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Tuesday
July 30, 1985

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Selected Subjects

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Tuesday, July 30, 1985

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures; Correction

AGENCY: Merit System Protection Board.

ACTION: Final rule; Correction.

SUMMARY: In the issue of Wednesday, July 17, 1985, in the document appearing at pages 28895 to 28898, which revised 5 CFR 1201.114, two sentences were inadvertently omitted. The corrections are listed below.

FOR FURTHER INFORMATION CONTACT: Joseph Ellis, Deputy Clerk of the Board, Merit Systems Protection Board, (202) 653-7262.

1. At 50 FR 28896, the following should be added as the final paragraph of the Supplementary Information on paragraph (h): For purposes of clarity, the Board added a sentence which establishes the date of service as the date of filing, as set forth in paragraph (d) of this section.

2. At 50 FR 28898, in § 1201.114, paragraph (h) is corrected by adding the following sentence at the beginning of the paragraph:

§ 1201.114 Filing of petition and cross-petition for review.

* * * * *

(h) *Service.* For purposes of § 1201.114, service occurs upon filing, as determined under paragraph (d) of this section. * * *

* * * * *

Dated: July 25, 1985.

Herbert E. Ellingwood,
Chairman.

[FR Doc. 85-17990 Filed 7-29-85; 8:45 am]
BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 354, Amdt. 1; Valencia Orange Regulation 355]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Amendment 1 of Regulation 354 increases the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period July 26–August 1, 1985. Regulation 355 establishes the quantity of such fruit that may be shipped to market during the period August 2–8, 1985. The amendment and regulation are needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: Regulation 354, Amendment 1 (§ 908.654) is effective for the period July 26–August 1, 1985. Regulation 355 (§ 908.655) is effective for the period August 2–8, 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: *Findings.* These rules have been reviewed under USDA procedures and Executive Order 12291 and have 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.

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

The amendment and the regulation are consistent with the marketing policy for 1984–85. The committee met publicly on July 23, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified weeks. The committee reports the demand for Valencia oranges has improved, and prices are stable.

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

List of Subjects in 7 CFR Part 908

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

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read as follows:

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

2. Section 908.654 is added to read as follows:

§ 908.654 Valencia Orange Regulation 354.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period July 26, 1985, through August 1, 1985, are established as follows:

(a) District 1: 312,000 cartons;

(b) District 2: 488,000 cartons;

(c) District 3: Unlimited cartons.

3. Section 908.655 is added to read as follows:

§ 908.655 Valencia Orange Regulation 355.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period August 2, 1985, through August 8, 1985, are established as follows:

(a) District 1: 312,000 cartons;

(b) District 2: 488,000 cartons;

(c) District 3: Unlimited cartons.

Dated: July 25, 1985.

Thomas R. Clark,

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

[FR Doc. 85-18030 Filed 7-29-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-28-AD; Amdt. 39-5111]

Airworthiness Directives; Boeing Model 727 and 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which improves fire safety in lavatories on Boeing Model 727 and Model 737 airplanes. This AD requires installation of divider panels on Model 727 airplanes to isolate the lavatory waste enclosure, and "No Stowage" placards in areas not suitable for storing combustible materials on both the Model 727 and Model 737 airplanes. Stowage of combustible materials in these areas could result in a fire if a component overheats or otherwise fails.

DATE: Effective September 6, 1985.

ADDRESSES: The service information cited in this AD may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Aerospace Engineer, Airframe Branch, ANM-120S; telephone (206) 431-2932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring installation of placards on Boeing Model 727 and 737 airplanes, and divider panels on Model 727 airplanes lavatories, was published in the **Federal Register** on April 30, 1985 (50 FR 18269). These modifications will improve fire safety in the affected airplanes by preventing stowage of combustible materials in areas not designed for such stowage and by better isolating the waste enclosure on certain airplanes.

The comment period closed on June 21, 1985. Interested persons have been afforded an opportunity to comment on the proposed AD. Due consideration has been given to all comments received.

Two comments were received in response to the Notice of Proposed Rulemaking. Neither commenter objected to the need for the modification.

One commenter stated his intentions for incorporating the requirements of the AD within the proposed compliance time.

Another commenter requested that the compliance time be extended to two years because at least one operator's fleet size will make it difficult to accomplish the modifications within one year. The FAA does not concur with the request. Since the AD would require only the installation of a placard on Model 727 and 737 airplanes, and the installation of a divider panel (on one lavatory) on Model 727 airplanes, the FAA considers one year sufficient time for compliance.

After careful review of all available data, including all of the comments received the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 1500 planes of U.S. registry will be affected by this AD. Approximately 4 manhours at an average cost of $40 per manhour are required to modify each airplane. The cost of parts is estimated at $100 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $390,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model 727 and 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 727 and Model 737 series airplanes as specified in Boeing Service Bulletins 727-25-277 dated February 23, 1984, and 737-25-1171 dated August 10, 1984, respectively, certificated in any category. To assure adequate lavatory fire protection, accomplish the following within one year after the effective date of this amendment, unless previously accomplished:

A. For Boeing Model 727 airplanes, modify lavatories in accordance with Boeing Service Bulletin 727-25-277 dated February 23, 1984, or later FAA approved revisions.

B. For Boeing Model 737 airplanes, install lavatory placards in accordance with Boeing Service Bulletin 737-25-1171 dated August 10, 1984, or later FAA approved revisions.

C. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received Boeing Service Bulletins 727-25-277 and 737-25-1171 may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective September 6, 1985.

Issued in Seattle, Washington, on July 23, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-18012 Filed 7-29-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-16-AD; Amdt. 39-5110]

Airworthiness Directives; Gates Learjet Model 35 and Model 36 Airplanes Modified by Raisbeck STC SA766NW

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Gates Learjet Model 35 and 36 airplanes modified in accordance with Raisbeck Supplemental Type Certificate (STC) SA766NW, which would reduce the maximum operating limit speed on affected airplanes to prevent encountering certain potentially hazardous conditions. This action is the result of several reported incidents of aileron buffet or buzz experienced during high speed cruise. The aileron buffet or buzz can result in deterioration of the aircraft lateral control system characteristics to an unacceptable level.

DATE: Effective September 6, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request from the Jet Air Corporation, P.O. Box 245, Bellevue, Washington 98009. This information also may be examined at the Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Les Berven, Flight Test Branch, ANM-160S, telephone (206) 431-2889; or Mr. Stanton Wood, Airframe Branch, ANM-120S telephone (206) 431-2924. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive that would require the operators of certain Gates Learjet Models 35 and 36 to permanently reduce the maximum operating Mach limit (M_{MO}) in order to reduce the probability of encountering aileron buffet or buzz was published in the **Federal Register** on April 8, 1985. The comment period for the proposal closed on May 21, 1985.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Three commenters responded to the proposal.

The first commenter stated that there are no requirements in the proposal for reidentification of the airspeed indicators and the Mach overspeed warning switch after the modifications required in accordance with the AD, and that this could lead to confusion between the modified and unmodified parts. The FAA concurs and the AD is revised to require reidentification of the modified parts.

The commenter also suggested that the criteria for issuance of an exemption, which was discussed in the preamble to the proposal, should be better defined and very closely monitored. The commenter further states that the number of flights accomplished at high weight, high altitude, and high speed for a specified airplane does not necessarily provide justification for granting an exemption. While some of the considerations for exemption requests were discussed in the preamble to the notice, this is not a proper subject for the rule itself. The FAA notes the factors suggested by the commenter and will consider these and all pertinent information furnished in any petition for exemption which may be received.

Finally, the commenter stated that aileron rigging affects the onset of aileron buffet or buzz, and any re-rigging of the ailerons could cause new incidents of aileron buffet or buzz. The FAA has determined that if the rigging is maintained in accordance with the Raisbeck Aileron Balance Tab Rigging Procedures, Report Number REI-81-3, and the airplane does not currently experience the problem, then it should not experience the problem in the future.

The second commenter stated that the AD was unjustified because he had never experienced the problem. He suggested that the problem is caused by poor maintenance and poor training. The FAA recognizes that the problem may not affect all airplanes modified by STC SA766NW. However, the FAA has found little evidence that this problem is caused merely by poor maintenance or poor training, and maintains that the actions required by the proposed AD are necessary in order to provide an acceptable level of safety.

The final commenter agreed with the AD as proposed.

The FAA has reviewed the available data, including all of the comments received, and has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

There are 29 U.S. registered airplanes that will be affected by this AD. It will take approximately 5 hours to accomplish the removal and recalibration of the airspeed indicators and Mach overspeed warning switch, and to revise the FAA approved Airplane Flight Manual Supplement. Average labor costs are estimated to be $40 per man-hour. It is estimated that it will cost $950 per airplane to reset the airspeed indicators and Mach overspeed warning switch. Based on these figures, the total cost impact of this AD is estimated to be $33,350.

For the reasons discussed above, the FAA has determined that this regulation in not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Learjet Model 35/36 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Gates Learjet: Applies to Model 35, 35A, 36, and 36A series airplanes modified by Raisbeck Group Supplemental Type Certificate (STC) SA766NW, certificated in any category. The affected airplane serial numbers are: 35-023, 35-034, 35-042, 35-044, 35-047, 35A-068, 35A-073, 35A-075, 35A-076, 35A-086, 35A-092, 35A-093, 35A-095, 35A-118, 35A-127, 35A-132, 35A-135, 35A-145, 35A-172, 35A-185, 35A-192, 35A-203, 35A-206, 35A-207, 35A-209, 35A-228, 35A-231, 35A-244, 35A-245, 36-003, 36-004, 36-017, 36A-028, 36A-029, 36A-031, 36A-038, 36A-043, and 36A-044.

To prevent deterioration of the airplane lateral control characteristics as a result of aileron buffet or buzz accomplish the following, unless previously accomplished.

A. Within the next 200 hours time in service or six months after the effective date of this AD, whichever comes first, accomplish either paragraph 1. or 2., as follows:

1. Reduce M_{MO} by accomplishing the following:

a. Submit the FAA approved STC SA766NW Airplane Flight Manual Supplement to the Manager, Flight Test Branch, ANM-160S, Seattle Aircraft

Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, to change the limit Mach number from .83 to .80:

b. Remove the "Mach Overspeed Warning Switch" and have it reset from Mach .83 to .80. Contact the manufacturer PRECISION SENSOR, P.O. Box 509, Milford, Connecticut 06460, telephone number (203) 877-2795, to have the instrument recalibrated. Reidentify the Mach overspeed warning switch by ink stamping "Mach limit .80" adjacent to the part number. Reinstall the "Mach Overspeed Warning Switch" after it has been calibrated; and

c. Remove pilot's and copilot's airspeed indicators and have them modified by changing the "Barber Pole" from Mach number .83 to .80. The instrument must be recalibrated by the instrument manufacturer or a certified repair station. Reidentify the airspeed inficators by ink stamping "Mach limit .80" adjacent to the part number. Reinstall the pilot's and copilot's airspeed indicators after they have been recalibrated.

2. Remove the modifications installed by Raisbeck Group STC SA766NM, and return the aircraft to the original type design configuration or to the Gates Learjet "Softflight" configuration.

B. Airplanes may be ferried to a maintenance base for repair in accordance with FAR 21.197 and 21.199.

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

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Jet Air Corporation, P.O. Box 245, Bellevue, Washington 98009. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective September 6, 1985.

Issued in Seattle, Washington, on July 23, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-18011 Filed 7-29-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-35-AD; Amdt. 39-5109]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that supersedes an existing airworthiness directive (AD) which requires visual/borescope inspection (NDI) and replacement, as necessary, of the aft pressure bulkhead tee cap on McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) series airplanes with 60,000 or more landings. This amendment requires the inspection and/or repair of the tee cap of airplanes with 35,000 or more landings and, in addition, requires repetitive inspection of all affected airplanes. This action is prompted by reports of cracks in the aft pressure bulkhead tee caps, the failure of which could result in rapid depressurization and severe structural damage to the aircraft.

DATE: Effective September 6, 1985.

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

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Company, P.O. Box 1771, Long Beach, California 90801, Attention: Publications Department, C1-L65, Mail Code: (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South C-68966, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2826.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require inspection and repair, as necessary, of the aft pressure bulkhead tee cap on certain McDonnell Douglas DC-9 series airplanes was published in the **Federal Register** on May 3, 1985 (50 FR 18871). The comment period for the proposal closed May 23, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the five comments received. Two commenters have suggested that the FAA review the NPRM requirements in view of the results of recent strain gaged flight testing and results of an eddy current inspection program from the forward side of the tee cap. The FAA has reviewed the recent developments of flight testing and has determined that the resultant data cannot support the delay in the issuance of this AD or any changes in the repetitive inspection intervals. The FAA has been apprised by the manufacturer of an eddy current inspection procedure currently being developed for use from the forward side of the subject tee cap; however, this procedure has not yet been formally submitted to the FAA for review. Should an eddy current inspection program be approved by the FAA, further rulemaking may be considered to revise the AD to incorporate this program, or accomplishment of this inspection program may be submitted to FAA for acceptance as an alternate means of compliance under paragraph D. of this AD.

The third commenter suggested that the proposed compliance threshold of 1,500 landings be extended to 2,000 landings. Based on the anticipated effective date of the final rule, the cause and nature of cracking, and the prediction of crack locations, the FAA considers a compliance threshold of 1,500 landings appropriate. The final rule remains unchanged in this regard.

The fourth commenter made two suggestions. The first was to extend the initial inspection time to allow the inspection to be accomplished at a long down time maintenance visit. The FAA considers the problem too critical to extend the initial inspection time beyond those proposed in the NPRM. The second suggestion was to incorporate an inspection program in which the areas of the tee cap where cracks have been detected are inspected first (between longerons 6 and 18 on both left and right sides of the airplane), with the entire tee cap inspected within 4,000 landings. The FAA concurs with the concept of the second suggestion which merely reduces the scope of the initial inspection to the sides of the aft pressure bulkhead tee cap, between longerons 6 and 18. Subsequent inspections, however, will include the entire bulkhead periphery as proposed.

The fifth commenter (the manufacturer) suggested that various editorial changes be made for clarification and consistency. The FAA has noted these editorial changes in the final rule. In addition, the manufacturer advised the FAA that an eddy current inspection procedure from the forward side of the tee cap will be incorporated into McDonnell Douglas DC-9 Service Bulletin 53-191. However, as of yet, this procedure has not yet been submitted to the FAA for review as an acceptable alternate inspection program.

It is estimated that 514 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required inspections, and that the average labor cost will be $40 per manhour. Based on these figures, the

total cost impact of this AD on U.S. operators is estimated to be $205,600.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-9 and C-9 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulation by superseding AD 85-06-03, Amendment 39-5014 (50 FR 10936), with the following new airworthiness directive:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10, -20, -30, -40, -50 and C-9 (Military) series aircraft, certificated in any category, with 35,000 or more landings. Compliance required as indicated unless previously accomplished within the last 3500 landings.

To detect cracks which could result in structural failure of the fuselage aft pressure bulkhead, accomplish the following:

A. Inspect from aft side of the bulkhead tee cap, between longerons 6 and 18 of the fuselage [ventral bulkhead P/N 5910130-53/-54 (LH and RH) or non-ventral bulkhead P/N 5910163-91/-92 (LH and RH)], in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A53-191, dated March 13, 1985 (hereinafter referred to as ASB A53-191), or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. The inspections must be performed in accordance with the compliance schedule shown in the following tabulation:

Accumulated landings (on effective date of this AD)	Initial inspection
35,000 to 49,999	1,500
50,000 to 59,999	1,000
60,000 or more	300

[1] Initial inspection from effective date of AD (landings).

For airplanes with less than 35,000 landings on the effective date of this AD, conduct the initial inspection before the accumulation of 36,500 landings.

Note.—The specific areas of concern include the forward and/or aft face of the upstanding leg of the tee, starting at the outboard edge of the bulkhead web. The area extends outboard to approximately the inboard point of tangency for the .188-inch tee fillet radius on the upstanding leg.

B. If no cracks are found, accomplish repetitive inspections in accordance with section 2., Accomplishment Instructions, of ASB A53-191, at intervals not to exceed 3,500 landings from the initial inspection in accordance with this AD.

C. If cracks are found, before further flight, accomplish one of the following:

1. Repair by replacing cracked tee cap with a new part, in accordance with McDonnell Douglas Service Rework Drawing SR09530001 (originally identified as MDC-J060305), dated February 15 1985, or later FAA approved revision; or

2. Repair by splicing in a section of tee cap, in accordance with McDonnell Douglas Service Rework Drawing SR09530001, dated February 15, 1985, or later FAA approved revision.

After repair, resume repetitive inspection in accordance with paragraph B., above.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—Compliance with paragraph 1.D. of ASB A53-191, (with the exception of the noted initial inspection compliance period) constitutes an acceptable alternate means of complying with this AD.

E. Upon request of an operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the adjustment for that operator.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplanes unpressurized to a base to comply with the requirements of this AD.

G. For the purposes of complying with this AD, existing records of landings will be used subject to acceptance of the assigned FAA Maintenance Inspector. In the absence of such records, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time per flight for the DC-9 airplanes with the approval of the assigned FAA Maintenance Inspector.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention, Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective September 6, 1985.

Issued in Seattle, Washington, on July 23, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-18014 Filed 7-29-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-88-AD; Amdt. 39-5108]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and replacement of parts, as necessary, of lower galley hot entree cart wiring installations on certain McDonnell Douglas DC-10 airplanes. This action is prompted by a fire on the ground which began in the area of the lower galley tunnel, and resulted in substantial damage to the airplane. This action is necessary to prevent a recurrence in other airplanes.

DATE: Effective August 19, 1985.

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

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Huettner, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION: On July 13, 1985, one operator reported a fire on the ground in the lower galley right-hand tunnel area between fuselage stations 675 and 750, which caused substantial damage to the airplane. There is evidence to believe that this fire was the result of misting hydraulic fluid combined with electrical arcing from wiring associated with the lower galley hot entree carts. Evidence indicates that some hot entree cart wiring installations may not conform to Douglas drawings in that clamping of the wiring conduit to hydraulic lines may be missing or the wiring incorrectly routed. Douglas DC-10 Alert Service Bulletin A24-131, dated July 17, 1985, has been released which prescribes inspection of the lower galley hot entree cart wiring installation for conformity to Douglas drawings, and correction, if necessary.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspection of the lower galley hot entree cart wiring installation for conformity to Douglas drawings, and correction, if necessary.

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

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10 series airplanes, certificated in any category, which are listed in McDonnell Douglas Alert Service Bulletin A24-131, dated July 17, 1985. Compliance required within 15 days after the effective date of this AD, unless previously accomplished.

To prevent hydraulic line damage and/or arcing of the electrical wiring installation associated with the lower galley hot entree cart, accomplish the following:

A. Inspect the lower galley electrically heated hot entree cart wiring and conduit installation in accordance with Douglas Alert Service Bulletin A24-131, dated July 17, 1985, or later FAA approved revision, Accomplishment Instructions A and B. Install or replace parts as necessary.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective August 19, 1985.

Issued in Seattle, Washington, on July 23, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-18013 Filed 7-29-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-24-AD; Amdt. 39-5112]

Airworthiness Directives; McDonnell Douglas Model DC-10-15, -30, and KC-10A (Military) Series Airplanes; and CF6-50C-Powered Airbus Industrie Model A-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires installation of modified fuel flowmeter tube assemblies. This action is prompted by reports of failures of the fuel flowmeter tube assembly. This condition, if not corrected, could result in fuel being pumped into the nacelle and lead to engine flameout in flight.

DATE: Effective September 6, 1985.

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

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2835.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require installation of modified fuel flowmeter tube assemblies was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on March 26, 1985 (50 FR 11894). The comment period for the proposal closed on May 20, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Two comments were received. Both commenters had no objections to the issuance of the proposed AD. The foreign aircraft manufacturer requested that a reference to its appropriate service bulletin be added to the final rule; the FAA concurs with this suggestion and a reference to the service bulletin has been added in paragraph A. of the amendment.

It is estimated that 39 DC-10 airplanes (3 engines per airplane) of U.S. registry, and 35 A-300 airplanes (2 engines per airplane) of U.S. registry will be affected by this AD. It is estimated that it will require approximately 7.7 manhours per airplane to accomplish the inspection, and 4.7 manhours per airplane to accomplish the required installation. The average labor cost is $40 per manhour. The cost of the new tube

assemblies in $652 per tube (one tube per engine). Based on these figures, the total cost impact of this AD to U.S. registered owners is estimated to be $158,628 (based on a single inspection).

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

For the reasons discussed above, the FAA had determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-10 or KC-10A, or CF6-50C-powered A300 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

McDonnell Douglas and Airbus Industrie: Applies to McDonnell Douglas Model DC-10-15, -30, and KC-10A (Military) series airplanes, and CF6-50C powered Airbus Industrie Model A-300 series airplanes. Compliance is required as indicated.

To prevent failure of the fuel flowmeter tube assembly, accomplish the following, unless already accomplished:

A. Within the next 1000 flight hours after the effective date of this AD, inspect the fuel flowmeter tube assemblies in accordance with McDonnell Douglas Alert Service Bulletin A73-20, dated January 7, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region; or Airbus Industrie Service Bulletin A300-73-007 (associated with modification 5912), as appropriate. Perform the inspection every 1000 flight hours until paragraph B., below, is accomplished. If any cracks are found, accomplish the requirements of paragraph B. before any further revenue flight.

B. Within one year after the effective date of this AD, install the fuel flowmeter tube assembly P/N-ASL0538-503 in accordance with McDonnell Douglas DC-10 Alert Service Bulletin A73-20, dated January 7, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective September 6, 1985.

Issued in Seattle, Washington, on July 23, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-18010 Filed 7-29-85; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Transportation System; Reimbursement for Spacelab Services

AGENCY: National Aeronautics and Space Administration.

ACTION: Interim final rule with request for public comment.

SUMMARY: This interim final rule, in conjunction with Subparts 1214.1 and 1214.2, provides an equitable basis for reimbursement for Spacelab services provided in conjuction with a Shuttle flight.

DATE: This interim final rule is effective on July 30, 1985. This action is subject to revision following a comment period of 60 days from the date of publication.

ADDRESS: Written comments should be submitted to the Office of Space Flight, Code MC, National Aeronautics and Space Administration, Washington, D.C. 20546. All written comments will be available for public inspection in Room 421M, FB-10B, 600 Independence Avenue, SW., Washington, D.C. during regular working hours.

FOR FURTHER INFORMATION CONTACT: Stanley Nichols, 202-453-1904.

SUPPLEMENTARY INFORMATION: On September 25, 1980, NASA published a proposed rule in the **Federal Register** (45 FR 63506-63512) concerning reimbursement for Spacelab services. Interested parties were given until November 24, 1980, to submit written comments or objections.

Full and careful consideration was given to all comments received. A number of comments received were related to the basic Shuttle policies, launch services agreements, or quantitative aspects of setting prices. Replies to such comments were sent directly to the commenters and are not included herein. Based on the comments received, as well as actual operational experience, several basic issues were re-examined and some substantive and editorial changes have been made to the proposed rule. The disposition of those comments regarding the proposed rule are discussed herein and a second comment period on this interim final rule is provided. Establishment of this interim final rule will not affect obligations incurred prior to its publication.

Except as otherwise noted, paragraph numbers referenced in this discussion below are as shown in the interim final rule.

Applicable Time Period

The proposed rule was developed to cover the entire STS operational era. As defined in § 1214.800, this interim final rule only applies to the second phase of STS operations. (U.S. government fiscal years 1986, 1987, and 1988). NASA will define policies for subsequent periods when more experience is gained with Spacelab operations.

FMDM/MPESS Offer

Since publication of the proposed rule, NASA has developed the flexible multiplexer-demultiplexer/multipurpose experiment support structure (FMDM/MPESS) as an adjunct to the ESA-developed Spacelab hardware. This interim final rule offers the services of the FMDM/MPESS on a dedicated-element basis [§ 1214.800(c)].

Mandatory Use of Dedicated Flights

Certain Spacelab configurations effectively preclude the manifesting of other payloads. In § 1214.804(a), these configurations are defined as requiring the customers to contract for a dedicated flight. Provisions are made, however, to provide some financial relief to the customer if a sharee can be found and manifested on the same flight.

Postponement and Termination

Since publication of the proposed rule, experience in Spacelab operations has indicated that the charges for postponement and termination should be separated into Spacelab operations charges and Shuttle transportation charges. Therefore, § 1214.804(c) has been modified accordingly. The adjusted values shall be used as the basis for computing charge factors and prorating services.

Payload Removal Cutoff Date

Because it is not always practical to remove a Spacelab payload near the launch date, § 1214.804(c)(5) requires the establishment of a payload removal cutoff date. This date will be set by NASA and will be based on the nature of individual payloads. It is NASA's intention to be as flexible as practical in accommodating late removals. Note that the customer may still exercise the postponement/termination provisions even though the payload is not removed from the flight.

Minor Delay

The minor delay provisions of the Shuttle policy were not offered to shared-element customers under the proposed rule. In § 1214.804(d), these provisions are extended to all customers whose payload has a Shuttle load factor equal to or greater than 0.05. This puts Spacelab payloads on an equal footing with other Shuttle payloads.

Standard Days on Orbit

Some commenters questioned the use of 1 day of on-orbit operations as the basis for the standard price for dedicated-Shuttle Spacelab flights [§ 1214.804(e)(2)(ii)] and dedicated pallet flights [§ 1214.804(f)(2)(iii)] when 7 days of on-orbit operations forms the basis for the standard flight price for complete-element [§ 1214.804(g)(2)(ii)] and shared-element [§ 1214.804(h)(2)(iv)] flights. NASA realizes that few, if any, Spacelab flights will involve 1-day missions. The pricing structure gives the customer the opportunity to reduce costs on those occasions when the customer's mission can be accomplished in less than 7 days. By basing the standard flight price for complete-pallet and shared-element customers on a 7-day mission, NASA can offer these customers the opportunity to fly on a 7-day mission while paying only a pro rata share of the extra-days-on-orbit charge. For these reasons no changes were made in the number of days used as the basis for standard services.

Flight Crews and Payload Operations

Two mission specialists now are assigned to all STS flights, and their available payload operation time now constitutes the standard service in this area [§ 1214.812(d)].

Responding to comments on the desirability of two-shift operation for Spacelab payloads, NASA has modified § 1214.804(g)(2)(ii) and § 1214.804(h)(2)(iv) to incorporate two-shift operation as a standard service for complete-pallet and shared-element missions. Because dedicated-pallet and dedicated FMDM/MPESS payloads may not require two-shift operation and are designed to fly as mixed cargo on standard Shuttle flights, one-shift operation remains the standard for service and price for these elements. Using single-shift operation as a standard for dedicated flights provides minimum cost to any customers who may not need two-shift service. Customers may contract for two-shift operation, if required, as an optional service.

One commenter felt that § 1214.804(g)(2)(ii) should be modified to allow the customer's payload to continue to operate so long as it did not use more than its share of resources and did not interfere with other operations. It is essential to establish the maximum amount of service to which a customer is entitled for the standard flight price, and § 1214.804(g)(2)(ii) does this. NASA will likely permit continued operation of the customer's payload at no extra cost if and when this is practical. However, it appears inappropriate to encourage customers to plan on obtaining operating time in excess of their pro rata share. Therefore, no change is made in § 1214.804(g)(2)(ii).

Rules regulating the use of customer-selected payload specialists are defined in § 1214.812. One commenter requested details on criteria for selection of customer-selected payload specialists. These criteria will be established in other NASA documents.

Dedicated-Element Standard Orbit

Experience to date indicates that the offer to fly dedicated elements (and other Shuttle payloads as well) to the 57° inclination on a standard shared-flight basis poses excessive financial risk to NASA because there are too few potential sharees to permit cost-effective missions. The only standard orbit for dedicated elements and dedicated FMDM/MPESS payloads is thus defined to be 28.5°, 160 nautical miles (nmi) in § 1214.804(f)(2)(iv).

Options

The launch options offered under the proposed rule have been withdrawn by § 1214.804(k). There has been no customer interest in these options and it is planned that they will be deleted from the Shuttle policy in an upcoming revision.

Premature Termination of Spacelab Flights

Some commenters felt that § 1214.806 as stated in the proposed rule was unduly discriminatory against Spacelab. NASA has deleted this distinction. Because dedicated-Shuttle, dedicated-pallet, and dedicated FMDM/MPESS customers pay for all extra days on orbit as optional services, and because NASA's practice is to refund charges for unused or undamaged optional services, affected customers automatically would be entitled to a refund in case of premature termination. For complete-pallet and shared-element flights, NASA previously established a standard 7-day-on-orbit mission to accommodate the needs of all customers. This standard mission duration is included in the standard flight price. NASA normally provides no refunds for unused standard services; however, NASA will give refunds of a pro rata share of extra-days-on-orbit charges to complete-pallet and shared-element customers whose missions are, in NASA's judgment, adversely affected by the premature termination.

Standby Spacelab Flights

Some customers felt that the standby provisions of the Shuttle policy should be extended to Spacelab customers. Because (1) NASA has a limited supply of Spacelab hardware and cannot permit it to be tied up for extended periods, and (2) it is essential that standby payloads be capable of being manifested on relatively short notice and, with a wide variety of other payloads, the standby provisions are not offered to Spacelab customers requiring NASA-furnished Spacelab hardware [§ 1214.808]. Customers who supply their own Spacelab hardware and require only Level I integration may fly under the standby provisions of the Shuttle policy.

Charges for Customer-Furnished Spacelab Hardware

Some commenters noted that there is little difference between the charges for NASA-furnished and customer-furnished hardware. The differences in cost for Level III/II integration are in fact relatively minor. NASA has modified § 1214.810 such that customers

who provide their own Spacelab hardware and do not require Level III/II integration are not charged for these services as a part of their standard services price.

Reflight Guarantees

Based on a number of comments as well as experience to date, a major revision of § 1214.811 was made. It is planned that most of the principles stated therein will be incorporated in § 1214.1 and § 1214.2 in upcoming revisions.

Consistent with current Shuttle practice for the second phase of STS operations, there is now no reflight premium for Spacelab shared-flight payloads to the 28.5°, 160 nmi standard orbit or for any dedicated-flight Spacelab mission [§ 1214.811(a)].

Provisions are made in § 1214.811(b) to negotiate reflight guarantees for nonstandard missions. NASA will negotiate any such guarantees on a case-by-case basis.

Because it is not practical to refly parts of payloads, § 1214.811(c) requires that reflight guarantees, if provided, must cover a customer's entire payload.

Several commenters felt that the Spacelab reflight guarantees did not provide adequate coverage. After lengthy deliberation, § 1214.811(d) was modified to guarantee that selected Spacelab systems would be within nominal limits, at the normal monitoring points for such systems, at the time of first turn-on of each customer's payload. In this context, the term "payload" encompasses all experiments covered by a single Launch Services Agreement. It is not NASA's intent to guarantee that Spacelab systems will be operational at the initiation of each individual experiment within a payload. In NASA's opinion, attempting to assess fault in case of subsequent Spacelab and/or Shuttle failures would prove unmanageable. NASA believes that providing this clear demarcation line, well beyond the achievement of orbit, is a reasonable compromise between the customers' desires and the realities of negotiating Launch Services Agreements and reflight guarantees.

Pricing Algorithms

A number of comments prompted a fundamental re-examination of the basic pricing algorithms. As a result, the sharing algorithms for all but shared-module flights are now based on the Shuttle length-or-upweight algorithms. Prices for shared modules are still based on the long module configuration because that provides the lowest cost to the customer consistent with cost recovery.

New assumed flight configurations and new data on element capacities have been factored into the computational procedures defined in § 1214.813. Under these conditions, the Shuttle load factors for dedicated and complete pallets are always length-limited. Fixed values for load factor, charge factor, and capacity are thus defined for these offers.

Adjustments of Load Factors

Some commenters felt that the provisions of § 1214.813(a)(5) negated the other computational procedures defined in § 1214.813. NASA did rather substantial analyses of the alternatives available for establishing standards for load factors. It was concluded that no simple algorithms could be established which would meet every conceivable need. Instead, a procedure was developed which permits a customer with a geometrically regular payload with nominal requirements for services to estimate a price rather exactly. Provision is then made for NASA, at the time of Launch Services Agreement signing, to adjust the load factor up or down for payloads which depart significantly from the nominal case. NASA still believes that this is the best approach, and no changes are made except to delete the provision which dealt with up-weight vs. down-weight.

