, T. 1 S., R. 1 W., NMPM, NM, was accepted August 31, 1984.

This survey was executed to meet certain administrative needs of this Bureau.

The plat will be placed in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 84-25606 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-FB-M

[A-17362]

Arizona; Conveyance of Public Land; Reconveyed Land Opened to entry

September 19, 1984.

Notice is hereby given that pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, the following described lands were transferred out of Federal ownership in exchange for privately-owned land. The lands transferred into private ownership are described as follows:

Gila and Salt River Meridian, Arizona

T. 27 N., R. 20 W.,
Sec. 16, SW¼NE¼, NW¼, S½;
Sec. 20, N½, NW¼SW¼, S½SW¼, SE¼.

Comprising 1,120.00 acres in Mohave County.

Lands acquired by the United States are described as:

Gila and Salt River Meridian, Arizona

T. 28 N., R. 16 W.,
Sec. 1, lots 1 thru 4, incl., S½N½, S½;
Sec. 11, E½, NW¼, NE¼SW¼, S½SW¼;
Sec. 15, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all.

Comprising 3,157.48 acres in Mohave County.

The exchange was made based on approximately equal values.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and the acquisition of private land by the Federal Government.

The surface of the land acquired by the Federal Government in this exchange will be open to entry under the public land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, at 10:00 a.m. on October 30, 1984. The mineral estate is owned by the Santa Fe Railroad Company and, therefore, will not be subject to entry under the United States Mining or Mineral Leasing Laws.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-25652 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-32-M

[N-39040]

Nevada; Exchange of Public Lands; Realty Action; Correction

Exchange of public and private lands in Humboldt County, State of Nevada. The September 6, 1984, Notice of Realty Action pertaining to the above referenced land exchange is hereby corrected in respect to the following: Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A right-or-way for ditches and canals constructed by the Authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. Those portions of the selected lands in the vicinity of Martin Creek and Charlie Young Canyon that have established roads and trails, specifically located:

Mount Diablo Base & Meridian

T. 44 N., R. 41 E.,
Sec. 33, E½SW¼, NE¼SE¼.
T. 43 N., R. 41 E.,
Sec. 9, W½NE¼.

An easement 60 feet in width along

the above mentioned road or trail for public utilities and to insure continued ingress and egress to the adjacent lands.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

4. Upon publication of this notice, the public lands described therein are hereby segregated from entry under the public land laws, including location under the mining laws.

Dated: September 18, 1984.

Frank C. Shields,

District Manager.

[FR Doc. 84-25658 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-HC-M

Susanville District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Wild Horse and Burro Open House.

SUMMARY: Notice is hereby given in accordance with the Pub. L. 94-579 (FLPMA) that a special meeting and Wild Horse and Burro Open House will be hosted by the Susanville District Advisory Council on October 17, 1984. The purpose of the event will be to explain and demonstrate to interested individuals all dimensions of the Wild Horse and Burro Program as managed by the Susanville District. The Wild Horse and Burro Open House will begin at 9:30 a.m. in the Susanville District Office, located at 705 Hall Street, Susanville, California 96130. The group in attendence will be given a presentation outlining the population status, how horses and burros are gathered from public lands, how the crews handle animals while they are being processed, how the adoption program is conducted and how the compliance and title transfer tasks are performed. In the afternoon, the group will travel to the Wild Horse and Burro Corrals in Litchfield California, near Susanville, for a demonstration of the facilities, the animals being cared for, and processing techniques used.

The Open House is open to the public. More information on the event can be obtained by contacting the Susanville District Office at 705 Hall Street, Susanville, California 96130, (916) 257-5381, or District Advisory Council Chairman, John Laxague, P.O. Box 10 Cedarville, California 96104.

C. Rex Cleary,

District Manager, Susanville.

[FR Doc. 84-25652 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-40-M

Winnemucca District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Winnemucca District Advisory Council will be held on November 29, 1984. The meeting will be from 10:00 a.m. to 4:30 p.m. in the Conference Room of the Winnemucca District Office, 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include: (1) Western Shoshone land claims—discussion; (2) 1984 fire season and rehabilitation—BLM update; (3) Livestock grazing issues (project maintenance responsibility, grazing fee study, cooperative management agreements)—BLM update; (4) Update of wild horse numbers established through CRMP (numbers gathered during FY84 and proposed gatherings for FY85); (5) Desert Peak proposed geothermal plant construction, recent mineral discoveries, and development plans; (6) Soldier Meadows desert dace proposed listing as endangered species.

The meeting is open to the public. Interested persons may make oral statements to the Council at 1:30 P.M. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445, by November 13, 1984. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: September 21, 1984.

Frank C. Shields,

District Manager.

[FR Doc. 84-25657 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-HC-M

[OR-19646 (WASH)]

Order Providing for Opening of Lands; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will correct an error in the land description of the order providing for opening of lands published in the Federal Register on January 17, 1984.

EFFECTIVE DATE: September 20, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr. (Telephone 503-231-6905), Oregon State Office, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-1186 published at page 2027, in the issue of Tuesday, January 17, 1984, make the following correction: On page 2027, in Column 2, paragraph 4, under T. 25 N., R. 10 W., add sec. 32, SW¼NW¼.

Dated: September 20, 1984.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-25661 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-84-M

[OR 20640 (WA); OR 35345 (WA)]

Realty Action; Sale of Public Land in Walla Walla and Franklin Counties, WA

The following described land has been identified as suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value: The lands have been reappraised to better reflect the current local market values, and are being reoffered for sale.

OR 20640 (WA)

WILLAMETTE MERIDIAN, WALLA WALLA COUNTY, WASHINGTON

Parcel No.	Legal description	Average	Value
1	T. 7 N., R. 31 E., Sec. 14, Lot 1.	25.69	$26,000
2	T. 7 N., R. 31 E., Sec. 14, Lot 6.	28.02	$28,000

OR 35345 (WA)

WILLAMETTE MERIDIAN, FRANKLIN COUNTY, WASHINGTON

Parcel No.	Legal Description	Average	Value
1	T. 9 N., R. 31 E., Sec. 20, NE¼ SW¼, N½SE¼.	120.00	$84,000

Except for the provisions of section 203 of the Federal Land Policy and Management Act of 1976, (90 stat. 2750; 43 U.S.C. 1713), the above described lands are hereby segregated from

appropriation under the public land laws, including the mining laws.

The sale will be held on December 5, 1984, at the Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

These isolated parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another federal agency. There are no significant resource values which will be affected by this disposal. Legal access is available to these parcels by county road. The sale is consistent with the BLM's planning for the land involved and the public interest would be served by offering this land for sale.

The patent issued will be subject to:

1. A reservation to the United States for ditches and canals (43 U.S.C. 945).

2. A reservation to the United States for all mineral rights (43 U.S.C. 1719).

3. All other easements, encumbrances, reservation, and restrictions of record.

Parcel No. 1 (OR 35345 WA), will also be subject to (1) the powerline right-of-way OR 34587 (WA) granted to Franklin County PUD No. 2.; and (2) the oil and gas lease OR 25833 (WA) issued to Tyrex Oil Company.

Patent to Parcel No. 2 (Lot 6, OR 20640 WA), will be issued subject to: (1) Transmission line right-of-way OR 12602 (WA) to Pacific Power and Light, (2) road right-of-way OR 14682 (WA) to Washington State Department of Natural Resources, and (3) pipeline right-of-way OR 13203 (WA) to Wallula Water District No. 1.

Parcels will be offered for sale by sealed bids only, using competitive bidding procedures (43 CFR 2711.3–1). No bid will be accepted for less than the appraised value, and bids for a parcel must include all the land in the parcel. Federal law requires that individuals be 18 years of age or over and U.S. citizens, and corporations be subject to the laws of any State or of the United States.

Bids must be made by the principal or his duly qualified agent. Bids delivered or sent by mail must be received at the BLM, at the above address, before 10:00 a.m., December 5, 1984, to be considered. Each sealed bid must be accompanied by a deposit in the form of a postal money order, bank draft, or cashier's check, made payable to the Bureau of Land Management for 20 percent of the amount of each bid. The sealed envelope must be marked in the lower left-hand corner as follows: "Public Sale Bid Parcel No. ——, Serial No. OR ——— (WA). Sale held December 5, 1984."

The highest qualifying sealed bid on each parcel will be declared by the Authorized Officer, and will be the sale price for that parcel. If two or more sealed bids of the same amount are received for the same parcel, the tied high bidders will be immediately notified and given 20 days to submit a new bid. The successful bidder will be required to pay the remainder of the sale price within 180 days. Failure to submit the full sale price within 180 days shall cancel sale of the specific parcel and the bidder's deposit shall be forfeited. All unsuccessful bids will be returned.

If any of the parcels are not sold on December 5, 1984, they will remain available for sale on a continuing basis until removed from market. Bids will be solicited on these parcels at the BLM, Spokane District Office during regular business hours. All bids received will be opened the first Wednesday of each month, beginning on January 2, 1985. To be considered, bids must be received by 10:00 a.m. on the day of the bid opening.

Detailed information concerning the sale, including the planning documents, environmental assessment, land report, and fair market appraisal, is available for review at the BLM, at the above address.

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the Spokane District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notificaton to the Congressional committees and delegations pursuant to P.L. 97–394 will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Date of Issue: September 17, 1984.

Joseph K. Buesing,

District Manager.

[FR Doc. 25651 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-33-M

Wyoming; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of Plats of Survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 A.M., September 19, 1984.

Sixth Principal Meridian

T. 14 N., R. 83 W.

The plat, in two sheets, representing the dependent resurvey of a portion of the south and north boundaries, a portion of the subdivisional lines, a portion of Mineral Survey No. 555, and the subdivision of certain sections, T. 14 N., R. 83 W., Sixth Principal Meridian, Wyoming, Group No. 408, was accepted September 6, 1984.

T. 20 N., R. 89 W.

The plat representing the dependent resurvey of a portion of the Fifth Standard Parallel North, through R. 88 W., a portion of the Eleventh Guide Meridian West, through T. 20 N., between Rs. 88 and 89 W., portions of the south and west boundaries, and the subdivisional lines, T. 20 N., R. 89 W., Sixth Principal Meridian, Wyoming, Group No. 411, was accepted September 6, 1984.

T. 21 N., R. 89 W.

The plat representing the dependent resurvey of the Fifth Standard Parallel North, through R. 89 W., Portions of the west and north boundaries, and the subdivisional lines, T. 21 N., R. 89 W., Sixth Principal Meridian, Wyoming, Group No. 411, was accepted September 6, 1984.

T. 19 N., R. 90 W.

The plat representing the dependent resurvey of the south boundary, a portion of the east boundary, and the subdivisional lines, T. 19 N., R. 90 W., Sixth Principal Meridian, Wyoming, Group No. 411, was accepted September 6, 1984.

T. 20N., R. 90 W.

The plat representing the dependent resurvey of the Fifth Standard Parallel North, through R. 90 W., portions of the south and west boundaries, and the subdivisional lines, T. 20 N., R. 90 W., Sixth Principal Meridian, Wyoming, Group No. 411, was accepted September 6, 1984.

T. 19N., R. 91 W.

The plat representing the dependent resurvey of portions of the south and north boundaries, the east boundary, and the subdivisional lines, T. 19 N., R. 91 W., 91 Sixth Principal Meridian, Wyoming, Group No. 411, was accepted September 6, 1984.

These surveys were executed to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515

Warren Avenue, Cheyenne, Wyoming 82003.

Dated: September 20, 1984.

Richard L. Oakes,

Chief Cadastral Surveyor for Wyoming.

[FR Doc. 84-25656 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document; CNG Producing Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that CNG Producing Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5391, Block 299, East Cameron Area, offshore Louisiana. 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 Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on September 21, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 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. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

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 § 250.34 of Title 30 of the CFR.

Dated: September 20, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-25655 Filed 9-26-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 2613 (Sub-1)]

Control of Central Pacific by Southern Pacific

AGENCY: Interstate Commerce Commission.

ACTION: Proceeding reopened and modified procedure scheduled.

SUMMARY: Pursuant to a petition filed June 4, 1984, by Southern Pacific Transportation Company (SP) this proceeding is reopened for the purpose of reconsidering the removal of conditions imposed in connection with the Commission's approval of the acquisition of control by SP's predecessor, the Southern Pacific Company, of the Central Pacific Railway Company in *Control of Central Pacific by Southern Pacific*, 76 I.C.C. 508 (1923), *modified*, 328 I.C.C. 345 (1966). The proceeding has been given a new sub-number to distinguish it from the old proceeding.

DATES: Notices of intent to participate are due on October 12, 1984. Service of the petition on all parties filling notices of intent to participate shall be effected by October 17, 1984. Statements in support of the removal of the conditions are due on November 19, 1984. Replies are due on December 19, 1984. Rebuttal is due on January 8, 1985.

A copy of the December, 1982, agreement between SP and the Denver and Rio Grande Western Railroad Company establishing an interline relationship between Ogden, UT, and St. Louis, MO, shall be filed with the Commission by October 9, 1984 and served on all parties who request a copy in their notice of intent by October 17, 1984.