Reduction in Minimum Price for Shared-Element Users

Some commenters felt that the price for minimum-sized shared-element payloads was too high and would discourage preliminary experimentation. NASA's justification for establishing the minimum prices is based on the fact that there are certain costs inherent in dealing with a payload covered by its own Launch Services Agreement, regardless of the size of the payload. NASA has, however, responded to the commenters' concerns by modifying § 1214.813(g) such that the minimum payload charges are substantially reduced.

The National Aeronautics and Space Administration has determined:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1214

Payload Specialist, Mission Manager, NASA-related payload, Mission Specialist, Investigator Working Group, Government employees, Government procurement, Security measures, Space transportation and exploration, SSUS procurement, Small self-contained payloads, Reimbursement for shuttle services, Authority of Space Transportation Systems (STS) Commander, Articles authorized to be carried on space transportation system flights, Space Transportation System Personnel Reliability Program, Nonscientific payloads, Space flight participants.

PART 1214—SPACE TRANSPORTATION SYSTEM

14 CFR Part 1214 is amended by adding Subpart 1214.8 to read as follows:

Subpart 1214.8—Reimbursement for Spacelab Services

Sec.

Authority: Sec. 203, Pub. L. 85–568, 72 Stat. 429, amended (42 U.S.C. 2473).

Subpart 1214.8—Reimbursement for Spacelab Services

§ 1214.800 Scope.

This Subpart 1214.8 establishes the special reimbursement policy for Spacelab services provided to Space Transportation System (STS) customers governed by the provisions of Subpart 1214.1 or Subpart 1214.2. It applies to flights occurring in the second phase of STS operations (U.S. Government fiscal years 1986, 1987, and 1988). The following five types of Spacelab flights are available to accommodate payload requirements:

(a) Dedicated-Shuttle Spacelab flight [Ref. § 1214.804(e)].

(b) Dedicated-pallet flight [Ref. § 1214.804(f)].

(c) Dedicated-FMDM/MPESS (flexible multiplexer-demultiplexer/multipurpose experiment support structure) flight [Ref. § 1214.804(f)].

(d) Complete-pallet flight [Ref. § 1214.804(g)].

(e) Shared-element flight [Ref. § 1214.804(h)].

§ 1214.801 Definitions.

(a) *Shuttle policy.* The appropriate Subpart (1214.1 or 1214.2) governing use of the Shuttle. Determination of the appropriate Subpart for each customer shall be made by reference to § 1214.101 and § 1214.201.

(b) *Spacelab elements.* Pallets (3-meter segments), pressurized modules (long or short), and the FMDM/MPESS (1-meter cross-bay structure), all as maintained in the NASA-approved Space lab configuration.

(c) *Standard flight price.* The price for standard Shuttle and standard Spacelab services provided. If a customer elects not to use a portion of the standard services, the standard flight price shall not be affected.

(d) *Shuttle load factor.* The parameter used to compute the customer's pro rata share of Shuttle services and used to compute the Shuttle charge factor. Means of computing this parameter are defined in § 1214.813.

(e) *Spacelab load fraction.* The parameter used to compute the customer's pro rata share of each element's services and used to compute the element charge factor. Means of computing this parameter are defined in § 1214.813.

(f) *Shuttle charge factor and element charge factor.* Parameters used in computation of the customer's flight price. Means of computing these parameters are defined in § 1214.813.

(g) *Dedicated flight price for Spacelab missions.* (1) The single-shift operation dedicated flight price for Spacelab missions is identical to the Shuttle dedicated flight price as defined in the Shuttle policy.

(2) The two-shift operation dedicated flight price for Spacelab missions is the sum of:

(i) The Shuttle dedicated flight price as defined in the Shuttle policy.

(ii) The standard price for additional services required to support a second shift of on-orbit operations.

§ 1214.802 Relationship to Shuttle policy.

Except as specifically noted, the provisions of the Shuttle policy also apply to Spacelab payloads. Although some language in the Shuttle policy is Shuttle-specific, it is the intent of this Subpart 1214.8 that the Shuttle policy be applied to Spacelab also, including the policy on patent and data rights. However, in the event of any inconsistencies in the policies, the Spacelab policy will govern with respect to Spacelab services.

§ 1214.803 Reimbursement policy.

(a) *Reimbursement basis.* (1) This policy is established for the second phase of STS operations (U.S. Government fiscal years 1986, 1987, and 1988).

(2) *Standard flight price.* During this phase, customers covered by Subpart 1214.1 or Subpart 1214.2 shall reimburse NASA for standard Spacelab services an amount which is a pro rata share of:

(i) The appropriate dedicated flight price for the customer's Spacelab mission.

(ii) The standard price for use of the selected Spacelab elements during the second phase of STS operations.

(3) The price shall be held constant for flights during this phase of STS operations.

(4) Reimbursement policies for subsequent phases of STS operations will be developed after NASA has obtained more operational experience.

(b) *Escalation.* Payments shall be escalated in accordance with the Shuttle policy.

(c) Customers shall reimburse NASA an amount which is the sum of the customer's standard flight price and the price for all optional services provided.

(d) *Earnest money.* For those customers required to pay earnest money by the Shuttle policy, the total earnest money payment per payload for Spacelab payloads (including Shuttle services) shall be the lesser of $150,000 or 10% of the customer's estimated standard flight price. Earnest money will be applied to the first payment for standard services made for each payload by the customer or will be retained by NASA if a Launch Services Agreement is not signed.

§ 1214.804 Services, pricing basis, and other considerations.

(a) *Mandatory use of dedicated-Shuttle Spacelab flight.*

(1) Customers shall be required to fly under the provisions of paragraph (e) of this section if the customer requires exclusive use of any of the following:

(i) Pressurized module (long or short).

(ii) Three pallets in the "1+1+1" configuration.

(iii) Four pallets in the "2+2" configuration.

(2) In the cases cited in paragraph (a)(1) of this section, if the customer requests, NASA will attempt to find compatible sharees to fly with the customer's payload. If NASA is successful, the customer's Shuttle standard flight price shall be the greater of:

(i) The appropriate dedicated flight price for the customer's Spacelab mission less adjusted reimbursements (as defined in the Shuttle policy) from sharees actually flown.

(ii) The computed shared-flight Spacelab flight price for the customer's payload.

(b) *Apportionment and assignment of services.* Subject to NASA approval, a customer contracting for a Spacelab flight shall be permitted to apportion and assign services under the provisions of the Shuttle policy.

(c) *Postponement and termination.* (1) A customer may postpone the flight of a Spacelab payload one time with no additional charge if postponement occurs more than 18 months before the scheduled launch date.

(2) Postponement or termination fees for Spacelab payloads shall consist of the sum of:

(i) A fee for Shuttle transporation.

(ii) A fee for use of the Spacelab elements.

(3) *Shuttle transportation fee.* Customers shall be governed by the provisions of the Shuttle policy with the following exception. When computing occupancy fees for shared-element payloads, the "adjusted reimbursements from other customers" shall be defined as the adjusted reimbursements from those customers who subsequently contract for the use of the element being shared.

(4) *Spacelab use fee.* The postponement and termination fees for use of the Spacelab elements are computed as a percentage of the customer's price for use of the Spacelab elements and shall be based on the table below. When postponement or termination occurs less than 18 months before launch, the fees shall be computed by linear interpolation using the points provided.

Time when postponement or termination occurs, months before scheduled launch date	Fee for use of Spacelab element(s), percent of price for use of element(s)	
	Post-ponement	Termi-nation
Dedicated Flights, Dedicated Elements, and Dedicated FMDM/MPESS		
0	75	100
3	60	85
12	14	20
18	5	10
More than 18	5	10
Complete Pallets and Shared Elements		
Less than 8	95	100
8	95	100
9	32	95
12	18	80
18	5	10
More than 18	5	10

(5) At the time of signing of the Launch Services Agreement, NASA shall define a payload removal cutoff date (relative to the launch date) for each Spacelab payload to be flown on a shared flight. A customer may still postpone or terminate a flight after the payload's cutoff date; however, NASA shall not be required to remove the payload before flight.

(d) *Minor delays.* The minor delay provisions of the Shuttle policy shall apply only to those Spacelab payloads whose Shuttle load factor is equal to or greater than 0.05.

(e) *Dedicated-Shuttle Spacelab flight.* (1) A dedicated-Shuttle Spacelab flight is a Shuttle flight sold to a single customer who is entitled to select the Spacelab elements used on the flight.

(2) In addition to the standard services listed in paragraph (i) of this section, the following standard services are provided to customers of dedicated-Shuttle Spacelab flights and form the basis for the standard flight price:

(i) Use of the full standard services of the Shuttle and the Spacelab elements selected.

(ii) One day of one-shift on-orbit operations.

(iii) Standard mission destinations as defined in the Shuttle policy.

(iv) Launch within a prenegotiated 90-day period in accordance with the dedicated flight scheduling provisions of the Shuttle policy.

(v) The available payload operations time of two NASA-furnished mission specialists.

(3) Customers contracting for a dedicated-Shuttle Spacelab flight shall reimburse NASA an amount which is the sum of:

(i) The one-shift operation dedicated flight price for a 1-day Spacelab mission.

(ii) The price for the use of all Spacelab elements used (including all necessary mission-independent Spacelab equipment).

(iii) The price for all optional services provided.

(f) *Dedicated 3-meter pallets and dedicated FMDM/MPESS.* (1) A dedicated pallet (or a dedicated FMDM/MPESS) is one which is sold to a single customer and which includes all Spacelab hardware necessary to permit it to be flown on any shared Shuttle flight as an autonomous payload (e.g., a dedicated 3-meter pallets may either be supplied with its own exclusive igloo or may fly without an igloo if it requires only standard Shuttle services).

(2) In addition to a pro rata share of the standard service listed in paragraph (i) of this section, the following standard services are provided to customers of dedicated pallets (or dedicated FMDM/MPESS) and form the basis for establishing the standard flight price:

(i) A pro rata share of the Shuttle services normally provided, where the basis for proration is the customer's Shuttle load factor as defined in § 1214.813(d)(1) for dedicated pallets and in § 1214.813(e)(2) for dedicated FMDM/MPESS.

(ii) The exclusive services of the pallet (or FMDM/MPESS) and all Spacelab hardware provided to support the pallet (or FMDM/MPESS).

(iii) One day of one-shift on-orbit operations.

(iv) Launch to the standard mission destination of 160 nmi, 28.5° as defined in the Shuttle policy.

(v) Launch within a prenegotiated 90-day period in accordance with the shared-flight scheduling provisions of the Shuttle policy.

(vi) A pro rata share of the on-orbit payload operations time of two NASA-furnished mission specialists, where the basis of proration shall be the customer's Shuttle load factor.

(3) Customers contracting for a dedicated pallet (or FMDM/MPESS) flight shall reimburse NASA an amount which is the sum of:

(i) The product of the customer's Shuttle charge factor and the one-shift-operation dedicated flight price of a 1-day Spacelab mission.

(ii) The price for the use of the pallet (or FMDM/MPESS) selected (including all necessary mission-independent Spacelab equipment).

(iii) The price for all optional services provided.

(g) *Complete pallet.* (1) A complete Spacelab pallet is one which is sold to a single customer but flies with other Spacelab elements on a NASA or NASA-designated Spacelab flight and shares the common standard Spacelab services, e.g., shares an igloo with other pallets.

(2) In addition to a pro rata share of the standard services listed in paragraph (i) of this section, the following standard services are provided to customers of complete pallets and form the basis for the standard flight price.

(i) The pallet's pro rata share of standard Shuttle services, where the basis of proration shall be the customer's Shuttle load factor as defined in § 1214.813(f)(1).

(ii) A pro rata share of 7 days of two-shift on-orbit operations, where the basis of proration shall be the customer's Shuttle load factor.

(iii) Mission destination selected by NASA in consultation with the customer.

(iv) Assignment, with the customer's concurrence, to a Spacelab flight designated by NASA.

(v) Launch date established by NASA.

(vi) A pro rata share of the on-orbit payload operations time of two NASA-furnished mission specialists, where the basis of proration shall be the customer's Shuttle load factor.

(vii) Use of the entire volume above a pallet.

(3) Users contracting for complete pallet flights shall reimburse NASA an amount which is the sum of:

(i) The product of the customer's Shuttle charge factor and the two-shift-operation dedicated flight price of a 7-day Spacelab mission. The dedicated flight price for a 7-day complete-pallet mission is the sum of the dedicated flight price for a 1-day two-shift mission and the charge for 6 extra days of two-shift on-obit operation.

(ii) The price for the use of a complete pallet, including all necessary mission-independent Spacelab equipment.

(iii) The price for all optional services provided.

(h) *Shared element.* (1) A shared element is a Spacelab pallet or module which:

(i) Is shared by two or more customers on a NASA-designated Spacelab flight.

(ii) Shares common standard Spacelab services with other Spacelab elements on the same flight.

(2) In aditional to a pro rata share of the standard services listed in paragraph (i) of this section, the following standard services are provided to customers of shared elements and form the basis for the standard flight price:

(i) For shared pallets, a pro rata share of the standard services provided by a pallet. The basis of proration shall be the customer's Spacelab load fraction as defined in § 1214.813(g)(1)(i).

(ii) For shared modules, a pro rata share of the standard services provided by a long module flown on a dedicated-Shuttle Spacelab flight. The basis of proration shall be the customer's Spacelab load fraction as defined in § 1214.813(g)(1)(ii). The type of pressurized module actually used to meet a customer's requirement for a shared module shall be determined by NASA subsequent to contract negotiations.

(iii) A pro rata share of the element's share of standard Shuttle services, where the basis for proration shall be the customer's Spacelab load fraction.

(iv) A pro rata share of 7 days of two-shift on-orbit operations, where the basis of proration shall be the.

customer's Shuttle load factor as defined in § 1214.813(g)(1).

(v) Mission destination selected by NASA in consultation with the customer.

(vi) Assignment, with the customer's concurrence, to a Spacelab flight designated by NASA.

(vii) Launch date established by NASA.

(viii) A pro rata share of the on-orbit operations time of two NASA-furnished mission specialists, where the basis of proration shall be the customer's Shuttle load factor.

(3) Customers contracting for shared-element flight shall reimburse NASA an amount which is the sum of:

(i) The product of the customer's Shuttle charge factor and the two-shift operation dedicated flight price of a 7-day Spacelab mission. The dedicated flight price for a 7-day shared-element mission is the sum of the dedicated flight price for a 1-day two-shift-mission and the charge for 6 extra days of two-shift on-orbit operations.

(ii) The product of the customer's element charge factor and the price for the use of the Spacelab element being used, including all necessary mission-independent Spacelab equipment.

(iii) The price for all optional services provided.

(i) *Common standard Spacelab services.* The following standard Spacelab services are common to all Spacelab flights:

(1) Use of Shuttle [1] and Spacelab hardware.

(2) Spacelab interface analysis.

(3) Kennedy Space Center (KSC) launch.[1]

(4) A five-person NASA flight crew consisting of commander, two pilots, and two mission specialists.

(5) Accommodations for a five-person flight crew.

(6) Prelaunch integration and interface verification of preassembled racks and pallets (Levels III, II, and I for NASA-furnished Spacelab hardware; Level I only for customer-furnished Spacelab hardware).

(7) Shuttle [1] and Spacelab flight planning.

(8) Payload electrical power.

(9) Payload environmental control.

(10) On-board data acquisition and processing services.

(11) Transmission of data to a NASA-designed monitoring and control facility via the basic STS Operational Instrumentation (OI) telemetry system.

(12) Use of NASA-furnished standard payload monitoring and control facilities.

(13) Voice communications between personnel operating the customer's payload and a NASA-designated payload monitoring and control facility.

(14) NASA payload safety review.[1]

(15) NASA support of payload design reviews.[1]

(j) *Typical optional Spacelab services.* The following are typical optional Spacelab services:

(1) Use of special payload support equipment, e.g., instrument pointing system.

(2) Vandenberg Air Force Base (VAFB) launch.

(3) Nonstandard mission destination.

(4) Additional time on orbit.

(5) Mission-independent training, use of, and accommodations for all flight personnel in excess of five.

(6) Mission-dependent training of all NASA-furnished personnel and backups.

(7) Analytical and/or hands-on integration (and de-integration) of the customer's payload into racks and/or onto pallets.

(8) Unique integration or testing requirements.

(9) Additional resources beyond the customer's pro rata share.

(10) Additional experiment time or crew time beyond the customer's pro rata share.

(11) Special access to and/or operation of payloads.

(12) Customer unique requirements for: software development for the Command and Data Management Subsystem (CDMS) onboard computer, configuration of the Payload Operations Control Center (POCC), and/or CDMS utilized during KSC ground processing.

(13) Extravehicular Activity (EVA) services.

(14) Payload flight planning services.

(15) Transmission of Spacelab data contained in the STS OI telemetry link to a location other than a NASA-designated monitoring and control facility.

(16) Transmission of Spacelab data not contained in the STS OI telemetry link.

(17) Level III and/or Level II integration of customer-furnished Spacelab hardware.

(k) *Options.* The provisions of § 1214.102(e) and § 1214.202(e) do not apply to Spacelab payloads.

§ 1214.805 Unforeseen customer delay.

Should an unforeseen customer payload problem pose a threat of delay to the Shuttle launch schedule or critical off-line activities, NASA shall, if requested by the customer, make all reasonable efforts to prevent a delay, contingent on the availability of facilities, equipment, and personnel. In requesting NASA to make such special efforts, the customer shall agree to reimburse NASA the estimated additional cost incurred.

§ 1214.806 Premature termination of Spacelab flights.

If a dedicated-Shuttle Spacelab flight, a dedicated-pallet flight, or dedicated-FMDM/MPESS flight is prematurely terminated, NASA shall refund the optional services charges for planned, but unused, extra days on orbit. If a complete-pallet or shared-element flight is prematurely terminated, NASA shall refund a pro rata share of the charges for planned, but unused, extra days on orbit to customers whose payload operations are, in NASA's judgment, adversely affected by such premature termination. The basis for proration shall be the customers' Shuttle load factor.

§ 1214.807 Exceptional payloads.

Customers whose payloads qualify under the NASA Exceptional Program Selection Process shall reimburse NASA for Spacelab and Shuttle services on the basis indicated in the Shuttle policy.

§ 1214.808 Standby payloads.

The standby payload provisions of the Shuttle policy do not apply to Spacelab flights.

§ 1214.809 Short-term call-up and accelerated launch.

The short-term call-up and accelerated launch provisions of the Shuttle policy normally are not offered to Spacelab customers. NASA will negotiate any such customer requirements on an individual basis.

§ 1214.810 Integration of payloads.

(a) The customer shall bear the cost of performing the following typical Spacelab-payload mission management functions:

(1) Analytical design of the mission.

(2) Generation of mission requirements and their documentation in the Payload Integration Plan (PIP).

(3) Provision of mission unique training and payload specialists (if appropriate).

(4) Physical integration of experiments into racks and/or onto pallets.

(5) Provision of payload unique software for use during ground processing, on orbit, or in POCC operations.

(6) Supporting operations.

(7) Assuring the mission is safe.

[1] Typical standard Shuttle services repeated for clarity

(b) All physical integration (and de-integration) of payloads into racks and/or onto pallets will normally be performed at KSC by NASA. When the customer provides Spacelab elements, these physical integration activities may be done by the customer at a location chosen by the customer.

(c) With the exception of the restrictions noted in paragraph (b) of this section, customers contracting for dedicated-Shuttle and dedicated-pallet flights may perform the Spacelab-payload mission management functions defined in paragraph (a) of this section. NASA will assist customers in the performance of these functions, if requested. Charges for this service will be based on estimated actual costs, or actual costs where appropriate, and will be in addition to the price for standard services.

(d) For complete pallets or shared elements, NASA will normally perform the Spacelab-payload mission management functions listed in paragraph (a) of this section. Charges for this service will be based on estimated actual costs, or actual costs where appropriate, and will be in addition to the price for standard services.

(e) Integration of payload entities mentioned in paragraphs (b)–(d) of this section with NAS-furnished Spacelab support systems and with the Shuttle shall be performed by NASA as a standard service for all payloads flown on customer-furnished Spacelab elements. Customers shall be available to participate as required by NASA in these levels of integration. Customer equipment shall be operated only to the extent necessary for interface verification. Customers requiring additional payload operation after delivery of the payload to NASA shall negotiate such operation as an optional service.

§ 1214.811 Reflight guarantee.

(a) During the second phase of STS operations, there is no additional reflight premium for those shared-flight Spacelab payloads which can be accommodated on a standard Shuttle launch to 160 nmi, 28.5° as defined in the Shuttle policy and all dedicated-flight Spacelab payloads.

(b) NASA and the customer may negotiate appropriate reflight provisions (e.g., scheduling, reflight premiums) for payloads not covered by paragraph (a) of this section. Otherwise, no reflight services shall be provided.

(c) Reflight guarantees, if provided, must cover the customer's entire payload.

(d) Payloads covered by reflight guarantees shall be entitled to a reflight with no charge for standard Spacelab and Shuttle services if both the following occur:

(1) Through no fault of the customer or defect in the customer's payload, Spacelab systems (i.e., data, power, and cooling) are not within nominal specifications, as measured by NASA at normal Spacelab monitoring points, at the time of first turn-on of the customer's payload, all as defined in the Launch Services Agreement.

(2) The customer's mission objective is not achieved solely as a direct result of the occurrence, at the time of first turn-on of the customer's payload, of events described in paragraph (d)(1) of this section.

(e) If more than one reflight is required, no additional reflight premium shall be charged.

(f) If a payload being reflown was not initially covered by a reflight guarantee, the reimbursements for the reflight shall be the same as for a newly-scheduled launch.

§ 1214.812 Payload specialists.

(a) The use of customer-furnished payload specialists shall be subject to the approval of the NASA Administrator or the Administrator's designee.

(b) Customers with payloads whose Shuttle load factor is equal to or greater than 0.5 are entitled to request that a customer-selected payload specialist be flown with the customer's payload. Dedicated-flight customers are entitled to request the flight of two customer-selected payload specialists.

(c) NASA may approve the flight of a customer-selected payload specialist with payloads whose Shuttle load factor is less than 0.5 if, in NASA's judgment, there is sufficient scientific need to warrant such a flight.

(d) The standard Spacelab flight price is based on operation of the customer's payload by two NASA-furnished mission specialists. Accommodations for, and mission-independent training of, any payload specialists and backups required for the customer's mission shall be provided as optional services and shall be paid for by the customer. The price for this service shall be the same for both customer-furnished and NASA-furnished payload specialists.

§ 1214.813 Computation of sharing and pricing parameters.

(a) *General.* (1) Computational procedures as contained in the following subparagraphs of this paragraph of this section shall be applied as indicated. The procedure for computing Shuttle load factor, charge factor, and flight price for Spacelab payloads replaces the procedure contained in the Shuttle policy.

(2) Shuttle charge factors as derived herein apply to the standard mission destination of 160 nmi altitude, 28.5° inclination. Customers shall reimburse NASA an optional services fee for flights to nonstandard destinations.

(3) The customer's total Shuttle charge factor shall be the sum of the Shuttle charge factors for the customer's individual (dedicated, complete, or shared) elements, with the limitation that the customer's Shuttle charge factor shall not exceed 1.0.

(4) Customers contracting for pallet-only payloads are entitled to locate minimal controls as agreed to by NASA in a pressurized area to be designated by NASA. There is no additional charge for this service.

(5) NASA shall, at its discretion, adjust up or down the load factors and load fractions calculated according to the procedures defined in this section. Adjustments shall be made for special space or weight requirements which include, but are not limited to:

(i) Sight clearances, orientation, or placement limits.

(ii) Clearances for movable payloads.

(iii) Unusual access clearance requirements.

(iv) Clearances extending beyond the bounds of the normal element envelope.

(v) Extraordinary shapes.

The adjusted values shall be used as the basis for computing charge factors and prorating services.

(b) *Definitions used in computations.*

(1) L_c = Chargeable payload length, m. The total length in the cargo bay occupied by the customer's experiment and the Spacelab element(s) used to carry it.

(2) W_c = The weight of the customer's payload and the customer's pro rata share of the weight of NASA mission-peculiar equipment carried to meet the customer's needs, kg.

(c) *Dedicated-Shuttle Spacelab flight (1-day mission).* The total reimbursement is as defined in § 1214.804(e)(3).

(d) *Dedicated-pallet flight (1-day mission).* (1) The Shuttle load factors and charge factors for dedicated-pallet flights are shown in Table 1. Subject to other STS Spacelab structural limits, customers are entitled to utilize the payload weight capability of the pallets as indicated in Table 1. Payload weights in excess of those shown are subject to NASA approval and may entail optional services charges.

TABLE 1.—SHUTTLE LOAD FACTORS, CHARGE FACTORS, AND NOMINAL CAPACITIES FOR DEDICATED PALLETS

Number of pallets	Load factor		Charge factor		Nominal payload capacity, kg	
	With Igloo	FMDM configuration	With Igloo	FMDM configuration	With Igloo	FMDM configuration
1	0.228	0.189	0.305	0.252	2,325	2,950
2	0.393	NA	0.523	NA	4,470	NA
3-pallet train [1]	0.556	NA	0.742	NA	4,435	NA
2+1 configuration	0.594	NA	0.792	NA	7,750	NA

[1] Three pallets requiring the "1+1+1" configuration shall be flown on a dedicated flight basis [See § 1214.804(a)].

(2) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.804(f)(3).

(e) *Dedicated FMDM/MPESS flight (1-day mission).*

(1) *Shuttle charge factor.* The computed charge factor for dedicated FMDM/MPESS flights is defined as:

$$\frac{\text{Shuttle Load Factor}}{0.75}$$

(2) *Shuttle load factor.* (i) The Shuttle load factor is defined as the maximum of:

$$\frac{L_c}{18.29} \text{ or } \frac{W_c+767}{29,478}$$

(ii) The minimum value of L_c is based on the element length, plus clearances, and is 1.18 m.

(3) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.804(f)(3).

(f) *Complete pallets (7-day mission).* (1) The Shuttle load factor and charge factor for a complete pallet are 0.198 and 0.228, respectively, and its payload weight capability is 2,583 kg. Subject to other STS or Spacelab structural limits, customers are entitled to utilize this payload weight capability. Payload weight in excess of 2,583 kg is subject to NASA approval and may entail optional service charges.

(2) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.804(g)(3).

(g) *Shared elements (7-day mission).*

(1) *Spacelab load fractions and Shuttle load factors.*

(i) *Pallet.* Spacelab load fraction is the greater of:

$$\frac{W_c}{2,583} \text{ or } \frac{\text{Payload volume, m}^3}{15}$$

Shuttle load factor is the greatest of:

$$\frac{W_c}{13,045} \text{ or } \frac{\text{Payload volume, m}^3}{76}$$

(ii) *Pressurized module.* Spacelab load fraction and Shuttle load factor are identical and are the greater of:

$$\frac{W_c}{4,319} \text{ or } \frac{2\times(\text{Experiment volume})+\text{Storage volume, m}^3}{40}$$

(2) *Shuttle charge factors and element charge factors for pressurized modules.* Shuttle charge factors and element charge factors are identical and are defined as follows:

If the Spacelab load fraction (and Shuttle load factor) is—	The element charge factor and Shuttle charge factor shall be—
Less than 0.00435	.005.
0.00435 to 0.87	Spacelab load fraction divided by 0.87.
Greater than 0.87	1.0.

(3) *Element charge factors for shared pallets.*

If the Spacelab load fraction is—	The element charge factor shall be—
Less than 0.0189	0.0218.
0.0189 to 0.87	Spacelab load fraction divided by 0.87.
Greater than 0.87	1.0.

(4) *Shuttle charge factors for shared pallets.*

If the Shuttle load factor is—	The Shuttle charge factor shall be—
Less than 0.00375	0.005.
0.00375 to 0.75	Shuttle load factor divided by 0.75.
Greater than 0.75	1.0.

(5) *Total reimbursement.* (i) The customer's total reimbursement is as defined in § 1214.804(h)(3).

(ii) If a customer contracts for portions of more than one element, the charges for the use of the elements shall apply individually to each element used.

(6) Experiment volume in the pressurized module is defined to be the sum of the customer's payload volume in racks and in the center aisle.

(i) Rack volume is defined relative to basic Air Transportation Rack (ATR) configurations. The customer's rack volume shall be defined as the volume of one or more rectangular parallelepipeds (rectangular-sided box) which totally enclosed the customer's payload. Width dimensions shall be either 45.1 or 94.0 centimeters. Height dimensions shall be integral multiples of 4.45 centimeters. Depth dimensions shall be 61.2 or 40.2 centimeters.

(ii) Center aisle space volume is defined as the volume of a rectangular parallelepiped which totally encloses the customer's payload. No edge of the parallelepiped shall be less than 30 centimeters in length.

(7) Storage volume in the pressurized module is defined as the volume of one or more rectangular parallelepipeds enclosing the customer's stowed payload. No edge of the parallepiped(s) shall be less than 30 centimeters in length.

(8) Volume of the customer's pallet-mounted payload is defined as the volume of a rectangular parallelepiped enclosing the pallet payload and customer-dictated mounting hardware. No edge of the parallelepiped shall be less than 30 centimeters in length.

James M. Beggs,

Administrator.

April 30, 1985.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Natural GW Policy Act; Ceiling Prices; Maximum Lawful Prices and Inflation Adjustment Factors

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 357.307(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of August, September and October, 1985. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Director, OPPR, (202) 357–8500.

In the matter of, Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978; Docket No. RM80–53.

Order of the Director, OPPR

Issued: July 24, 1985.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(l) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of August, September and October, 1985 are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1)(2), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to August 1985 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

§ 271.101 [Amended]

1. Section 271.101(a) is amended by inserting the maximum lawful prices for August, September and October, 1985 in Tables I and II and inserting footnote numbers one and three in the text of Table I.

§ 271.102 [Amended]

2. Section 271.102(c) is amended by inserting the inflation adjustment for the months of August, September and October, 1985 in Table III.

TABLE I.—NATURAL GAS CEILING PRICES

[Other than NGPA sections 104 and 106(a)]

Subpart of Part 271	NGPA section and category of gas	Maximum lawful price per MMBtu for deliveries in—		
		Aug. 1985	Sept. 1985	Oct. 1985
B	102: New natural gas, certain OCS gas.[4]	$4.045	$4.068	$4.091
C	103(b)(1): New onshore production wells.[5]	3.024	3.031	3.038
	103(b)(2): New onshore production wells.[5]	3.535	3.550	3.565
E	105(b)(3): Intrastate existing contracts.	4.023	4.043	4.063
F	106(b)(1)(B): Alternative maximum lawful price for certain intrastate rollover gas.[1]	1.731	1.735	1.739
G	107(c)(5): Gas produced from tight formations.[2]	6.048	6.062	6.076
H	108 Stripper gas	4.330	4.354	4.379
I	109 Not otherwise covered.	2.506	2.512	2.518

[1] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas is deregulated. (See Part 272 of the Commission's regulations.)

[2] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

[4] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) is deregulated. (See Part 272 of the Commission's regulations.)

[5] Commencing January 1, 1985, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 is deregulated. (See Part 272 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(a)

[Subpart D, Part 271]

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries made in—		
	Aug. 1985	Sept. 1985	Oct. 1985
Post-1974 gas: All producers	$2.506	$2.512	$2.518
1973–1974 Biennium gas:			
Small producer	2.119	2.124	2.129
Large producer	1.616	1.620	1.624
Interstate rollover gas: All producers	.930	.932	.934
Replacement contract gas or recompletion gas:			
Small producer	1.190	1.193	1.196
Large producer	.911	.913	.915
Flowing gas:			
Small producer	.603	.604	.605
Large producer	.509	.510	.511
Certain Permian Basin gas:			
Small producer	.708	.710	.712
Large producer	.627	.629	.631

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(a)—Continued

[Subpart D, Part 271]

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries made in—		
	Aug. 1985	Sept. 1985	Oct. 1985
Certain Rocky Mountain gas:			
Small producer	.708	.710	.712
Large producer	.603	.604	.605
Certain Appalachian Basin gas:			
North subarea contracts dated after Oct. 7, 1969	.572	.573	.574
Other contracts	.527	.528	.529
Minimum rate gas:[1] All producers	.311	.312	.313

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

TABLE III.—INFLATION ADJUSTMENT

Month of delivery, 1985—	Factor [1]
August	1.00247
September	1.00247
October	1.00247

[1] By which price in preceding month is multiplied.