ADDRESSES: Send an original plus 1 copy of each notice of intent to participate and an original plus 10 copies of all other pleadings referring to Finance Docket No. 2613 (Sub-1) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of each notice of intent to participate and any supporting or reply statement to: Michael A. Smith, Southern Pacific Transportation Company, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision in Finance Docket No. 2613 (Sub-1). To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: September 20, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioners Lamboley and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-25674 Filed 9-26-84; 8:45 a.m.]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-117X)]

Illinois Central Gulf Railroad Company—Abandonment and Discontinuance Exemption—In Louisville, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by Illinois Central Gulf Railroad Company of a segment of its own line from milepost 0.24 to milepost 0.37, and the discontinuance of its service

(through trackage rights) over Consolidated Rail Corporation's line from milepost 0.37 to milepost 1.49, a total of 1.25 miles, in Louisville, KY, subject to standard labor protection.

DATES: This exemption will be effective on October 29, 1984. Petitions for reconsideration must be filed by October 17, 1984. Petitions for stay must be filed by October 9, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB–43 (Sub-117X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Richard M. Kamowski, 233 North Michigan Avenue, Chicago, Illinois 60601.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: September 20, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioners Lamboley and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84–25675 Filed 9–26–84; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 388 (Sub-25)]

Intrastate Rail Rate Authority—Ohio

AGENCY: Interstate Commerce Commission.

ACTION: Assumption of Commission Jurisdiction over Ohio Intrastate Rail Transportation.

SUMMARY: Pursuant to a request from the Ohio Public Utilities Commission (OPUC), the Commission will assert jurisdiction over intrastate freight rates in Ohio and vacate the provisional certification of OPUC.

EFFECTIVE DATE: October 29, 1984.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: In Ex Parte No. 388 (Sub-No. 25), *Intrastate Rail Rate Authority-Ohio* (not printed), served October 21, 1983, the Commission extended the provisional certification, pursuant to 49 U.S.C. 11501, of Ohio in order to allow the State time to make necessary statutory amendments, in conformance with Federal law, as set forth in that decision.

In a letter filed July 23, 1984, Ohio states that it will not seek final certification to regulate intrastate freight rates. Ohio also has expressed its desire that this Commission exercise jurisdiction over Ohio's intrastate railroad freight rates.

We are assuming jurisdiction over Ohio intrastate rail rates. At the same time, Ohio's provisional certification to regulate intrastate rates is terminated. Rail carriers in Ohio shall comply with Commission regulations including the filing of intrastate tariffs with the Commission. Parties that wish to continue litigating cases that were pending before OPUC shall so advise Deputy Director Louis E. Gitomer, Rail Section, Office of Proceedings. In the case of any remaining pending State section 229 cases, parties shall consult immediately with Chief Administrative Law Judge David Allard. In this way, we will develop, with the parties, appropriate steps in each case to transfer the records and establish procedural schedules.

This decision does not significantly affect either the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 11501.

Decided: September 20, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioners Lamboley and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84–25676 Filed 9–26–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Proposed Consent Decree in an Action Under the Clean Water Act; Hilo Coast Processing Co.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on August 28, 1984, a proposed consent decree in *United States* v. *Hilo Coast Processing Company* was lodged with the United States District Court for the District of Hawaii. The decree requires Hilo Coast to take remedial actions so as to come into immediate compliance with its NPDES permit, to pay a civil penalty of $35,000 for past violations, to pay stipulated penalties for future violations and to file monthly reports with the Environmental Protection Agency until the Decree terminates.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *Hilo Coast Processing Company*, D.J. 90–5–1–1–2070.

The proposed consent decree may be examined at the office of the United States Attorney, Room C–242, 300 Ala Moana Blvd. Honolulu, Hawaii, at the Region IX office of the Environmental Protection Agency, Office of Regional Counsel, 215 Fremont Street, San Francisco, California and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice (Room 1515), Ninth and Pennsylvania Avenues, NW., Washington, D.C. 20530. A copy of the proposed consent decree can be obtained in person or by mail from the Environmental Enforcement Section at the above address.

F. Henry Habicht, II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84–25617 Filed 9–26–84; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biophysics; 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 Biophysics.

Date and time: Monday and Tuesday, October 15 and 16, 1984 from 8:30 am to 5:00 pm.

Place: Room 338, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Arthur Kowalsky, Program Director, Biophysics Program, Room 329, Telephone: 202/357–7777.

Purpose of advisory panel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

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.

Dated: September 24, 1984.

Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–25724 Filed 9–26–84; 8:45 am]

BILLING CODE 7555–01–M

DOE/NSF Nuclear Science Advisory Committee; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee, Subcommittee on Computers and Computing.

Date, time and place: October 15, 1984, 9:00 am–5:00 pm, October 16, 1984, 9:00 am–5:00 pm, Venus Room, Continuing Education Center, University of Houston, Houston, Texas 77074.

Type of meeting: Open.

Contract person: Dr. Harvey B. Willard, Head, Nuclear Science Section, National Science Foundation, Washington, D.C. 20550, 202/357–7993.

Summary minutes: May be obtained from: Mrs. Shirley Goulart, Physics Division, National Science Foundation, Washington, D.C. 20550.

Purpose of subcommittee: Examination of the needs of the United States basic nuclear research program for computers and computing over the next decade.

Agenda: Oral presentations; committee discussions and workshop.

Dated: September 24, 1984.

M. Rebecca Winkler,,

Committee Management Coordinator.

[FR Doc. 84–25725 Filed 9–26–84; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on October 16 and 17, 1984, in Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, October 16, 1984—1:00 p.m. until the conclusion of business

Wednesday, October 17, 1984—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the joint NRC/Babcock and Wilcox Owners Group/B&W/EPRI integral test program.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 21, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84–25730 Filed 9–26–84; 8:45 am]

BILLING CODE 7590–01–M

Advisory Panel for the Decontamination of Three Mile Island, Unit 2

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI–2) will be meeting on October 11, 1984, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 South Second Street, Harrisburg Pennsylvania 17101. The meeting will be open to the public.

At this meeting the Panel will report on any issues relative to the TMI–2 cleanup effort contained in specific TMI–1 restart NRC Commission Meeting transcripts. The Panel will receive a briefing by the licensee on removal of the reactor pressure vessel plenum and other activities to be accomplished prior to commencement of fuel removal. The Panel will also discuss the appropriateness of receiving the results of specific field radiation measurements taken by State and Federal officials at the request of the public.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492–7466.

Dated September 24, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–25729 Filed 9–26–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–348 and 50–364]

Alabama Power Co., Joseph M. Farley Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR 50.48 to Alabama Power Company (the licensee), for the Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, located at the licensee's site near the city of Dothan, Alabama.

Environmental Assessment

Identification of proposed action: The exemption would extend the deadlines for installation of certain portions of the alternate shutdown systems for Unit 1 and 2 from the end of the 1985 refueling outages to the end of the 1986 refueling outages. The proposed exemption is in accordance with the licensee's request for exemptions dated June 18, 1982, supplemented by letters dated July 1 and November 3, 1982, September 28, 1983, and May 15, July 27, and August 6, 1984.

The need for the proposed action: 10 CFR 50.48(c)(4) requires a licensee to complete installation of alternative shutdown capability before startup after the earliest of three kinds of outages commencing six months or more after issuance of the NRC Fire Protection Safety Evaluation Report dated August

26, 1983. The refueling outage of April 1985 is the earliest such outage for Unit 1 and the outage of January 1985 is the earliest such outage for Unit 2. 10 CFR 50.48(c)(4) requires completion of the alternative shutdown capability before startup from these refueling outages.

The licensee has indicated that the installation and verification of the alternative shutdown system cannot be completed on the schedule stated in 10 CFR 50.48(c)(4) for the following reasons:

(1) Final design and procurement activities were initiated upon receipt of NRC approval of the alternate shutdown system design on August 26, 1983.

(2) Procurement lead times for some needed equipment (e.g. signal converter cards) is about 48 weeks.

(3) Installation work inside containment requiring plant shutdown would take about four weeks, barring field problems, out of the five weeks outage schedule. Thus, two outages are needed for system completion and verification.

Taking all of these factors into consideration the licensee has committed to complete installation by the end of the 1986 refueling outages.

Environmental impacts of the proposed action: The proposed alternative shutdown capability is to provide the controls to allow the reactor to be safely shut down and maintained shutdown in the unlikely event that fire damages certain cables in the cable spreading room (an area outside of the alternative shutdown panel). The environmental impact of delaying completion of this capability is the slightly increased risk of the radiological releases which could be associated with such an event during the next year (approximately one year) of power operation for each plant. To minimize this risk, the licensee will institute interim procedures for alternate shutdown as compensatory measures until installation is complete. This incremental risk is quite low and the releases if they did occur would be bounded by releases which have been previously determined as possible consequences for other accidents at the Farley Nuclear Plant. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

The proposed exemption involves only systems located entirely within the restricted area as defined in 10 CFR Part 20. Also, the proposed exemption does not affect non-radiological plant effluents or other non-radiological environmental impacts. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

The principal alternative to the proposed action would be to deny the exemption and not allow reactor startup after the refueling outages stated above until installation of the alternative shutdown capability was complete. Such an action would negate the insignificant incremental risk described above. However, such an action would result in the loss of a significant amount of generated electricity for each unit, a large adverse impact.

Alternative use of resources: This action involves no use of resources not previously considered in the Final Environmental Statement for the Joseph M. Farley Nuclear Plant Unit Nos. 1 and 2.

Agencies and persons consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated June 18, 1982, supplemented July 1, and November 3, 1982, September 28, 1983, and May 15, July 27 and August 6, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36301.

Dated at Bethesda, Maryland, this 18th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-25727 Filed 9-26-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix E to 10 CFR Part 50 to Florida Power and Light Company (the licensee), for the Turkey Point Plant, Units Nos. 3 and 4, located in Dade County, Florida.

Environmental Assessment

Identification of proposed action: The exemption would permit the extension of the time for performance of the emergency preparedness exercise at the Turkey Point Plant, Units 3 and 4, from June to November for the 1984 exercise and permit all subsequent annual exercises to be performed in November of each year. The proposed action is responsive to the licensee's request for exemption dated July 26, 1984.

The need for the proposed action: 10 CFR 50.54(q) requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of § 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F of Appendix E requires each licensee to conduct emergency preparedness exercises at each site at least annually.

Exercises for the Turkey Point Plant were conducted in the fall time period during the years of 1975 through 1981. Under the upgraded emergency planning regulation, the first full scale exercise of State and local plans for the Turkey Point Plant was in March 1982 and a full scale local exercise with participation of all major State agencies was conducted in June 1983. The licensee has requested a return to a fall time of year for the annual exercises to avoid conflict with the summer hurricane season which impact the emergency organizations of Dade and Monroe Counties which participate in the annual Turkey Point Plant exercises. In addition, the State of Florida emergency preparedness program will benefit by a more even distribution of its exercise related work, especially this year due to the impact of the Federal Field Exercise conducted in March. Since a delay in the next full scale exercise until November 1984 would constitute 17 months between exercises, an exemption from the annual exercises requirement of 10 CFR Part 50, Appendix E is needed.

Environmental impacts of the proposed action: The proposed exemption affects only scheduling of the annual emergency preparedness exercise and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed relief does not otherwise

affect facility radiological effluents, or any significant occupational exposures. Likewise, the relief does not affect facility nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives either will have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require literal compliance with Section IV.F of Appendix E to 10 CFR Part 50. Such an action would not enhance the protection of the environment and could result in unnecessary conflicts with the summer hurricane season in Florida and other exercise related work the local and State participating agencies are involved in.

Alternative use of resources: This action involves no use of resources not previously considered in the Final Environmental Statement (operating licenses) for the Turkey Point Plant, Unit Nos. 3 and 4.

Agencies and persons consulted: The Commission's staff reviewed the licensee's request, the FEMA Final Report of the 1983 exercise at the Turkey Point Plant and a letter from the Federal Emergency Management Agency (FEMA) to the NRC dated February 15, 1984, which indicates that the State and local plans and preparedness for the Turkey Point Plant are adequate to protect the health and safety of the public. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. The Commission has, therefore, determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application for exemption dated July 26, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Bethesda, Maryland, this 20th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-25726 Filed 9-26-84; 8:45 am]

BILLING CODE 7590-01-M

Revised NRC Form 3, Notice to Employees; Standards for Protection Against Radiation (Part 20); Notices, Instructions and Reports to Workers (Part 19); Employee Protection; Availability

The Nuclear Regulatory Commission (NRC) has published a revised NRC Form 3, "Notice to Employees." 10 CFR 19.11(c) requires posting of NRC Form 3 by employers who are NRC licensees, permittees, and applicants. The Notice describes the responsibilities of the employer, employee, the NRC, and the Department of Labor (DOL) regarding matters of public health and safety and employee discrimination. The Notice identifies when, where, and who to contact in the NRC and DOL regarding safety concerns and employee discrimination.

The revised NRC Form 3 is written in the form of simple questions and answers which paraphrase relevant statutes and regulations. The purpose of this change in format is to make the form more readable and understandable. The various protections and prohibitions are described in a straightforward, general way. The NRC believes the revised Form 3 will help employees to clearly understand their responsibilities and the steps they may take to bring safety concerns and employee discrimination complaints to the attention of NRC and DOL.

Free copies of the revised Form 3 may be requested by members of the public, NRC licensees, permittees and applicants, their contractors or subcontractors, and vendors, by writing the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Washington, DC, this 14th day of September, 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-25723 Filed 9-26-84; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) Collection title: Medical Reports
(2) Form(s) submitted: G-3EMP, G-250, RL-11b and RL-11d
(3) Type of request: Revision of a Currently Approved Collection
(4) Frequency of use: On occasion
(5) Respondents: State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, Small Businesses or Organizations
(6) Annual responses: 28,050
(7) Annual reporting hours: 11,050
(8) Collection description: The Railroad Retirement Act provides disability annuities for qualified railroad employees whose physical or mental condition renders them incapable of working in their regular occupation (occupational disability) or any occupation (total disability). The medical reports will obtain information needed for determining the nature and severity of the impairment.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Robert Fishman (202-395-6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens

Director of Information and Data Management.

[FR Doc. 84-25619 Filed 9-26-84; 8:45 am]

BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for

the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Statement of authority of Act for employee
(2) Form(s) submitted: SI–10
(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(4) Frequency of use: On occasion
(5) Respondents: Individuals or households, Businesses or other for-profit
(6) Annual response: 500
(7) Annual reporting hours: 42
(8) Collection description: Under 20 CFR 335.102, the RRB accepts claims for sickness benefits executed by other than the sick or injured employee provided the RRB has the information needed to satisfy itself that the delegation should be made.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Robert Fishman (202–395–6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 84–25618 Filed 9–26–84; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Form 3
No. 270–125

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of clearance Form 3. Form 3 is an initial statement of beneficial ownership of securities by officers, directors and ten percent shareholders of certain companies subject to the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935 and the Investment Company Act of 1940. A copy of the submission is available for inspection and copying at the Commission's Public Reference Room, 450 5th St. N.W., Washington, D.C. 20549. Interested parties should refer to File No. 270–125.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: September 21, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–25718 Filed 9–26–84; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval
Regulation F and Form 1–F
No. 270–117

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of clearance Regulation F under the Securities Act of 1933 (17 CFR 230.651 through 17 CFR 230.656) and Form 1–F. Regulation F and Form 1–F provide a basis for the exemption from registration under the 1933 Act for assessments and for securities sold at delinquent assessment sales. A copy of the submission is available for inspection and copying at the Commission's Public Reference Room, 450 5th St. N.W., Washington, D.C. 20549. Interested parties should refer to File No. 270–117.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: September 21, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–25719 Filed 9–26–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–21342; File No. SR–AMEX–84–26]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to AUTOAMOS

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 29, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc., has determined to establish as a permanent floor-wide enhancement to the Amex Options Switching (AMOS) system the AUTOAMOS program, which enables specialists to enter AMOS execution data using touch-screen terminals.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* In November 1983, the Exchange implemented a pilot program called AUTOAMOS, which enables participating specialists to enter Amex Options Switching (AMOS) system execution data using touch-screen terminals. The pilot program provides more efficient and accurate execution and reporting of small routine orders, thus improving AMOS processing and turnaround time. AUTOAMOS virtually eliminates price errors and significantly reduces other errors compared to the

existing method of card reporting. Given the success both of the pilot and its sister program for equities, AUTOPER, the Exchange has determined to establish AUTOAMOS as a permanent floor-wide enhancement to the AMOS system.

Under AUTOAMOS, eligible orders are automatically routed to the specialist for display on a touch-screen. The specialist may either execute the trade as principal or agent using the touch-screen, or cause the order to be removed from the screen and printed if the order cannot be executed immediately. The specialist may also "stop" the order [1] using the touch-screen.

A total of five touch-screens are being used in the pilot, with order size limited to up to five contracts (the present AMOS parameter) in ten classes of options. The proposed floor-wide expansion will include market orders and marketable limit orders of up to five contracts in all classes of options and provide specialists with the ability to capture contra broker identification numbers (*i.e.*, the badge numbers of members representing the opposite sides of transactions). These numbers are also captured by Exchange reporters as part of the trade-reporting process, and each side of a trade reports its "executing broker" to the Exchange through the trade comparison process.

(2) *Basis.* The expansion of AUTOAMOS is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to facilitate transactions in securities and perfect the mechanism of a free and open market. Further, the expanded us of touch-screen technology will afford quicker and more accurate execution and reporting of small routine orders and will thus result in more efficient and effective market operations, consistent with section 11A(a)(1)(B) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rules changes will create no burden on competition and in fact will enhance the Exchange's competitive status by providing an efficient, fast and accurate order-handling system.

[1] Pursuant to Exchange Rule 109, a specialist "stops" an order when he guarantees a specific price or better price at which an order will be executed.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted by October 18, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 21, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25721 Filed 9-26-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21340; File No. SR-PSE-84-17]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange

September 21, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 13, 1984, the Pacific Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Presently Rule I, section 2(a) of PSE's rules provides that the Exchange will not be open for business on nine days, the majority of which are national holidays. One of these nine days is referred to as a General Election Day and has by custom and usage been defined as an election day on which the electorate is asked to vote for the Office of President of the United States. The proposed amendment would allow PSE's Board of Governors the discretion to decide whether the Exchange will be open for business on Presidential Election Days. PSE cites section 6 of the Act as the statutory basis for the proposed rule change.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-PSE-84-17.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission

and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the CBOE.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25722 Filed 9-26-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-702]

Midland American Capital Corp., Midland Bank plc; Application and Opportunity for Hearing

September 24, 1984.

Notice is hereby given that Midland American Capital Corporation ("MACC") and Midland Bank plc (the "Bank") have filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934 (the "1934 Act") for an order granting MACC an exemption from the periodic reporting requirements of sections 13 and 15(d) of the 1934 Act.

The Applicants state in part that:

(1) MACC has issued and intends to issue in the future debt securities (the "Securities") in the United States, the proceeds of which will be advanced to the Bank. MACC is a wholly-owned subsidiary of the Bank.

(2) The Securities to be issued by MACC will be unconditionally guaranteed as to payment of interest and principal by the Bank on a subordinated basis.

(3) The Securities have been and will be sold based upon the business and financial condition of the Bank, and subsequent investment decisions concerning such securities can reasonably be expected to be based upon such information which will be contained in the Bank's periodic reports required under the 1934 Act.

The Applicants contend that the granting of the exemption would not be inconsistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 450 5th Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person no later than October 19, 1984 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary,

[FR Doc. 84-25720 Filed 9-26-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 916]

The Secretary's Advisory Panel on Overseas Security; Meeting

The Secretary's Advisory Panel on Overseas Security will hold a meeting on Friday, October 5, 1984, from 9:00 a.m. until 12:00 noon at Room 706, 1825 Connecticut Avenue, NW., Washington, D.C. 20009.

Due to the national security information that will be discussed, this meeting will be closed to the public.

For further information, please contact the Advisory Panel staff on 202-673-5544.

Dated: September 20, 1984.

Victor H. Dikeos,

Executive Secretary, the Secretary's Advisory Panel on Overseas Security.

[FR Doc. 84-25614 Filed 9-26-84; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Cities of Cedar Falls and Waterloo, IA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed roadway project in Cedar Falls and Waterloo, Iowa.

FOR FURTHER INFORMATION CONTACT: H.A. Willard, Division Administrator, Federal Highway Administration, Ames, Iowa 50010, Telephone: (515) 233-1664.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Iowa Department of Transportation and the city of Cedar Falls, will prepare an Environmetal Impact Statement (EIS) for a proposed highway improvement known as Greenhill Road within the city limits of Cedar Falls and Waterloo, Iowa. If constructed, this project would involve a two- to four-lane, undivided roadway running east-west approximately 4.5 miles between Iowa Highway 57 in Cedar Falls and the proposed Hackett Road Bypass in Waterloo. The general corridor is along Greenhill Road/Sager Avenue extended westerly.

The project is intended to provide for projected traffic demand and to reduce congestion on existing east-west streets to the north. Several alternatives are under consideration including the no build and widening the existing streets in the area. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Requests for early coordination comments will be sent to appropriate Federal, state, and local agencies, and to private organizations and citizens who have previously expressed interest in this improvement. No need for a public multi-agency scoping meeting is anticipated at this time.

Public meetings will be held in Cedar Falls and Waterloo during development of the EIS. A public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment.

To ensure that issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: September 21, 1984.

H.A. Willard,

Division Administrator, Federal Highway Administration, Ames, Iowa 50010

[FR Doc. 84-25621 Filed 9-26-84; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Smyth County, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Smyth County, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, telephone (804) 771–2682.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Highways and Transportation (VDH&T), will prepare an environmental impact statement (EIS) on a proposal to construct a new two-lane facility from the intersection of Room 603 to the intersection of Route 762 in Smyth County, Virginia.

The construction will involve the use of existing Route 600 alignment and new location for various segments of the project. The environmental study limits of the project are from 0.3 mile west of the intersection of Route 600 and Route 603 to the intersection of Route 600 and Route 762, for a total length of approximately seven miles.

The proposed project will improve access to the western portion of the Mount Rogers National Recreation Area as well as improving local service to the area.

Alternatives under consideration include (1) taking no action; (2) upgrading existing two-lane highway; (3) utilizing existing highway and new location on certain segments. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to organizations and/or citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment. Following the publication of the Draft EIS, a location public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 13372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued: September 21, 1984.

Robert B. Welton,

District Engineer, Richmond, Virginia.

[FR Doc. 84–25622 Filed 9–26–84; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration Rulemaking, Research and Enforcement Programs; Public Meetings

The National Highway Traffic Safety Administration (NHTSA) will hold a meeting on November 14, 1984, to answer questions from the public and industry regarding the agency's rulemaking, research and enforcement programs. The meeting will begin at 10:30 a.m., run until 1:00 p.m., and reconvene at 2:00 p.m., if necessary. It will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

At the November meeting, representatives of DOT will answer questions received from the industry and public relating to NHTSA's rulemaking, research and enforcement programs (including defects). The purpose of this is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature.

Questions for the November meeting should be submitted in writing by October 19, 1984, to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, D.C. 20590. If sufficient time is available, questions received after the October 19 date may be answered at the meeting. The individual, group, or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by October 19 and the issues to be discussed will be mailed to interested persons on or before November 2, 1984, and will be available at the meeting. This list will serve as the agenda.

A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, D.C., within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590.

Issued in Washington, D.C. on September 24, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84–25623 Filed 9–26–84; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 21, 1984.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545–0171
Form Number: IRS Form 4469
Type of Review: Revision
Title: Computation of Excess Hospital Insurance Benefits Tax Credit

OMB Number: 1545–0035
Form Number: IRS Form 943
Type of Review: Revision
Title: Employer's Annual Tax Return for Agricultural Employees

OMB Number: 1545–0233
Form Number: IRS Form 7004
Type of Review: Revision
Title: Application for Automatic Extension of Time to File Corporation Income Tax Return

OMB Number: 1545–0177
Form Number: IRS Form 4684
Type of Review: Revision
Title: Casualties and Thefts

OMB Number: 1545–0023
Form Number: IRS Form 720
Type of Review: Revision
Title: Quarterly Federal Excise Tax Return

Clearance Officer: Garrick Shear (202) 566–6254, Room 5571, 1111 Constitution Avenue, N.W., Washington, D.C. 20224

OMB Reviewer: Norman Frumkin, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive

Office Building, Washington, D.C. 20503.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 84-25640 Filed 9-26-84; 8:45 am]

BILLING CODE 4810-25-M

Office of Foreign Assets Control

Issuance by Government of Japan of Certificates Verifying Non-Cuban Origin of Nickel-Bearing Materials Manufactured by Certain Japanese Steel Corporations

Certificates of origin are now available for importation into the United States from Japan of nickel-bearing materials produced by the Shunan Works of Nisshin Steel Corporation and by the Hikari Works of Nippon Steel Corporation. These certificates are issued pursuant to an arrangement between the Government of Japan and the Government of the United States. The certificates, which are issued by the Japanese Ministry of International Trade and Industry, attest that the materials with respect to which they are issued do not contain nickel of Cuban origin. Each certificate will bear the following statement:

"The Ministry of International Trade and Industry (MITI) hereby certifies that the nickel-bearing products described herein do not contain nickel of Cuban origin and that this certificate has been issued in accordance with procedures administered by MITI to which prior consent was given by the Government of the United States on June 27, 1983."

Each certificate shall bear as a footnote the statement: "Issued in connection with the United States Cuban Assets Control Regulations."

Nickel-bearing material produced by the Shunan Works of the Nisshin Steel Corporation and by the Hikari Works of Nippon Steel Corporation may be imported under the general license in § 515.536(c) of the Cuban Assets Control Regulations (31 CFR Part 515) in accordance with the provisions of that section and of § 515.808 of the Regulations. Such merchandise will be permitted entry through United States Customs if accompanied by a certificate of origin as described above and issued by MITI is presented to the U.S. Customs authorities at the point of entry.

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

Dated: September 24, 1984.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved:

John M. Walker, Jr.,

Assistant Secretary (Enforcement & Operations).