[FR Doc. 85–17973 Filed 7–29–85; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 282

[Docket No. RM79–14]

Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8500.

Order of the Director, OPPR

In the matter of Publication of Prescribed Incremental Pricing Acquisition Cost Threshold of the NGPA of 1978; Docket No. RM79–14.

Issued: July 24, 1985.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(l) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of August 1985 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to August 1985 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	January	February	March	April	May	June	July	August	September	October	November	December
Calendar year 1984:												
Incremental pricing threshold	$2.283	$2.291	$2.299	$2.307	$2.315	$2.323	$2.331	$2.338	$2.345	$2.352	$2.359	$2.366
NGPA Section 102 threshold	3.586	3.609	3.632	3.656	3.680	3.705	3.730	3.752	3.774	3.797	3.821	3.845
NGPA Section 109 threshold	2.359	2.367	2.375	2.383	2.391	2.399	2.407	2.414	2.421	2.428	2.436	2.444
13% of No. 2 fuel oil in New York City Threshold	7.730	7.570	7.570	8.550	8.590	7.670	7.930	7.740	7.650	7.230	7.040	7.290
Calendar year 1985:												
Incremental pricing threshold	2.373	2.378	2.383	2.388	2.399	2.410	2.421	2.427				
NGPA Section 102 threshold	3.869	3.890	3.911	3.932	3.962	3.992	4.022	4.045				
NGPA Section 109 threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500	2.506				
130% of No. 2 fuel oil in New York City threshold	7.170	7.310	7.090	6.920	7.210	7.120	7.400	7.000				

[FR Doc. 85–17974 Filed 7–29–85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8041]

Income Tax; Designation of Principal Campaign Committee

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the designation of a principal campaign committee by a candidate for Congress. Changes to the applicable tax law were made by the Economic Recovery Tax Act of 1981 and the Tax Reform Act of 1984. These regulations provide candidates for Congress and their principal campaign committees with the guidance needed to comply with these Acts.

DATES: The amendments to the regulations apply to taxable years beginning after December 31, 1981 and are effective July 30, 1985.

FOR FURTHER INFORMATION CONTACT: Susan Thompson Baker of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC: LR: T) (202–566–3294).

SUPPLEMENTARY INFORMATION:

Background

On April 20, 1983, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 527 of the Internal Revenue Code of 1954 (48 FR 16911). The amendments were proposed to conform the regulations to section 128 of the Economic Recovery Tax Act of 1981 (95 Stat. 172, 203). No written comments responding to this notice were received, and no public hearing was requested or held. This Treasury decision adopts these amendments as proposed, with certain clarifying changes, and conforms the regulations to a change made by section 722 (c) of the Tax Reform Act of 1984 (98 Stat. 973).

Explanation of Provisions

Section 128 of the Economic Recovery Tax Act of 1981 adds new section 527(h) to the Internal Revenue Code of 1954. That section provides that the political organization taxable income of a "principal campaign committee" of a candidate for Congress shall be taxed at the appropriate corporate rate specified in section 11 (b) of the Code rather than at the highest rate specified in that section. The highest corporate rate of tax is the rate of tax applicable to other political organizations.

In order to qualify for the more favorable rate of tax, a committee must be designated in writing as a "principal campaign committee" by a candidate for Congress. A copy of this written designation, which may be made on Federal Election Commission Form 2 or or equivalent document, must be appended to the Form 1120–POL filed by the principal campaign committee for each taxable year for which the designation is effective. Only a candidate for Congress, and not a candidate for other Federal or State office, may make a designation of a principal campaign committee. A candidate for Congress may have only one designation under 527(h) in effect at any time. If, however, a candidate for Congress has only one campaign committee, no designation is required.

Non-Application of Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in these regulations has been submitted to the Office of Management and Budget

(OMB) in accordance with the requirement of Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of this regulation is Susan Thompson Baker of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in developing the regulation, both substantively and stylistically.

List of Subjects

26 CFR 1.501(a)-1—1.528-10

Income taxes, Exempt organizations, Foundations, Non-profit organizations, Cooperatives, Political organizations, Homeowners associations.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the amendments to 26 CFR Part 1 and Part 602 are adopted as proposed, with certain clarifying changes. The amendments read as follows:

PART 1—[AMENDED]

26 CFR Part 1 is amended as follows:

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sec. 1.527-9 also issued under 26 U.S.C. 527(h)(2)(B)(i).

Par. 2. Section 1.527-1 is revised to read as follows:

§ 1.527-1 Political organizations; Generally.

Section 527 provides that a political organization is considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes. A political organization is subject to tax only to the extent provided in section 527. In general, a political organization is an organization that is organized and operated primarily for an exempt function as defined in § 1.527-2(c). Section 527 provides that a political organization is taxed on its political organization taxable income (see § 1.527-4) which, in general, does not include the exempt function income (see § 1.527-3) of the political organization. Furthermore, section 527 provides that an exempt organization, other than a political organization, may be subject to tax under section 527 when it expends an amount for an exempt function, see § 1.527-6. The taxation of newsletter funds is provided under section 527(g) and § 1.527-7. A special rule for principal campaign committees is provided under section 527(h) and § 1.527-9.

Par. 3. Section 1.527-2 is amended by adding a new paragraph (e) immediately following paragraph (d). New paragraph (e) reads as follows:

§ 1.527-2 Definitions.

* * * * *

(e) *Principal campaign committee.* A "principal campaign committee" is the political committee designated by a candidate for Congress as his or her principal campaign committee for purposes of section 302(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. section 432(e)), as amended, and section 527(h) and § 1.527-9.

Par. 4. Section 1.527-8(d) is revised to read as follows:

§ 1.527-8 Effective date; filing requirements; and miscellaneous provisions.

* * * * *

(d) *Effective date.* Except as provided in paragraph (b)(2) of § 1.527-6 and in paragraph (a) of § 1.527-9, the regulations under section 527 apply to taxable years beginning after December 31, 1974.

Par. 5. A new § 1.527-9 is added immediately following § 1.527-8. New § 1.527-9 reads as follows:

§ 1.527-9 Special rule for principal campaign committees.

(a) *In general.* Effective with respect to taxable years beginning after December 31, 1981, the tax imposed by section 527(b) on the political organization taxable income of a principal campaign committee shall be computed by multiplying the political organization taxable income by the appropriate rates of tax specified in section 11(b). The political organization taxable income of a campaign committee not a principal campaign committee is taxed at the highest rate of tax specified in section 11(b). A candidate for Congress may designate one political committee to serve as his or her principal campaign committee for purposes of section 527(h)(1). If a designation is made, it shall be made in accordance with the requirements of paragraph (b) of this section. A candidate for Congress may have only one designation in effect at any time. Under 11 CFR 102.12, no political committee may be designated as the principal campaign committee of more than one candidate for Congress. Further, no political committee that supports or has supported more than one candidate for Congress may be designated as a principal campaign committee. No designation need be made where there is only one political campaign committee with respect to a candidate.

(b) *Manner of designation.* If a candidate for Congress elects to make a designation under section 527(h) and this section, he or she shall designate his or her principal campaign committee by appending a copy of his or her Statement of Candidacy (that is, the Federal Election Commission Form 2, or equivalent statement that the candidate filed with the Federal Election Commission under 11 CFR 101.1(a)), to the Form 1120-POL filed by the principal campaign committee for each taxable year for which the designation is effective. This designation may also be made by appending to the Form 1120-POL statement containing the following information: The name and address of the candidate for Congress; his or her taxpayer identification number; his or her party affiliation and the office sought; the district and State in which the office is sought; and the name and address of the principal campaign comittee. This designation shall be made on or before the due date (as extended) for filing Form 1120-POL. Only a candidate for Congress may make a designation in accordance with this paragraph.

(c) *Manner of revoking designation.* A designation of a principal campaign committee that has been filed in accordance with this section may be revoked only with the consent of the Commissioner. In general, the Commissioner will grant such consent in every case where the candidate for Congress has revoked his or her designation in compliance with the requirements of the Federal Election Commission by filing an amended Statement of Organization or its equivalent pursuant to 11 CFR 102.2(a)(2). In the case of the revocation of the designation of a principal campaign committee by a candidate followed by the designation of another principal campaign committee by such candidate, for purposes of determining the appropriate rate of tax under section 11(b) for a taxable year, the political organization taxable income of the first principal campaign committee shall be treated as that of the subsequent principal campaign committee. In a case where consent to revoke a designation of a principal campaign committee is granted and a new designation is filed, the Commissioner may condition his

consent upon the agreement of the candidate for Congress to insure compliance with the preceding sentence.

PART 602—[AMENDED]

Par. 6. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 7. Section 602.101[c] is amended by inserting in the appropriate places in the table "§ 1.527–9 . . . . 1545–0129".

Approved: June 17, 1985.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–17834 Filed 7–29–85; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–211; Notice No. 560]

North Yuba Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is establishing in Yuba County, California, an American viticultural area known by the appellation "North Yuba." This final rule results from a petition filed by Karl Werner and James R. Bryant, officers of Renaissance Vineyard and Winery, Inc., located near Oregon House, California.

The establishment of this viticultural area and the use of the name as an appellation of origin in the labeling and advertising of wine allows the proprietor of a winery to designate the area as the locale in which grapes used in the production of a wine are grown and enables the consumer to identify and to differentiate between that wine and other wines offered at retail.

EFFECTIVE DATE: This final rule is effective August 30, 1985.

FOR FURTHER INFORMATION CONTACT: Michael J. Breen, Coordinator, FAA, Wine and Beer Branch, Room 6237, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 [43 FR 37672, 54624) revising regulations in Title 27, Code of Federal Regulations, Part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added to Title 27 a new Part 9 providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1) defines an American viticultural area as a delimited grape growing region distinguishable by geographical features. Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition shall include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundary of the proposed viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and,

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundary prominently marked.

Petition

On November 13, 1984, ATF received the petition for the establishment of the "North Yuba" viticultural area in the middle and upper foothills in north-central Yuba County, California. Upon completing a review of the data furnished with the petition, ATF consulted with the petitioner regarding expansion of the petitioned boundary to include areas of land of the same soil associations as are common to the area covered by the petition. ATF published the proposed boundary in Notice No. 560 (50 FR 12038) dated March 27, 1985.

Comments

ATF received one comment in response to the proposal to establish the "North Yuba" viticultural area. The commenter, the executive officer of the Board of Forestry for the State of California, favors the establishment of the viticultural area as proposed.

Name

The name "North Yuba" is well documented in the petition. Yuba County is named after the Yuba River which took its name from the Indian tribe which populated the area. "North Yuba" is the name used locally to designate the area in north central Yuba County in which are located the towns of Dobbins and Oregon House. This is the name used by Pacific Bell Telephone to designate the area. Included with the petition are letters from the county sheriff and the local chamber of commerce attesting to local usage and acceptance of the name "North Yuba" to designate the area.

Historically, viticulture came to Yuba County in the 1950's. Documents show the planting of wine grapes and the establishment of a winery in 1855. By 1860, Yuba County had five wineries and 800 acres were devoted to wine grape cultivation. By 1930, there were 1,000 acres devoted to wine grape cultivation. However, as a consequence of National Prohibition, the vineyards were replaced by orchards of peaches and prunes and the wineries closed.

Today, however, there are 360 acres of vineyards and one winery operating in the "North Yuba" viticultural area.

Geography

The North Yuba viticultural area consists of the middle and upper foothills in Yuba County immediately west of the Sierra Nevadas and north of the Yuba River. The 2,000-foot contour line of the Sierra Nevada Mountains forms the eastern and northern portions of the boundary of the proposed viticultural area and the 1,000-foot contour line north of the Yuba River canyon forms the southern portion of the boundary. The eastern bank of Woods Creek forms part of the western portion of the boundary. The area is approximately 7 miles in length from north to south and 3 to 6 miles in width from west to east.

The principal streams which drain the area are Dobbins Creek and the upper portions of Dry Creek. Both streams flow into the Yuba River. The land drained by these streams shares similar geological history, topographical features, soils, and climatic conditions. The portions of the area which are currently devoted to viticulture consist of foothill slopes between 1,000 and 2,000 feet above sea level.

Distinguishing Characteristics

The viticultural area is not only distinguished historically from surrounding areas but geographically by its topography, elevation, geology, soils, temperature, and rainfall.

Topography and Elevation

The topography of the viticultural area ranges from gently rolling hills to steeper slopes at the base of the Sierra Nevadas and generally ranges in elevation from 1,000 feet to 2,000 feet above sea level. Lying between the high Sierras to the east and the lowlands of the Sacramento Valley to the west, the boundary of the viticultural area defines a region well suited for viticulture. The topography of the area ensures adequate ventilation for viticulture. The area escapes both the early frosts and snow of higher elevations in the Sierra Nevadas and the heat, humidity and fog common to the lowlands in the Sacramento Valley.

Geology

The area is an example of a middle foothill to lower mountain landscape that has been formed during a long period of geologic time. The area is underlain by igneous rocks and granitic rocks that extend along the base of the Sierra Nevadas. It is geologically well defined by the Sierra Nevadas to the north and east, by greenstone rock to the west, and by the Yuba River canyon to the south.

Soil Characteristics

The three major physiographic units in Yuba County are the valley lands of the Sacramento Valley, the Sierra Nevadas to the east of the valley, and the foothills region which lies between the valley and the mountains. There are nine soil associations common to the valley lands, three common to the foothills region, and six common to the mountainous terrain. Of the 18 soil associations found in Yuba County, basically three distinguish the soils of the viticultural area from the soils in surrounding areas of the county and the adjoining counties of Butte and Nevada in California.

The soil associations common to the proposed area are Sierra-Auberry, Englebright-Rescue, and Dobbins. These soils are typical of those developed from granitic and igneous rocks. The soils are shallow to very deep, rocky, cobbly and rocky, or noncobbly and rocky and are generally well drained.

"Soils of the Yuba County, California", a 1969 soil survey published jointly by the Department of Soils and Plant Nutrition of the University of California at Davis and by the County of Yuba, California, contains a color coded general soil map which clearly shows a pattern of these three soil associations in the middle and upper foothills region of Yuba County between the predominant soil association of the lower foothills, Auburn-Sobrante-Las Posas, and the predominant soil association of the mountains, Challenge-Tish Tang. The boundary includes small areas of Auburn-Sobrante-Las Posas, Challenge-Tish Tang and Rackerby-Dobbins, a mountain soil association.

Data from the soil survey of Yuba County and the 1975 soil survey of Nevada County, which lies south of Yuba County, strongly support the boundary established in this final rule.

Climatological Characteristics

Generally, Yuba County has an interior "Mediterranean" type climate. However, the location of the "North Yuba" viticultural area in the middle to upper foothills region approaching the mountainous terrain of the Sierra Nevadas allows a subtle distinction in climatological characteristics from the rest of the county in that the area escapes both the heat and fog common to the lowlands of the Sacramento Valley and the early frosts and snow of the higher elevations of the Sierra Nevadas.

The lands of the Sacramento Valley in Yuba County range from 30 to 250 feet above sea level and the mean average rainfall is 20 to 25 inches. The valley lands are an extensive area of floodplains, terraces, alluvial fans and basins.

The mountains of Yuba County are part of the western slope of the Sierra Nevadas. This is a region of gently rounded ridges, moderately steep rolling hillsides, and rugged, steep canyon slopes, that is deeply entrenched by the Yuba River and its tributaries. Basic metavolcanic rocks are dominant in this area. Elevations range from 1,600 feet to more than 4,800 feet above sea level. Rain increases with elevation and ranges from 45 inches to more than 80 inches, much of which falls as snow at higher elevations.

The middle to upper foothills in which the viticultural area lies occupy the lower western slope of the Sierra Nevadas between the valley lands and the mountainous uplands of the county. This is an area of rolling to steep hills with conspicuous ridges and peaks. Rock outcroppings are common. The central foothills region ranges in elevation from 250 feet to 2,700 feet above sea level. However, the viticultural area generally ranges in elevation from 1,000 to 2,000 feet above sea level and can be distinguished from surrounding areas by rainfall. The rainfall within the area increases gradually with elevation from 25 to 50 inches. For example, the mean annual precipitation at the Dobbins-Colgate weather station is 40.4 inches compared to 61.9 inches at the Camptonville station to the east of the area and 20.7 inches at Marysville to the west of the area.

Such statistics are corroborated by a map adapted from the State of California Department of Water Resources Seasonal Isohyetal Map (1905 to 1955) to show mean annual precipitation for Yuba County. The map distinguishes by rainfall the central foothills region from the areas to the west and to the east.

The growing season of the viticultural area is distinctly cooler than the neighboring Sacramento Valley to the west and warmer than the mountainous area to the east. The climate of the area is characterized by cool summer night temperatures, often dropping to 30 degrees below daytime highs and allowing the grapes to retain sufficient acidity to balance the high sugar levels induced by daytime sunshine.

Foothill winds are an additional cooling factor in summer, contributing further to the development of proper acidity in the area's grapes. These cooling winds are distinguished from those of the valley. At the higher foothill elevations, the winds conform more closely with the free-flowing westerly winds over northern California rather than the southwesterly winds which come up from the Straits of Carquinez into the lowland area of Yuba County.

Climatological data from three weather stations of the U.S. Department of Commerce National Oceanographic and Atmospheric Administration document the climatological differences between "North Yuba" and adjoining areas. The data from these stations when compared with data compiled over the 10-year period 1975 to 1984 from vineyards in the vicinity of Oregon House show the following differences in climate between "North Yuba" and surrounding areas:

Location	Elevation (feet)	Mean annual	Rainfall (inches)	Growing season (days)
Marysville	60	62.9 °F	20.7	273.
Dobbins-Colgate	600	62.6 °F	40.4	267.

Location	Elevation (feet)	Mean annual	Rainfall (inches)	Growing season (days)
Oregon House	1,500	59.0 °F	35 to 40	215 to 225.
Camptonville	2,755	57.5 °F	61.9	185.

Boundary

The boundary of the North Yuba viticultural area is found on four United States Geological Survey maps of the 7.5 minute series, scale 1:24,000. The boundary is described in § 9.106.

The boundary of the proposed viticultural area encompasses approximately 35 square miles or 22,400 acres. Within the area there are approximately 360 acres devoted to the cultivation of wine grapes and one bonded winery.

Compliance with Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, 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 for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

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

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

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Michael J. Breen, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural Areas is amended as follows:

Par. 1. The authority citation for 27 CFR Part 9 continues to read as follows:

Authority: August 29, 1935, Chapter 814, sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205), unless otherwise noted.

Par. 2. The Table of Sections in 27 CFR Part 9 is amended by adding § 9.106 to Subpart C to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.106 North Yuba.

* * * * *

Par. 3. Subpart C is amended by adding § 9.106 which reads as follows:

§ 9.106 North Yuba.

(a) *Name.* The name of the viticultural area described in this section is "North Yuba."

(b) *Approved maps.* The appropriate maps for determining the boundary of North Yuba viticultural area are the following four U.S.G.S. topographical maps of the 7.5 minute series:

(1) "Oregon House Quadrangle," edition of 1948, photo-revised 1969.

(2) "Rackerby Quadrangle," edition of 1948, photo-revised 1969.

(3) "Challenge Quadrangle," edition of 1948 photo-revised 1969.

(4) "French Corral Quadrangle," edition of 1948, photo-revised 1969.

(c) *Boundary.* The North Yuba viticultural area is located in Yuba County in the State of California. The boundary is as follows:

(1) Beginning on the "Oregon House Quadrangle" map at the point where the Browns Valley Ditch crosses Woods Creek in the southwest corner of section 25, T. 17 N., R. 6 E., the boundary proceeds northeasterly in a meandering line approximately 1.5 miles along the east bank of Woods Creek to the point near Richards Ranch where the paved light duty road crosses said creek;

(2) Then west and north, approximately 0.33 mile to the point where the paved light duty road meets the unimproved dirt road accessing Dixon Hill and Texas Hill;

(3) Then northwest continuing along the paved light duty road approximately 2.75 miles to the intersection at Oregon House of said light duty road with the medium duty road which travels east and west between Virginia Ranch Reservoir of Dry Creek and the Yuba County Forestry Headquarters near Dobbins;

(4) Then northeasterly, 0.7 mile, along same light duty road to its intersection with the unimproved dirt road to Lake Mildred, located in the northwest corner of section 2, T. 17 N., R. 6 E.;

(5) Then northwesterly, 1.0 miles, along the unimproved dirt road to the end of said road at the shoreline of Lake Mildred;

(6) Then southwest along the shoreline of Lake Mildred to the Los Verjeles Dam at the westernmost end of said lake;

(7) Then across the face of said dam and continuing northeast along the shoreline of Lake Mildred to the point where the stream running through Smokey Ravine flows into Lake Mildred;

(8) Then north and west along said stream to the point where the stream crosses the 1,900-foot contour line in the northeast corner of section 27, T. 18 N., R. 6 E.;

(9) Then southwest in a meandering line along the 1,900-foot contour line of Lamb Hill;

(10) Then northwest along the 1,900-foot contour line of High Spring Ridge to the point where the medium duty paved road running north and south along Willow Glen Creek crosses the 1,900-foot contour line, approximately 0.75 mile north of Finley Ranch;

(11) Then north along said road, approximately 1 mile, to its intersection at Willow Glen Ranch near the west boundary line of section 15, T. 18 N., R. 6 E., with the light duty road which crosses Critterden Ridge;

(12) Then in a generally easterly direction along said road, approximately 2.0 miles, to its point of intersection with the light duty paved road named Frenchtown Road which runs north and south between Brownsville and Frenchtown;

(13) Then south along the Frenchtown Road to the point where the road

crosses the 1,600-foot contour line in the northwest corner of section 24, T. 18 N., R. 6 E.;

(14) Then east along the 1,600-foot contour line to the point where Dry Creek crosses the 1,600-foot contour line near the south boundary line of section 13, T. 18 N., R. 6 E.;

(15) Then south along Dry Creek, approximately 0.16 mile, to the confluence of Indiana Creek with Dry Creek;

(16) Then in a generally easterly direction, approximately 1 mile, along Indiana Creek to the confluence of Keystone Creek with Indiana Creek;

(17) Then north along indiana Creek, approximately 0.87 mile, to the point where Indiana Creek meets the 2,000-foot contour line of Oregon Hills;

(18) Then in a generally southeasterly direction along the 2,000-foot contour line of Oregon Hills, approximately 6 miles, to the point near the east boundary line of section 9, T. 17 N., R. 7 E., where the power transmission line on Red Bluff crosses the 2,000-foot contour line;

(19) Then southwest along the right of way of said power transmission line to the point near the south boundary of section 9, T. 17 N., R. 7 E., where it meets the power transmission line running northwest and southeast between Dobbins and the Colgate Power House;

(20) Then southeast along the power transmission line between Dobbins and Colgate Power House to the Colgate Power House;

(21) Then in a generally westerly direction from the Colgate Power House along the power transmission line which crosses over Dobbins Creek to the point west of Dobbins Creek where the power transmission line intersects the 1,000-foot contour line;

(22) Then in a generally southwesterly direction along the 1,000-foot contour line above the north bank of the Yuba River and Harry L. Englebright lake of the Yuba River to the intersection of the 1,000-foot contour line with Woods Creek in the northeast corner of section 36, T. 17 N., R. 6 E.;

(23) Then east and north along the east bank of Woods Creek, approximately 0.5 miles, to the point of beginning.

Signed: June 28, 1985

Stephen E. Higgins,

Director.

Approved: July 15, 1985.

Edward T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 85-17985 Filed 7-29-85; 8:45 am]

BILLING CODE 4810-31-M

27 CFR Part 170

[T.D. ATF-207; Correction]

Stills; Miscellaneous Provisions; Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision); correction.

SUMMARY: This document corrects an error made in FR Doc. 85-16774, which contained miscellaneous provisions regarding stills. FR Doc. 85-16774 was published in the **Federal Register** on July 15, 1985 at 50 FR 28572.

FOR FURTHER INFORMATION CONTACT: J.R. Whitley, ATF Tax Specialist, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566-7531.

SUPPLEMENTARY INFORMATION:

Par. 1. In the middle column of page 28572, in § 170.55, remove the words "Reporting and Recordkeeping requirements in paragraph (a)" from the beginning of the parenthetical paragraph containing the OMB control number. As corrected the parenthetical paragraph should read as follows:

(Approved by the Office of Management and Budget under control number 1512-0341)

Signed: July 22, 1985.

W.T. Drake,

Acting Director.

[FR Doc. 85-17971 Filed 7-29-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-011]

Minnesota State Plan; Approval of Revised Compliance Staffing Benchmarks and Final Approval Determination

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of Revised Compliance Staffing Benchmarks and Final State Plan Approval.

SUMMARY: This document amends Subpart N of 29 CFR Part 1952 to reflect the Assistant Secretary's decision approving revised compliance staffing requirements and granting final approval to the Minnesota State Plan. As a result of this affirmative determination under section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA standards and enforcement authority no longer apply to occupational safety and health issues covered by the Minnesota plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over offshore maritime employment in the private sector. Federal jurisdiction remains in effect with respect to Federal government employers and employees and employment at the Twin Cities Army Ammunition Plant.

EFFECTIVE DATE: July 30, 1985.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue NW., Washington, D.C. 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, initial approval is granted.

A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1902.3 and .4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period. 29 CFR 1902.2(b). The Assistant Secretary publishes a notice of "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met. 29 CFR 1902.34.

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA. 29 CFR 1954.3(f). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3, 1902.4 and 1902.37 are being applied. An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent jurisdiction in the State with respect to occupational safety and health issues covered by the plan. 29 U.S.C. 667(e).

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety and health compliance officers established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision, that directed the Assistant Secretary to calculate for each State plan State the number of enforcement personnel needed to assure a "fully effective" enforcement program.

History of the Minnesota Plan and Its Compliance Staffing Benchmarks

Minnesota Plan

On August 22, 1972, Minnesota submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on November 25, 1972, a notice was published in the **Federal Register** (37 FR 25083) concerning submission of the plan, announcing that initial Federal approval was at issue and offering interested persons an opportunity to submit data, views and arguments concerning the plan. Comments were received from: The American Federation of Labor and Congress of Industrial Organizations (AFL–CIO); United States Steel Corporation; Porter Inc.; Honeywell, Inc.; Abrams and Spector, P.A.; Northwestern Bell Co.; Naegele Outdoor Advertising Co.; Inc.; International Brotherhood of Electrical Workers; United Auto Workers; Minnesota Association of Commerce and Industry; Winona Area Chamber of Commerce; and Patrick Lee Reagan. The Winona Area Chamber of Commerce and Patrick Lee Reagan requested a hearing. In response to these comments, as well as to OSHA's review of the plan submission, the State made changes in its plan which were discussed in the notice of initial approval. Because the comments did not indicate that the plan failed in any material way to meet the criteria for acceptability as set forth in section 18(c) of the Act and 29 CFR Part 1902, no hearing was held.

On June 8, 1973, the Assistant Secretary published a notice granting initial approval of the Minnesota plan as a developmental plan under section 18(b) of the act (38 FR 15076). The State's program began operating on August 1, 1973. The plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The Minnesota Department of Labor and Industry is designated as having responsibility for administering the plan throughout the State. The day-to-day administration of the plan is directed by the Assistant Commissioner of Labor and Industry and the Director of the Minnesota Occupational Safety and Health Division. Health inspections are conducted by the Minnesota Department of Health, Division of Environmental Health, under contract. Health inspection findings are forwarded to the Department of Labor and Industry for action. The Department of Health also provides laboratory services in support of the plan.

The plan provides for the adoption by Minnesota of standards which are at least as effective as Federal occupational safety and health standards, including emergency temporary standards.

The plan requires employers to furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm and to comply with all occupational safety and health standards promulgated by the agency. Employees are likewise required to comply with standards applicable to their conduct. The plan contains provisions similar to Federal procedures for, among others, imminent danger proceedings, variances, safeguards to protect trade secrets, and employer and employee rights to participate in inspection and review proceedings. Appeals of citations, penalties and abatement periods are heard by the Minnesota Occupational Safety and Health Review Board. Decisions of the Review Board may be appealed to the appropriate State District Court.

The notice of initial approval noted a few distinctions between the Federal and Minnesota programs. In addition to adopting all Federal occupational safety and health standards, the State promulgates standards for which there are no corresponding Federal standards. The plan includes prohibition of denial of pay to an employee for participating in an inspection as part of its provision prohibiting discrimination against employees for exercising their rights under the law. State law also provides that standards requiring personal protective equipment mandate that such equipment be made available by or at the cost of the employer. In addition, in 1983 Minnesota enacted its Employee Right-to-Know Law which requires employers to provide information and training to employees concerning hazardous substances in their workplaces. (This law was subsequently amended in 1985 to conform with the provisions of the OSHA Hazard Communication Standard.)

The Assistant Secretary's initial approval of the Minnesota developmental plan, a general description of the plan, a schedule of required developmental steps and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart N; 38 FR 15076 (June 8, 1973)).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and appropriate documentation submitted for OSHA approval during the three-year period ending June 30, 1976. These "developmental steps" included: amendments to the Minnesota Occupational Safety and Health Act; promulgation of State Occupational Safety and Health Act; promulgation of State occupational safety and health standards and program regulations, and revision of the State's Field Compliance Manual. In completing these

developmental steps, the State developed and submitted for Federal approval all components of its enforcement program including, among other things, a merit staffing and a safety and health poster for private and public employees.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Subpart of 29 CFR Part 1952 designated as relating to Minnesota was amended to reflect each of these approval determinations (see 29 CFR 1952.204).

On September 28, 1976, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Minnesota had satisfactorily completed all developmental steps (41 FR 42659). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the plan—to be at least as effective as corresponding Federal provisions. Certification does not entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine, in accordance with section 18(e) of the Act, whether the statutory and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

Although Minnesota had not sought previously to enter into an operational status agreement, in 1981 OSHA determined that such agreements should be concluded with all qualified States. Thus, a **Federal Register** notice was published on June 11, 1982 (47 FR 25325), announcing that an operational status agreement had been signed on October 9, 1981, for Minnesota. Under the terms of that agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the Minnesota plan.

Minnesota Benchmarks

In 1978, the Assistant Secretary was directed by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision, to calculate for each State plan state the number of enforcement personnel (compliance staffing benchmarks) needed to assure a "fully effective" enforcement program. In 1980, OSHA submitted a Report to the Court containing the benchmarks and requiring Minnesota to allocate 56 safety compliance officers and 74 industrial hygienists to conduct inspections under the plan.

In September 1984 the Minnesota State designee in conjunction with OSHA completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for Minnesota. Pursuant to an initiative begun in August 1983 by the State plan designees as a group with OSHA and in accord with the formula and general principles established by that group for individual State revision of the benchmarks, Minnesota reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal to OSHA contained in comprehensive documents of revised compliance staffing benchmarks of 31 safety and 12 health compliance officers.

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR Part 1902, Subpart D. On January 16, 1985, the Occupational Safety and Health Administration published notice of its proposal to approve revised compliance staffing benchmarks for Minnesota and the resultant eligibility of the Minnesota State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted (50 FR 2467). The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Unified Management Information System, and staffing which meets the proposed revised State staffing benchmarks.

The January 16 **Federal Register** notice set forth a general description of the Minnesota plan and summarized the results of Federal OSHA monitoring of State operations during the period from October 1982 through March 1984. In addition to the information set forth in the notice itself, OSHA submitted, as part of the record in this rulemaking proceeding, extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which Minnesota operates its plan, and copies of all previous **Federal Register** notices regarding the plan.

A copy of the October 1982–March 1984 Evaluation Report of the Minnesota plan ("18(e) Evaluation Report"), which was extensively summarized in the January 16 proposal and which provided the principal factual basis for the proposed 18(e) determination, was included in the Record (Ex. 3–13). Copies of all OSHA evaluation reports on the plan since its certification as having completed all development steps were made part of the record.

The January 16 **Federal Register** also contained notice of the Occupational Safety and Health Administration's proposed approval of revised compliance staffing benchmarks for Minnesota. A detailed description of the methodology and State-specific information used to develop the revised compliance staffing benchmarks for Minnesota was included in the notice. In addition, OSHA submitted, as a part of the record (Docket No. T–011), Minnesota's detailed submission containing both a narrative explanation and supporting data (Ex. 2–10). A summary of the benchmark revision process was likewise set forth in a separate **Federal Register** notice on January 16, 1985, concerning the Wyoming State plan (50 FR 2491). An informational record was established in a separate docket (No. T–018) and contained background information relevant to the benchmark issue in general and the current benchmark revision process.

To assist and encourage public participation in the benchmark revision process and 18(e) determination, copies of the complete record were maintained in the OSHA Docket Office in Washington, D.C., in the OSHA Region V Office in Chicago, Illinois, and the office of the Minnesota Department of Labor and Industry in St. Paul, Minnesota. A summary of the January 16 proposal, with an invitation for public comments, was published in Minnesota on January 28, 1985 (Ex. 5).

The January 16 proposal invited interested persons to submit, by February 20 (subsequently extended to March 22, 1985, 50 FR 6956, in response to a request from James N. Ellenberger, Department of Occupational Safety, Health and Social Security, AFL–CIO), written comments and views regarding the Minnesota plan, whether the proposed revised compliance staffing benchmarks should be approved, and whether final approval should be granted. Opportunity to request an informal public hearing on the issue of final approval was likewise provided. Twelve letters of comment were received in response to these notices:

four from local, State and national labor organizations; one from an employer; four from non-governmental organizations, other than management or labor groups, concerned with occupational safety and health issues; one from a firm of attorneys; one from a group of physicians; and one from a 12-member body within the State government, composed of representatives of labor, management, the occupational safety and health professions, and the general public, appointed to provide advice on occupational safety and health matters. No requests for an informal hearing were received.

Summary and Evaluation of Comments Received

During this proposed rulemaking OSHA has encouraged interested members of the public to provide information and views regarding operations under the Minnesota plan, to supplement the information already gathered during OSHA monitoring and evaluation of plan administration, and regarding the proposed revised compliance staffing benchmarks for Minnesota.

In response to the January 16 **Federal Register** notice, OSHA received comments from: Minnesota Safety Council, Inc., Robert L. Anderson, President (Ex. 4–2); Apprenticeship Coordinators Association of Minnesota, James H. Gustafson, President (Ex. 4–3); Northern States Power Company, E.I. Malone, General Manager, Industrial Relations, Safety and Workers' Compensation, and J.J. Pineault, Manager, Occupational Safety and Health (Ex. 4–4); State of Minnesota Occupational Safety and Health Advisory Council, Edwin Conrad, Chairman (Ex. 4–5); Minnesota State Building and Construction Trades Council, William R. Peterson, President (Ex. 4–6); Koll and McCoy, Attorneys at Law, Laurence F. Koll, Attorney at Law (Ex. 4–7); Midwest Center for Occupational Health and Safety, Ruth K. McIntyre, Director, Continuing Education (Ex. 4–8); Occupational Health Services, Paul B. Johnson, M.D. *et al.* (Ex. 4–9); International Brotherhood of Electrical Workers, Local Union No. 160, Robert M. Sable, Safety Chairman, and David C. Ring, Business Manager (Ex. 4–10); American Industrial Hygiene Association (AIHA), James R. Thill, President, Midwest Section (Ex. 4–11); American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), Margaret Seminario, Association Director, Department of Occupational Safety, Health and Social Security (Ex. 4–12); United Steelworkers of America, Mary Win O'Brien, Assistant General Counsel (Ex. 4–13). Ivan Russell, Director, Occupational Safety and Health Division, Minnesota Department of Labor and Industry, responded to the public comments (Ex. 4–14).

The Minnesota Safety Council's response was supportive of the Minnesota plan (Ex. 4–2). The Council has been associated with the program since its inception, having participated in the drafting of the plan, and has closely observed State activities since the program became operational. Thus, Council President Robert L. Anderson felt that there was a firm basis for its favorable appraisal of the State's enforcement effort and the level of compliance obtained.

A similarly supportive position was taken by the Apprenticeship Coordinators Association of Minnesota (Ex. 4–3). The Association's President, James H. Gustafson, expressed the view that the State's performance had been skilled and professional.

Messrs. Malone and Pineault, representing the Northen States Power Company, had both been administrators of the State plan (Ex. 4–4). On the basis of this dual perspective as employers and former program officials, they asserted that the State was protective of employees' rights to a safe and healthful workplace and employers' rights to an equitable review of disputed State actions. It was felt that the final approval of the Minnesota plan would be a significant advance for the employees of Minnesota.

Edwin Conrad, Chairman of the State of Minnesota's Occupational Safety and Health Advisory Council, noted a decline in the total injury and illness incidence rate and the reduction in the total number of work-related fatalities as ultimate evidence of the Minnesota program's effectiveness (Ex. 4–5). The 12 members of the Council, representing management, labor, the occupational safety and health professions and the general public, have observed the development of a working relationship between the State and employers and employees which has contributed to this achievement.

The competence of State personnel was commended by Lawrence F. Koll of Koll and McCoy, Attorneys at Law (Ex. 4–7). Mr. Koll had been a former Minnesota Workers' Compensation Commissioner and is currently a member of the Workers Compensation Advisory Council, and thus has had an opportunity to examine accident investigation reports of Division of Occupational Safety and Health field investigators. These reviews have shown the reports to present a complete and cogent analysis of the accidents in question.

The Midwest Center for Occupational Health and Safety has gone on record as affirming its support of the Minnesota program (Ex. 4–8). Ruth K. McIntyre, Director of Continuing Education for the Center, noted the strong administration and management of the program, resulting in a stringent enforcement of standards and, consequently, greater protection for employees. She also views the revised staffing benchmarks favorably.

On the basis of their experiences with the State plan, Paul B. Johnson, M.D., and four other physicians associated with Occupational Health Services, a program of St. Paul-Ramsey Medical Center, have asserted their belief in the plan's value (Ex. 4–9). They claim that the knowledge and effectiveness of State personnel have been frequently demonstrated and advocate final approval.

James R. Thill, President, Midwest Section of the American Industrial Hygiene Association, wrote on behalf of the board and officers of the Association to urge final approval of the Minnesota plan and approval of the State's revised staffing benchmarks (Ex. 4–11). Speaking from personal experience gained in assisting the State in its development of the Minnesota Employee Right-to-Know Law, serving as an expert witness in workers' compensation cases, and advising cited employers, Mr. Thill gave a positive appraisal of the State's program. He had been favorably impressed with the technical competence of the staff, their cooperative attitude, and their practical and realistic approach to solving problems affecting the health of workers.

Two State affiliates of the AFL–CIO expressed their support of the Minnesota program and its proposed final approval. William R. Peterson of the Minnesota State Building and Construction Trades Council (AFL–CIO) noted, as an indication of the State's effectiveness, that compliance with the State's housekeeping standards has resulted in a 50% reduction in minor injuries at one construction site in Becker, Minnesota (Ex. 4–6).

Presenting the position of the International Brotherhood of Electrical Workers, Local Union No. 160 (AFL–CIO), Robert M. Sable, Safety Chairman, and David C. Ring, Business Manager, have endorsed a determination in favor of Minnesota's final approval (Ex. 4–10). They maintain that by working

vigorously for employees' safety and health and by maintaining good relations with both labor and management, the State has established and continues to operate a program which exceeds the requirement that it be "at least as effective" as OSHA.

The March 22 comments submitted by Margaret Seminario, Associate Director, Department of Occupational Safety, Health and Social Security of the AFL–CIO, contained a number of criticisms, which fall into three broad categories relating to State plans and the evaluation thereof: OSHA's data-based State monitoring system; Minnesota plan performance discussed in the 18(e) Evaluation Report for the period October 1, 1982 through March 31, 1984; and OSHA's revised compliance staffing benchmarks both in general terms and as they relate specifically to Minnesota (Ex. 4–12). Regarding the first area of concern, a brief description of OSHA's State plan monitoring and evaluation system is appropriate.

The evaluation of the Minnesota plan was conducted in accordance with OSHA's new State plan monitoring and evaluation system. This system uses statistical data to compare Federal and State performance on a number of criteria, or measures. Significant differences between the two are evaluated to determine whether these differences, viewed within the framework of overall State plan administration, detract from the State's effectiveness and potentially render it less effective than the Federal program.

The AFL–CIO expressed concern that Federal OSHA's monitoring system with its reliance on statistical indicators fails to accurately reflect the overall conduct of the State program and tries to limit those areas of State performance which exceed OSHA's enforcement efforts in several areas. However, OSHA never intended that superior performance would result in any negative conclusion. Statistical outliers display differences, not necessarily deficiencies. If further review related to an outlier determines stronger State performance, clearly no negative determination will be made.

The AFL–CIO's comments on specific State performance issues are addressed in the appropriate sections of the Findings and Conclusions portion of this notice. Ivan Russell, the Director of the Minnesota Occupational Safety and Health Division, responded in detail to the issues raised by the AFL–CIO on both the benchmarks and State-specific issues (Ex. 4–14).

Comments by both the AFL–CIO and the United States Steelworkers of America addressing the proposed revised benchmarks for Minnesota reflected, for the most part, the commenters' concerns regarding the benchmark revision process generally. Thus, the comments question whether the benchmark's formula as applied in Minnesota should have assumed a need for routine, general schedule inspections at all covered workplaces; question whether the proposed staffing levels will be sufficient to respond to new hazards or future standards; and question the appropriateness of the inclusion or exclusion of various industry groups in Minnesota's general inspection universe unless corresponding industries are treated identically in other States. As was specifically discussed in the **Federal Register** notice of June 13, 1985, dealing with approval of revised benchmarks for the Kentucky State plan (50 FR 24884), the concept of universal general schedule coverage has been replaced by more sophisticated targeting systems which deploy enforcement resources where they are most needed, and universal coverage is as inappropriate a concept for benchmarks formulation as it is for inspection scheduling. The possible effect of new hazards or future standards cannot be ascertained with any precision, and in any case both OSHA and the States have generally been able to effectively enforce new standards with no additions to staff for that purpose. As to the need for "uniformity," OSHA believes the greatest strength of the current formula is that it takes into account actual State program needs as shown by State data and experience. OSHA has found that the formula used to derive benchmarks for Minnesota and other States involved in the 1984 revision process employs the best information and techniques currently available; properly takes into account each of the factors set forth in the District Court Order in *AFL–CIO* v. *Marshall* and is an appropriate means of establishing fully effective benchmarks which provide proper program coverage in the context of each State's specific program needs. A more detailed discussion of the general concerns raised by the AFL–CIO and the Steelworkers can be found in the June 13, 1985, **Federal Register** notice on Kentucky (50 FR 24884).

The comments filed by the AFL–CIO also addressed several specific issues relating to calculation of the benchmarks for Minnesota. The union indicated that although Minnesota had added many industries and establishments to its general schedule safety inspection universe, no workplaces with ten or fewer employees in high hazard industries were added. This comment is in error. Minnesota added 530 small establishments with an experience of above-average Workers' Compensation Insurance premiums in industries with high injury rates to its safety universe. Moreover, in all industry groups and workplaces covered by the Minnesota plan, the State provides coverage by responding to employee complaints of unsafe or unhealthful conditions and to accidents.

The AFL–CIO also commented that although Minnesota added some high hazard non-manufacturing establishments to its initial health inspection universe, the State did not allocate general schedule resources to certain industries with serious health hazards, including bottled and canned soft drinks, wood products, auto repair shops, and hospitals. Minnesota responded that many of the industries about which the AFL–CIO expressed concern are already included in the State's safety inspection universe and would receive inspection coverage by safety compliance personnel cross-trained in the recognition of health hazards. In many instances the safety personnel make referrals to the Minnesota Department of Health for referral inspections to be conducted by industrial hygienists. Of course, these industries would also be subject to inspections under the State's employee complaint and accident investigation provisions. OSHA concurs that inclusion of these industries in the initial health universe is not required for proper program coverage. (It should also be remembered that assumptions made in determining a State's theoretical workload for benchmark purposes are not binding upon the State in determining specific employers for general schedule enforcement visits. The initial universe is not in itself a targeting system but rather a method for determining a reasonable estimate of workplaces with industrial exposures likely to produce hazards.)

The AFL–CIO asserted that Minnesota's allocation of enforcement resources to health inspections in the public sector and the construction industry, which the State based on past experience, is inadequate. Minnesota responded that 17% of its covered workforce is in the public sector, with only a very small percentage of those employees engaged in "high-risk" occupations. The State also noted that health hazards in the construction industry are most often cited by cross-trained safety compliance officers, or as the result of referral or health complaint inspections. Minnesota further responded that health hazards warranting special State attention,

either in construction or the public sector, will be addressed through special emphasis programs without any negative impact upon the State's overall enforcement program.

Finally, both the AFL–CIO and the Steelworkers allege that the number of enforcement personnel now found appropriate for a fully effective program in Minnesota and other States is lower than the staffing levels allocated by the States in 1980 or projected in the benchmarks issued by OSHA during its first effort to implement the *AFL–CIO* v. *Marshall* Court Order in 1980. However, the District Court Order on which the revision process has been based does not assume or require that revised benchmarks must provide a comparative increase over past levels. The adequacy of the revised benchmarks cannot be determined by whether they are greater or smaller than the 1980 benchmarks or earlier enforcement levels. Such direct numerical comparison of staffing levels is no more valid than was direct comparison of State to Federal staffing levels under the "at least as effective" test rejected by the Court of Appeals in 1978. The objective assigned to OSHA by the Court of Appeals decision and District Court Order was, in sum, to measure the workload assumed by each State under its plan and to determine, using the best available information and techniques, but avoiding direct numerical comparisons, the staffing levels needed for fully effective coverage. This is precisely what has been done in the present revision process. The review of each State's illness and injury data, industrial mix, demographics and enforcement history has been far more detailed than was the case when benchmarks were first issued in 1980. As discussed above, the concept of universal routine inspection has been replaced by far more sophisticated targeting, devoting resources to the relative minority of industries where the majority of enforcement-preventable injuries occur. These factors have resulted in the more realistic enforcement staffing requirements embodied in the revised benchmarks for Minnesota.

For these reasons, and in light of other comments by groups and individuals directly affected and knowledgeable about safety and health enforcement needs in Minnesota, OSHA believes application of the current benchmark formula for Minnesota has resulted in staffing levels which result in fully effective enforcement in the State of Minnesota.

Findings and Conclusions

Minnesota Benchmarks

As provided in the 1978 Court Order in *AFL–CIO* v. *Marshall*, Minnesota, in conjunction with OSHA, has undertaken to revise the compliance staffing benchmarks originally established in 1980 for Minnesota. OSHA has reviewed the State's proposed revised benchmarks and supporting documentation and has carefully considered the public comments received with regard to this proposal, and has determined that compliance staffing levels of 31 safety and 12 health compliance officers meet the requirements of the Court and provide staff sufficient to ensure a fully effective enforcement program.

Minnesota Final Approval

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan, OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the Minnesota State plan. This information has included all previous evaluation findings since certification of completion of the State plan's developmental steps, especially data for the period of October 1982 through March 1984 and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows:

(1) *Standards.* Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. Such standards where not identical to the Federal must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1902.4(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1902.4(b)(2)(i)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1902.4(b)(2)(vi)); must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1902.4(b)(2)(vii)); and where applicable to a product must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

As documented in the approved Minnesota State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the January 16 notice, the Minnesota plan provides for the adoption of standards and amendments thereto which are identical to, or at least as effective as, Federal standards. The State's law and regulations, previously approved by OSHA and made a part of the record in this proceeding (Exs. 2–2 and 2–3), include provisions addressing all of the structural requirements for State standards set out in 29 CFR Part 1902.

In order to qualify for final State approval, a State program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)); to have timely adopted identical or at least as effective standards, including emergency temporary standards and standards amendments (29 CFR 1902.37(b)(3)); to have interpreted its standards in a manner consistent with Federal interpretations and thus to demonstrate that in actual operation State standards are at least as effective as the Federal (29 CFR 1902.37(b)(4)); and to correct any deficiencies resulting from administrative or judicial challenge of State standards (29 CFR 1902.37(b)(5)).

During the evaluation period, the State experienced some difficulty in complying with the six-month time frame for adopting Federal standards changes. The average lapse time for adoption of standards was 6.9 months. This appears to be due to the State's past practice of publishing notices of adoption of standards semi-annually. A recent change in State procedures now provides for quarterly adoption of standards (18(e) Evaluation Report, p. 14).

When a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. The State has generally adopted standards interpretations, which are at least as effective as the Federal, in a timely fashion. OSHA's monitoring has found that the State's application of its standards is comparable to Federal standards application. No challenges to standards have occurred in Minnesota.

Therefore, in accordance with section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds the Minnesota program in actual operation to provide for standards adoption, correction when found deficient, interpretation and application, in a manner at least as effective as the Federal program.

(2) *Variances.* A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal

program (29 CFR 1902.4(b)(2)(iv)). The Minnesota State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to qualify for final State plan approval permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); temporary variances granted must assure compliance as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). The twelve permanent variances granted during the evaluation period were granted in a timely manner in accordance with approved State procedures and were deemed to provide equivalent protection (18(e) Evaluation Report, p. 17). The three temporary variances granted by Minnesota during the period met the established criteria (18(e) Evaluation Report, p. 18).

Accordingly, OSHA finds that the Minnesota program effectively grants variances from its occupational safety and health standards.

(3) *Enforcement.* Section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1) require a State program to provide a program for enforcement of State standards which is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. The State must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the legal authority for standards enforcement including compulsory process (29 CFR 1902.4(c)(2)).

The Minnesota Occupational Safety and Health Act of 1973, as amended, and implementing regulations previously approved by OSHA, establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms substantially identical to those in the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effectivce compliance program (29 CFR 1902.37(b)(2)). The 18(e) Evaluation Report data show no lack of adherence to such procedures.

(a) *Inspections.* A plan must provide for inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1902.4(c)(2)(i)). As noted in the January 16, 1985 Federal Register notice, Minnesota attempts to formalize all complaints submitted and responds to all written employee complaints by inspection. The State has a procedure similar to OSHA's for handling non-formal complaints by a letter to the employer. During the evaluation period, however, this procedure was not in effect, and 81.4% of complaints received by the State were responded to by inspection. Complaint response was timely (18(e) Evaluation Report, pp. 40–42).

In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(6)). Minnesota's safety targeting plan is based upon the Federal system, supplemented by a special emphasis program which targets inspections in individual facilities in relation to their safety performance and history. The State's health inspection targeting system is comparable to the Federal system. Data contained in the 18(e) evaluation indicate that 95.4% of State programmed safety inspections and 91.0% of State programmed health inspections were conducted in high-hazard industries, which are comparable to the Federal data (18(e) Evaluation Report, p. 37).

The AFL–CIO criticized the State's adoption of the Federal system of recognizing records reviews as inspections (Ex. 4–12). Under State procedures, similar to those used Federally, employers eligible for a general schedule safety inspection may qualify for a "records review" inspection if their lost workday injury (LWDI) rate is less than the national average for all industries. OSHA believes that this is an efficient use of resources. In addition, the State points out in its response that a partial walk-through inspection is attempted or conducted if the investigator observes a serious hazard or imminent danger during the opening conference, if a safety complaint is filed during the opening conference, or if the review of injury and illness records reveals an unusual number or type of injury occurring in a particular area of the facility. Employers who qualify for a "records review" inspection must still post a notice to employees notifying them that such an inspection has occurred and providing the name, address and phone number of the nearest Minnesota Area Office (Ex. 4–14).

(b) *Employee Notice and Participation in Inspections.* In conducting inspections the State plan must provide an opportunity for employees and their respresentatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(2)(ii)). The State's procedures require compliance officers to provide this opportunity. During the evaluation period employees elected to exercise their right to accompany the inspector on the walkaround in 13.3% of initial inspections (18(e) Evaluation Report, p. 50). Minnesota's statutory requirement that employers pay employees for the time spent participating in inspections was praised by the AFL–CIO in its comments (Ex. 4–12).

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1902.4(c)(2)(iv)) and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, Minnesota requires that a poster, which was previously approved by OSHA (40 FR 13211), be displayed in all covered workplaces. Requirements for the posting of the poster and other notices such as citations, contests, hearings and variance applications, are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employee exposure to regulated agents and access to medical and monitoring records is provided through State standards, including the Access to Employee Exposure and Medical Records standard. Federal OSHA's evaluation concludes that the State performance is satisfactory.

(c) *Nondiscrimination.* A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). The Minnesota Act and regulations provide for discrimination protection which is at least as effective as the Federal. The State investigated 15 complaints out of 16 complaints received. The State settled administratively all three complaints initially found meritorious. Average lapse time between receipt of a complaint and the notification to the complainant of the investigation results for the State is 44 days, which compares favorably to the Federal lapse time (18(e) Evaluation Report, p. 68).

(d) *Restraint of Imminent Danger; Protection of Trade Secrets.* A State

plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1902.4(c)(2)(vii) and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisions concerning imminent danger and protection of trade secrets in its law, regulations and Field Compliance Manual which are similar to the Federal. The 18(e) Evaluation Report indicates that there were no imminent danger situations identified during the period. In the 10-year history of the Minnesota program, there have been no instances of complaints about the protection of trade secrets (18(e) Evaluation Report, p. 50).

(e) *Right of Entry; Advance Notice.* A State program is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1902.3(e)). Likewise, a State is expected to prohibit advance notice of inspection, allowing exception thereto no broader than in the Federal program (29 CFR 1902.3(f)). Section 182.659 of the Minnesota Occupational Safety and Health Act authorizes the Commissioner to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. State law allows the Attorney General to obtain a warrant from the State District Court if gaining entry is impeded by the employer. State procedures differ from the Federal in that, at several stages, attempts are made to persuade the employer to permit entry. The Minnesota law likewise prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal.

In order to be found qualified for final approval, a State is expected to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. Of the 42 denials of entry during the evaluation period, the State was able to gain warrantless entry, or otherwise resolve the issue, in 19 cases and successfully obtained warrants in 15 cases (18(e) Evaluation Report, p. 48). The evaluation report did not note any improper use of advance notice.

The AFL–CIO alleged that the State's practice of negotiating with employers who had denied entry violated the prohibition against advance notice (Ex. 4–12). OSHA's monitoring of this aspect of the State's program has shown that Minnesota does not negotiate with employers in lieu of seeking a warrant, but performs both operations concurrently. Upon denial of entry, the legal process for obtaining a warrant is initiated while, simultaneously, dialogue with the employer continues as repeated attempts are made to obtain entry. The State believes that this procedure has been proven more effective in expediting entry, a conclusion supported by OSHA's monitoring which has revealed that an average of 27.3 days elapsed from the date of the warrant application to the date of entry, while normally negotiation required no more than a few days. As the State notes in its response to the AFL–CIO's comments, the time needed for negotiating with an employer is minimal when compared with the time needed to seek and obtain a warrant through the Court system. Whether entry is negotiated or obtained through a warrant, the employer is not notified of the date on which the inspection will be conducted (Ex. 4–14).

(f) *Citations, Penalties, and Abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations identified during inspection, for the proposal of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2) (x) and (xi)). The Minnesota plan through its law, regulations and Field Compliance Manual, which have all been previously approved by OSHA, has established a system similar to the Federal for prompt issuance of citations to employers delineating violations and establishing reasonable abatement periods, requiring posting of such citations for employee information and proposing penalties.

In order to be qualified for final approval, the State, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(b)(10)), to issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), to propose penalties for first instance violations that are at least as effective as those under the Federal program (29 CFR 1902.37(b)(12)), and to ensure abatement of hazards including issuance of failure-to-abate notices and appropriate penalties (29 CFR 1902.37(b)(13)).

The Minnesota Field Compliance Manual has been updated through the issuance of Division Policies (internal memoranda to State staff), and thus the State follows inspection procedures, including documentation procedures, which are similar to the Federal.

Minnesota's provisions governing classification of violations differ in some respects from the Federal. However, both the number of violations cited per initial inspection (2.2) and the percentage of violations which are considered serious (21.5%) are comparable to Federal statistics. In addition, the State percentage of programmed inspections found not-in-compliance (safety—60.7%; health—39.8%) is comparable to the Federal percentage.

Minnesota's lapse time from inspection to issuance of citation is comparable to the Federal for safety (10 days) but longer for health (30 days). The AFL–CIO in its comments criticized the health citation lapse time and suggested that it is related to an insufficient number of health inspectors (Ex. 4–12). However, as the State points out in its response, it appears that this discrepancy is due to the larger percentage of apparent violations requiring analysis of samples found on State health inspections, Minnesota's former policy of delaying issuance of citations for all violations found on inspections until laboratory analysis is completed, and clerical staffing shortages in the Minnesota Health Department (Ex. 4–14). As noted in the 18(e) Evaluation Report, a recently instituted State policy of issuing citations for which laboratory analysis is not needed without awaiting sampling results for other potential violations, as well as decreased clerical time since implementation of the new Integrated Management Information System, should reduce the health citation lapse time (18(e) Evaluation Report, pp. 72–73). The size of the State's health compliance staff is totally unrelated to this issue.

Neither the data nor any comments suggest that the State has a problem in adequately documenting inspections to support citations. Further, Lawrence Koll, of the law firm of Koll and McCoy, commented that he has found the investigative files of accidents which he has reviewed to be thorough and conclusive (Ex. 4–7).

The 18(e) Evaluation Report indicates that the State of Minnesota's average proposed penalty for serious violations was somewhat lower than the Federal ($150 for safety and $198 for health) (18(e) Evaluation Report, p. 59). Analysis has shown the State's penalty average to have been acceptable.

Minnesota conducts follow-up inspections on all serious, willful and repeat violations, and therefore the

State conducts a proportionately greater number of follow-up inspections (16.4% of not-in-compliance inspections) than does Federal OSHA (18(e) Evaluation Report, p. 55).

During the report period the State conducted 21 follow-up inspections that resulted in failure-to-correct citations out of 242 follow-up inspections (18(e) Evaluation Report, p. 56).

State abatement periods are somewhat longer than those set Federally (12.6 days for safety and 37 days for health). The State grants Petitions for the Modification of Abatement (PMA's) only when appropriate and reasonable. (PMA's were granted in 1.6% of total violations cited (18(e) Evaluation Report, pp. 56–57)).

(g) *Contested Cases.* In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportuntity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). Minnesota's procedures for employer contest of citations, penalties and abatement requirements and for ensuring employee rights are contained in the law, regulations and Field Compliance Manual made a part of the record in this proceeding and are substantially identical to the Federal procedures. Appeals of citations, penalties and abatement periods are heard by the Occupational Safety and Health Review Board and may be further appealed to the appropriate State District Court.

During the 18(e) evaluation period, 125 cases, representing 8.4% of inspections with citation, resulted in contests. Although this percentage is higher than the percentage of formal contests Federally, most contested cases in Minnesota are settled without a hearing. The report concludes that the State's contest results are generally the same as those in the Federal program, with no additional resources used and the rights of all parties respected (18(e) Evaluation Report, p. 65).

To qualify for final approval, the State must seek review of any adverse adjudications and take action to correct any enforcement program deficiencies resulting from adverse administrative or judicial determinations (29 CFR 1902.37(b)(14)). The State had no adverse decisions which would require review or corrective action. Accordingly, OHSA finds that the Minnesota plan effectively reviews contested cases.

(h) *Enforcement Conclusion.* In summary, the Assistant Secretary finds that enforcement operations provided under the Minnesota plan are competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) *Public Employee Program.* Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's progam for public employees be as effective as the State's program for private employees covered by the plan.

Minnesota's plan provides a program in the public sector which is identical to that in the private sector, including the proposal of penalties. During the evaluation period, the State conducted 337 inspections in the public sector and cited 1064 violations. Penalties proposed for safety violations (serious—$172; other than serious—$83) were similar to those in the private sector. No health violations were penalized in the public sector. Injury and illness rates for State and local government employment for 1982 (all case rate 7.0; lost workday case rate 2.9) are somewhat lower than those for the private sector (18(e) Evaluation Report, pp. 28–29).

Because the State treats the public sector in the same manner as the private sector, as evidenced by its written procedures, which are applicable to all covered employees, public or private, and since monitoring indicates similar performance in the public and private sectors, OSHA concludes that the Minnesota program meets the criterion in 29 CFR 1902.3(j).

(5) *Stoffing and Resources.* Section 18(c)(4) of the Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1902.37(b)(1), one factor which OSHA must consider in evaluating a plan for final approval is whether the State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

Minnesota has committed itself to funding the State share of salaries for 31 safety inspectors and 12 health enforcement officers as evidenced by the FY 1984 Application for Federal Assistance (Ex. 2–6) as well as its subsequent FY 1985 application. These compliance staffing levels meet the revised benchmarks proposed for Minnesota.

As noted in the **Federal Register** notice announcing certification of the completion of developmental steps for Minnesota (41 FR 42659) all personnel under the plan meet civil service requirements under the State merit system, which was found to be in substantial conformity with the Standards for a Merit System of Personnel Administration by the U.S. Civil Service Commission.

The State provides continuing training for its staff. During the evaluation period, compliance officers received an average of 89 hours of formal training (18(e) Evaluation Report, p. 25). The comments from the Midwest Section of the American Industrial Hygiene Association and from Occupational Health Services, a group of physicians, both praised the training and competence of State personnel (Exs. 4–9, 4–11).

Because Minnesota has allocated sufficient enforcement staff to meet the revised benchmarks for that State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the 1978 Court Order in *AFL–CIO* v. *Marshall, supra,* are being met by the Minnesota plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The Minnesota plan was funded at $3,262,488 in FY 1984. (50% of the funds were provided by Federal OSHA and 50% were provided by the State.)

As noted in the Evaluation Report, Minnesota's funding appears sufficient in absolute terms; moreover, the State manages its resources in a cost effective manner (18(e) Evaluation Report, pp. 79–81). On this basis, OSHA finds that Minnesota has provided sufficient funding for the various activities carried out under the plan.

(6) *Records and Reports.* State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (section 18(c)(8) of the Act and 29 CFR 1902.3(i)).

Minnesota's employer recordkeeping requirements are substantially identical to those of Federal OSHA, except that Minnesota has elected not to adopt the Federal recordkeeping exemption for

certain low-hazard industry groups, and the State participates in the BLS Annual Survey of Occupational Illnesses and Injuries. As noted in the January 16 proposal, the State participates and has assured its continuing participation with OSHA in the Federal-State Unified Management Information System as a means of providing reports on its activities to OSHA.

For the foregoing reasons, OSHA finds that Minnesota has met the requirements of sections 18(c) (7) and (8) of the Act on employer and State reports to the Secretary.

(7) *Voluntary Compliance Program.* A State plan is required to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1902.4(c)(2)(xiii)).

The State conducts a training and education program covering the private and public sectors. During the 18(e) evaluation period, Minnesota provided training to 2,587 employers and supervisors and 659 employees (18(e) Evaluation Report, p. 22).

In the private sector, Minnesota provides on-site consultative services to employers under a cooperative agreement with OSHA made pursuant to section 7(c)(1) of the Act and 29 CFR Part 1908.

In addition, as discussed in the 18(e) Evaluation Report (p. 19), Minnesota has indicated its intention to establish a public sector on-site consultation program in FY 1985. (That program has now been initiated.)

Accordingly, OSHA finds that Minnesota has established and is administering an effective voluntary compliance program.

(8) *Injury and Illness Statistics.* As a factor in its 18(e) determination, OSHA must consider the Bureau of Labor Statistics annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health (29 CFR 1902.37(b)(15)).