[FR Doc. 84-25638 Filed 9-26-84; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Performance Review Board Members

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This Notice is issued to revise the membership of the United States Information Agency (USIA) Performance Review Board.

DATE: September 27, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Harlan Rosacker (Co-Executive Secretary), Chief, Domestic Personnel Division, Office of Personnel, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, Tel: (202) 485-2617.

or

Ms. Johnnie Manzo (Co-Executive Secretary), Chief, Special Staffing Programs, Office of Personnel, Voice of America, U.S. Information Agency, 301 C Street, S.W., Washington, D.C. 20547, Tel: (202) 485-8095.

SUPPLEMENTARY INFORMATION: In accordance with section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95454), the following list supersedes the U.S. Information Agency Notice (48 FR 49571, October 26, 1983).

Chairperson: Associate Director for Management—Woodward Kingman (Presidential Appointee).

Career SES Members

Deputy Chairperson: Acting Associate Director for Voice of America—Ernest E. Pell.

Deputy for Operations, Office of Engineering and Technical Operations, Voice of America—Walter La Fleur.

Director, Office of Contracts, Bureau of Management—Philip Rogers.

Deputy Associate Director, Bureau of Programs—Michael Schneider.

Director, Television & Film Service—Alvin Snyder.

Non Career SES Member

Director, Office of Private Sector Programs, Bureau of Educational & Cultural Affairs—Mark Blitz.

Alternates

Senior Foreign Service Officer: Deputy Director (Modernization), Voice of America—Morton Smith.

Career SES Member: Inspector General—Jerry Bridges.

This supersedes the previous U.S. Information Agency Notice (48 FR 49571), October 26, 1983.

Woodward Kingman,

Associate Director for Management, U.S. Information Agency.

[FR Doc. 84-25713 Filed 9-26-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement 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 (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 289-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Officer of Management and Budget, 726 Jackson Place, NW, Washington DC 20503 (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 21, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management

Reinstatement

1. Department of Medicine and Surgery
2. Shop Data Sheet (Artificial Limbs)
3. VA Form 10–2793
4. On occasion
5. Businesses or other for profit; Small businesses or organizations
6. 30 responses
7. 10 hours
8. Not applicable

[FR Doc. 84–25627 Filed 9–26–84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 189
Thursday, September 27, 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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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Meeting

DATE AND TIME: 9:30 AM (Eastern Time), Tuesday, October 2, 1984.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes.
2. A Report on Commission Operations (Optional).
3. Freedom of Information Act Appeal No. 84-8-FOIA-170-CL, concerning a request for documents from a charge file.
4. Freedom of Information Act Apeal No. 84-07-FOIA-088-CT, concerning a request for a confidential affidavit from an ADEA charge file.
5. Freedom of Information Act Appeal No. 84-75-FOIA-55-NO, concerning a request for documents from a concurrent Title VII/ADEA charge file.
6. Freedom of Information Act Appeal No. 84-7-FOIA-88-DA, concerning a request for the contents of a charge file.
7. Freedom of Information Act Appeal No. 84-06-FOIA-045-IN, concerning a request for copies of all materials related to a age discrimination charge.
8. Freedom of Information Act Appeal No. 84-6-FOIA-81-DA, concerning a request for documents in an Age Discrimination file.
9. Freedom of Information Act Appeal No. 84-5-FOIA-66-DA, concerning a confidential witness statements.
10. Early Retirement Incentives.
11. Opinion Letter (on Early Retirement Plan).

Closed

1. Litigation Authorization; General Counsel Recommendations.
2. Proposed Decisions, Settlements, and Subpoenas.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

This Notice Issued September 25, 1984.

Dated: September 25, 1984.

Treva McCall,

Executive Secretary.

[FR Doc. 84-25785 Filed 9-25-84; 2:28 pm]

BILLING CODE 6750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

[38386]

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, September 24, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum re: Amendments to the Corporation's General Travel Regulations (GTR's).

By the same majority vote, the Board further determined that Corporation business required the addition to the agenda for consideration at this meeting, on less than seven days' notice to the public, of the following matters:

Application for capital assistance under section 13(i) of the Federal Deposit Insurance Act: Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(8), and (c)(9)(A)(ii)).

Recommendation regarding the Corporation's assistance agreement involving an insured bank pursuant to Section 13 of the Federal Deposit Insurance Act.

Recommendation regarding a proposal for financial assistance to facilitate a voluntary merger of savings banks: Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(8), and (c)(9)(A)(ii)).

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,113-L: International City Bank and Trust Company, New Orleans, Louisiana

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 25, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-25792 Filed 9-25-84; 3:03 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

[38387]

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, September 24, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the

Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Midlantic National Bank/North, West Paterson, New Jersey, for consent to purchase certain assets of and assume the liability to pay deposits made in the Mahwah Branch of Carteret Savings and Loan Association, F.A., Newark, New Jersey, a non-FDIC-insured institution.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: September 25, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-25793 Filed 9-25-84; 3:04 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

[38382]

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 7:30 p.m. on Friday, September 21, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A) consider an application for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act: Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)); and

(B)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Security State Bank, Weatherford, Oklahoma, which was closed by the Oklahoma Bank Commissioner on Friday, September 21, 1984; (2) accept the bid for the transaction submitted by United Community Bank, Weatherford, Oklahoma, a newly-chartered State nonmember bank; (3) approve the applications of United Community Bank, Weatherford, Oklahoma, for Federal deposit insurance, and for consent to purchase certain assets of and to assume the liability to pay deposits made in Security State Bank, Weatherford, Oklahoma; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 24, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-25794 Filed 9-25-84; 3:05 pm]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, September 27, 1984, at the conclusion of the open meeting.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public—Pursuant to 11 CFR 3.5(d), the Commission determined that Commission business so required, and that no earlier announcement of this meeting was possible, and accordingly voted to hold an Executive Session to consider an expedited compliance matter.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-25790 Filed 9-25-84; 3:00 pm]

BILLING CODE 6715-01-M

6

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 2, 1984, 10:00 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, October 4, 1984, 10:00 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 #1984-41
J. Curtis Herge, on behalf of the National Conservative Foundation and National Conservative Foundation Endowment Fund
Draft Advisory Opinion #1984-45
Loren D. McManus, on behalf of R.J. Reynolds Industries, Inc.
Draft Advisory Opinion #1984-48
John R. Wallace, on behalf of Governor James B. Hunt, Jr. and the Jim Hunt Committee
Standards of Conduct for FEC employees: Notice of Proposed Rulemaking
Finance Committee Report
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-25791 Filed 9-25-84; 3:00 pm]

BILLING CODE 6715-01-M

federal register

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Part II

Federal Mine Safety and Health Review Commission

29 CFR Part 2706

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs; Proposed Rule

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2706

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended which prohibits discrimination on the basis of handicap, as it applies to program or activities conducted by the Federal Mine Safety and Health Review Commission.

DATE: To be assured of consideration comments must be in writing and must be received on or before November 26, 1984. Comments should refer to specific sections in the regulation.

ADDRESSES: Send comments to Ann Rosenthal, Counsel to the Chairman, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., Room 610, Washington, D.C. 20006. Comments received will be available for public inspection at the Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Ann Rosenthal, (202) 653–5625 or TDD (202) 724–7678.

SUPPLEMENTARY INFORMATION: The Federal Mine Safety and Health Review Commission conducts all adjudicative proceedings and hearings required by the Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 801 et seq.). When determining where hearings will be held, the Commission must consider both the convenience of the public or parties to a proceeding, and the extent to which delay or expense can be minimized. (30 U.S.C. 823(a) and the regulation promulgated thereunder, 29 CFR 2700.51). This usually means that hearings are conducted in relatively rural areas at sites near the mining operation involved. Often it is impossible to locate accessible facilities near the mining operation. The Commission will therefore include in the announcement of any hearing a notice that persons desiring to attend should inform the agency in advance of any accessibility features they may require. The announcement will be sent to parties who will attend the hearing and/or their representatives. The Commission will also include such a notice in any public announcement of a hearing. If the Commission receives a request for an accessible hearing site in response to a hearing notice, the Commission will move the hearing to an accessible hearing site, even though this site is farther from the mining operation.

The notice will also require handicapped persons to inform the agency in advance of any auxiliary aids, such as sign language interpreters, that may be necessary. Thus, the Commission will, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Federal Mine Safety and Health Review Commission.

As amended by the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95–602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that

> No otherwise qualified handicapped individual in the United States * * * shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Development Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. See 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance, 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) id.; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); id. at 38,552 (remarks of Rep. Sarasin.)

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Excutive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis

Section 2706.101 Purpose.

Section 2706.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 2706.102 Application.

The proposed regulation applies to all programs or activities conducted by the agency.

Section 2706.103 Definitions.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 2706.160(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." The definition of "complete complaint" enables the ageny to determine the beginning of its

obligations to investigate a complaint (*see* § 2706.170(d)).

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted, because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ 2706.149, 2706.150, and 2706.170(f).

"Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

"Historic preservation programs," "Historic properties," and "Substantial impairment." These terms are defined in order to aid in the interpretation of § 2706.150(a)(2) and (b)(2), which relate to accessibility of historic preservation programs.

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) is an adaptation of existing definitions of "qualified handicapped person" for purposes of federally assisted preschool, elementary, and secondary education programs (*see, e.g.*, 45 CFR 84.3(k)(2)). It provides that a handicapped person is qualified for preschool, elementary, or secondary education programs conducted by the agency, if he or she is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive these services from the agency. In other words, a handicapped person is qualified if, considering all factors other than the handicapping condition, he or she is entitled to receive education services from the agency.

Paragraph (2) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified handicapped person" with regard to any program other than those covered by paragraph (1) under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified handicapped person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *Id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

We encourage comment on paragraph (2). The language we have proposed comes directly from the Supreme Court's interpertation of section 504. However, so long as the definition of "qualified handicapped person" remains faithful to the statute and current case law, we are receptive to alternative language.

For programs or activities that do not fall under either of the first two paragraphs, paragraph (3) adopts the existing definition of "qualified handicaped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." this definition makes clear that, as used in this regulation, "section 504" applies only to progams or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 2706.110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The Department of Justice is considering whether and to what degree the Federal Advisory Committee Act (5 U.S.C. app.) is applicable to the proposed consultation requirement. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

Section 2706.111 Notice.

Section 2706.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protctions afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's progams and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 2706.130 General prohibitions against discrimination.

Section 2706.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs

or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 2706.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 2706.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 2706.150–2706.151) and communications (§ 2706.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualifed handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This subparagraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 2706.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certification. A person is a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 2706.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified handicapped persons in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The program or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designated to benefit only handicapped persons or a given class handicapped persons may be limited to those handicapped persons.

Section 2706.140 Employment.

Section 2706.140 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt* v. *United States Postal Service*, 662, F.2d 292 (5th Cir. 1981). Consistent with that decision, this section provides that the standards, requirements, and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employment in federally conducted programs or activities. In addition to this section, § 2706.170(b) of this regulation specifies that the agency will use the existing

EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

Section 2706.149 Program accessibility: Discrimination prohibited.

Section 2706.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 2706.150 and 2706.151.

Section 2706.150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–.58), with certain modifications. Thus, § 2706.150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regualtion also makes clear that the agency is not required to make each of its existing facilities accessible (§ 2706.150(a)(1)). However, § 2706.150, unlike 28 CFR 41.56–41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 2706.150(a)(2), (a)(3)).

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph (b).

Paragraph (a)(3) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This subparagraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 2706.160(e). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation (DOT). The court in *APTA* noted "that at some point at transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of paragraph (a)(3) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This paragraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 2706.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 2706.150(a) would fundamentally alter the nature of a program of activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 2706.170.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Section 2706.150(a)(2) provides an additional limitation on the obligation to ensure program accessibility that is applicable only to historic preservation programs. In order to avoid possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against handicapped persons on the other, § 2706.150(a)(2) provides that in historic preservation programs the agency is not required to take any action that would result in a substantial impairment of significant historic features of an historic property.

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, § 2706.150(b)(2) requires the agency to give priority to methods of providing program accessibility that permit handicapped persons to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the agency administer programs in the most integrated setting appropriate to the needs of qualified handicapped persons (§ 2706.130(d)). Only when providing physical access would result in a substantial impairment of significant historic features, a fundamental alteration in the nature of the program

or in undue financial and administrative burdens, may the agency adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in § 2706.150(b)(2).

The special limitation on program accessibility set forth in § 2706.150(a)(2) is applicable only to programs that have preservation of historic properties as a primary purpose (*see supra* definition of "historic preservation program," § 2706.103). Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program the agency is not bound to a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside froms structural changes, all other necessary steps to achieve compliance shall be taken within sixty days. The Department of Justice is considering whether and to what degree the Federal Advisory Committee Act (5 U.S.C. app.) is applicable to the proposed consultation requirement included in § 2706.150(d).

Section 2706.151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new consruction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 2706 151 provides that those buildings that are constructed or altered by, on behalf of or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 2706.150.

Section 2706.160 Communications.

Section 2706.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 2706.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 2706.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 2706.160(e). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions intepreting it (*see supra* preamble § 2706.150(a)(3)). Unless not required by § 2706.160(e), the agency shall provide auxiliary aids at no cost to the handicapped person.

It is our view that compliance with § 2706.160 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burden are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 2706.160 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a compliant under the compliance procedures established in § 2706.170.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpretes are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 2706.160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Paragraph (d) requires the agency to take appropriate steps to ensure that information regarding section 504 rights and protections that is supplied to employees, applicants, participants, beneficiaries, and other interested

persons under § 2706.111 is effectively communicated to handicapped persons.

Section 2706.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency will designate an official responsible for coordinating implementation of this section (§ 2706.170(c)).

The agency is required to accept and investigate all complete complaints (§ 2706.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 2706.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 2706.170(g)). One appeal within the agency shall be provided (§ 2706.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 2706.170(i)).

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 29 CFR Part 2706

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 29 of the Code of Federal Regulations be amended by adding Part 2706 as set forth at the end of this document.

Signed this 18th day of September, 1984.

Catherine Sands Hiler,

Executive Director.

PART 2706—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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2706.152–2706.159 [Reserved]
2706.160 Communications.
2706.1–2706.169 [Reserved]
2706.170 Compliance procedures.
2706.171–2706.999 [Reserved]

Authority: 29 U.S.C. 794.

§ 2706.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies of the United States Postal Service.

§ 2706.102 Application.

This part applies to all programs or activities conducted by the agency

§ 2706.103 Definitions.

For purposes of the part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons, (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having a

mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Historic preservation programs" means program conducted by the agency that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places.

"Qualified handicapped person" means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that would result in a fundamental alteration in its nature; and

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Section 504" means section 504 of the rehabilitation Act of 1973 [Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)], as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§2706.104–2706.109 [Reserved]

§ 2706.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

(1) a list of the interested persons consulted,

(2) a description of areas examined and any problems identified, and

(3) a description of any modifications made.

§ 2706.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 2706.112–2706.129 [Reserved]

§ 2706.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a

manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statue or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 2706.131—2706.139 [Reserved]

§ 2706.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§ 2706.141—2706.148 [Reserved]

§ 2706.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 2706.150 and 2706.151, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 2706.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 2706.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.*

(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilites, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 2706.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 2706.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligation established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 2706.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons.

The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 2706.152–2706.159 [Reserved]

§ 2706.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible service, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The agency shall take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the agency's programs or activities.

(e) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 2706.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 2706.161—2706.169 [Reserved]

§§ 2706.170 Compliance procedures

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaint alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The head of the agency shall designate an official to be responsible for coordinating implementation of this section

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 2706.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed for the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in (g) and (j) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§ 2706.171—2706.999 [Reserved]

[FR Doc. 84–25469 Filed 9–26–84; 8:45 am]
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federal register

Thursday
September 27, 1984

Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Reference Methods; Alternative Methods for Nitrogen Oxide Emissions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2655-6]

Standards of Performance for New Stationary Sources; Reference Methods; Alternative Methods for Nitrogen Oxide Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this action is to promulgate as alternative methods to Method 7, "Method 7C, Determination of Nitrogen Oxide Emissions from Stationary Sources—Alkaline Permanganate/Colorimetric Procedure," and "Method 7D, Determination of Nitrogen Oxide Emissions from Stationary Sources—Alkaline Permanganate/Ion Chromatography Procedure," which are to be added to Appendix A of 40 CFR Part 60. The methods provide integrated samples rather than grab samples as in Method 7. These methods were proposed in the **Federal Register** on October 12, 1983 (48 FR 46472).

These methods would, at present, apply to fossil-fuel fired steam generators (Subpart D), electric utility steam generating units (Subpart Da), and nitric acid plants (Subpart G).

EFFECTIVE DATE: September 27, 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 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.

Docket. Docket No. A-82-42, containing supporting information relevant to this rulemaking, is available for public inspection and copying 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, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger Shigehara, Emission Measurement Branch (MD-19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION: Methods 7C and 7D will serve as alternative methods to Method 7. Both methods utilize impingers to provide time integrated samples instead of evacuated flask grab samples. The alternative methods use colorimetric or ion chromatographic analysis.

Public Participation

Methods 7C and 7D were proposed and published in the **Federal Register** on October 12, 1983 (48 FR 46472). The opportunity to request a public hearing was presented to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed test methods, but no person desired to make an oral presentation. The public comment period was from October 12, 1983, to December 15, 1983. Six comment letters were received concerning issues relative to the proposed test methods. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made.

Significant Comments and Changes to the Proposed Test Methods

Six comment letters were received on the proposed test methods. The major comments and responses are summarized in this preamble. Some of the comment letters contained multiple comments. The significant comments and subsequent changes to the proposed test methods are listed here.

1. One commenter requested a clarification in the definition of the test duration and number of repetitions constituting a valid test run for Methods 7C and 7D. It was noted that a discrepancy exists between the duration specified in the methods and that specified in the proposed amendments to Subparts D, Da, and G.

The proposed amendments to Subparts D, Da, and G that generate confusion over the test duration and frequency for a run have been deleted. A statement has been added to applicable subparts specifying a 1-hour sample to constitute a run.

2. The same commenter suggested that Section 7.1.2 of Performance Specification 2 in Appendix B be revised to allow the use of Methods 7C and 7D for relative accuracy testing, and a description of a minimum acceptable sampling duration, other than 60 minutes as specified in the methods, be given.

Section 7.4 currently allows the use of Methods 7C and 7D since they are approved alternatives to Method 7. Sampling strategy for Methods 7C and 7D is defined in Section 7.1.1, not 7.1.2, since both methods take integrated samples. A 1-hour sampling period is best for increased precision with the methods. Therefore, for relative accuracy testing, the minimum sampling time is 1 hour, sampling 20 minutes at each traverse point. This requirement will be noted in the methods.

3. Another commenter questioned whether Greenburg-Smith impingers may be used in place of the impingers in the proposed methods without creating a bias. Table 1 of Citation 1 in the bibliography shows that the use of Greenburg-Smith impingers would create a bias because the NO_x collection efficiency would only be 94 percent. However, this does not preclude the use of Greenburg-Smith impingers if one can demonstrate the bias can be eliminated.

4. A commenter wondered why it is essential in preparing the cadmium reduction column to cut off the burette at a certain height and have a funnel attached by a glassblower. The funnel is not an essential item but is used to ensure quantitative transfer of the sample. This transfer would be difficult without the funnel. Other means may be used to attach the funnel to the burette (e.g. plastic tubing).

5. A commenter asked if it were possible to use a Method 7C or 7D train at a lower flow rate for the backup monitoring required by Subpart Da [40 CFR 60.47a(f)]. The Agency cannot recommend use of the methods at lower flow rates for long-term sampling because method evaluations under these conditions have not been fully conducted. A method similar to Methods 7C and 7D employing a single sampling train is currently under investigation by the Agency and may become available in the future for long-term monitoring of NO_x and SO_2 emissions.

6. One commenter asked if the Fyrite analyzer of Method 3 is sufficiently accurate, or must the Orsat analyzer be used to measure CO_2. The methods now state that the Fyrite analyzer may be used to measure CO_2.

7. It was desired that the frequency of the rotameter accuracy check be specified in the methods. A recommendation to check the rotameter accuracy before each test has been added to the methods.

8. One commenter wondered what method of testing should be used in Method 7D to ensure that no NO_2- is present in the sample after the 48- to 60-hour standing period.

Recent research has shown that a 36-hour standing time is sufficient to oxidize all NO_2- to NO_3-. Therefore, no test for NO_2- remaining after this

standing time is necessary. Section 4.3 (Sample Preparation for Analysis) has been changed to require a 36-hour standing period.

9. A commenter asked if the 10-minute period for color development in section 4.4 of Method 7C is critical. The commenter also asked if there is a recommended number of calibration points for spectrophotometer calibration curve.

The 10-minute color development period is critical only as a minimum time. Longer times have no effect on color intensity. For the spectrophotometer calibration curve, a minimum of three points each will be specified for the linear and slightly nonlinear (above 1.2 absorbance) ranges.

10. The need for achieving the accuracy implied by a pH of 12.0 required in section 4.3 of Method 7C was questioned by a commenter. The pH adjustment step need not be as accurate as the number indicates. The adjustment is necessary to maintain the pH above 11 as the solution is diluted in the cadmium column. EDTA chelates Cd^{++} to prevent $Cd(OH)_2$ from precipitating on the column and restricting the flow. EDTA chelation of metals is optimum at pH 11 and higher. Therefore, the pH specification in the methods has been revised to cover the range of 11.7 to 12.0.

A few commenters cited the lack of clarity in certain sections of the methods. Where warranted, changes have been made to these sections to add clarity. The various typographical printing errors mentioned in the comment letters have also been corrected.

Docket

The docket is an organized and complete file of the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purposes of the proposed and promulgated rule and EPA responses to significant comments, the comments of the docket will serve as the record in case of judicial review [section 307(d)(7)(A)].

Miscellaneous

This rulemaking would not impose any additional emission measurement requirements on any facilities. Rather, the rulemaking would simply add alternative test methods associated with emission measurement requirements that would apply irrespective of this rulemaking.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have any economic impact on a substantial number of small entities because the rulemaking simply adds alternative test methods.

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, Fiberglass insulation, Synthetic fibers.

Dated: September 19, 1984.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended as follows:

1. The authority citation for this amendment is as follows:

Authority: Secs. 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

2. By revising § 60.17(a)(22) as follows:

§ 60.17 Incorporation by reference.

* * * * *

(a) * * *

(22) ASTM D 1192–77, Standard Specification for Reagent Water, Incorporated by Reference approved January 27, 1983, for Appendix A to Part 60, Method 6, par. 3.1.1; Method 7, par. 3.2.2; Method 7C, par. 3.1.1; Method 7D, par. 3.1.1; Method 8, par. 3.1.3; Method 12, par. 4.1.3.

* * * * *

3. By amending §§ 60.45, 60.46, 60.47a, 60.73, and 60.74 as follows:

§ 60.45 [Amended]

a. In 60.45(c)(1) and 60.46(a)(2) by removing the word "Reference" and by removing "7 or 7A" and replacing with "7, 7A, 7C, or 7D".

§ 60.46 [Amended]

b. In 60.46(a)(5) and 60.46(c) by removing "7 or 7A" and replacing with "7, 7A, 7C, or 7D".

c. In 60.46(c), in the last sentence by removing "Method 6" and replacing with "Method 6, 7C, and 7D".

d. In 60.46(e) by adding the following sentence: "For Method 7C or 7D, each run shall consist of a 1-hour sample."

e. In 60.46(f)(2) by removing "or 7" and replacing with "7, 7A, 7C, or 7D".

f. In 60.46(f)(3)(i) by removing "7 or 7A" and replacing with "7, 7A, 7C, or 7D" in the first sentence only.

§ 60.47a [Amended]

g. In 60.47a(h)(1) by removing the word "Reference" and by removing "7 or 7A" and replacing with "7, 7A, 7C, or 7D".

h. In 60.47a(h)(3) by adding the following sentence: "For Method 7C or 7D, each run shall consist of a 1-hour sample."

i. In 60.47a(h)(4) by removing "7 or 7A" and replacing with "7, 7A, 7C, or 7D".

j. In 60.47a(h)(5)(i)(1) by removing the word "Reference" and by removing "7 or 7A" and replacing with "7, 7A, 7C, or 7D".

§ 60.73 [Amended]

k. In 60.73(a) by removing the word "Reference" and by removing "7, 7A, or 7B" and replacing with "7, 7A, 7B, 7C, or 7D".

§ 60.74 [Amended]

l. In 60.74(a)(1) by removing "7, 7A, or 7B" and replacing with "7, 7A, 7B, 7C, or 7D".

m. In 60.74(b) by adding the following sentence: "For Method 7C or 7D, each run shall consist of a 1-hour sample."

4. By adding Methods 7C and 7D to Appendix A as follows:

Appendix A—Reference Methods

* * * * *

Method 7C—Determination of Nitrogen Oxide Emissions From Stationary Sources

Alkaline-Permanganate/Colorimetric Method

1. *Applicability, Principle, Interferences, Precision, Bias, and Stability.*

1.1 Applicability. The method is applicable to the determination of NO_x emissions from fossil-fuel fired steam generators, electric utility plants, nitric acid plants, or other sources as specified in the regulations. The lower detectable limit is 13 mg NO_x/m^3, as NO_2 (7 ppm NO_x) when sampling at 500 cc/min for 1 hour. No upper limit has been established; however, when using the recommended sampling conditions, the method has been found to collect NO_x emissions quantitatively up to 1,782 mg NO_x/m^3, as NO_2 (932 ppm NO_x).

1.2 Principle. An integrated gas sample is extracted from the stack and collected in alkaline-potassium permanganate solution; NO_x ($NO + NO_2$) emissions are oxidized to NO_2^- and NO_3^-. The NO_3^- is reduced to NO_2^- with cadmium, and the NO_2^- is analyzed colorimetrically.