The 1981 and 1982 Bureau of Labor Statistics injury and illness rates for Minnesota (private sector all case rate for 1981, 8.2; 1982, 7.7; lost workday case rate for 1981, 3.7; 1982, 3.4) were similar to rates in States where Federal OSHA provides enforcement coverage. In 1982, the lost workday case rates for the private sector, manufacturing and construction, experienced a greater decline in Minnesota than in States with Federal enforcement jurisdiction (18(e) Evaluation Report, pp. 82–83). Comments from the Minnesota Occupational Safety and Health Advisory Council noted that the injury and illness all case rate for Minnesota workers was reduced from 11.0 in 1973 to 7.3 in 1983 (Ex. 4–5). This is comparable to the reduction in the Federal rate. In addition, comments from both the Advisory Council and the Occupational Safety and Health Division pointed out that work-related fatalities in Minnesota declined from 85 in 1973 to 25 in 1984 (Exs. 4–5, 4–14).

Comments from the AFL–CIO expressed concern that Minnesota's all case rates for the private sector, manufacturing and construction, and the lost workday case rate for construction for 1982 exceeded the Federal rates (Ex. 4–12). However, the State rates were only slightly higher than the Federal rates and were within the prescribed limits. OSHA does not view these differences as significant, especially when considered within the context of changes in the rates.

Therefore, OSHA finds that the trends in injury and illness statistics in Minnesota compare favorably with those in States with Federal enforcement.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments received thereon. The present **Federal Register** document sets forth the findings and conclusions resulting from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that (1) the revised compliance staffing levels proposed for Minnesota meet the requirements of the 1978 Court Order in *AFL–CIO* v. *Marshall* in providing the number of safety and health compliance officers necessary for a "fully effective" enforcement program, and (2) the Minnesota State plan for occupational safety and health in actual operation, which has been monitored for at least one year subsequent to certification, is at least as effective as the Federal program and meets the statutory criteria for State plans in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Therefore, the revised compliance staffing benchmarks of 31 safety and 12 health are approved, and the Minnesota State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective July 30, 1985.

Under this 18(e) determination, Minnesota will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in providing employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting State initiated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, Minnesota must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the Department of Labor, or any revision to those benchmarks.

Effect of Decision

The determination that the criteria set forth in section 18(c) of the Act and 29 CFR Part 1902 are being applied in actual operations under the Minnesota plan terminates OSHA authority for Federal enforcement of its standards in Minnesota, in accordance with section 18(e) of the Act, in those issues covered under the State plan. Section 18(e) provides that upon making this determination "the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination."

Accordingly, Federal authority to issue citations for violation of OSHA standards (sections 5(a) (2) and 9); to conduct inspections (except those necessary to conduct evaluations of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section 18(e)) (section 8); to conduct enforcement proceedings in contested cases (section 10); to institute proceedings to correct imminent dangers (section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act (section 17) is relinquished as of the effective date of this determination. (Because of the effectiveness of the Minnesota plan, there has been no exercise of concurrent Federal enforcement authority in issues covered by the plan since the signing of the Operational Status Agreement in October 1981.)

Federal authority under provisions of the Act not listed in section 18(e) are unaffected by this determination. Thus, for example, the Assistant Secretary

retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act although such complaints may be initially referred to the State for investigation. Jurisdiction over any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination remains a Federal responsibility. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination. In the event that a State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in the State.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Minnesota plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders which relate to safety or health in offshore private sector maritime employment and at the Twin Cities Army Ammunition Plant. In addition Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the State is unable to provide effective coverage for reasons not related to the required performance or structure of the State plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evalute the manner in which the State is carrying out its plan. Section 18(f) and regulations at 29 CFR Part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the State has substantially failed to comply with any provision or assurance contained in the plan. Additionally, the Assistant Secretary is required to initiate proceedings to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47 *et seq.*, if his evaluations show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to the Assistant Secretary as required by 29 CFR Part 1953.

Explanation of Changes to 29 CFR Part 1952

29 CFR Part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determinations be accompanied by changes to Part 1952 reflecting the final approval decision. This notice makes several changes to Subpart N of Part 1952 to reflect the final approval of the Minnesota plan.

A new § 1952.203, Compliance staffing benchmarks, has been added to reflect the approval of the 1984 revised benchmarks for Minnesota.

A new § 1952.204, Final approval determination, has been added to reflect the determination granting final approval of the plan. The new paragraph contains a more accurate description of the scope of the plan than the one contained in the initial approval decision.

Newly redesignated § 1952.205, Level of Federal Enforcement, has been added to reflect the State's 18(e) status. The new paragraph replaces former § 1952.202, which described the relationship of State and Federal enforcement under an Operational Status Agreement which was entered into on October 9, 1981. Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for Minnesota, and the Operational Status Agreement is no longer in effect. § 1952.205 describes the issues where Federal authority has been terminated and the issues where it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present **Federal Register** notice.

While most of the existing Subpart N has been retained, paragraphs within the subpart have been rearranged and renumbered so that the major steps in the development of the plan (initial approval, developmental steps, certification of completion of developmental steps and final plan approval) are set forth in chronological order. Related editorial changes to the subpart include modification of the heading of § 1952.200, to clearly identify the 1973 initial plan approval decision to which it relates. The addresses of locations where State plan documents may be inspected have been updated and are found in § 1952.206.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*) that this rulemaking will not have a significant economic impact on a substantial number of small entities. Final approval will not place small employers in Minnesota under any new or different requirements nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan. Certification to this effect was previously forwarded to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (48 FR 35736))

Signed at Washington, D.C., this 30 day of July 1985.

Patrick R. Tyson,

Acting Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subpart N of 29 CFR Part 1952 is hereby amended as follows:

1. The authority citation for Part 1952 continues to read:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (48 FR 35736).

2. Section 1952.200 is amended by revising the heading to read: *§ 1952.200 Description of the plan as initially approved.*

§ 1952.201, 1952.202, and 1952.203, and 1952.204 [Redesignated as 1952.206, 1952.205, 1952.201, and 1952.202 respectively]

3. Section 1952.201 Redesignated as § 1952.206.

4. Section 1952.202 Redesignated as § 1952.205.

5. Section 1952.203 Redesignated as § 1952.201.

6. Section 1952.204 Redesignated as § 1952.202.

7. The Table of Contents for Part 1952, Subpart N is revised to read as follows:

Subpart N—Minnesota

Sec.

8. New §§ 1952.203 and 1952.204 are added to read as follows:

§ 1952.203 Compliance Staffing Benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall*, compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 Minnesota, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 31 safety and 12 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on July 30, 1985.

§ 1952.204 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR Part 1902, and after determination that the State met the "fully effective" compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL–CIO* v. *Marshall* (CA 74–406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Minnesota State plan for a period of at least one year following certification of completion of developmental steps (41 FR 42659). Based on the 18(e) Evaluation Report for the period of October 1982 through March 1984, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Minnesota's occupational safety and health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Accordingly, the Minnesota plan was granted final approval, and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective July 30, 1985.

(b) The plan which has received final approval covers all activities of employers and all places of employment in Minnesota except for private sector offshore maritime employment and employment at the Twin Cities Army Ammunition Plant.

(c) Minnesota is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR Part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

9. Newly designated §§ 1952.205 and 1952.206 are revised to read as follows:

§ 1952.205 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Minnesota plan under section 18(e) of the Act, effective July 30, 1985, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Minnesota plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Minnesota plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector offshore maritime activities and will continue to enforce offshore all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is also retained at the Twin Cities Army Ammunition Plant, and with respect to Federal government employers and employees.

In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the plan which has received final approval and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest or administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal OSHA and the State designated agency.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Minnesota State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

§ 1952.206 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3476, Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 230 S. Dearborn, 32nd Floor, Chicago, Illinois 60604; and the Minnesota Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101.

[FR Doc. 85-17902 Filed 7-29-85; 8:45 am]

BILLING CODE 4510-26-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for Issue 19 of the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations, 39 CFR 111.1.

Most of the revisions are minor, editorial or clarifying. Substantive changes, such as the revised regulations on merchandise return service and the payment of the annual fee by bulk third-class mailers, have previously been published in the Federal Register.

EFFECTIVE DATE: June 7, 1985.

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

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1) has been amended by the publication of a transmittal letter for issue 19, dated June 7, 1985. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 19 covers the minor changes not previously described in interim or final rules published in the Federal Register.

Note.—Issue 19 contains all DMM revisions published between February 28, 1985, and June 6, 1985 (Postal Bulletins 21503 through 21517).

Summary of Changes

Major Revisions

* * * * *

Other Revisions

1. Exhibit 122.63e is revised to reflect changes in the Optional Area Distribution Center (ADC) labeling list (PB 21516, 5-30-85).

2. Section 123.44b is revised to make mail of foreign origin containing matter determined by a court of competent jurisdiction or by the International Trade Commission to violate a mask work owner's exclusive statutory right is nonmailable matter (PB 21505, 3-14-85).

3. Exhibit 125.2 is revised to update the conditions applicable to mail addressed to military post offices overseas (PB 21506, 3-21-85).

4. Section 137.252 is revised to update agency names, sampling numbers and permit imprint numbers (PB 21514, 5-16-85).

5. Sections 153, 159, 224 and 291 are revised to (1) establish policy on redelivery of Express Mail Next Day Service items undeliverable on the first attempt; and (2) clarify procedures on holding Express Mail; and (3) emphasize the necessity of providing directory service for Express Mail (PB 21503, 2-28-85).

6. Section 159.225 is revised to reflect changes in the forwarding of second-class publications for servicemen. The Department of Defense now pays for the fowarding of second-class publications for a period not to exceed sixty days when a serviceman moves due to permanent change of station orders (PB 21511, 4-25-85).

7. Section 159.334b is amended to enhance Postal Service response to customer inquiries regarding the delivery of Express Mail (PB 21510, 4-18-85).

8. Sections 159.42, 159.43, 159.45, 159.52 through 159.54 are revised to: (1) establish $5 or more as the cutoff for filing of dead letters; (2) eliminate the registry fee for reforwarding of registered dead letters; and (3) provide for the deduction of the money order fee from cash amounts of $10 or more returned by money orders and miscellaneous editorial changes (PB 21514, 5-16-85).

9. * * *

10. Section 369.3 is revised to reflect the correct optional endorsement lines and formats that First-Class Presort mailers may use (PB 21510, 4-18-85).

11. Sections 452.41, 661.331 and 664.23 are amended to permit mailers of detached labels used with second- and third-class mail to include on the face of the labels pictures and information on missing children provided by the National Center for Missing and Exploited Children (PB 21514, 5-16-85).

12. Sections 467.222, 667.622 and 767.521 are revised to reduce the minimum weight requirements of packages prepared for palletized mailings (PB 21516, 5-30-85).

13. Section 622.12a is amended to include a provision that 50 pieces or 10 pounds of mail for a 5-digit destination will qualify for the bulk third-class, 5-digit presort level rate when prepared in packages and bundles presented on pallets in accordance with section 667.6 (PB 21509, 4-11-85).

14. * * *

15. Section 767.411 is revised to require the owner or the mailing agent to submit the application to the Regional Postmaster General of the region when the mailing is to be made. Section 767.423 is revised to require mailers to use a nonstandard facing slip to label bedloaded carrier route and carrier route bundles (PB 21505, 3-14-85).

16. Section 917.343 is revised to reflect the current rates for Business Reply Mail returned through a postage due account or through a business reply account (PB 21508, 4-4-85).

17. Section 917.352 is amended to clarify refund procedures for business reply mail bearing stamps (PB 21507, 3-28-85).

18. Minor editorial and typographical changes have been made in 132, Exhibit 137.275d(1), Exhibit 137.275d(2), 143.421b, 143.422b, 144.13, 146.122, 148.2, 149.251e(4), 159.42, 367.221, 367.313b(5), 421.3, 422.3, 423.132b(1), 423.14b, 425.3c, 482.1, 667.3b(5), 667.92, Exhibit 667b, Exhibit 722.1, 724.1a, 767.811, 767.812, 767.82, 767.822, 911.521b(3), 932.1, 932.32, 932.34, 933.1, 933.42, 942.241, 944.3, Exhibit 945.32g.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3405, 3601, 3621, 42 U.S.C. 1973cc-13, 1973cc-14.

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

§ 111.3 Amendment to the Domestic Mail Manual.

Transmittal letter for issue	Dated	"Federal Register" Publication
19	June 7, 1985	50 FR

W. Allen Sanders,
Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-17969 Filed 7-29-85; 8:45 am]
BILLING CODE 7710-12-M

39 CFR Part 111

Addressing Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule changes the postal regulations which govern the addressing of mail matter in order to promote a clearer understanding of proper addressing procedures. Formerly, addressing regulations provided some guidelines but did not clearly differentiate between requirements, restrictions, and recommendations. Thus, some post offices attempted to enforce addressing recomendations as requirements. To solve this problem we have revised the regulations to use the word "must" when requirements or restrictions are imposed; when recommendations are intended the regulations use the word "should." The Postal Service believes that if customers will follow the changed regulations, whether required to do so or not, the Postal Service will be able to operate at a more efficient and less costly level, and customers will, at the same time, increase the likelihood that their own mail will be delivered more expeditiously.

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. George E. Thomas, (202) 245-4512.

SUPPLEMENTARY INFORMATION: On February 13, 1985, the Postal Service published for comment in the **Federal Register** (50 FR 6007) proposed changes in certain sections of the Domestic Mail Manual relating to addressing. Interested persons were invited to submit comments on the proposed changes by March 15, 1985.

Written views were received from ten commenters, none of whom were opposed to adoption of the proposed regulations. However, some questions were raised and suggestions were made for further clarification.

For example, one commenter suggested that section 129 of the rule should be amended to make it clear that in window envelopes, the window may be the "standard" ⅛ inch from the bottom edge of the envelope, but that ⅝ inch is preferred. We amended the rule as suggested.

Two commenters suggested that the name or identification of the intended recipient should not be required, but only recommended. The Postal Service declines to make the suggested change because of its negative effect on our ability to deliver mail to the person intended by the sender. Moreover, previous regulations were not ambiguous on this point. The proposed regulation was merely carrying forward existing long-standing regulations.

One commenter suggested that proposed 122.12 and 122.33 of the DMM imply that an address with the ZIP Code as the bottom line is an acceptable address format. The commenter said there ought to be an illustration of this format if it is acceptable. We refer the commenter to existing 122.642 of the DMM, which shows such an illustration. The same commenter also suggested that an address which contains the name of the addressee plus the house number and the street name need not contain the city and State so long as the ZIP Code is contained in the address. Theoretically, mail that lacks the city and State but has the correct ZIP Code will be delivered to the intended addressee. However, in the absence of city and State information mail might well be undeliverable should one or more digits of the ZIP Code be incorrect. Accordingly, in the interest of more consistent delivery, the Postal Service continues to require the city and State to be part of the address.

Another commenter said that it would be very beneficial for direct mail efforts if the same information would be available about post office boxholders as is available about the rural routes. Under new 122.43c postmasters will furnish without charge information on the route numbers and the number of families on each rural route. However, information about post office boxholders does not specify whether the box is used by a family or a business. We are not adopting this suggestion at the present time, but are referring it to the appropriate division for further study.

Another commenter said that the second line of an address, the line that follows the name or identification of the intended recipient, may not always be available and gave an example of mail addressed to Postmaster, Englewood, New Jersey 07631-9998 which would supposedly not be mailable under the terms of proposed section 122.12(b). Perhaps the commenter has not noticed that the street number and street name etc., must be used "if necessary". The requirement is not absolute.

Another commenter appears to be confused over the requirement to use in the address the name of the post office, which is actually the city and State where the post office is located. The commenter seems to believe that putting the branch, the station, the community post office or the place name might conflict with the requirement to use the name of the parent post office. Since the branch or station is merely a part of the parent post office, the city and State is the proper address to use.

One commenter thought the placement of the postage stamp should be optional and not required to be placed in the upper right corner of a letter size envelope, or in the upper right corner of the address area on other mail. Cancellation of stamps on letter mail, which is done mostly by machines, and other practical considerations make it necessary that stamps be in a particular place and not any place the mailer decides, so we cannot change this requirement.

We have also made the following minor changes, some at the request of commenters, and some at our own instigation. We changed some of the examples in 122.16 to show current endorsements. The illustration in 122.22 has been changed to add the post office station or branch name after the post office box number as a preferred address format.

Former sections 122.23, 122.24 and 122.25, which were inadvertently omitted from the proposed rule, have been renumbered 122.37, 122.37a and 122.37b and adopted as renumbered without change.

New 122.38 has been added, dealing with enclosing inside a parcel the address of the sender and the addressee. While this has not been a requirement, and is not here, it seems prudent to follow this practice in view of the possibility of obliteration or defacing of the outside address. This recommendation also appears at 121.41a of the DMM.

A new 122.39 has also been added, recommending that the address be parallel or nearly parallel to the longest edge of the mailing piece. This puts into the regulations the "normal" or "usual" way of addressing mail.

We eliminated the proposed revision of 122.635, dealing with directory assistance, since that subject is being handled in another, later proposed rule on correct ZIP Codes that was published

in the Federal Register on March 19, 1985 (50 FR 10991).

Certain erroneous typographical references have also been corrected, and minor textual changes have been adopted or illustrations added to improve clarity in the following DMM sections: 122.12b; 122.12d; 122.12d(7); 122.12d(9); 122.12d(10); 122.13; 122.14; 122.15; 122.16; 122.17; 122.31; 122.33; 122.641; 127c; 129.3b; 352.21c; 452.1f; and 651.212c.

Finally, a commenter observed that bulk third-class mail, other than carrier route rated, is not exempt from the address placement restriction in 651.2. The commenter's observation is accurate. However, bulk third-class mail is not subject to a nonstandard surcharge. Thus, as a practical matter, address placement on bulk third-class mail can only affect its ability to meet minimum size standards governing mailability.

Upon consideration of all the comments, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service, Incorporation by reference.

PART 111—[AMENDED]

The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973 cc–13, 1973 cc–14.

PART 122—ADDRESSES

Revise 122 to read DELIVERY ADDRESS.

Revise 122.1 thru 122.3 to read as follows:

122.1 Requirements.

The purpose of an address is to indicate the specific delivery location of a mailing piece.

.11 Mail must bear the legible address of the intended recipient on one side only. See 124.63a(13) for exception on live-day-old poultry.

.12 At a minimum, an address must consist of the following elements and appear in the following order (except simplified address mail as prescribed in 122.51):

a. Name or identification of the intended recipient;

b. Street and number, or box number, or general delivery, or rural or highway contract route designation and box number, if necessary;

c. City and state. The "city" is the name of the post office serving the intended recipient (the delivery post office), and

d. ZIP Code (5-digit or ZIP+4 codes) where required. ZIP Codes (5-digit or ZIP+4 codes) are required on:

(1) Presort First-Class Mail (361.3);

(2) ZIP+4 First-Class Mail (361.4);

(3) Postal cards and post cards, not mailed as presorted First-Class Mail, which are mailed under 322.31h, i, or j (322.32);

(4) Second-class mail (452 and 455.2f);

(5) Bulk third-class mail (661.2); and

(6) Fourth-class (761.1);

(7) Business Reply mail (917.525);

(8) Merchandise Return (919.43, 919.531 and 919.532);

(9) Mail sent to Military Addresses within the United States (122.82);

(10) Penalty mail (137.263a(3));

(11) Printed stamped envelopes (141.242);

(12) Return addresses of mail on which postage is paid by stamps precanceled by bars only (143.421a);

(13) The sender's return address where return service is requested on second-class mail (493).

122.13 Placement of Address.

.131 Letter-Size Mail. See section 322.3 regarding address placement on post cards. The placement of the address on letter-size mail determines which dimensions constitute the height and length, and may subject the mail to a surcharge or render it nonmailable (see sections 127, 324, 352.21, 353, 651.212 and 652).

.132 Other Mail Processing Categories. See Exhibit 452.6 regarding address placement on second-class publications. A clear space must be provided on other mail for the address, stamps, postmarks, and postal endorsements.

.14 Return Address. The return address contains elements corresponding to those for the destination address in 122.12. The mail listed below must bear, in legible form, the return address of the actual sender:

a. Mail of any class, when its return, and/or address correction service is desired —122.16;

b. Penalty mail—137.27 and 137.285;

c. Mail matter on which postage is paid by stamps precanceled by bars only—143.421

d. Matter bearing company permit imprints—145.44;

e. Priority mail—361.2;

f. Second-class mail in envelopes or wrappers—453.2a;

g. Fourth-class mail—761.12;

h. Registered mail—911.31;

i. Insured mail—913.13e;

j. COD mail—914.131.

.15 Special Addressing Instructions. The following mail items must be addressed in accordance with the sections listed below:

a. Overseas military mail—122.8;

b. Department of State mail—128.2;

c. Window envelope mail—129.3;

d. International mail—International Mail Manual.

.16 A mailer's specific instructions for forwarding mail (see 159.2), as well as requests for address correction service or return (see 159.3) must appear below the sender's return address. A full return address must be used with these endorsements. On letter-size mail, the information must appear in the upper left corner of the address side of the piece; on other mail, the information must appear in the upper left corner of the address area. The endorsements must be clearly visible.

EXAMPLES:

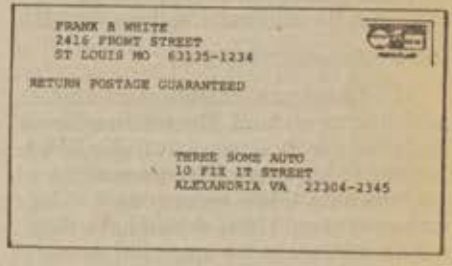
a.
FRANK B WHITE
2416 FRONT STREET
ST LOUIS MO 63135-1234
RETURN POSTAGE GUARANTEED

b.
FRANK B WHITE
2416 FRONT STREET
ST LOUIS MO 63135-1234
FORWARDING & RETURN POSTAGE GUARANTEED

c.
FRANK B WHITE
2416 FRONT STREET
ST LOUIS MO 63135-1234
ADDRESS CORRECTION REQUESTED

d.
FRANK B WHITE
2416 FRONT STREET
ST LOUIS MO 63135-1234
FORWARDING & RETURN POSTAGE GUARANTEED
ADDRESS CORRECTION REQUESTED

e.
FRANK B WHITE
2416 FRONT STREET
ST LOUIS MO 63135-1234
FORWARDING & ADDRESS CORRECTION REQUESTED



.17 At the sender's request the delivery post office will retain mail, other than registered, insured, and certified, for not less than 3 days or more than 30 days. To request a specific retention time, the sender in his return address must request that mail be held. Requests to lengthen or shorten retention periods to not less than 3 nor more than 30 days will be honored only at the sender's request. See 159.333 for registered, insured, and certified mail retention periods.

Examples:

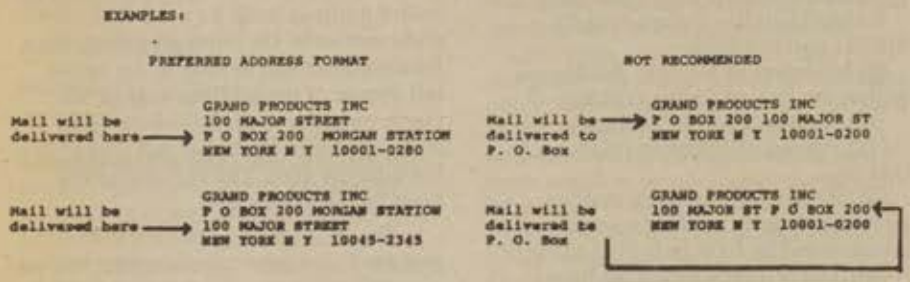
a. Return in 3 days to:
Frank B. White,
2416 Front Street,
St. Louis, MO 63135-2134

b. Return in 30 days to:
Frank B. White,
2416 Front Street,
St. Louis, MO 63135-2134
RETURN POSTAGE GUARANTEED

122.2 Restrictions.

.21 Mail bearing both a street address and a post office box number on different address lines will be delivered to the address element appearing on the line immediately above the city and state. If a ZIP Code (ZIP + 4 or 5-digit code) is used, it must correspond with the address element immediately above the city and state. These restrictions also apply to return addresses on mail matter.

.22 Mail bearing both a street address and a post office box number on the same address line will be delivered to the post office box. If a ZIP Code (ZIP + 4 or 5-digit code) is used, it must correspond with the post office box number in the address. This type of addressing is not recommended.



.23 Mail bearing the name of more than one post office in either the address or return address is not acceptable for mailing.

.24 An endorsement directing return to point of mailing (postmark) will not be honored.

.25 Postage (stamps, meter stamps, or permit imprints) must be placed in the upper right corner of the address side for letter size mail (see 128.2). All other processing categories (see 128.1) must have the postage in the upper right corner of the address area (see 122.132).

122.3 Recommendations.

.31 The return address should be included on all mail. The return address on letter-size mail (see 128.2) should be located in the upper left corner of the address side. Other processing categories (see 128.1) should have the return address in the upper left corner of the address area (see 122.132). The return address should not be placed below the delivery address. It should not appear on any but the address side.

.32 The use of ZIP Codes is recommended on all mail because they enable the Postal Service to achieve greater reliability and efficiency in dispatch and delivery. Although its use is voluntary, except where a ZIP + 4 discount is claimed, use of the ZIP + 4 Code is preferred over the 5-digit ZIP Code.

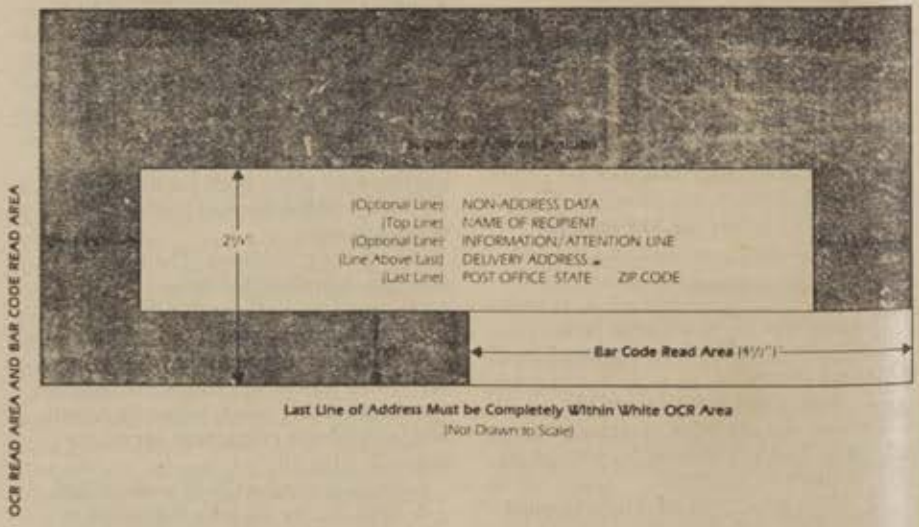
.33 The Postal Service also requests that mailers follow certain addressing guidelines which permit the efficient processing of letter-size mail on automated optical character readers (OCRs) and bar code sorters (BCSs). The address, or at a minimum, the city, state, and ZIP Code line(s) of the address, on letter-size mail should be located within an imaginary rectangle (the OCR read area) on the front of the mail piece formed by the following boundaries:

a. At least 1 inch from the left edge;
b. At least 1 inch from the right edge;
c. At least ⅝ inch from the bottom edge (bottom line of rectangle);
d. No more than 2¼ inches from the bottom edge (top line of rectangle.)

Note. See OCR Read Area and Bar Code Read Area Illustration.

.34 Nonaddress printing, computer punch holes, etc., should not be placed within the OCR read area, alongside or below the city, state, and ZIP Code line(s) of the address.

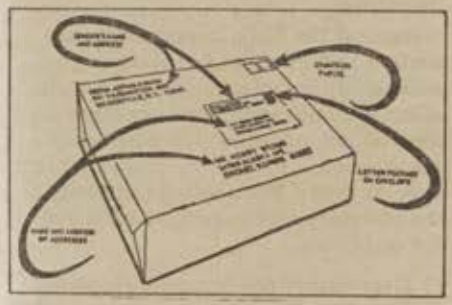
.35 Unit, apartment, mail receptacle, office, or suite number should be included in the address. Place that information at the end of the delivery address line. If there is not enough space on this line, place it on the line immediately above the delivery address. Special service endorsements should be placed on the right side below the postage and above the address.



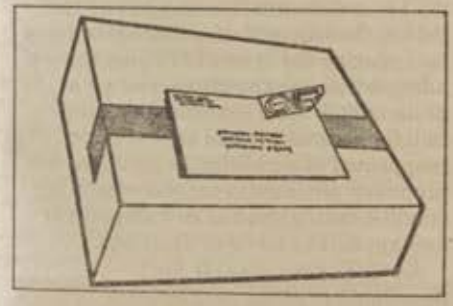
.36 Addresses should not be inverted (upside down).

.37 Addresses on Parcels

Illustration of how to affix a first-class letter on a parcel:



a. Parcels which bear address labels shall have the regular or postage meter stamps affixed by accepting postal employees so that the stamps overlap the upper right corner of the label, as shown in the following illustration:



b. Postmasters should seek the cooperation of business mailers by asking them to affix postage in this manner. Parcels bearing address labels covering any portion of the postage or showing other significant evidence of overlabeling shall be withheld from dispatch or delivery and must be immediately reported to the nearest postal inspector or postal inspector in charge.

.38 A slip should be attached to articles enclosed in parcels showing the address of the sender and addressee.

.39 On all mail processing categories the address should be parallel or nearly parallel to the longest edge of the mailing piece. (See the requirement for letter-size mail in 122.131.)

122.4 Simplified Address.

Revise 122.43 to read as follows:

.43 Number of Customers. Delivery statistics for all carrier routes and post office box sections are included in the CRIS Scheme. See 622.11(e) for CRIS ordering information. On request, postmasters will furnish, without charge, information as follows:

a. Number of post office boxholders;

b. Route number and number of boxholders on each rural and highway contract route;

c. Route numbers and number of families on each rural route;

d. Number of families served or number of business places served within the total delivery area or on particular carrier routes.

122.6 ZIP Code System.

Revise 122.61 to correct typographical error on the penultimate line "routine" is changed to read "route." Revise 122.632 to correct typographical error on line 5 "signed" is changed to the read "assigned."

Revise 122.641 and 642 to omit punctuation marks in the examples.

Revise the text of 122.641 to delete the words "A space not less than 3/10 of an inch nor more than 5/10 of an inch", and insert the words "From one to two character spaces."

122.8 Military Mail.

All examples appearing in this section are revised to omit punctuation marks.

127 Minimum Sizes.

Omit the "Note" following 127b and insert new 127c reading as follows:

c. Address placement can subject First-Class Mail and single piece third-class mail to a nonstandard surcharge or render it incompatible with the above minimum size standards. Mailing pieces which do not meet the minimum size standard are prohibited from the mails.

Note.—With the exception of mail sent at third-class carrier route rates, the placement of the address establishes which dimensions are the height and length.

129 Envelopes and Cards.

Revise 129.3 a, b and c to read as follows:

a. The address window on all lettersize envelopes should be located within the area described in 122.33. The window can be placed ½ inch from the bottom of the envelope, but ⅝ inch is preferred. See 122.131 regarding address position. The address window must be parallel with any edge of the envelope on flat-size mail (see 128.3). See 122.38 for recommendation. See 127 for size standards.

b. The window must be of sufficient size and transparency so that each character in the address and optional endorsement line (if used) is visible throughout an insert's movement within its envelope. Mail which does not conform to this standard may be rejected or returned.

c. The provisions in Part 122 governing addressing also apply to window envelopes. Nonaddress printing, computer punch holes, or other extraneous information should not be placed alongside or below the city, state, or ZIP Code line of the address.

159.3 Address Correction Service and Return.

Revise 159.332b to change reference 122.32 to read 122.17.

322.3 Restrictions on the Use of Double and Single Postal and Post Cards.

Revise 322.32b to read as follows:

b. The addresses on the cards must include either the ZIP + 4 code or the 5-digit ZIP Code and must be placed in accordance with 122.131.

323 Presorted First-Class Mail.

Revise 323.2 to insert the word CRIS after Postal Service and before scheme on line 19.