1.3 Interferences. Possible interferences are SO_2 and NH_3. High concentrations of SO_2 could interfere because SO_2 consumes MnO_4^- (as does NO_x) and, therefore, could reduce the NO_x collection efficiency. However, when sampling emissions from a coal-fired electric utility plant burning 2.1-percent sulfur coal with no control of SO_2 emissions, collection efficiency was not reduced. In fact, calculations show that sampling 3000 ppm SO_2 will reduce the MnO_4^- concentration by only 5 percent if all the SO_2 is consumed in the first impinger.

NH_3 is slowly oxidized to NO_3^- by the absorbing solution. At 100 ppm NH_3 in the gas stream, an interference of 6 ppm NO_x (11 mg NO_2/m^3) was observed when the sample was analyzed 10 days after collection. Therefore, the method may not be applicable to plants using NH_3 injection to control NO_x emissions unless means are taken to correct the results. An equation has been developed to allow quantitation of the interference and is discussed in Citation 5 of the bibliography.

1.4 Precision and Bias. The method does not exhibit any bias relative to Method 7. The within-laboratory relative standard deviation for a single measurement is 2.8 and 2.9 percent at 201 and 268 ppm NO_x, respectively.

1.5 Stability. Collected samples are stable for at least 4 weeks.

2. *Apparatus.*

2.1 Sampling and Sample Recovery. The Sampling train is shown in Figure 7C-1, and component parts are discussed below. Alternative apparatus and procedures are allowed provided acceptable accuracy and precision can be demonstrated.

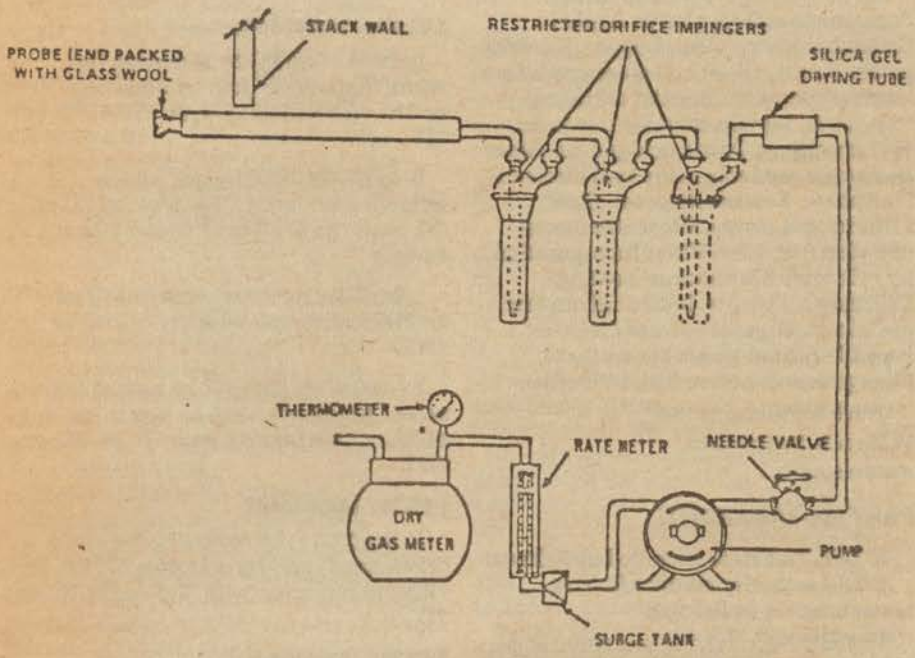


Figure 7C-1. NO_x sampling train

2.1.1 Probe. Borosilicate glass tubing, sufficiently heated to prevent water condensation and equipped with an in-stack or out-stack filter to remove particulate matter (a plug of glass wool is satisfactory for this purpose). Stainless steel or Teflon tubing may also be used for the probe. (Note: Mention of trade names or specific products does not constitute endorsement by the U.S. Environmental Protection Agency.)

2.1.2 Impingers. Three restricted-orifice glass impingers, having the specifications given in Figure 7C-2, are required for each sampling train. The impingers must be connected in series with leak-free glass connectors. Stopcock grease may be used, if necessary, to prevent leakage. (The impingers can be fabricated by a glass blower until they become available commercially.)

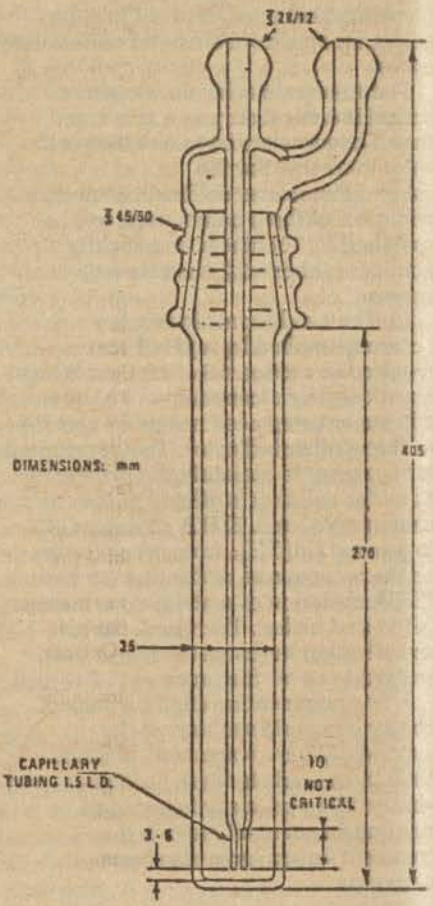


Figure 7C-2. Restricted orifice impinger

2.1.3 Glass Wool, Stopcock Grease, Drying Tube, Valve, Pump, Barometer, and Vacuum Gauge and Rotameter. Same as in Method 6, Sections 2.1.3, 2.1.4, 2.1.6, 2.1.7, 2.1.8, 2.1.11, and 2.1.12, respectively.

2.1.4 Rate Meter. Rotameter, or equivalent, accurate to within 2 percent at the selected flow rate between 400 and 500 cc/min. For rotameters, a range of 0 to 1 liter/min is recommended.

2.1.5 Volume Meter. Dry gas meter capable of measuring the sample volume, under the sampling conditions of 400 to 500 cc/min for 60 minutes within an accuracy of 2 percent.

2.1.6 Filter. To remove NO_x from ambient air, prepared by adding 20 g of a 5-angstrom molecular sieve to a cylindrical tube, e.g., a polyethylene drying tube.

2.1.7 Polyethylene Bottles. 1-liter, for sample recovery.

2.1.8 Funnel and Stirring Rods. For sample recovery.

2.2 *Sample Preparation and Analysis.*

2.2.1 Hot Plate. Stirring type with 50- by 10-mm Teflon-coated stirring bars.

2.2.2 Beakers. 400-, 600-, and 1000-ml capacities.

2.2.3 Filtering Flask. 500-ml capacity with side arm.

2.2.4 Buchner Funnel. 75-mm ID, with spout equipped with a 13-mm ID by 90-mm long piece of Teflon tubing to minimize possibility of aspirating sample solution during filtration.

2.2.5 Filter Paper. Whatman GF/C, 7.0-cm diameter.

2.2.6 Stirring Rods.

2.2.7 Volumetric Flasks. 100-, 200- or 250-, 500-, and 1000-ml capacity.

2.2.8 Watch Glasses. To cover 600- and 1,000-ml beakers.

2.2.9 Graduated Cylinders. 50- and 250-ml capacities.

2.2.10 Pipettes. Class A

2.2.11 pH Meter. To measure pH from 0.5 to 12.0

2.2.12 Burette. 50-ml with a micrometer type stopcock. (The stopcock is Catalogue No. 8225–t–05, Ace Glass, Inc., Post Office Box 996, Louisville, Kentucky 50201.) Place a glass wool plug in bottom of burette. Cut off burette at a height of 43 cm from the top of plug, and have a glass blower attach a glass funnel to top of burette such that the diameter of the burette remains essentially unchanged. Other means of attaching the funnel are acceptable.

2.2.13 Glass Funnel. 75-mm ID at the top.

2.2.14 Spectrophotometer. Capable of measuring absorbance at 540 nm. One-cm cells are adequate.

2.2.15 Metal Thermometers. Bimetallic thermometers, range 0 to 150 °C.

2.2.16 Culture Tubes. 20- by 150-mm, Kimax No. 45048.

2.2.17 Parafilm "M." Obtained from American Can Company, Greenwich, Connecticut 06830.

2.2.18 CO_2 Measurement Equipment. Same as in Method 3.

3. *Reagents.*

Unless otherwise indicated, all reagents should conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

3.1 Sampling.

3.1.1 Water. Deionized distilled to conform to ASTM specification D 1193–74, Type 3 (incorporated by reference—see § 60.17).

3.1.2 Potassium Permanganate, 4.0 percent (w/w), Sodium Hydroxide, 2.0 percent (w/w). Dissolve 40.0 g of $KMnO_4$ and 20.0 g of NaOH in 940 ml of water.

3.2 Sample Preparation and Analysis.

3.2.1 Water. Same as in Section 3.1.1.

3.2.2 Sulfuric Acid. Concentrated H_2SO_4.

3.2.3 Oxalic Acid Solution. Dissolve 48 g of oxalic acid [$(COOH)_2 \cdot 2H_2O$] in water, and dilute to 500 ml. Do not heat the solution.

3.2.4 Sodium Hydroxide, 0.5 N. Dissolve 20 g of NaOH in water, and dilute to 1 liter.

3.2.5 Sodium Hydroxide, 10 N. Dissolve 40 g of NaOH in water and dilute to 100 ml.

3.2.6 Ethylenediamine Tetraacetic Acid (EDTA) Solution, 6.5 Percent. Dissolve 6.5 g of EDTA (disodium salt) in water, and dilute to 100 ml. Solution is best accomplished by using a magnetic stirrer.

3.2.7 Column Rinse Solution. Add 20 ml of 6.5 percent EDTA solution to 960 ml of water, and adjust the pH to 11.7 to 12.0 with 0.5 N NaOH.

3.2.8 Hydrochloric Acid (HCl), 2 N. Add 86 ml of concentrated HCl to a 500-ml volumetric flask containing water, dilute to volume, and mix well. Store in a glass-stoppered bottle.

3.2.9 Sulfanilamide Solution. Add 20 g of sulfanilamide (melting point 165 to 167 °C) to 700 ml of water. Add, with mixing, 50 ml concentrated phosphoric acid (85 percent), and dilute to 1000 ml. This solution is stable for at least 1 month, if refrigerated.

3.2.10 N-(1-Naphthyl)-Ethylenediamine Dihydrochloride (NEDA) Solution. Dissolve 0.5 g of NEDA in 500 ml of water. An aqueous solution should have one absorption peak at 320 nm over the range of 260 to 400 nm. NEDA, showing more than one absorption peak over this range, is impure and should not be used. This solution is stable for at least 1 month if protected from light and refrigerated.

3.2.11 Cadmium. Obtained from Matheson Coleman and Bell, 2909 Highland Avenue, Norwood, Ohio 45212, as EM Laboratories Catalogue No. 2001. Prepare by rinsing in 2 N HCl for 5 minutes until the color is silver-grey. Then rinse the cadmium with water until the rinsings are neutral when tested with pH paper. CAUTION: H_2 is liberated during preparation. Prepare in an exhaust hood away from any flame.

3.2.12 $NaNO_2$ Standard Solution, Nominal Concentration, 100 μ g NO_2^-/ml. Desiccate $NaNO_2$ overnight. Accurately weigh 1.4 to 1.6 g of $NaNO_2$ (assay of 97 percent $NaNO_2$ or greater), dissolve in water, and dilute to 1 liter. Calculate the exact NO_2^- concentration from the following relationship:

$$\mu g\ NO_2^-/ml = g\ of\ NaNO_2 \times \frac{purity,\ \%}{100} \times 10^3 \times \frac{46.01}{69.01}$$

This solution is stable for at least 6 months under laboratory conditions.

3.2.13 KNO_3 Standard Solution. Dry KNO_3 at 110 °C for 2 hours, and cool in a desiccator. Accurately weigh 9 to 10 g of KNO_3 to within 0.1 mg, dissolve in water, and dilute to 1 liter. Calculate the exact NO_3^- concentration from the following relationship:

$$\mu g\ NO_3^-/ml = g\ of\ KNO_3 \times 10^3 \times \frac{62.01}{101.10}$$

This solution is stable for 2 months without preservative under laboratory conditions.

3.2.14 Spiking Solution. Pipette 7 ml of the KNO_3 standard into a 100-ml volumetric flask, and dilute to volume.

3.2.15 Blank Solution. Dissolve 2.4 g of $KMnO_4$ and 1.2 g of NaOH in 96 ml of water. Alternatively, dilute 60 ml of $KMnO_4$/NaOH solution to 100 ml.

3.2.16 Quality Assurance Audit Samples. Same as in Method 7, Section 3.3.9. When requesting audit samples, specify that they be in the appropriate concentration range for Method 7C.

4. *Procedure.*

4.1 Sampling.

4.1.1 Preparation of Collection Train. Add 200 ml of $KMnO_4$/NaOH solution (3.1.2) to each of three impingers, and assemble the train as shown in Figure 7C–1. Adjust probe heater to a temperature sufficient to prevent water condensation.

4.1.2 Leak-Check Procedure. A leak-check prior to the sampling run should be carried out; a leak-check after the sampling run is mandatory. Carry out the leak-check(s) according to Method 6, Section 4.1.2.

4.1.3 Check of Rotameter Calibration Accuracy (Optional). Disconnect the probe from the first impinger, and connect the filter (2.1.6). Start the pump, and adjust the rotameter to read between 400 and 500 cc/min. After the flow rate has stabilized, start measuring the volume sampled, as recorded by the dry gas meter (DGM), and the sampling time. Collect enough volume to measure accurately the flow rate, and calculate the flow rate. This average flow rate must be less than 500 cc/min for the sample to be valid; therefore, it is recommended that the flow rate be checked as above prior to each test.

4.1.4 Sample Collection. Record the initial DGM reading and barometric pressure. Determine the sampling point or points according to the appropriate regulations, e.g., Section 60.46(c) of 40 CFR Part 60. Position the tip of the probe at the sampling point, connect the probe to the first impinger, and start the pump. Adjust the sample flow to a value between 400 and 500 cc/min. CAUTION: HIGHER FLOW RATES WILL PRODUCE LOW RESULTS. Once adjusted, maintain a constant flow rate during the entire sampling run. Sample for 60 minutes. For relative accuracy (RA) testing of continuous emission monitors, the minimum sampling time is 1 hour, sampling 20 minutes at each traverse point. [**Note.**—When the SO_2 concentration is greater than 1200 ppm, the sampling time may have to be reduced to 30 minutes to eliminate plugging of the impinger orifice with MnO_2. For RA tests with SO_2 greater than 1200 ppm, sample for 30 minutes (10 minutes at each point)]. Record the DGM temperature, and check the flow rate at least every 5 minutes. At the conclusion of each

run, turn off the pump, remove probe from the stack, and record the final readings. Divide the sample volume by the sampling time to determine the average flow rate. Conduct a leak-check as in Section 4.1.2. If a leak is found, void the test run, or use procedures acceptable to the Administrator to adjust the sample volume for the leakage.

4.1.5 CO_2 Measurement. During sampling, measure the CO_2 content of the stack gas near the sampling point using Method 3. The single-point grab sampling procedure is adequate, provided the measurements are made at least three times—near the start, midway, and before the end of a run and the average CO_2 concentration is computed. The Orsat or Fyrite analyzer may be used for this analysis.

4.2 Sample Recovery. Disconnect the impingers. Pour the contents of the impingers into a 1-liter polyethylene bottle using a funnel and a stirring rod (or other means) to prevent spillage. Complete the quantitative transfer by rinsing the impingers and connecting tubes with water until the rinsings that are clear to light pink, and add the rinsings to the bottle. Mix the sample, and mark the solution level. Seal and identify the sample container.

4.3 Sample Preparation for Analysis. Prepare a cadmium reduction column as follows: Fill the burette (2.2.12) with water. Add freshly prepared cadmium slowly with tapping until no further settling occurs. The height of the cadmium column should be 39 cm. When not in use, store the column under rinse solution (3.2.7). [**Note.**—The column should not contain any bands of cadmium fines. This may occur if regenerated column is used and will greatly reduce the column lifetime.]

Note the level of liquid in the sample container, and determine whether any sample was lost during shipment. If a noticeable amount of leakage has occurred, the volume lost can be determined from the difference between initial and final solution levels, and this value can then be used to correct the analytical result. Quantitatively transfer the contents to a 1-liter volumetric flask, and dilute to volume.

Take a 100-ml aliquot of the sample and blank [unexposed $KMnO_4$/NaOH] solutions, and transfer to 400-ml beakers containing magnetic stirring bars. Using a pH meter, add concentrated H_2SO_4 with stirring until a pH of 0.7 is obtained. Allow the solutions to stand for 15 minutes. Cover the beakers with watch glasses, and bring the temperature of the solutions to 50 °C. Keep the temperature below 60 °C Dissolve 4.8 g of oxalic acid in a minimum volume of water, approximately 50 ml, at room temperature. Do not heat the solution. Add this solution slowly, in increments, until the $KMnO_4$ solution becomes colorless. If the color is not completely removed, prepare some more of the above oxalic acid solution, and add until a colorless solution is obtained. Add an excess of oxalic acid by dissolving 1.6 g of oxalic acid in 50 ml of water, and add 6 ml of this solution to the colorless solution. If suspended matter is present, add concentrated H_2SO_4 until a clear solution is obtained.

Allow the samples to cool to near room temperature, being sure that the samples are still clear. Adjust the pH to 11.7 to 12.0 with 10 N NaOH. Quantitatively transfer the mixture to a Buchner funnel containing GF/C filter paper, and filter the precipitate. Filter the mixture into a 500-ml filtering flask. Wash the solid material four times with water. When filtration is complete, wash the Teflon tubing, quantitatively transfer the filtrate to a 500-ml volumetric flask, and dilute to volume. The samples are now ready for cadmium reduction. Pipette a 50-ml aliquot of the sample into a 150-ml beaker, and add a magnetic stirring bar. Pipette in 1.0 ml of 6.5 percent EDTA solution, and mix.

Determine the correct stopcock setting to establish a flow rate of 7 to 9 ml/min of column rinse solution through the cadmium reduction column. Use a 50-ml graduated cylinder to collect and measure the solution volume. After the last of the rinse solution has passed from the funnel into the burette, but before air entrapment can occur, start adding the sample, and collect it in a 250-ml graduated cylinder. Complete the quantitative transfer of the sample to the column as the sample passes through the column. After the last of the sample has passed from the funnel into the burette, start adding 60 ml of column rinse solution, and collect the rinse solution until the solution just disappears from the funnel. Quantitatively transfer the sample to a 200-ml volumetric flask (250-ml may be required), and dilute to volume. The samples are now ready for NO_2–4- analysis. [**Note.**— Both the sample and blank should go through this procedure. Additionally, two spiked samples should be run with every group of samples passed through the column. To do this, prepare two additional 50-ml aliquots of the sample suspected to have the highest NO_3– concentration, and add 1 ml of the spiking solution to these aliquots. If the spike recovery or column efficiency (see 6.2.1) is below 95 percent, prepare a new column, and repeat the cadmium reduction].

4.4 Sample Analysis. Pipette 10 ml of sample into a culture tube. (**Note.**—Some test tubes give a high blank NO_2– value but culture tubes do not.) Pipette in 10 ml of sulfanilamide solution and 1.4 ml of NEDA solution. Cover the culture tube with parafilm, and mix the solution. Prepare a blank in the same manner using the sample from treatment of the unexposed $KMnO_4$/NaOH solution (3.1.2). Also, prepare a calibration standard to check the slope of the calibration curve. After a 10-minute color development interval, measure the absorbance at 540 nm against water. Read μg NO_2–/ml from the calibration curve. If the absorbance is greater than that of the highest calibration standard, pipette less than 10 ml of sample and enough water to make the total sample volume 10 ml, and repeat the analysis. Determine the No_2 concentration using the calibration curve obtained in Section 5.3.

4.5 Audit Analysis. This is the same as in Method 7, Section 4.4.

5. *Calibration.*

5.1 Dry Gas Metering System (DGM).

5.1.1 Initial Calibration. Same as in Method 6, Section 5.1.1. For detailed instructions on carrying out this calibration, it is suggested that Section 3.5.2 of Citation 4 in the bibiography be consulted.

5.1.2 Post-Test Calibration Check. Same as in Method 6, Section 5.1.2.

5.2 Thermometers for DGM and Barometer. Same as in Method 6, Sections 5.2 and 5.4, respectively.

5.3 Calibration Curve for Spectrophotometer. Dilute 5.0 ml of the $NaNO_2$ standard solution to 200 ml with water. This solution nominally contains 25 μg NO_2–/ml. Use this solution to prepare calibration standards to cover the range of 0.25 to 3.00 μg NO_2–/ml. Prepare a minimum of three standards each for the linear and slightly nonlinear (described below) range of the curve. Use pipettes for all additions.

Run standards and a water blank as instructed in Section 4.4. Plot the net absorbance vs μg NO_2–/ml. Draw a smooth curve through the points. The curve should be linear up to an absorbance of approximately 1.2 with a slope of approximately 0.53 absorbance units/μg NO_2–/ml. The curve should pass through the origin. The curve is slightly nonlinear from an absorbance of 1.2 to 1.6.

6. *Calculations.*

Carry out calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculation.

6.1 Sample volume, dry basis, corrected to standard conditions.

$$V_{m(std)} = V_m X Y \frac{T_{std}}{T_m} \frac{P_{bar}}{P_{std}} = K_1 X Y \frac{V_m P_{bar}}{T_m} \qquad \text{(Eq. 7C-1)}$$

Where:

$V_{m(std)}$ = Dry gas volume measured by the dry gas meter, corrected to standard conditions, dscm.

V_m = Dry gas volume as measured by the dry gas meter, dcm.

Y = Dry gas meter calibration factor.

X = Correction factor for CO_2 collection.

$$= \frac{100}{100 - \%CO_2 (v/v)}$$

P_{bar} = Barometric pressure, mm Hg.

P_{std} = Standard absolute pressure, 760 mm Hg.

T_m = Average dry gas meter absolute temperature, °K.

T_{std} = Standard absolute temperature, 293 °K.

K_1 = 0.3858 °K/mm Hg.

6.2 Total μg NO_2 Per Sample.

6.2.1 Efficiency of Cadmium Reduction Column. Calculate this value as follows:

$$E = \frac{(x - y)\ 200}{s \times 1.0 \times \frac{46.01}{62.01}} = \frac{269.6\ (x - y)}{s} \qquad \text{(Eq. 7C-2)}$$

Where:
E = Column efficiency, unitless.
x = Analysis of spiked sample, μg NO_2^-/ml.
y = Analysis of unspiked sample, μg NO_2^-/ml.
200 = Final volume of sample and blank after passing through the column, ml
s = Concentration of spiking solution, μg NO_3/ml.
1.0 = Volume of spiking solution added, ml.
46.01 = μg NO_2^-/μmole.
62.01 = μg NO_3^-/μmole.

6.2.2 Total μg NO_2.

$$m = \frac{(S-B)}{E} \times 200 \times \frac{500}{50} \times \frac{1000}{100} = \frac{(2\times10^4)\ (S-B)}{E} \qquad \text{(Eq. 7C-3)}$$

Where:
m = Mass of NO_x, as NO_2, in sample, μg.
S = Analysis of sample, μg NO_2^-/ml.
B = Analysis of blank, μg NO_2^-/ml.
500 = Total volume of prepared sample, ml.
50 = Aliquot of prepared sample processed through cadmium column, ml.
100 = Aliquot of $KMnO_4$/NaOH solution, ml.
1000 = Total volume of $KMnO_4$/NaOH solution ml.

6.3 Sample Concentration.

$$C = K_2 \frac{m}{V_{m(std)}}$$

Where:
C = Concentration of NO_x as NO_2, dry basis, mg/dscm.
$K_2 = 10^{-3}$ mg/μg.

6.4 Conversion Factors.
1.0 ppm NO = 1.247 mg NO/m^3 at STP.
1.0 ppm NO_2 = 1.912 mg NO_2/m^3 at STP.
1 $ft^3 = 2.832 \times 10^{-2}$ m^3.

7. *Quality Control.*

Quality control procedures are specified in Sections 4.1.3 (flow rate accuracy); 4.3 (cadmium column efficiency); 4.4 (calibration curve accuracy); and 4.5 (audit analysis accuracy).

8. *Bibliography.*

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2. Memorandum and attachment from J.H. Margeson, Source Branch, Quality Assurance Division, Environmental Monitoring Systems Laboratory, to The Record, EPA. March 30, 1983. NH_3 Interference in Methods 7C and 7D.

3. Margeson, J.H., J.C. Suggs, and M.R. Midgett. Reduction of Nitrate to Nitrite with Cadmium. Anal. Chem. *52*:1955–57. 1980.

4. Quality Assurance Handbook for Air Pollution Measurement Systems. Volume III—Stationary Source Specific Methods. August 1977. U.S. Environmental Protection Agency, Research Triangle Park, N.C. Publication No. EPA–600/4–77–027b. August 1977.

5. Margeson, J.H., et al. An Integrated Method for Determining NO_x Emissions at Nitric Acid Plants. Manuscript submitted to Analytical Chemistry. April 1984.

Method 7D—Determination of Nitrogen Oxide Emissions From Stationary Sources

Alkaline-Permanganate/Ion Chromatographic Method

1. *Applicability, Principle, Interferences, Precision, Bias, and Stability.*

1.1 Applicability. The method is applicable to the determination of NO_x emissions from fossil-fuel fired steam generators, electric utility plants, nitric acid plants, or other sources as specified in the regulations. The lower detectable limit is similar to that for Method 7C. No upper limit has been established; however, when using the recommended sampling conditions, the method has been found to collect NO_x emissions quantitatively up to 1782 mg/NO_x/m^3, as NO_2 (932 pm NO_x).

1.2 Principle. An integrated gas sample is extracted from the stack and collected in alkaline-potassium permanganate solution; NO_x (NO + NO_2) emissions are oxidized to NO_3^-. Then NO_3^- is analyzed by ion chromatography.