352.2 Shape, Ratio, and Sealing.

Omit the "Note" following 352.21b and insert new 352.21c reading as follows:

c. Address placement can subject First-Class Mail to a nonstandard surcharge or render it incompatible with the above minimum size standards. First-Class Mail which does not meet these minimum standards is prohibited from the mails.

Note.—The placement of the address establishes which dimensions are the height and length of First-Class Mail.

452 Addressing.

Revise 452.1f to read as follows:

See 122.131 and 127 regarding address placement and minimum size standards on letter-size pieces. On unenveloped and unwrapped flat size pieces (see 128.3) it is suggested the address be placed so that when the bound (or folded) edge is grasped in the right hand, the address should be along the bound edge or the top edge near the bound edge as illustrated in Exhibit 452.6.

651.2 Size, Shape, and Ratio.

Omit the "Note" following 651.212b(3) and add new 651.212c reading as follows:

c. Address placement can render third-class mail incompatible with the minimum size standards above or subject single piece rated third-class mail to a nonstandard surcharge. Third-class mailing pieces other than keys and identification devices which do not meet these minimum size standards are prohibited from the mails.

Note.—With the exception of mail sent at third-class carrier route rates, the placement

of the address establishes which dimensions are the height and length.

951 Post Office Box (P.O. Box) Service.

Revise 951.86 to change reference 122.32 to 122.17.

952 Caller Service.

Revise 952.46 to change reference 122.32 to 122.17.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400 and 433

[BPO-11-F]

Medicaid Program; Medicaid Management Information Systems; Conditions of Approval and Reapproval and Procedures for Reduction of Federal Financial Participation

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

ACTION: Final rule.

SUMMARY: This final rule provides the additional requirements to the conditions and procedures for initial approval and reapproval of Medicaid Management Information Systems (MMIS) that were added by section 1903(r) of the Social Security Act (as amended by section 901 of the Mental Health Systems Act of 1980, Pub. L. 96-398). These provisions are intended to improve States' MMIS, ensure efficient system operations, and make the procedures for detection of fraud, waste, and abuse more effective. In addition, this final rule specifies the procedures we follow in reducing the level of Federal financial participation in State administrative expenditures if a State fails to meet the conditions for initial operation, initial approval, or reapproval of an MMIS.

EFFECTIVE DATE: These regulations are effective August 29, 1985. Paragraphs (e) and (g) of 42 CFR 433.116 contain information collection requirements with which the public is not required to comply until the office of Management and Budget approves these requirements. (See Section VI for this preamble for a discussion of information collection.)

FOR FURTHER INFORMATION CONTACT: Guy Harriman, (301) 594-4880

SUPPLEMENTARY INFORMATION:

I. Background

A. Medicaid Management Information Systems

An MMIS is a mechanized system of claims processing and information retrieval used in State Medicaid programs under title XIX of the Social Security Act (the Act). The system is used to process Medicaid claims and to retrieve and produce utilization data and management information about recipients and services. Under section 1903(a)(3)(A) of the Act and regulations at 42 CFR 433.112, Federal financial participation (FFP) is available at a rate of 90 percent in State expenditures for design, development, installation or improvement of the systems. (As with all Medicaid FFP rates for fiscal years (FY) 1982-1984, the rates presented in this preamble and in the regulations are subject to any adjustment that occurs under sections 1903 (s) and (t) of the Act.) Under section 1903(a)(3)(B) of the Act and § 433.116, FFP is available at 75 percent for operation of an approved MMIS. These rates are higher than the normal matching rate of 50 percent under section 1903(a)(7) of the Act for general administrative operations of the State agency.

B. Title IX of the Mental Health Systems Act of 1980

Title IX of Pub. L. 96-398, the Mental Health Systems Act of 1980, added a new paragraph (r) to section 1903 of the Social Security Act (42 U.S.C. 1396b(r)). That legislation requires each State with a Medicaid program, with certain exceptions, to have an approved operating MMIS before established deadlines and, if the State fails to do so, prescribes FFP reductions by increments in the funding available under sections 1903(a) (2) and (7) of the Act. (Those sections provide 75 percent FFP for compensation and training of skilled medical, professional and support staff, and 50 percent FFP for general administrative expenditures.) The legislation also imposes new conditions for approval and reapproval of systems and prescribes FFP reductions by increments for failure to meet the conditions. However, the law requires us to waive the FFP reductions and modify deadlines if we determine that a State has good cause for being unable to comply or the State cannot comply due to circumstances beyond its control. We are required to report to Congress all waivers of FFP reductions, the bases for the determinations, and modifications of deadlines.

Because the basic requirements of section 1903(r) of the Act were sufficiently complete and clear to take effect without regulations, we have already put into effect the portions of that section for which we had to act by specific dates. We notified the States of the statutory requirements well before the deadlines.

C. Overview of the Notice of Proposed Rulemaking

On March 3, 1983, we published in the **Federal Register** at 48 FR 9039 a notice of proposed rulemaking (NPRM) to solicit comments on our proposed changes to the regulations that govern MMIS. That NPRM included additional requirements added by section 1903(r) of the Act (as amended by section 901 of the Mental Health Systems Act of 1980, Pub. L. 96-398) and specified procedures for reducing the level of FFP in a State's administrative expenditures when a State fails to meet the conditions for initial operation, initial approval, or reapproval of an MMIS. In addition, we proposed procedures for waivers of the conditions of approval and reapproval and appeals of adverse decisions.

As part of the process for development of the performance standards for reapproval to be used during fiscal year 1984, we also solicited comments on Part 11 of the State Medicaid Manual (SMM), which contains both the performance standards (including their factors and elements) for reapproval and system requirements for initial approval and reapproval. After consideration of the public comments concerning the NPRM and Part 11 of the SMM, we have decided to adopt the proposed rule without substantial modification as a final rule. (Changes included in this final rule that were not included in the NPRM are explained in section **IV. Summary of Changes**, below.) The reader is referred to the NPRM for a more complete discussion of the provisions of these regulations. However, for the convenience of the reader, we have briefly summarized the major provisions, below.

II. Major Provisions of These Regulations

The provisions of these regulations revise 42 CFR Part 433, Subpart C,

Mechanized Claims Processing and Information Retrieval Systems.

A. Advance Planning Document

We have clarified § 433.112 of the regulations to state more clearly that FFP is available at the 90 percent rate in State expenditures for the design, development, installation, or improvement of mechanized claims processing and information retrieval system only if the advance planning document (APD) is approved by HCFA prior to the State's expenditure of funds for these purposes. (An APD is a written plan of action to acquire the initial system or a replacement system.) This means that a State expenditure may qualify for the 90 percent rate only if the expenditure is made after HCFA approves the APD.

Section 433.112 is required by section 1903(a)(3)(A) of the Act, which provides for FFP at the 90 percent rate in State expenditures for the design, development, and installation of mechanized claims processing and information retrieval systems "which the Secretary determines are likely to provide more efficient, economical and effective administration of the plan. . . ." (The Secretary has delegated the approval of mechanized claims processing systems for Medicaid to HCFA.) We believe that section 1903(a)(3)(A) of the Act requires HCFA to approve the APD before the State's expenditure of funds, for FFP to be provided at the 90 percent rate, because it is important that HCFA know at the outset, that is, before the system is developed, about the system the State is proposing. The APD provides HCFA with this information.

Regulations at 45 CFR Part 95, Subpart F prescribe the conditions under which the Department will approve FFP at applicable rates for costs of automatic data processing incurred under an approved Medicaid State plan and may appear to conflict with the regulations at 42 CFR 433.112. However, unless the Secretary makes the determination that the system is likely to satisfy the section 1903(a)(3)(A) requirements, the applicable rate of FFP would be 50 percent. 45 CFR Part 95 restricts us in imposing prior approval requirements at the 50 percent rate, since the statute does not require an advance determination in order for a State to receive this percentage rate. However, since the Secretary must make this prospective determination in order for the State expenditures to qualify for the 90 percent rate, the prior approval demanded by the MMIS regulations (§ 433.112) is to obtain the enhanced rate and is not a condition limiting State procurements, which would be precluded by 45 CFR Part 95. Therefore, there is no conflict between 45 CFR Part 95, which limits our authority to require prior approval, and the requirements of § 433.112.

The § 433.112 requirement that the APD be approved before a State's expenditure of FFP for design, development, installation, or improvement of a system for receipt of the 90 percent rate of FFP applies to both an initial system and a replacement system. Section 433.113 contains other rules for obtaining approval of a State's original system. Section 433.117 contains the rules for approval of a replacement system and incorporates rules contained in § 433.113.

B. Initial Operation

Section 433.113(a) provides that a State (unless a waiver was obtained) must have in operation an MMIS that the State detailed in an advance planning document (APD) that was approved by HCFA. Under § 433.113(a), the system must have been in operation by the earlier of—(1) September 30, 1982; or (2) the last day of the sixth month following the date specified for operation of the system in the State's most recently approved APD submitted before October 7, 1980 (the date of enactment of Pub. L. 96-398). This means that a State that submitted an APD after October 7, 1980 had to have its system operating by September 30, 1982. If the State submitted an APD before October 7, 1980 that was approved by HCFA and that contained an operating date before March 1, 1982, the system must have been operating by the last day of the sixth month following the specified operating date. These deadlines were delayed only if HCFA determined under § 433.131 that the State was unable to comply for good cause or for circumstances beyond its control (see sections II-M and II-N below).

When system operation begins, the State receives 50 percent FFP in its expenditures for system operation until the system is approved. Under § 433.116, FFP in State expenditures for system operation increases to 75 percent, effective with the first day of the calendar quarter after the system was determined to be operating safisfactorily. Section 1903(r)(3) (A) of the Act provides for the 75 percent rate if we determine the system to have been operational for an entire calendar quarter before the quarter in which the system received its initial approval.

If a system had not been in operation by the specified deadline, under § 433.113(b), we would have reduced the rate of FFP in both State expenditures for skilled medical personnel and staff (section 1903(a)(2)) and general administrative expenses (section 1903(a)(7)) by 5 percentage points for every two-quarter period of non-operation beyond the deadline described above. (The rate of FFP under section 1903(a) (2) and (7) would not have been reduced more than 25 percentage points for each type of FFP.)

C. Initial Approval of an Operating System

Section 433.113(a)(3) provides that a State must have an operating system initially approved by HCFA by the last day of the fourth quarter that begins after the date on which HCFA establishes that the system became operational or be subject to reductions in FFP, described below.

Retroactive funding at the 75 percent rate is provided under § 433.116 for operation of an approved system from the first quarter beginning after the system became operational. If a system is operating but not approved by the specified deadline, under § 433.113, we reduce FFP in State expenditures under section 1903(a) (2) and (7) by 5 percentage points each for every two-quarter period for which the system is operating but not approved beyond that deadline. Again, the rate of FFP may not be reduced more than 25 percentage points for each type of FFP.

If the State is subject to a reduction of FFP because it did not meet the deadline for initial approval, § 433.113(c) requires that the State be subject to reductions in the retroactive FFP otherwise available for operating an approved system at the rate of five percentage points for every two-quarter period beyond the deadline for initial approval. Funding of the system for the quarters following the the quarter in which the system is initially approved is at the 75 percent rate.

To determine whether a system qualifies for initial approval, HCFA needs information retrieved from six months of system operation. Since FFP reductions could occur if there is a delay in the approval process, we encourage States to contact us to request initial approval of the system, when the State's system has been in operation between three and six months. At that time, we will review and evaluate State-furnished information developed by the system.

A State that is now without an operating system or that wishes to replace a currently approved system must submit its request for approval with the supporting documentation within three months after the system begins operating to allow us the needed

time to complete our evaluation within the first year of system operation.

D. Appeals of Initial Operations and Approval Decisions

A State may appeal reductions in FFP resulting from the denial of initial approval and reductions in FFP for expenses of the system for initial operations under the procedures of the Departmental Grant Appeals Board contained in 45 CFR Part 16 (governing reconsiderations of disallowances of claims for FFP under section 1903 of the Act). The appeal may be filed only when a claim (or a portion of a claim) made by the State for FFP in these expenditures has been disallowed.

E. Replacement Systems

Rules for initial approval of replacement systems are located at § 433.117. Replacement systems have to be approved by us in accordance with the initial approval conditions, and the APD, which the State files for a new system, must include: (1) The date the new system will become operational; and (2) a plan that assures an orderly transition from the system being replaced.

FFP is available at 90 percent in expenditures for the design, development and installation of the replacement system if the State owns the software. While the replacement system is being prepared to become operational, we will continue to fund, at 75 percent, the already approved operating system. (If the current system has been disapproved, it would be funded at a reduced rate under § 433.120, the regulation governing FFP in expenditures for disapproved systems.) When a replacement system becomes operational, FFP is available at 50 percent of expenditures for operation of the replacement system until we approve it. At that time, FFP is increased to 75 percent of expenditures for operation of the approved replacement system, retroactively to the date HCFA determines the replacement system met all conditions for initial approval. However, although a State may be operating both systems for a limited period of time, FFP is available at 75 percent of expenditures for operation of only one system at any time. (FFP is available at 50 percent of expenditures for the other operating system.)

F. Replacement of System Operators

A State may replace the operator of an approved MMIS. FFP continues to be available at 75 percent for an approved operating system regardless of who operates it. The following Departmental requirements apply also: 45 CFR Part 74, Administration of Grants, and 45 CFR Part 95, which prescribes the conditions under which the Department will provide FFP for the costs of automated data processing.

G. Conditions of Approval and Reapproval

In order to receive 75 percent FFP for operation of an MMIS, States must meet these new requirements of 42 CFR 433.116:

1. The State must provide that information on probable fraud or abuse obtained from, or developed by, the system, is made available to the State's Medicaid fraud control unit (if any) certified under section 1903(q) of the Act.

2. The system must meet all performance standards and other conditions for initial approval that we develop and about which we notify the States.

Except for the requirements in 1 and 2 above, there are no changes in the existing conditions in the regulations for initial approval in redesignated § 433.116 (c) through (g). In addition, no changes have been made in the conditions for initial approval in Part 11 of the SMM on which we solicited public comments in the NPRM. For yearly reapproval under § 433.119, States are required to meet the first requirement above, and also, performance standards and other conditions for reapproval. These include the system requirements in Part 11 of the SMM. The initial list of performance standards that must be met for reapproval has also been published in the **Federal Register** (see 46 FR 33653—June 30, 1981 and 48 FR 24204—May 31, 1983) and Part 11 of the SMM. For purposes of clarity, we publish separate notices in the **Federal Register** to specify conditions for initial approval and conditions for reapproval.

H. Reapproval: Basis for and Amount of Reduction

Section 1903(r)(4)(B) of the Act requires us to reduce FFP to no more than 70 percent, but not less than 50 percent, for an MMIS that fails to meet the conditions of reapproval. We may not reduce FFP by more than 10 percentage points in any four-quarter period. That is, a State whose system fails to meet the conditions of reapproval three years in a row and that is subject to the maximum potential reduction each year will receive 65 percent FFP the first year, 55 percent FFP the second year, and 50 percent the third year. In such a case, only 50 percent FFP will be available to the State until it meets the conditions of reapproval in a subsequent yearly review period.

Under § 433.120, we will reduce FFP by increments from 75 percent to 50 percent of State expenditures, in accordance with the statutory provisions, if successive yearly reviews of a State's MMIS operations show that the system no longer meets the requirements for reapproval specified in § 433.119 (performance standards, system requirements, and other conditions of reapproval). To avoid a further reduction in FFP because of the requirements, the State must demonstrate that the system meets all the current requirements during the next annual review.

I. Reapproval: Notice of Results of Review

During each yearly review, we evaluate performance for each State's MMIS over a period of at least six months. We are continuing to provide technical assistance, as in the past, to aid States in correcting system deficiencies. As early as possible in the first quarter after the end of the fiscal year under review, we notify each State whether its system has met the conditions of reapproval. If the system failed to meet these conditions, the notice includes—

1. A statement that the State's FFP for systems operation will be reduced, and the percentage to which it is reduced, for the four quarters immediately following the quarter in which the notice is issued;

2. The findings of fact on which we made our determination; and

3. A statement that State claims in excess of the reduced FFP rate will be disallowed and that any such disallowance will be appealable to the Grant Appeals Board.

J. Reapproval: Timing, Duration and Restoration of the FFP Reduction

By law (section 1903(r)(6)(C) of the Act), the first review that could have resulted in a reduction of FFP to a State could not begin before Federal fiscal year 1982 (October 1, 1981 to September 30, 1982). Under § 433.119, review periods continue to coincide with Federal fiscal years and any reduction of FFP begins in the January following the end of the fiscal year.

We interpret section 1903(r) of the Act to establish the mechanism under which States that have had their MMIS disapproved will have their FFP reduced for at least four quarters after the quarter in which the disapproval is made and up to the first quarter beginning after the system is

reapproved. Section 1903(r)(4)(A) of the Act requires us to review at least once each fiscal year; we are conducting reviews and making review determinations only once each fiscal year. We conduct the required regular yearly reviews in all MMIS States to determine whether systems receiving reduced funding subsequently meet the conditions of reapproval, and whether systems receiving full funding continue to meet those conditions.

As we make regular review determinations once each calendar year, we do not resume full FFP for a system receiving reduced funding until we complete the next regular yearly review that results in a favorable determination. Yearly review determinations actually take effect after the end of the calendar year (i.e., we resume 75 percent FFP for MMIS operation, or reduce it if applicable, effective the following January).

Under § 433.122, a State that receives reduced FFP because of deficiencies found during the review process could receive the withheld amount retroactively, if the next yearly review determination shows that the system then meets all conditions of reapproval. The restoring of withheld FFP is also subject to our judgment that return of the funds would improve the effective administration of the State's plan. This provision for retroactive adjustment is intended as an incentive for States to correct the system deficiencies as soon as possible.

Our decision whether to restore one, two, three, four or five quarters of FFP is discretionary and, therefore, not subject to appeal to the Grant Appeals Board. In making this decision we will consider any relevant information, including the amount of improvement shown as a result of the latest yearly review.

Because section 1903(r)(4)(C) of the Act precludes restoration of the withheld FFP for more than four quarters immediately prior to the quarter in which the system is approved, the withheld FFP will be lost permanently for the first three quarters of the calendar year in question if the subsequent yearly review shows the system still failing to meet any condition of reapproval. Thus, the Secretary has the discretion to retroactively restore the enhanced FFP that was reduced because of a disapproval of a system, but only for a maximum period of five quarters—the quarter in which the system is reapproved plus the immediately preceding four quarters.

During the period in which a State receives FFP for MMIS operation at a reduced rate, claims by the State for FFP at any higher level for MMIS will be disallowed; i.e., the State will not be eligible to receive 75 percent FFP for MMIS funding.

K. Reconsideration by the Departmental Grant Appeals Board

States have the opportunity to request a reconsideration from the Board of the disallowance of claims for FFP. Where FFP in State expenditures for operating an MMIS is reduced or FFP under section 1903 (a)(2) and (a)(7) is reduced because of the State's failure to meet the requirements of section 1903(r) of the Act, the State could request Grant Appeals Board review of the resulting disallowance by filing a written request with the Board. Procedures for consideration of such requests were described in the preamble of the NPRM and are detailed in § 433.121.

L. Notification to States of Changes in Conditions of Approval and Reapproval

We announce the changes in conditions of approval and reapproval once a year by publishing a notice in the **Federal Register** describing the proposed revisions and inviting public comment. We then respond in the **Federal Register** to comments on revisions making substantive changes.

Also, we publish changes in performance standards, system requirements, and other conditions for reapproval in the SMM after first publishing a notice in the **Federal Register** advising the public of the changes and inviting comment, and after responding to the comments received, if any, in a subsequent **Federal Register** notice. Under section 1903(r) of the Act, we are required to inform the States of conditions of reapproval at least three months before the beginning of the review period in which the procedures, standards and other conditions will be used.

M. Waiver of Conditions for Initial Operation and Approval

We will continue to waive the requirements for initial approval and for operating an MMIS for States with small populations if a State has demonstrated to HCFA's satisfaction that an MMIS will not significantly improve the efficiency of the administration of the State plan.

Section 1903(r)(7)(A)(ii) also directs the Secretary to waive these requirements for the Commonwealths, territories, and possessions of the United States under the same conditions as described above for States with small populations. Therefore, without necessity for a further showing, we granted waivers of MMIS requirements to Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

N. Waiver of Reductions for Good Cause

Under §433.131(a), we will waive the FFP reductions for failure to gain initial approval or reapproval for not more than two quarters if we determine that a State is unable to comply with a requirement of these regulations for good cause. We interpret the two-quarter waiver to apply to FFP reductions arising from two quarters of inadequate performance of a State's system.

This means that absent significantly poor performance for more than two quarters, we have the discretion to completely waive the reductions in FFP in State expenditures for operation of the State's system if good cause exists to do so. For example, in the first two quarters of a fiscal year, a State fails to produce its reports timely or accurately; however, in the next two quarters, the State's reports are both timely and accurate. Because the FFP reductions result from State performance in the first two quarters only, and we found good cause for the State's poor performance (for example, because of the lack of experience with a new requirement), HCFA would apply the good cause waiver and not reduce FFP during the next fiscal year even though this State system has not been reapproved. (Since passage of section 1903(r) of the Act in 1980, we have granted a number of good cause waivers for State inability to comply with several provisions in section 1903(a) of the Act.)

O. Waiver of Reductions Due to Circumstances Beyond the Control of the State

We will waive the FFP reductions for a period during which a State is unable to comply due to circumstances beyond its control, as provided in § 433.131(b). This situation will exist when a State or the contractor responsible for the MMIS is without fault in being unable to comply; e.g., a natural disaster occurred or a delay was caused by us. We will also defer all remaining deadlines for the initial approval process for the same length of time.

III. Analysis and Response to Public Comments

We received seven letters concerning the proposed regulations, all from State agencies. These State agencies express concern that the proposed regulations will be applied too stringently and that the concerns of State agencies will not continue to be taken into account.

Reapproval Requirements That Measure Performance Not Within the Scope of the MMIS

Comment: One State agency, while agreeing that the proposal reflects the provisions of section 1903(r) of the Act, requests that we apply the FFP reduction provisions only to MMIS items on which there is wide agreement. For example, the commenter urges us not to apply these funding provisions to any items not included in present rules or in the MMIS General System Design documents (explained in § 11300 of Part 11 of the SMM). The commenter says that this comment is consistent with the position taken by State members of the Systems Technical Advisory Group, who object to including items in the MMIS reapproval requirements that measure functions outside the scope of the system itself.

Response: An MMIS is described both in sections 1903(a)(3) and 1903(r) as a system that the Secretary determines is likely to provide more efficient, economical, and effective administration of the State plan for medical assistance. To this end, Congress has authorized enhanced FFP for design, development, installation, and operation of a system that meets this objective. In turn, the Secretary has determined that a system is not likely to provide more efficient, economical, and effective administration of the plan unless it is provided with quality data. Thus, in making the statutory determination of what qualifies a system for enhanced FFP, the Secretary has decided not to look at MMIS in a vacuum. Instead she has decided to look at it in the context of the Medicaid program as a whole. In complying with the mandate of section 1903(r), which requires her to adopt performance standards, the Secretary opted to measure the performance of an MMIS by reference to the quality of the data that is put into the system as well as the quality of the system that manipulates that data. Since adopting the commenter's proposal could result in enhanced funding for a system that merely processes worthless data (that is, garbage in; garbage out), we have chosen to reject the commenter's suggestion.

We have worked with and will continue to work with States through the Systems Technical Advisory Group to identify items to be included in reapproval reviews. In addition, through the MMIS Relook Project, we are reviewing the relationship between system operations funding and system evaluation. Based on these efforts, some revision may be made in the FY 1985 reapproval review package and subsequent reviews. We will also retain the perspective of approving systems operations which contribute to efficient, economical and effective administration of the State plan, as required by sections 1903(a)(3) and 1903(r) of the Act. We will continue to seek consensus with States on the best means of applying the law through system reviews.

Frequency of Review

Comment: One State agency recommends that a complete reapproval procedure take place once every three years, rather than on an annual basis as we proposed. This commenter suggests that only system functions requiring frequent monitoring be reviewed annually.

Response: This comment would require a legislative change. Section 1903(r)(4)(A) of the Act requires the Secretary to review all approved systems and to reapprove or disapprove such systems not less often than once each fiscal year. The statute does not allow exceptions so that certain areas of the MMIS will be subject to review on a less frequent basis. We make annual changes to our reapproval requirements to reflect changes in State performance, new conditions of approval, and Medicaid needs. These changes are applied uniformly to all systems.

Failure To Comply With Reapproval Standards

One commenter requests that we provide technical assistance, instead of fiscal sanctions, to resolve State agency dificiencies, suggesting that it is contradictory to impose fiscal sanctions at a time when a State needs funds to eliminate deficiencies.

Response: Section 1903(r)(4)(B) of the Act requires that the Secretary impose FFP reductions if an MMIS is disapproved.

Since the inception of the annual MMIS reapproval process, it has been our policy to make technical assistance available to States upon request in an effort to assist in improving their MMIS operations and avoiding FFP reductions. This technical assistance is provided principally by HCFA regional offices. In addition, since FY 1982, an early warning system has been in place to alert any State as early as possible to actual or potential failure of the reapproval requirements. The early warning system requires reviews to be conducted during the first two quarters of each fiscal year of elements and standards failed by any State during the preceding reapproval review cycle. This aids a State in avoiding final failure by alerting it to needed remedial actions. If requested, we will provide technical assistance so that a State can take actions to avoid system disapproval and FFP reductions. Furthermore, if deficiencies are rectified promptly, the reductions of FFP for operating a disapproved system may be restored retroactively.

Reduction of FFP for a Disapproved MMIS

The proposed rules indicated that upon disapproving an MMIS, we would reduce FFP by increments of up to 10 percentage points beginning with the next calendar quarter and continuing until the "next yearly review." This implies that the reduction always will be applied for a minimum of four full quarters regardless of when the State modified its system to conform to the MMIS standards. One State agency suggests that a State be allowed to request a review when the State has made the necessary changes in order to reduce the potential loss of funds. The commenter claims that this type of request is allowable in the law but the proposed rules refer to yearly reviews only, with no other options available.

Response: Section 1903(r)(4)(A) of the Act indicates that the Secretary shall reapprove or disapprove an MMIS and notify the State not later than the end of the first quarter following the review period. We have established the review period as the Federal fiscal year; that is, four quarters. There will not be another notification or reapproval determination until after the next yearly review.

As noted above, we have establihed an early warning system to alert States to operational problems in certain key functions and in areas where the States experienced difficulties during the previous reapproval review cycle. This early warning affords States an opportunity to adjust system operations and avoid failure of performance standards and other conditions of reapproval.

It is simply not administratively feasible for us to be on call for follow-up reviews. The staffing and paperwork burdens inherent in the State's proposal are unmanageable. Indeed, our recent experience with reapproving two previously disapproved State systems prior to the end of the fiscal year demonstrated that we do not have the capacity to handle follow-up reviews if they become a widespread practice. This is one reason why we have established the review cycle on a fiscal year basis. We do not have the resources to staff more frequent reviews.

Of course, as provided in § 433.122(b), HCFA may restore the reduced FFP if the system meets all conditions of reapproval in the next yearly review and if HCFA determines that restoring the reduced FFP could improve the administration of the State Medicaid plan.

Time period for an appeal to the Grant Appeals Board

Comment: One State agency claimed that there was an inconsistency between the preamble and the proposed regulations text concerning when we will notify the State agency of disapproval of a system and the time period for the State agency to appeal to the Grant Appeals Board. The commenter claimed that the proposed rule stated that an appeal must be filed within 30 days from the date of the letter notifying the State of the disapproval. The preamble indicates that the States would not be able to challenge the disallowance until after the end of the first quarter in which FFP is reduced. The commenter suggested that an appeal be allowed as soon as the written notice is received, with a reasonable amount of time provided in which to file the appeal, such as sixty days.

Response: We do not believe that there is a conflict between the preamble and the regulations text of the NPRM. The commenter apparently confused the notice of disapproval (which does not confer an immediate right to appeal) with the notice of disallowance (which does confer an immediate right to appeal).

The Act provides a mechanism by which a State is able to contest a reduction in FFP. Specifically, section 1116(d) of the Act provides for a reconsideration by the Secretary (which the Secretary has delegated to the Departmental Grants Appeal Board) of a determination concerning any item for which FFP is claimed and disallowed. Because there is no disallowance until a State submits a claim for FFP and a letter of disallowance is sent to the State, the Grant Appeals Board does not have the authority to take any action on the earlier notice of disapproval. If we were to provide a predisallowance appeal right, a State could relitigate the issue at a later time by claiming enhanced FFP that had been denied in the predisallowance appeal and then, by contesting the resulting predisallowance before the Board under section 1116(d) of the Act. We do not believe it would be appropriate to provide for duplicative appeals.

Under 42 CFR 433.121(a) and 45 CFR Part 16, Procedures of the Departmental Grant Appeals Board, the State has 30 days to file a notice of appeal (the notice can be very brief) from the date it receives a letter of disallowance. Under 45 CFR 16.8, the State will also have an additional 30 days to prepare its argument after the Grant Appeals Board acknowledges the notice of appeal.

Decisions That May Not Be Appealed to the Grant Appeals Board

Comment: One State agency objects to the provisions of proposed § 433.121 that decisions concerning the following issues are not subject to appeal to the Grant Appeals Board—

(1) The amount of the percentage reduction of FFP (if within the range set by title XIX of the Act);

(2) Whether to restore FFP retroactively; and

(3) The number of quarters restored.

The commenter's objection is based on the absence of these exclusions in title XIX of the Act.

Response: We have determined that these issues are not subject to appeal. Section 1903(r)(4)(C) indicates that decisions involving the restoration of FFP are within the Secretary's discretion. In addition, section 1903(r)(4)(B) of the Act explicitly covers the authorized range for the Secretary's reducing FFP. Therefore, such decisions are not subject to review or appeal to the Grant Appeals Board unless they exceed the range authorized by law or unless the Secretary delegates review of this exercise of discretionary authority to the Board. For the reasons presented below, we concluded that it would be unwise to delegate review of this discretionary authority.

The law explicitly authorized the Secretary the discretion to establish the appropriate reduction within certain statutory limits upon a finding of disapproval, we believe that the Board's proper role should be limited to questions of fact; that is, whether the performance of the MMIS failed to meet the standards, requirements, or other conditions of reapproval. The amount of actual reduction must, out of necessity, be based on multiple operational and administrative issues that do not readily admit to quasi-judicial review. As for the decisions for restoration and the number of quarters to be restored, the statute does not establish restoration as a State right. Even were a State to meet all criteria for restoration, no obligation to grant such restoration is imposed upon the Secretary. Therefore, to allow a reconsideration review by a third party is not desirable.

Postponement of FFP Reductions

Comment: One State agency, believing that section 1903(r) of the Act does not require immediate reductions in FFP, urges us to modify § 433.121(c) to allow postponement of FFP reductions for failure to meet the conditions of reapproval until completion of all administrative appeals. If the disallowance is upheld, this commenter suggests that the State would pay interest from the date of the disallowance.

Response: This recommendation is not compatible with section 1903(r) of the Act, and therefore, a legislative change would be required to delay the reduction of funding until a final decision by the Grant Appeals Board. Section 1903(r)(4)(A) of the Act requires us to reapprove or disapprove a State's MMIS and to notify the State by the end of the first quarter following the yearly review period. This requirement is the basis for § 433.119(b).

In the event HCFA disapproves a State's MMIS, HCFA is required to reduce the State's FFP in accordance with the range specified in section 1903(r)(4)(B) of the Act. That section of the statute also requires us to implement the reduction for the four quarters beginning after the determination of disapproval. Should the State request a reconsideration, such request does not delay implementation of the reduction in FFP because, once the disapproval notice is issued, the State is no longer eligible for full enhanced funding for MMIS operations.

Section 1903(d) of the Act provides for interim payments to the State based upon an estimate of what its quarterly expenditures will be for the upcoming quarter. Therefore, since section 1903(r)(4)(B) requires FFP to be reduced if the system is not reapproved (and since section 1904(r)(4)(C) contemplates retroactive waivers of the reduction if the system is reapproved in the next review and certain other conditions are met), we believe delaying the reduction until all administrative appeals are exhausted would frustrate the Congressionally-enacted scheme of reduction of FFP for disapproved systems with a possibility for retroactive restoration of FFP.

Moreover, specific statutory authority would be necessary to permit a State to receive the full enchanced matching after its system is disapproved and then compel the State to pay interest from the date of the disallowance on the increment of FFP that could have been reduced. However, section 1903(d)(5) of the Act provides a mechanism under

which a State may keep FFP that has been overpaid pending a final determination on the disallowance. If a State keeps the disallowed funds during this period, section 1903(d)(5) of the Act requires the State to repay the amount plus interest if the disallowance is upheld. However, this provision applies only when the State has been overpaid and does not apply in the context of an MMIS reduction under section 1903(r) of the Act because section 1903(r) of the Act requires that the FFP be reduced prospectively, thereby eliminating the possibility of an overpayment. Since section 1903(d)(5) of the Act provides the exclusive authority for a State to keep disallowed funds and then repay them with interest at the end of the appeals process if the State does not prevail, and since it does not apply to the reductions under section 1903(r) of the Act, we could not adopt the comment without a legislative change.

Use of Published Summaries of Changes to MMIS Performance Standards, System Requirements, and Other Conditions of Reapproval

Comment: One State agency is concerned that our proposal to publish for comment a summary of proposed changes rather than the changes themselves will not provide sufficient opportunity for the States to interpret the proposed changes. The commenter recommends that either the content of the entire change be published or the comment period be extended so that the States can obtain the details of the proposed changes and assess them thoroughly.

Response: States will be notified of the detailed text for the MMIS performance standards, system requirements, and other conditions of reapproval concurrent with or prior to the publication of the summary of those conditions of reapproval in the **Federal Register**. This has in fact been our practice over the past few years.

As was indicated in the preamble to the proposed rule, section 1903(r)(6)(E) of the Act requires us to inform the States of the conditions of reapproval at least three months before the beginning of the review period in which the procedures, standards, or other conditions will be used. For example, in addition to HCFA's publishing a notice in the **Federal Register** that summarizes any changes, the States will have the detailed text of any change at least one quarter before the date of expected implementation. This will also enable the States to have sufficient time to comment on the summary or to obtain more detailed information and comment on all the changes.

Also, whenever HCFA proposes to modify the performance standards, system requirements or other conditions of approval or reapproval, these proposals will be published in a notice in the **Federal Register**, and there will be opportunity for comment (at least 30 days) on these proposals. HCFA will respond in a subsequent **Federal Register** notice to any comments that were received and will announce any changes.

State Participation in the Development of Performance Standards and System Requirements

Comment: One State agency suggests that we develop new performance standards, system requirements or other conditions of reapproval with State agency participation because—

- State participation worked well in the original MMIS development.
- The use of the notice and comment procedure by itself is not adequate for changes that will have great impact upon State funding.

Response: In the future, we will make greater use of both the State Medicaid Directors Group and the Systems Technical Advisory Group, which is composed of State agency representatives, whenever possible in developing the new standards and systems requirements. In addition, since 1980 whenever we have modified system requirements and other conditions for initial approval or annual reapproval, we have first published the proposal in the **Federal Register** to provide an opportunity for States and members of the public to comment on the proposals.

Reducing the Approval Procedure Burden for New System Requirements

Comment: One State agency suggests that the approval procedure for new system requirements be streamlined to reduce the inappropriate burden on the States.

Response: In a further effort to foster State participation, approval of enhanced FFP (at the 90 percent rate) for improvements made to a system in order to meet new system requirements has been moved to the regional offices. The requirements for approval for improvements to existing approved systems have been added to the language of the regulation at § 433.112(b). The procedure to be followed to obtain prior approval is detailed in Part 11 of the SMM. At any time, a State may submit recommendations about how the process may be further streamlined.

Length of Time Period Allowed for Compliance With New Conditions of Reapproval

Comment: One State agency is worried that the "appropriate period" allowed for the States to comply with new MMIS conditions of reapproval will not be long enough for the many States whose legislatures appropriate funds on a two-year basis.

Response: The time period for implementing new conditions of reapproval is set forth in each proposed rule or notice with a comment period that proposes new conditions of reapproval. During the notice and comment period, a State that needs additional time to implement the new requirements should write to us explaining just how much time the State needs. Then, we will take that into account when issuing the effective date in the final rule or notice. So far this procedure has worked well, and, to our knowledge, all States have had enough time to comply with any new conditions of reapproval.

In addition, § 433.123 requires that HCFA provide at least one calendar quarter before the review period to which the new or modified performance standards and other conditions for reapproval apply.

Time Period To Dispute a Finding of Disapproval

Comment: One State agency suggest that a State would need more time than we propose to allow to dispute a finding that the State has not met a condition of reapproval.

Response: The State actually has a great deal of time to present its case. In addition to responding to the regional office findings, the State may submit evidence of satisfactory performance at any time prior to receipt of the notice of disapproval. The State may then continue to prepare its case for use before the Grant Appeals Board should it intend to contest the disallowance.

Notification of Proposed Changes to Performance Standards and System Requirements

Comment: Two State agencies quoted section 1903(r)(6)(E) of the Act, which requires the Secretary to "notify all States of proposed procedures, standards, and other requirements at least one quarter prior to the fiscal year in which such procedures, standards, and other requirements will be used for conducting reviews for reapproval." The commenters questioned whether the statute's time frame coincided with our proposal in § 433.123(c) that we will notify agencies at least one calendar

quarter before the review period to which the new or modified standards or conditions apply. The State agencies recommended that we allow the maximum time to respond to changes and provide for State participation in developing new performance standards, system requirements or other conditions of approval or reapproval.

Response: The reapproval review package containing the required standards of performance for reapproval of a State's MMIS is issued by the end of June each year to all State Medicaid directors. The actual review is conducted on the Federal fiscal year basis. This means the period to be reviewed is from October through September annually. This time frame, as reflected in this final regulation, corresponds to the statutory requirements. We do discuss proposed changes with States and have postponed adding requirements, based on the concerns of States. Implementation of proposed claims processing review requirements has been delayed and is being revised as a result of the notice and comment process.

Comments Concerning the Claims Processing Assessment System (CPAS)

A number of comments addressed a statement in the Supplementary Information portion of the NPRM that we intended to include a quality control component as a condition of MMIS approval and reapproval. Subsequent to publication of this NPRM, we published a notice and NPRM (August 9, 1983, 48 FR 36151) dealing with a new claims processing assessment system (CPAS), which we proposed as a new condition for MMIS approval and reapproval.

Comments relating to the quality control component were considered and responded to in the final rule concerning CPAS, which is entitled Medicaid Program: Claims Processing Assessment System (CPAS), BQC-18-F. That final rule was published on May 29, 1985 (40 FR 21839).

IV. Summary of Changes

42 CFR 400.310 has been amended to include the currently valid OMB control numbers for the information collection requirements in 42 CFR 433.112 and 433.117 (see section VI. Reporting Requirements, below, for additional information). In addition, although these final regulations contain the same substantive rules that were proposed in the NPRM, the following sections of the regulations have been changed solely for clarity:

(1) Section 433.110 has been revised to indicate that the requirements under section 1903(r) of the Act do not apply to American Samoa.

(2) In § 433.112, FFP for design, development, installation or improvement of mechanized claims processing and information retrieval systems, paragraph (b) has been changed to indicate that HCFA will approve the APD (rather than the system) if the several listed conditions are met. For purposes of obtaining 90 percent FFP in expenditures for design, development, or installation of a system, it may not be appropriate to refer to "approving the system".

This is because the "system" may not exist in the developmental stage. Therefore, we have changed the reference to "approval of the system" to approval of the APD. Approval of the APD prior to the expenditure of funds is a prerequisite to receipt of 90 percent FFP. This approval must be received prior to the award of the enhanced FFP.

(3) Section 433.112(b)(4) now refers to peer review organizations; that term currently includes Professional Standards Review Organizations and Utilization and Quality Control Peer Review Organizations, rather than Professional Standards Review Organizations only.

(4) Section 433.113(c) has been amended to provide that the amount of FFP that would be available retroactively for operating a system that later receives initial approval will be reduced by HCFA by the same percentage points for the same periods of time as the reduction in FFP in expenditures for compensation and training of skilled medical personnel and support staff and for general administration until the system is approved.

(5) Section 433.120(b) has been amended to explain that HCFA—

(a) Will not reduce FFP by more than 10 percentage points (rather than 10 percent) in any four-quarter period; and

(b) Will also consider the actual and potential program impact attributable to the unsatisfactory conditions in determining the amount of the FFP percentage reduction.

V. Regulatory Impact Analyses

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this final rule does not constitute a major rule because it will not have an annual impact on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions, or otherwise meet the thresholds of the Executive Order.

We believe that this final rule will not result in any significant economic impact. The final regulations implement statutory provisions for which the estimated annual impact will be no more than $34 million in FY 1985. The difference between the NPRM estimate of $25 million in FFP reductions and the current $34 million figure is the impact of inflation between FY 1982 and FY 1985. As in the NPRM, our FY 1985 figure is based on a "worst case" estimate in which ten percent in FFP for system operations would be reduced if all currently approved systems were found deficient during the next yearly review. However, based on program experience, we do not expect the actual impact of this rule to be anywhere close to $34 million in FY 1985 or meet any of the other threshold criteria of the Executive Order. Therefore, this rule does not constitute a major rule.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this final rule will not have a significant economic impact on a substantial number of small entities. As defined by the Regulatory Flexibility Act, a "small entity" includes the term "small governmental jurisdiction", which means "governments of cities, counties, towns, townships, villages, school districts or special districts, with a population of less than fifty thousand". No State or the District of Columbia meets this definition, and, as these regulations only affect States and the District of Columbia, a regulatory flexibility analysis is not required.

VI. Reporting Requirements

The system requirements in 42 CFR 433.112 (a) and (b)(2), 433.116 (e) and (g), and 433.117(b) of this final rule contain information collection requirements. As required by section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its approval of these information collection requirements. OMB approved the information collection requirements in §§ 433.112(a) and 433.117(b) under control number 0990-0058, and the information collection requirements in § 433.112(b)(2) under control number 0938-0247. When we obtain OMB approval of the information collection requirements in paragraphs (e) and (g) of § 433.116, we will publish the control number in the **Federal Register.**

Comments on the information collection requirements in this final rule should be sent directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C., 20503; Attn: Fay Iudicello.

List of Subjects

42 CFR Part 400

OMB control numbers, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Assignment of rights, Claims, Contracts (agreements), Cost allocation, Federal Financial participation (FFP), Federal matching provision, Grant-in-Aid program—health, Mechanized Claims Processing and Information Retrieval Systems (MMIS), Medicaid, State fiscal administration, Third party liability.

42 CFR Chapter IV is amended as set forth below:

I. Part 400 is amended as follows:

PART 400—INTRODUCTION; DEFINITIONS

The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

Subpart C—OMB Control Numbers for Approved Collection of Information

42 CFR 400.310 is amended by reprinting the title of the table for the convenience of the reader and adding the following in section numerical order as follows:

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control number
• • • • •	
433.112(a)	0990-0058
• • • • •	
433.112(b)(2)	0938-0247
• • • • •	
433.117(b)	0990-0058
• • • • •	

II Part 433, Subpart C is amended to read as follows:

1. In the Table of Contents to Part 433, Subpart C is revised by redesignating § 433.113 as § 433.116, § 433.114, as § 433.127, § 433.115 as § 433.123, and revising the title; and by adding new §§ 433.113, 433.114, 433.117, 433.119, 433.120, 433.121, 433.122, 433.130, and 433.131. The authority citation for Part 433 is also revised.

PART 433—STATE FISCAL ADMINISTRATION

• • • • •

Subpart C—Mechanized Claims Processing and Information Retrieval Systems

Sec.

• • • • •

Authority: Secs. 1102, 1902(a)(4), 1902(a)(25), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(25), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r) and 1396k, unless otherwise noted.

2. Section 433.110 is revised to read as follows:

§ 433.110 Basis, purpose, and applicability.

(a) This subpart implements the following sections of the Act:

(1) Section 1903(a)(3) of the Act, which provides for FFP in State expenditures for the design, development, or installation of mechanized claims processing and information retrieval systems and for the operation of certain systems. Additional HHS regulations and HCFA procedures for implementing these regulations are in 45 CFR Part 74, 45 CFR Part 95, Subpart F, and Part 11, State Medicaid Manual; and

(2) Section 1903(r) of the Act, which—

(i) Requires reductions in FFP otherwise due a State under section 1903(a) if a State fails to meet certain deadlines for operating a mechanized claims processing and information retrieval system or if the system fails to meet certain conditions of approval or conditions of reapproval;

(ii) Requires at least an annual Federal performance review of the mechanized claims processing and information retrieval systems; and

(iii) Allows waivers of conditions of approval, conditions of reapproval, and FFP reductions under certain circumstances.

(b) The requirements under section 1903(r) of the Act do not apply to Puerto Rico, Guam, the Virgin Islands, American Somoa and the Northern Mariana Islands.

3. Section 433.111 is amended by reprinting the introductory text of the section for the convenience of the reader and revising the first definition to read as follows:

§ 433.111 Definitions.

For purposes of this section:

"Advance Planning Document (APD)" means a written plan of action to acquire the proposed system. Content requirements for the APD are in 45 CFR Part 95, Subpart F, and in Part 7–71–00 of the Medical Assistance Manual.

• • • • •

4. Section 433.112 is amended by changing the words "the Administrator" to "HCFA" wherever they appear, and by revising paragraph (a), the introductory text of paragraph (b) and paragrahs (b) (2), (4), and (7) to read as follows:

§ 433.112 FFP for design, development, installation or improvement of mechanized claims processing and information retrieval systems.

(a) FFP is available at the 90 percent rate in State expenditures for the design, development, installation, or improvement of a mechanized claims processing and information retrieval system only if the APD is approved by HCFA prior to the State's expenditure of funds for these purposes.

(b) HCFA will approve the system described in the APD if the following conditions are met:

• • • • •

(2) The system meets the system requirements and performance standards in Part 11 of the State Medicaid Manual, as periodically amended.

• • • • •

(4) The system supports the data requirements of peer review organizations established under Part B of title XI of the Act.

* * * * *

(7) The costs of the system are determined in accordance with 45 CFR 74.171.

§ 433.113 [Redesignated from § 433.116]

5. Section 433.113 is redesignated as § 433.116.

6. A new § 433.113 is added to read as follows:

§ 433.113 Reduction of FFP for failure to operate a system and obtain initial approval.

(a) Except as waived under § 433.130 or 433.131, FFP will be reduced as specified in paragraph (b) of this section unless the Medicaid agency has in continuous operation a mechanized claims processing and information retrieval system that meets the following conditions:

(1) The APD for the system was approved by HCFA;

(2) The system is operational by the earlier of—

(i) September 30, 1982; or

(ii) The last day of the sixth month following the date specified for operation in the State's most recently approved APD that was submitted before October 7, 1980; and

(3) The system is initially approved by the last day of the fourth quarter that begins after the date the system became operational as determined by HCFA.

(b) HCFA will reduce FFP in expenditures for compensation and training of skilled professional medical personnel and support staff under section 1903(a)(2) of the Act, and for general administration under section 1903(a)(7) of the Act, by the following increments applied separately to those two categories of expenditures:

(1) Five percentage points for the first two quarters beginning after a deadline in paragraph (a) of this section;

(2) An additional five percentage points during each additional two-quarter period, through the quarter in which the State achieves compliance with the conditions for initial operation or initial approval of an operating system. FEP reductions will not exceed 25 percentage points for each type of reduction.

(c) The amount of FFP (determined under section 1903(a)(3)(B)) that would be available retroactively for operating a system that later receives initial approval will be reduced by HCFA by the same percentage points for the identical periods of time described in subparagraph (b)(1) of this section, until the system is initially approved. No reduction will be made after the first quarter during which the system is initially approved.

§ 433.114 [Redesignated as § 433.127]

7. Section 433.114 is redesignated as §433.127.

8. A new § 433.114 is added to read as follows:

§ 433.114 Procedures for obtaining initial approval; notice of decision.

(a) To obtain initial approval, the Medicaid agency must inform HCFA in writing that the system meets the conditions specified in § 433.116(c) through (h).

(b) If HCFA disapproves the system, or determines that the system met requirements for initial approval on a date later than the date required under § 433.113(a)(3), the notice will include—

(1) The findings of fact upon which the determination was made; and

(2) The procedures for appeal of the determination in the context of a reconsideration of the resulting disallowance, to the Departmental Grant Appeals Board.

§ 433.115 [Redesignated as § 433.123]

9. Section 433.115 is redesignated as § 433.123.

10. The redesignated § 433.116 is amended by revising paragraphs (a), (b), (c), and (h) to read as follows:

§ 433.116 FFP for operation of mechanized claims processing and information retrieval systems.

(a) Subject to § 433.113(c), FFP is available at 75 percent of expenditures for operation of a mechanized claims processing and information retrieval system approved by HCFA, from the first day of the calendar quarter after the date the system met the conditions of initial approval, as established by HCFA (including a retroactive adjustment of FFP if necessary to provide the 75 percent rate beginning on the first day of that calendar quarter).

(b) HCFA will approve the system operation if the conditions specified in paragraphs (c) through (h) of this section are met.

(c) The conditions of § 433.112(b) (1) through (4) and (7) through (9), as periodically modified under § 433.112(b)(2), must be met.

* * * * *

(h) If the State has a Medicaid fraud control unit certified under section 1903(q) of the Act and § 455.300 of this chapter, the Medicaid agency must have procedures to assure that information on probable fraud or abuse that is obtained from, or developed by, the system is made available to that unit. (See § 455.21 of this chapter for State plan requirements.)

11. New §§ 433.117, 433.119, 433.120, 433.121, 433.122 are added to read as follows:

§ 433.117 Initial approval of replacement systems.

(a) A replacement system must meet all conditions of initial approval of a mechanized claims processing and information retrieval system.

(b) The agency must submit a APD that includes—

(1) The date the replacement system will be in operation; and

(2) A plan for orderly transition from the system being replaced to the replacement system.

(c) FFP is available at—

(1) 90 percent in expenditures for design, development, and installation in accordance with the provisions of § 433.112; and

(2) 75 percent in expenditures for operation of an approved replacement system in accordance with the provisions of § 433.16(b) through (h), from the date that the system met the conditions of initial approval, as established by HCFA.

(d) FFP is available at 75 percent in expenditures for the operation of an approved system that is being replaced (or at a reduced rate determined under § 433.120 of this subpart for a system that has been disapproved) until the replacement system is in operation and approved.

§ 433.119 Conditions for yearly reapproval; notice of decision.

(a) HCFA will review yearly each system operation initially approved under § 433.114 and reapprove it for FFP at 75 percent of expenditures if the following conditions are met:

(1) The system meets the conditions of § 433.112(b) (1), (3), (4), and (7) through (9).

(2) The system meets the conditions of § 433.116 (d) through (h).

(3) The system meets the performance standards for reapproval and the system requirements in Part 11 of the State Medicaid Manual as periodically amended.

(b) HCFA will issue to each Medicaid agency, by the end of the first quarter after the fiscal year of the review, a written notice informing the agency whether its system is reapproved or disapproved. If the system is disapproved, the notice will also include—

(1) HCFA's decision to reduce FFP for system operations, and the percentage

to which it is reduced, beginning with the next calendar quarter;

(2) The findings of fact upon which the determination was made; and

(3) A statement that State claims in excess of the reduced FFP rate will be disallowed and that any such disallowance will be appealable to the Grant Appeals Board.

§ 433.120 Procedures for reduction of FFP after yearly reapproval review.

(a) If HCFA determines after the yearly review that the system no longer meets the conditions of reapproval in § 433.119, HCFA will reduce FFP for system operations for at least four quarters. However, no system will be subject to reduction of FFP for at least the first four quarters after the quarter in which the system is initially approved as eligible for 75 percent FFP.

(b) HCFA will reduce FFP in expenditures for system operations from 75 percent to no more than 70 percent and no less than 50 percent; however, HCFA will not reduce FFP by more than 10 percentage points in any four-quarter period. The percentage to which the FFP is reduced will depend primarily on the following criteria:

(1) The number of conditions judged unsatisfactory;

(2) The extent to which conditions were not met;

(3) The significance of the unsatisfactory conditions in overall mechanized claims processing and information retrieval system operations; and

(4) The actual and potential program impact attributable to the unsatisfactory conditions.

§ 433.121 Reconsideration of the decision to reduce FFP after the yearly review.

(a) The agency may appeal to the Departmental Grant Appeals Board, under 45 CFR Part 16, a disallowance concerning a reduction in FFP claimed for system operation caused by a disapproval of the State's MMIS. If the Board finds such a disallowance to be appropriate, the discretionary determination to reduce FFP by a particular percentage amount (instead of by a lesser percentage) is not subject to review by the Board unless the percentage reduction exceeds the range authorized by section 1903(r)(4)(B) of the Act.

(b) The decisions concerning whether to restore any FFP retroactively and the actual number of quarters for which FFP will be restored under § 433.122 of this subpart are not subject to administrative appeal to the Grant Appeals Board under 45 CFR part 16.

(c) An agency's request for a reconsideration before the Board under paragraph (a) of this section does not delay implementation of the reduction in FFP. However, any reduction is subject to retroactive adjustment if required by the Board's determination on reconsideration.

§ 433.122 Reapproval of a disapproved system.

When FFP has been reduced under § 433.120(a), and HCFA determines upon subsequent yearly review that the system meets all current performance standards, system requirements and other conditions of reapproval, the following provisions apply:

(a) HCFA will resume FFP in expenditures for system operations at the 75 percent level beginning with the quarter following the yearly review determination that the system again meets the conditions of reapproval.

(b) HCFA may retroactively waive a reduction of FFP in expenditures for system operations if HCFA determines that the waiver could improve the administration of the State Medicaid plan. However, HCFA cannot waive this reduction for any quarter before the fourth quarter immediately preceding the quarter in which HCFA issues the determination (as part of the yearly review process) stating that the system is reapproved.

12. The redesignated § 433.123 is revised to read as follows:

§ 433.123 Notification of changes in system requirements, performance standards or other conditions for approval or reapproval.

(a) Whenever HCFA modifies system requirements or other conditions for approval under § 433.112 or § 433.116, or performance standards or other conditions of reapproval under § 433.119, HCFA will—

(1) Publish a notice in the **Federal Register** making available the proposed changes for public comment;

(2) Respond in a subsequent **Federal Register** notice to comments received; and

(3) Issue the new or modified standards or conditions in the State Medicaid Manual.

(b) For changes in system requirements or other conditions for approval, HCFA will allow an appropriate period for Medicaid agencies to meet the requirement determining this period on the basis of the requirement's complexity and other relevant factors.

(c) For performance standards and other conditions for reapproval, HCFA will notify Medicaid agencies at least one calendar quarter before the review period to which the new or modified standards or conditions apply.

§ 433.127 [Amended]

13. The redesignated § 433.127 is amended by changing the words "The Administrator" to "HCFA" wherever they appear.

14. New §§ 433.130 and 433.131 are added to read as follows:

§ 433.130 Waiver of conditions of initial operation and approval.

(a) HCFA will waive requirements for initial operation and approval of systems under § 433.113 for a State meeting the requirements of paragraph (b) of this section and that had a 1976 population of less than one million and made total Federal and State Medicaid expenditures of less than $100 million in fiscal year 1976. Population figures are those reported by the Bureau of the Census. Expenditures for fiscal year 1976 are those reported by the State for that year.

(b) To be eligible for this waiver, the agency must submit its reasons to HCFA in writing and demonstrate to HCFA's satisfaction that an MMIS will not significantly improve the efficiency of the administration of the State plan.

(c) If HCFA denies the waiver request, the notice of denial will include—

(1) The findings of fact upon which the denial was made; and

(2) The procedures for appeal of the denial.

(d) If HCFA determines, after granting a waiver, that an MMIS would significantly improve the administration of the State Medicaid program, HCFA may withdraw the waiver and require that a State obtain initial approval of an MMIS within two years of the date of waiver withdrawal.

433.131 Waiver for noncompliance with conditions of approval and reapproval.

If a State is unable to comply with the conditions of approval or of reapproval and the noncompliance will cause a percentum reduction in FFP, HCFA will waive the FFP reduction in the following circumstances:

(a) *Good Cause.* If HCFA determines that good cause existed, HCFA will waive the FFP reduction attributable to those items for which the good cause existed. A waiver of FFP consequences of the failure to meet the conditions of approval or reapproval based upon good cause will not extend beyond two consecutive quarters.

(b) *Circumstances beyond the control of a State.* The State must satisfactorily explain the circumstances that are

beyond its control. When HCFA grants the waiver, HCFA will also defer all other MMIS deadlines for the same length of time that the waiver applies.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 25, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration

Approved: May 6, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-17875 Filed 7-29-85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Guidelines on Minimum Criteria for Identification of Nontoxic Shot Zones for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Final Guidelines.

SUMMARY: This final notice contains guidelines for determining areas where sickness and/or death of waterfowl from lead poisoning due to ingestion of spent lead shotshell pellets is considered to be a significant problem and where nontoxic shot should be used by waterfowl hunters. When waterfowl eat spent lead shotshell pellets during the course of feeding, and when these pellets are retained in the digestive tract, the birds receive a hightly concentrated dosage of lead. Sickness and death may result. The use of nontoxic shot has been found to reduce lead poisoning sickness and mortality from this source of lead. The only nontoxic shot currently available on the market is steel shot. These criteria have been developed on the basis of extensive consultation with state wildlife agencies, conservation organizations, and other interested groups. The Fish and Wildlife Service believes that they represent a practical, scientific way to identify areas that should be considered as nontoxic shot zones.

EFFECTIVE DATE: July 30, 1985.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Managment, Fish and Widlife Service, Department of the Interior, Washington, D.C. 20240 (telephone 202-254-3207).

SUPPLEMENTARY INFORMATION: The FWS is seeking to reduce losses of waterfowl from preventable causes such as disease and lead poisoning. When waterfowl eat spent lead shotshell pellets, the birds may become sick or die. The ingested pellets provide a highly concentrated and intensive dosage of lead in a rather short period of time.

In dealing with the lead problem, the FWS initiated several actions in recent months of which this criteria proposal is one of the most important. Other actions include: implementation of a lead monitoring program; preparation of a technicial supplement to the 1976 Final Environmental Impact Statement on the Use of Steel Shot for Waterfowl Hunting; in-depth analysis of the nature and extent of lead poisoning in bald eagles and other species; implementation of nontoxic shot zones to minimize the threat of lead poisoning in bald eagels; analysis of research needs relevants to the issue; analysis of past and on-going efforts to develop nontoxic shot substitutes as well as identifying opportunities for expediting such development work; and development of an information plan to ensure delivery of objective scientific information to waterfowl hunters and other concerned groups and individuals.

The reason that the criteria are important is that they provide a scientifically sound and practical way to identify and designate nontoxic shot zones on a reasonably uniform basis throughout each waterfowl flyway within the United States. Since 1976, the manner in which these zones were established has varied by region and state. Because of this, the method of zone selection has been controversial. By having developed these criteria in an open manner, with full public input, the FWS believes that the criteria represent a general consensus of the states, conservation organizations, waterfowl hunters and other interested groups.

Further, this public input has been an important supplement to the FWS's data and analysis.

As indicated in 50 CFR 20.21(j) and 50 CFR 20.108, nontoxic shot is required for hunting waterfowl in certain designated zones. Since 1978, no nontoxic shot zone could be implemented or enforced by the FWS without approval of the appropriate authorities in each state affected. The restriction on use of funds by FWS has been contained in the Interior Department Appropriations Bill each year since 1978. As a consequence, the FWS has proposed additions and deletions to the designated nontoxic shot zones for hunting waterfowl only with the approval of state authorities.

As stated in the FWS proposal of January 16, 1985 (50 FR 2298-2301) the Department's policies on lead poisoning are designed to focus designation of nontoxic shot zones on problem areas, in a partnership basis with the states. Futher, the Department's efforts in this regard apply only to hunting of ducks, geese, swans, and coots (*Fulica americana*).

Officials of the Department have heard from many interested organizations, states, and individuals concerning the nature, extent, and significance of lead poisoning of waterfowl. Through these discussions it has become clear that states, flyway councils, private organizations, and individuals want greater participation from the FWS in dealing with this problem. The FWS has responded to these requests by implementing the various actions outlined above. Specific actions leading to these final guidelines are described below.

On Spetember 25, 1984, the FWS published in the **Federal Register** a Notice of Intent (49 FR 37672). The notice solicited comments and recommendations from interested parties as to the specific criteria that should be used in proposing and selecting nontoxic shot zones within the four administrative flyways used in managing the waterfowl resource. Comments were received until October 30, 1984.

On January 16, 1985, the FWS published in the **Federal Register** (50 FR 2298-2301) a notice of draft guidelines. These guidelines contained two proposals that would provide guidance in making decisions on the use of nontoxic shot. One was recommended by representatives of the flyway councils, the other FWS. Both proposals would have established two levels of criteria: triggering criteria and decision criteria.

Triggering criteria identify counties or other designated waterfowl habitat areas as having a potential for a significant lead poisoning problem. Desiganted areas may be specific units of waterfowl habitat within a county or within several counties, as identified by the state.

Under the FMS proposal a county or designated area would have been triggered for further monitoring if it had a 3-year average annual harvest of 10 waterfowl per square mile or if 3 or more birds were diagnosed to have died from lead poisoning. Under the council representatives' proposal, the triggering would have been a harvest of 5 waterfowl per square mile or one dead bird.

Decision criteria would have been used to determine whether or not a significant lead poisoning problem exists in areas meeting either of the triggering criteria.

Under the FWS proposal, three decision criteria were specified. Under the proposal of the flyway council representatives, three of the four flyways would also use three criteria. A county or area identified by either one of the triggering criteria would then have been monitored for at least two of the decision criteria.

Under the council representatives' proposal, the Pacific flyway decision criteria would have been based essentially upon the number of dead birds diagnosed as having died from lead poisoning.

On January 27, 1985, the Pacific Flyway Council approved decision criteria that were procedurally similar but somewhat quantitatively different from the other three flyways and the FWS proposal. Specifically, a harvest level of 20 birds per square mile or a mortality of 5 dead birds would be used as the triggering criteria. This action represented a positive and constructive move by the Pacific flyway states toward consensus agreement on the criteria.

On May 7, 1985, the FWS published in the **Federal Register** (50 FR 19268–19277) modified criteria based upon public comment received on the January 16, 1985, proposal. This proposal specified a phased-in approach to implementation as recommended by the International Association of Fish and Wildlife Agencies, the ammunition companies, and certain others. Other changes included: the addition of protoporphryin as a decision criterion; a provision to allow states to use existing monitoring data that they considered current; a provision to enable states to consider bottom firmness as a means to establish priorities for monitoring; and adjustments in the criteria based upon the Pacific Flyway Council's action referenced above.

Summary of Public Comment

The comments received on the modified guidelines published on May 7, 1985, are summarized below. Many of the concerns raised were repeats of comments generated by the proposed guidelines published on January 16, 1985, and to which the FWS responded in the May 7, 1985, publication. Therefore, only those concerns that have not previously surfaced are addressed in a comprehensive way herein. FWS responses in the May 7, 1985, proposal remain as published as no respondent submitted scientific, technical or other such information or data to warrant any changes.