1.3 Interferences. Possible interferences are SO_2 and NH_3. High concentrations of SO_2 could interfere because SO_2 consumes MnO_4^- (as does NO_x) and, therefore, could reduce the NO_x collection efficiency. However, when sampling emissions from a coal-fired electric utility plant burning 2.1-percent sulfur coal with no control of SO_2 emissions, collection efficiency was not reduced. In fact, calculations show that sampling 3000 ppm SO_2 will reduce the MnO_4^- concentration by only 5 percent if all the SO_2 is consumed in the first impinger.

NH_3 is slowly oxidized to NO_3^- by the absorbing solution. At 100 ppm NH_3 in the gas stream, an interference of 6 ppm NO_x (11 mg NO_2/m^3) was observed when the sample was analyzed 10 days after collection. Therefore, the method may not be applicable to plants using NH_3 injection to control NO_x emissions unless means are taken to correct the results. An equation has been developed to allow quantitation of the interference and is discussed in Citation 4 of the bibliography.

1.4 Precision and Bias. The method does not exhibit any bias relative to Method 7. The within-laboratory relative standard deviation for a single measurement was approximately 6 percent at 200 to 270 ppm NO_x.

1.5 Stability. Collected samples are stable for at least 4 weeks.

2. *Apparatus.*

2.1 Sampling and Sample Recovery. The sampling train is the same as in Figure 7C–1 of Method 7C. Component parts are the same as in Method 7C, Section 2.1.

2.2 Sample Preparation and Analysis.

2.2.1 Magnetic Stirrer. With 25- by 10-mm Teflon-coated stirring bars.

2.2.2 Filtering Flask. 500-ml capacity with sidearm.

2.2.3 Buchner Funnel. 75-mm ID. The spout equipped with a 13-mm ID by 90-mm long piece of Teflon tubing to minimize possibility of aspirating sample solution during filtration.

2.2.4 Filter Paper. Whatman GF/C, 7.0-cm diameter.

2.2.5 Stirring Rods.

2.2.6 Volumetric Flask. 250-ml.

2.2.7 Pipettes. Class A.

2.2.8 Erlenmeyer Flasks. 250-ml.

2.2.9 Ion Chromatograph. Equipped with an anion separator column to separate NO_3^-, a H^+ suppressor, and necessary auxiliary equipment. Nonsuppressed and other forms of ion chromatography may also be used provided that adequate resolution of NO_3^- is obtained. The system must also be able to resolve and detect NO_2^-.

3. *Reagents.*

Unless otherwise indicated, all reagents should conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

3.1 Sampling.

3.1.1 Water. Deionized distilled to conform to ASTM specification D 1193–74, Type 3 (incorporated by reference—see § 60.17).

3.1.2 Potassium Permanganate, 4.0 Percent (w/w), Sodium Hydroxide, 2.0 Percent (w/w). Dissolve 40.0 g of $KMnO_4$ and 20.0 g of NaOH in 940 ml of water.

3.2 Sample Preparation and Analysis.

3.2.1 Water. Same as in Section 3.1.1.

3.2.2 Hydrogen Peroxide, 5 Percent. Dilute 30 percent H_2O_2 1:5 (v/v) with water.

3.2.3 Blank Solution. Dissolve 2.4 g of $KMnO_4$ and 1.2 g of NaOH in 96 ml of water. Alternatively, dilute 60 ml of $KMnO_4$/NaOH solution to 100 ml.

3.2.4 KNO_3 Standard Solution. Dry KNO_3 at 110 ° C for 2 hours, and cool in a desiccator. Accurately weigh 9 to 10 g of KNO_3 to within 0.1 mg, dissolve in water, and dilute to 1 liter. Calculate the exact NO_3^- concentration from the following relationship:

$$\mu g\ NO_3^-/ml = g\ of\ KNO_3 \times 10^3 \times \frac{62.01}{101.10}$$

This solution is stable for 2 months without preservative under laboratory conditions.

3.2.5 Eluent, 0.003 M $NaHCO_3$/0.0024 M Na_2CO_3. Dissolve 1.008 g $NaHCO_3$ and 1.018 g Na_2CO_3 in water, and dilute to 4 liters. Other eluents capable of resolving nitrate ion from sulfate and other species present may be used.

3.2.6 Quality Assurance Audit Samples. This is the same as in Method 7, section 3.3.9. When requesting audit samples, specify that they be in the appropriate concentration range for Method 7D.

4. *Procedure.*

4.1 Sampling. This is the same as in Method 7C, Section 4.1.

4.2 Sample Recovery. This is the same as in Method 7C, Section 4.2.

4.3 Sample Preparation for Analysis. Note the level of liquid in the sample container, and determine whether any sample was lost during shipment. If a noticeable amount of leakage has occurred, the volume lost can be determined from the difference between initial and final solution levels, and this value can then be used to correct the analytical result. Quantitatively transfer the contents to a 1-liter volumetric flask, and dilute to volume.

Sample preparation can be started 36 hours after collection. This time is necessary to ensure that all NO_2^- is converted to NO_3^-. Take a 50-ml aliquot of the sample and blank, and transfer to 250-ml Erlenmeyer flasks. Add a magnetic stirring bar. Adjust the stirring rate to as fast a rate as possible without loss of solution. Add 5 percent H_2O_2 in increments of approximately 5 ml using a 5-ml pipette. When the $KMnO_4$ color appears to have been removed, allow the precipitate to settle, and examine the supernatant liquid. If the liquid is clear, the H_2O_2 addition is complete. If the $KMnO_4$ color persists, add more H_2O_2, with stirring, until the supernatant liquid is clear. Note.—The faster the stirring rate, the less volume of H_2O_2 that will be required to remove the $KMnO_4$.) Quantitatively transfer the mixture to a Buchner funnel contaiing GF/C filter paper, and filter the precipitate. The spout of the Buchner funnel should be equipped with a 13-mm ID by 90-mm long piece of Teflon tubing. This modification minimizes the possibility of aspirating sample solution during filtration. Filter the mixture into a 500-ml filtering flask. Wash the solid material four times with water. When filtration is complete, wash the Teflon tubing, quantitatively transfer the filtrate to a 250-ml volumetric flask, and dilute to volume. The sample and blank are now ready for NO_3^- analysis.

4.4 Sample Analysis. The following chromatographic conditions are recommended: 0.003 M $NaHCO_3$/0.0024 M Na_2CO_3 eluent solution. (3.2.5), full scale range 3 μMHO; sample loop, 0.5 ml; flow rate, 2.5 ml/min. These conditions should give a NO_3^- retention time of approximately 15 minutes (Figure 7D–1).

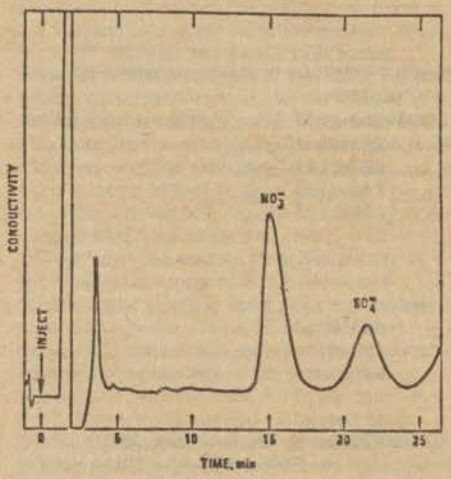


Figure 7D–1. Ion chromatograph of a prepared sample

Establish a stable baseline. Inject a sample of water, and determine if any NO_3^- appears in the chromatogram. If NO_3^- is present, repeat the water load/injection procedure approximately five times; then re-inject a water sample, and observe the chromatogram. When no NO_3^- is present, the instrument is ready for use. Inject calibration standards. Then inject samples and a blank. Repeat the injection of the calibration standards (to compensate for any drift in response of the instrument). Measure the NO_3 peak height or peak area, and determine the sample concentration from the calibration curve.

4.5 Audit analysis. This is the same as in Method 7, Section 4.4

5. *Calibration.*

5.1 Dry Gas Metering System (DGM).

5.1.1 Initial Calibration. Same as in Method 6, Section 5.1.1. For detailed instructions on carrying out this calibration, it is suggested that Section 3.5.2 of Citation 3 in the bibliography be consulted.

5.1.2 Post-Test Calibration Check. Same as in Method 6, Section 5.1.2.

5.2 Thermometers for DGM and Barometer. Same as in Method 6, Section 5.2 and 5.4, respectively.

5.3 Calibration Curve for Ion Chromatograph. Dilute a given volume (1.0 ml or greater) of the KNO_3 standard solution to a convenient volume with water, and use this solution to prepare calibration standards. Prepare at least four standards to cover the range of the samples being analyzed. Use pipettes for all additions. Run standards as instructed in Section 4.4. Determine peak height or area, and plot the individual values versus concentration in μg NO_3^-/ml. Do not force the curve through zero. Draw a smooth curve through the points. The curve should be linear. With the linear curve, use linear regression to determine the calibration equation.

6. *Calculations.*

Carry out calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculation.

6.1 Sample Volume, Dry Basis, Corrected to Standard Conditions. Same as in Method 7C, Section 6.1.

6.2 Total μg NO_2 Per Sample.

$$m = (S-B) \times 250 \times \frac{1000}{50} \times \frac{46.01}{62.01} = 3710\ (S-B) \qquad \text{(Eq. 7D–1)}$$

Where:

m = Mass of NO_x, as NO_2, in sample, μg.
S = Analysis of sample, μg NO_3^-/ml.
B = Analysis of blank, μg NO_3^-/ml.
250 = Volume of prepared sample, ml.
46.01 = Molecular weight of NO_2^-.
62.01 = Molecular weight of NO_3^-.
1000 = Total volume of $KMnO_4$ solution, ml.
50 = Aliquot $KMnO_4$/NaOH solution, ml.

6.3 Sample Concentration.

$$C = K_2 \frac{m}{V_{m(std)}}$$

Where:

C = Concentration of NO_x as NO_2, dry basis, mg/dscm.
$K_2 = 10^{-3}$ mg/μg.
$V_{m(std)}$ = Dry gas volume measured by the dry gas meter, corrected to standard conditions, dscm.

6.4 Conversion Factors.

1.0 ppm NO = 1.247 mg NO/m^3 at STP.
1.0 ppm NO_2 = 1.912 mg NO_2/m^3 at STP.
1 $ft^3 = 2.832 \times 10^{-2}$ m^3.

7. *Quality Control.*

Quality control procedures are specified in Sections 4.1.3 (flow rate accuracy) and 4.5 (audit analysis accuracy) of Method 7C.

8. *Bibliography.*

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H.J. Res. 545/Pub. L. 98-414

Designating the week of September 16 through 22, 1984 as "Emergency Medicine Week". (Sept. 24, 1984; 98 Stat. 1582) Price: $1.00

S.J. Res. 333/Pub. L. 98-415

To designate September 21, 1984, as "World War I Aces and Aviators Day". (Sept. 24,1984; 98 Stat. 1583) Price: $1.00

S.J. Res. 340/Pub. L. 98-416

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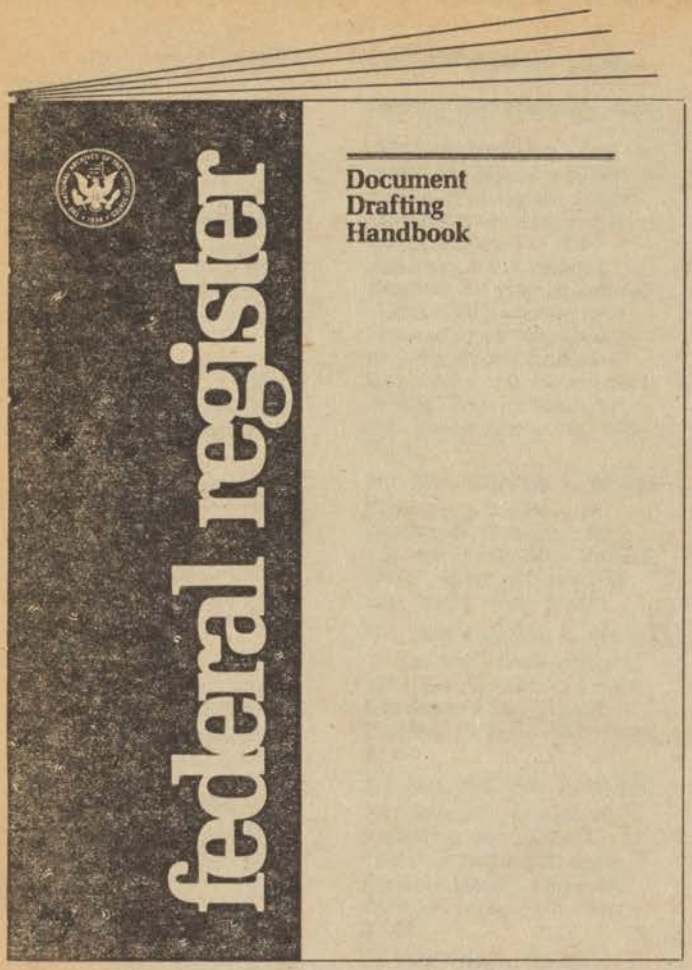
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