Comments of State Wildlife Agencies

Eleven state wildlife agencies sent letters in response to the modified guidelines published on May 7, 1985. Indiana stated its disappointment that the FWS requires three confirmed lead poisoning deaths for the triggering criteria since three of the four flyways selected one bird and that conversion to nontoxic shot zones is delayed by these criteria until 1987. South Dakota supported the modified proposal, but urged FWS to abandon the decision criteria and use only the triggering criteria as the basis for designation of nontoxic shot zones. Oregon generally approved the FWS modified guidelines, but did express concern about the cost involved with monitoring and suggested that the FWS pay the cost of liver analysis. Oregon also stated its preference that counties with less than five birds harvested per square mile be exempt from the monitoring program except in instances where the death of birds from lead poisoning or other factors dictate the need for monitoring. Finally, they felt that the criteria should address only lead shot found in gizzards and not steel. Missouri stated its concerns that included opposition to the sampling period requirement; ensuring that soft tissue samples be required only when necessary to supplement gizzard data or when proposing zone rejection; ensuring that counties with harvest levels of less than five birds per square mile be included; and that the use of existing monitoring data (gizzard samples) should be sufficient to establish a nontoxic shot zone. Arizona, Massachusetts, and Mississippi generally supported the FWS modified criteria but each state had some concerns. Arizona felt that one confirmed lead poisoned duck or goose was sufficient for the triggering criteria, and that ample time be given to allow for an orderly conversion of an area to nontoxic shot. Massachusetts opposed the late sampling period requirement. Mississippi questioned the precision of the county harvest data and opposed the collection of soft tissue data as being repetitious. Maine opposed the FWS proposal based on their doubts that nontoxic shot zones will be effective in achieving the desired acceptance of steel shot by waterfowl hunters. Florida expressed concern over the minimum lead measures proposed for liver and blood and questioned the value of liver lead content as an indicator of lead toxicosis. Their basic problem with the FWS proposal is that they see no need for the decision criteria and that the triggering criteria are adequate for establishment of nontoxic shot zones. Wisconsin commented that the modified guidelines were an improvement over previous proposals and urged the FWS to be aggressive in assuring that the guidelines are applied uniformly in all states. Wisconsin also questioned the requirement to sample 100 ducks and felt that this is unneeded and an unnecessary expense. Michigan basically supported the guidelines and felt that such guidelines were the only fair and equitable way to implement nontoxic shot regulations. Michigan also requested a review of FWS harvest data for certain Michigan counties and indicated that it may wish to pursue these and certain other counties with FWS at a future date. Michigan also commented that FWS should list the species known to be susceptible to lead poisoning, and that would cooperate fully in implementing the new guidelines.

Comments from Organizations

Comments were received from nine organizations. Two of the organizations, including the Wildlife Management Institute, favored the approach proposed by the FWS. One organization supported the FWS plan but would go further to totally ban lead shot for waterfowl hunting. One organization supported the proposal if it would help increase the number of ducks. Another organization, the National Wildlife Federation (NWF), endorsed the proposal but reiterated several of their concerns expressed on the January 16, 1985, proposal, including: any of the decision criteria alone are adequate to demonstrate a lead poisoning problem; the proposal still lacks regulatory authority; and the final criteria should be a regulation having the force of law in their view. In addition, the Federation also commented: that a protocol be developed for measuring protoporphyrin; that the final criteria will render the "Stevens Amendment" inoperative; and that a requirement be included that areas identified as having lead poisoning problems should not be opened to waterfowl hunting in non-consenting states.

Four organizations opposed the FWS proposal. Each reiterated some of the same concerns submitted in response to the January 16, 1985, proposal. These concerns included: increased crippling losses with steel shot; unsubstantiated losses due to lead poisoning; unscientific approach to the lead poisoning problem; low minimum thresholds in the FWS proposal; and the relatively minor contribution of lead pollution to the

environment by hunters when compared to the total lead pollution from all sources.

The National Rifle Association (NRA), in addition to its prior stated concerns in response to the January 16, 1985, proposal, objected on the grounds that, "there is no correlation between the proposed criteria and lead shot ingestion in the determination of a hot spot."

Comments from Individuals

Comments were received from 24 individuals. Eleven of the respondents favored the phased-in approach proposed by the FWS and 13 were in opposition. The respondents opposing the FWS proposal gave as their reasons such things as: Higher crippling losses for steel shot; unsubstantiated lead poisoning deaths; need for an alternative to steel shot, and that the amount of lead deposited in the environment annually in the form of lead shot is insignificant compared to the total deposited from all sources.

FWS Response to Comments

Most of the comments received in response to the May 7, 1985, modified proposal were essentially repetitive of concerns expressed on the January 16, 1985, proposal. For such comments FWS responses contained in the May 7, 1985, proposal still apply and will not be repeated herein. With respect to the NRA comment that "there is no correlation between the proposed criteria and lead shot ingestion in the determination of a hot spot," the FWS would like to clarify the situation. The FWS feels that there is clearly a direct correlation between the criteria and lead shot ingestion. The facts are that for any area to qualify for consideration as a nontoxic shot zone, it must meet the gizzard criterion PLUS either one of the other three decision criterion.

In addition, the FWS would like to supplement its comments to concern No. 10 as published in the May 7, 1985, proposal that pertains to environmental lead. NRA and certain others commented that lead pollution from spent shot shell pellets was relatively minor when compared with other lead sources. In a nationwide sense, the FWS would agree. Unfortunately, such lead is not evenly distributed. What respondents may have overlooked is that the continued use of lead shot shells can result in a concentrated source of lead in many of the areas where waterfowl feed. Because of this concentrated source of lead, and because of the concentrated intensive dosage that lead pellets provide to the birds, it is a far more dangerous and insidious form of pollution than is lead entering the environment from atmospheric or other sources. Although it is clear that lead from sources other than spent shot shell pellets can be picked up within the food chain, there is no evidence to show that foods containing such lead, when eaten by waterfowl or birds of prey, result in any clinical signs of lead poisoning within the birds. The FWS believes that the scientific evidence is clear, that the birds must be exposed to a highly concentrated form of lead, such as a lead shotshell pellet, fishing sinker, or other such lead object, in order for clinical signs of lead poisoning to appear.

As to the concern of Mississippi and Michigan about the precision of the county harvest data, the FWS will continue to work with the states to improve the quality of this data for this and other uses.

As to the monitoring of counties with a harvest level of less than 5 birds per square mile, the FWS believes that monitoring at this level should be left to the discretion of the states due to the extensive workload already imposed by the higher harvest levels. The FWS will, of course, continue to cooperate in any such monitoring programs to the extent practical.

The FWS firmly believes that both gizzards and soft tissue must be monitored. Gizzard ingestion data outlines the extent of exposure to spent lead shot shell pellets while soft tissue data substantiates the extent that lead has been assimilated into the body tissues, as well as the degree of sickness from lead. As outlined in the guidelines that follow, the FWS does recognize the authority of the various states to designate nontoxic shot zones based on less evidence than these guidelines require.

One state requested that FWS identify susceptible species for monitoring. The FWS would prefer that where any questions arise on the part of the states as to which species are to be monitored, this can be determined on a site-by-site basis, based upon consultation between the states and the FWS.

The FWS fully recognizes and concurs in the need for sufficient lead time to provide adequate notification to waterfowl hunters and others affected by nontoxic shot proposals. The FWS believes that it is incumbent upon all cooperators and interested groups to work in a positive and constructive manner to ensure such awareness and understanding on the part of waterfowl hunters. The adequate notification of waterfowl hunters, along with the lead time needed by ammunition manufacturers, are the principal reasons for the phased-in approach to implementation.

The NWF suggested that a rigid protocol for handling protoprophyrin samples be developed and distributed. The FWS will explore the need for this. If such a need is found to exist, such procedures will be developed and distributed as suggested.

The NWF also insists that the final guidelines constitute a regulation that carries the force of law. The FWS does not concur with this interpretation and stands by the explanation provided in response to concern No. 18 as contained in the proposal published on May 7, 1985.

The NWF believes that publication of the final guidelines will satisfy the 1985 Appropriations Act Conference Report language and that the restrictive language in the Interior Appropriations Act will be rendered inoperative. The FWS believes that the language of the statute contains a clear bar to action. The report, in an ambiguous explanation, states that this provides a continued bar "until" specific baseline criteria are promulgated. The explanation can be reconciled with the face of the statute only if it is understood as a statement of Congressional intent to drop the amendment if such criteria are created. The explanation would conflict with the face of the statute if it were read to explain a self-executing termination of the appropriations limitation . . . a termination Congress did not place in the statute. In the event of such conflict, the FWS is bound by the clear language of the statute itself.

The NWF further recommended that language be inserted in the guidelines that would keep qualifying areas closed to waterfowl hunting until such time that nontoxic shot is required on the area. The FWS believes that this is unnecessary as the states are already fully aware of the FWS authority to do this. Further, inclusion of such language in these guidelines would serve no useful purpose, especially since the guidelines do not constitute a regulation.

Final Guidelines for Identification and Establishment of Nontoxic Shot Zones

The criteria and procedures specified below are the guidelines to be followed in the identification and establishment of nontoxic shot zones to minimize lead poisoning in waterfowl.

Triggering Criteria

A county or waterfowl habitat area within one or a combination of adjoining counties, as identified by the state, will

be triggered for monitoring of the decision criteria if it meets either of the two criterion below.

Harvest per square mile. The waterfowl harvest level specified below will be used as this criterion. The specified numbers are outlined in the implementation schedule below.

Harvest level (birds per square mile)	Hunting season that monitoring is to begin	Hunting season in which nontoxic shot is to be required in qualifying areas
20	1985–86	1987–88
15	1986–87	1988–89
10	1987–88	1989–90
5	1988–89	1990–91

A state may monitor areas with a harvest level of less than 5 per square mile, if it feels there is a need to do so. Monitoring would automatically be required if the three dead bird triggering criterion is met. Otherwise, monitoring at harvest levels below 5 per square mile is purely at the discretion of the respective state.

The number of birds determined to be harvested in a county or other designated area will be based upon periodic reports issued by the FWS or upon other reliable data for the counties or designated areas in question.

Obviously, if a state has no counties or designated areas meeting the 20 bird harvest criterion, then it should proceed to monitor the 15 or 10 bird level, whichever is applicable. On the other hand, a few states have so many counties at the 20 and 15 bird harvest levels that it may not be possible to adhere to this schedule. In such cases, the states and the FWS must negotiate an appropriate schedule and any cooperative monitoring work. This will be achieved as follows: Within 90 days of determining that a triggering criterion has been met, the state(s) must make a commitment to monitor and that such monitoring will begin within one year. Such commitment and a proposed schedule for monitoring will be submitted to FWS for approval by the Director. This is the preliminary step to negotiating an acceptable cooperative approach to the monitoring and tissue analysis workload.

Number of dead waterfowl diagnosed as having died from lead poisoning during the year. This criterion is three dead waterfowl. The FWS feels, as indicated in previous proposals, that this number is more likely to be representative of a significant problem in a given location, since it is likely that the birds picked up the lead in the area where they died. Not only will this help focus monitoring efforts on areas where problems are most likely to exist, it will significantly reduce the initial costs associated with monitoring as required under decision criteria discussed below.

Decision Criteria

An area identified by either triggering criterion will be monitored for ingested shot, and at least one of the other three decision criterion. A sample size of at least 100 birds is required.

One or more ingested shot in five percent or more of the gizzards examined, PLUS 2ppm lead (wet weight), in a minimum of five percent of the liver tissues sampled OR 0.2ppm lead in five percent of the blood samples drawn from hunter-killed or live-trapped waterfowl, OR a protoporphyrin level of 40μg/dl in five percent of the blood samples would serve as the decision criterion.

Gizzard samples are a required part of the monitoring process. Shot in the gizzards reflects the degree of exposure to lead shot. Lead in the liver or blood reveals that either lead pellets or some other type of lead has been assimilated in tissues. Lead in the liver or blood, when analyzed in combination with the incidence of shot in gizzards, provides basic scientific data for making decisions on the source and extent of lead poisoning within a given area.

Use of existing monitoring data. States are free to use existing monitoring data on triggered areas, provided the data is recent. Many states have already completed extensive monitoring for some areas. If the state feels that the data are current and can be realistically defended, then no additional monitoring would be necessary or required. This approach would further reduce the financial requirements imposed by these criteria.

Recognition of state authority. The FWS recognizes that state wildlife agencies have the authority to require nontoxic shot on any additional areas where they determine that a problem exists by means other than these criteria. The FWS in no way implies to the states that areas not meeting these criteria should be excluded from nontoxic shot. Individual states may therefore determine for their own management purposes, that the use of lead shot in waterfowl feeding areas in any degree should be prohibited. The FWS will continue to honor States' requests to establish nontoxic shot zones in areas not meeting established minimum Federal criteria. It is the responsibility of the individual states to justify and defend any such actions they take in this regard.

Action upon completion of monitoring. If the results of monitoring are *positive* for the gizzard criterion PLUS either the liver, blood or protoporphyrin criterion, the county or designated area will be proposed as a nontoxic shot zone during the next scheduled update of the Federal regulations for nontoxic shot zones for waterfowl. If the results of monitoring are *negative*, the area will be considered not to have a lead poisoning problem unless, at a subsequent date, three or more dead waterfowl confirmed as lead poisoned are reported from the area. In that event, monitoring will be reinstituted. The state may, however, decide to remonitor the county or area for a second successive year or to reschedule it for monitoring at some point in the future when all other counties or areas that have met a triggering criterion have been checked. This additional effort is purely at the option of the state.

If an area is designated as a nontoxic shot zone and then is remonitored and found not to meet the decision criteria, it should remain as a nontoxic shot zone because this is strong evidence that lead poisoning is being reduced. Should, however, the state decide to revert back to the use of lead on such areas, it would be necessary to remonitor the area at a later date to determine if the area should remain in lead for an additional period. Once any such converted area has been found to have a reoccurrence of the lead poisoning problem, it should not in the future be converted back to a lead area.

Use of bottom data. The FWS recognizes that some specific areas where waterfowl are hunted may have bottoms that are very oozy and are so soft that they resemble whipped cream in firmness. Thus, spent lead shotshell pellets may soon sink out of reach of feeding waterfowl. In such areas identified by the state, the state may delay monitoring to focus initial monitoring efforts on what it considers to be higher priority areas.

Dated: July 10, 1985.

Robert A. Jantzen,

Director.

TABLE 1.—FWS FINAL MINIMUM CRITERIA OR GUIDELINES FOR ESTABLISHING NONTOXIC SHOT ZONES

Harvest level	Monitoring begins	Qualifying areas converted
I. Triggering Criteria [1]		
Harvest per sq. mi. (by county, or other designated areas as jointly agreed by State and FWS; harvest estimate based on most recent FWS or State data):		
20 or more	1985–86	1987
15 or more	1986–87	1988
10 or more	1987–88	1989

TABLE 1.—FWS FINAL MINIMUM CRITERIA OR GUIDELINES FOR ESTABLISHING NONTOXIC SHOT ZONES—Continued

Harvest level	Monitoring begins	Qualifying areas converted
5 or more	1988–89	1990
Dead waterfowl (individual specimens confirmed as lead poisoned during the year)	3.	
II. Decision Criteria [2]		
Gizzard (ingested shot) [3]	1 or more shot in 5%.	
Liver (lead content)	2 ppm wet weight in 5%.	
Blood (lead content)	0.2 ppm in 5%.	
Protoporphyrin [4]	40 µg/dl in 5%.	
III. Other Conditions		
Sample size (species known to be susceptible to lead poisoning.[5]	100 (hunter killed or trapped).	
Sampling procedures [6]	Most susceptible species only.	

[1] In areas where one or more of the triggering criteria are met, a state must monitor the gizzard criterion and any one of the other three decision criteria. Within 90 days of making a determination that any triggering criterion has been met, the state must provide the FWS with either a commitment to monitor the area within 1 year or submit a proposed schedule for monitoring to begin within 1 year for approval by the Director.

[2] Any area meeting the gizzard criterion plus 1 of the other decision criterion will be proposed for nontoxic shot.

[3] X-ray examination of gizzards is preferred.

[4] Sample techniques and procedures must be approved by FWS so as to ensure the proper sampling and processing techniques are followed. The FWS also reserves the right to subsample up to 10 percent of the samples for lead concentration.

[5] Applies only to decision criteria.

[6] Specimens can be collected by shooting or trapping. No more than 25% of a hunter-killed sample should occur in the first week of the hunting season. At least 50% of a sample of hunter-killed birds should occur in the last half of the waterfowl season.

[FR Doc. 85–18004 Filed 7–29–85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 31012–199]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA issues this notice to increase the Harpoon Boat category quota of giant Atlantic bluefin tuna from 60 short tons (st) to 75 st and to decrease the inseason adjustment amount from 104 st to 89 st accordingly. The increase is necessary to prevent an early closure of this segment of the fishery.

EFFECTIVE DATE: July 29, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617–281–3600, extension 325; or David S. Crestin, 617–281–3600, extension 253. The address for both individuals is National Marine Fisheries Service, Northeast Region, Management Division, State Fish Pier, Gloucester, Massachusetts 01930–3097.

SUPPLEMENTARY INFORMATION: Final regulations governing the Atlantic bluefin tuna fishery were published on June 17, 1983 (48 FR 27745). Section 285.22(g) provides that the Regional Director may allocate during the fishing season any portion (from zero to 100 percent) of the inseason adjustment amount (104 st) to any segment of the fishery. The Regional Director is required to publish a notice of allocation in the **Federal Register** before such allocation becomes effective. Consistent with § 285.22(g), the Regional Director has considered the following factors:

(1) The usefulness of information obtained from catches of the particular gear segment of the fishery for biological sampling and monitoring the status of the stock;

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

The Regional Director has determined that a 15 st allocation to the Harpoon Boat category is appropriate based on these factors.

Current landing reports indicate that the Harpoon Boat quota of 60 short tons of giant Atlantic bluefin tuna will be taken by July 29, 1985. Without an allocation from the inseason adjustment amount, fishing for giant Atlantic bluefin tuna by vessels permitted in the Harpoon Boat category will cease for the remainder of 1985. A significant increase in the number of vessels permitted in the Harpoon Boat category has occurred from 1980 to the present (30 to 226). This increase in the number of vessels actively engaged in this fishery has occurred at the same time as a substantial reduction in the quota (150 st to 60 st). There is little doubt that, with the increased number of vessels permitted in the Harpoon Boat category and landings to date, a 15 st increase in the quota could be taken prior to the end of the 1985 fishing season.

An allocation of 15 st from the inseason adjustment amount would leave 89 st available for potential allocation to other gear categories later in the fishing season. Based on current landings data for all gear categories in the Atlantic bluefin tuna fishery, the 89 st remaining in the inseason adjustment amount should be more than sufficient to provide for potential shortages in other gear segments.

The Regional Director, therefore, increases the Harpoon Boat quota in § 285.22(b) from 60 st to 75 st and decreases the inseason adjustment amount in § 285.22(g) from 104 st to 89 st. When the adjusted Harpoon Boat quota is reached, the further taking and retention of Atlantic bluefin tuna by vessels permitted in this category will be prohibited for the remainder of 1985.

Notice of this action has been mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters

This action is taken under the authority of 50 CFR 285.22, and is taken in compliance with Executive Order 12291.

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

Dated: July 25, 1985.

William G. Gordon,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 85–18040 Filed 7–25–85; 4:31 pm]

BILLING CODE 3510-22-M

50 CFR Part 652

[Docket No. 50575–5075]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Georges Bank area closure.

SUMMARY: NOAA issues this notice closing the Georges Bank surf clam fishery. The action is necessary because harvest from the fishery will reach the allocation for the third quarter of the fishing year on or about July 25, 1985. The intended effect of the closure is to prevent harvests from exceeding the annual quota for the fishery.

EFFECTIVE DATE: 0001 hours Eastern daylight time (E.d.t.) July 26, 1985, through 2400 hours E.d.t. September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Monique Rutledge, 617–281–3600, ext. 351.

SUPPLEMENTARY INFORMATION: Emergency regulations implementing portions of proposed Amendment 6 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) were published May 30,

1985 (50 FR 23014). The regulations provide at § 652.22(h)(2) that if the Regional Director determines, based on logbook reports, processor's reports, vessel inspections, or other information, that the quarterly allocation for surf clams will be exceeded, the Secretary will publish a notice in the **Federal Register** stating the determination and stating a date and time for closure of the fishery.

Dense beds of surf clams were discovered on Georges Bank in mid-1984. Subsequent research resulted in a stock assessment by the NMFS Northeast Fisheries Center supporting an optimum yield range of 25,000–300,000 bushels. Management measures for the Georges Bank fishery were incorporated into Amendment 6, which is currently under Secretarial review. Emergency regulations implementing portions of Amendment 6 established the Georges Bank Area and set the maximum annual quota at 300,000 bushels with the following quarterly allocations: 30,000 bushels in the first quarter; 120,000 bushels in the second quarter; 120,000 bushels in the third quarter; and 30,000 bushels in the fourth quarter.

As of July 12, 1985, approximately 225,000 bushels of surf clams had been harvested on Georges Bank. The cumulative allocation for the first three quarters of 1985 is 270,000 bushels. The Regional Director has reviewed the landing data and information which indicate that this allocation will be reached by July 25, 1985. The Regional Director has determined, therefore, that the fishery will close at the end of the fishing day on July 25, 1985. It is expected that the fishery will reopen on October 1, 1985 with the fourth quarter allocation, if either the emergency regulations currently in effect are extended, or Amendment 6 to the FMP is approved by the Secretary of Commerce (review in progress).

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

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

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: July 25, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-18039 Filed 7-25-85; 4:31 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 146
Tuesday, July 30, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

Nectarines, Pears, Plums and Peaches Grown in California; Proposed Amendment of Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the container and pack regulations for nectarines, peaches, and plums grown in California. The principal changes would add labeling requirements for consumer packages and a new metric container, the No. 22G standard lug box used in shipping. This action would be in accordance with the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Orders 916 and 917. These actions were unanimously recommended by the commodity committees established under these orders.

DATE: Comments are due by August 14, 1985.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2069–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

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 action 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 determined that this action will not have a significant economic impact on a substantial number of small entities.

This proposed rule is issued under the marketing agreements, as amended, and Marketing Orders 916 and 917, as amended (7 CFR Parts 916 and 917), regulating the handling of nectarines, pears, plums, and peaches grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Shipments of these California fruits are regulated by container and pack under Nectarine Regulation 8 (7 CFR Part 916), Peach Regulation 8 (7 CFR Part 917), and Plum Regulation 17 (7 CFR Part 917). Because these regulations do not change substantially from season to season, they were issued on a continuing basis subject to amendment, modification or suspension as may be recommended by the applicable committee and approved by the Secretary. This proposed rule is based upon recommendations and information submitted by the committees and other available information.

The proposed marking requirements for master containers of consumer packages of nectarines, peaches and plums are designed to prevent misrepresentation of the pack, size and net weight of the specific fruits and promote buyer confidence. The proposal would also require marking requirements for individual consumer packages of fruit. Since consumer packages are removed from master containers, they should also be marked to inform the buyer of the contents of the package. The proposal would also specify marking requirements for a new metric container (No. 22G standard lug box) for plums and nectarines and experimental containers for peaches to assure that fruit packed in these containers is appropriately represented to the trade.

This proposed rule would exempt master containers of consumer packages of nectarines and peaches and individual consumer packages of such fruit from the requirements of standard pack except that nectarines shall be fairly uniform in size. A similar size uniformity requirement is currently in effect for peaches and plums. Other standard pack requirements are generally applicable to fruit packed in boxes and not consumer packages, e.g. polybags. The proposal would require that master containers of consumer packages of nectarines, peaches and plums be marked with the number of individual consumer packages and the net weight of each individual consumer package within the master container, minimum size of the fruit (e.g. 80 size), and name and address of the shipper. Individual consumer packages of the specified fruits would have to be marked with the net weight and name and address of the shipper. Currently only the regulation for plums requires that master containers of consumer packages and individual consumer packages be marked with the net weight.

This proposed rule would also require the new metric container, the No. 22G standard lug box, of nectarines and plums and experimental containers of peaches packed in molded forms to be marked with the number of fruit in each container such as "80 count", "88 count", etc. and to be marked with the size corresponding to the number of such fruit when packed in molded forms in the No. 22D standard lug box. The proposal would require each No. 22G standard lug box of loose-filled nectarines to be marked with the words "25 pounds net weight". This is the same requirement in effect for loose-filled nectarines in the No. 22D standard lug box.

This proposed rule provides a 15-day comment period. A longer comment period would be contrary to the public interest and would serve no useful purpose since fresh shipments of California nectarines, peaches, and plums are currently underway.

List of Subjects

7 CFR Part 916

Marking agreements and orders, Nectarines, California.

7 CFR Part 917

Marketing agreements and Orders, Pears, Plums, Peaches, California.

1. The authority citations for 7 CFR Parts 916 and 917 continue to read as follows:

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

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.350 is revised to read as follows:

§ 916.350 Nectarine Regulation 8.

(a) No handler shall ship any package or container of any variety of nectarines except in accordance with the following terms and conditions:

(1) Such nectarines, when packed in any closed package, or container, except master containers of consumer packages and individual consumer packages therein, shall conform to the requirements of standard pack: *Provided*, That nectarines in any container shall be fairly uniform in size.

(2) Each package or container of nectarines shall bear, on one outside end in plain sight and in plain letters, the name "nectarines" and except for consumer packages in master containers the name of the variety, if known or, when the variety is not known, the words "unknown variety."

(3) Each package or container of nectarines shall bear, on one outside end in plain sight and in plain letters, the following count and/or size description of the nectarines as applicable:

(i) The size of nectarines packed in molded forms (tray-packs) in No. 22D standard lug boxes, No. 22G standard lug boxes, cartons, No. 12B fruit (peach) boxes or flats and the size of wrapped nectarines packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of nectarines in each container, such as "80 count," "88 count," etc.

(ii) The size of nectarines in molded forms (tray packs) in No. 22G standard lug boxes shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D standard lug box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc, along with count requirements in paragraph (a)(3)(i).

(iii) The size of nectarines loose-filled or tight-filled in any container shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D standard lug box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc.

(4) Each No. 22D standard lug box and No. 22G standard lug box of loose-filled nectarines shall bear on one outside end, in plain sight and in plain letters, the words "25 pounds net weight."

(5) Each No. 22E standard lug box of loose-filled nectarines shall bear on one outside end, in plain sight and in plain letters, the words "35 pounds net weight."

(6) Each bulk bin container of loose-filled nectarines shall contain not less than 400 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

(i) The name and address (including zip code) of the shipper.

(ii) The net weight.

(7) Each master container when filled with nectarines packed in consumer packages shall bear on one outside end in plain sight and in plain letters the following information:

(i) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents.

(ii) The name and address (including zip code) of the shipper.

(8) Each individual consumer package shall bear the name and address of the shipper and the net weight.

(b) As used herein, "standard pack" and "fairly uniform in size" shall have the same meaning as set forth in U.S. Standards for Grades of Nectarines (§§ 51.3145 to 51.3160) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. "No. 12B standard fruit box" measures 2⅜ to 7⅛ x 11½ x 16⅛ inches, "No. 22D standard lug box" measures 2⅞ to 7⅛ x 13½ x 16⅛ inches, "No. 22E standard lug box" measures 8¾ x 13½ x 16⅛ inches, "No. 22G standard lug box" measures 7⅜ to 7½ x 13¼ x 15 ⅞ inches. All dimensions are given in depth (inside dimension) by width by length (outside dimension).

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

3. Section 917.442 is revised to read as follows:

§ 917.442 Peach Regulation 8.

(a) No handler shall ship any package or container of any variety of peaches except in accordance with the following terms and conditions:

(1) Such peaches, when packed in any closed package or container, except master containers of consumer packages and individual consumer packages therein, shall conform to the requirements of standard pack.

(2) Each package or container of peaches shall bear, on one outside end in plain sight and in plain letters the name "peaches" and except for consumer packages in master containers the name of the variety, if known or, when the variety is not known, the words "unknown variety."

(3) Each package or container of peaches shall bear, on one outside end, in plain sight and in plain letters, the following count and/or size description of the peaches as applicable:

(i) The size of peaches packed in molded forms (tray-packs) in No. 22D standard lug boxes, experimental containers, cartons, No. 12B fruit (peach boxes, or flats and the size of wrapped peaches packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of peaches in the container, such as "80 count, "88 count," etc.

(ii) The size of peaches in molded forms in experimental containers shall be indicated according to the number of such peaches when packed in molded forms in the No. 22D standard lug box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc, along with count requirements in paragraph (a)(3)(i).

(iii) The size of peaches loose-filled or tight-filled in any container shall be indicated according to the number of such peaches when packed in molded forms in the No. 22D standard lug boxes, in accordance with the requirements of standard pack, such as "80 size," "88 size," etc.

(4) The variation in diameter between the smallest and largest peach in any individual container shall not exceed one-fourth (¼) inch for size 80 and smaller and three-eight (⅜) inch for peaches larger than size 80: *Provided*, That not more than five (5) percent, by count, of the peaches in any individual container may fail to meet the diameter requirements of this paragaph.

(5) Each No. 22D standard lug box of loose-filled peaches shall bear on one outside end, in plain sight and in plain letters, the words "25 pounds net weight."

(6) Each No. 22E standard lug box of loose-filled peaches shall bear on one outside end, in plain sight and in plain letters, the words "35 pounds net weight."

(7) Each bulk bin container of loose-filled peaches shall contain not less than 400 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

(i) The name and address (including zip code) of the shipper.

(ii) The net weight.

(8) Each master container when filled with peaches packed in consumer packages shall bear on one outside end in plain sight and in plain letters the following information:

(i) The number of indiv idual consumer packages, the net weight of each consumer package, and the size description of the contents.

(ii) The name and address (including zip code) of the shipper.

(9) Each individual consumer package shall bear the name and address of the shipper and the net weight.

(b) As used herein, "standard pack" shall have the same meaning as set forth in U.S. Standards for Grades of Peaches (§§ 51.1210 to 51.1223) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. "No. 12B standard fruit box" measures 2⅜ to 7⅛ x 11½ x 16⅛ inches, "No. 22D standard lug box" measures 2⅞ to 7⅛ x 13½ x 16⅛ inches. "No. 22E standard lug box" measures 8¾ x 13½ x 16⅛ inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimension).

4. Section 917.454 is amended by revising paragraphs (a) and (d) to read as follows:

§ 917.454 Plum Regulation 17.

(a) No handler shall ship any package or container of any variety of plums except in accordance with the following terms and conditions:

(1) Such plums, when shipped in closed packages or containers, except master containers of consumer packages and individual consumer packages therein, shall conform to the requirements of standard pack:

(2) The diameters of the smallest and largest plums in any individual package or container shall not vary more than one-fourth (¼) inch: *Provided*, That a total of not more than five (5) percent, by count, of the plums in any package or container may fail to meet this requirement.

(3) Each package or container of plums shall bear on one outside end, in plain sight and in plain letters, the name "plums" and except for consumer packages in master containers the name of variety if known or, when the variety is not known, the words "unknown variety".

(4) Each package or container of plums shall bear on one outside end, in plain sight and in plain letters, the size description of the contents which description shall conform to the following as applicable:

(i) The size of plums in four-basket crates shall be indicated in accordance with the arragnement of the plums in the top layer of the baskets, such as "4 x 4 size," "4 x 5 size," etc.

(ii) The size of plums loose-filled or tight-filled in standard lug boxes, cartons, or other packages or containers shall be indicated in accordance with the equivalent size designation for such plums when packed in four-basket crates, such as "4 x 4 size," etc.

(iii) The size of plums packed in molded forms (tray-packs) in carton or lugs and of wrapped plums packed in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of plums in the container, such as "88 count," "108 count, " etc.

(iv) The size of plums packed in molded forms (tray-packs) in No. 22G standard lug boxes shall be indicated according to the number of such plums when packed in molded forms in the No. 22D standard lug box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc., along with count requirements in paragraph (a)(4)(iii).

(5) Each package or container of loose-filled or tight-filled plums other than bulk bin containers, master containers of consumer packages, and individual consumer packages in master containers shall bear on one outside end, in plain sight and in plain letters, the words "28 pounds net weight."

(6) Each bulk bin container of loose-filled plums shall contain not less than 400 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

(i) The name and address (including zip code) of the shipper.

(ii) The net weight.

(7) Each master container when filled with plums packed in consumer packages shall bear on one outside end in plain sight and in plain letters the following information:

(i) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents.

(ii) The name and address (including zip code) of the shipper.

(8) Each individual consumer package shall bear the name and address of the shipper and the net weight.

(b) * * *

(c) * * *

(d) When used herein "standard pack" and "diameter" shall have the same meanings as set forth in the U.S. Standards for Grades of Fresh Plums and Prunes (§§ 51.1520 to 51.1538) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. "No. 12B standard fruit box" measures 2⅜ to 7⅛ x 11½ x 16⅛ inches, "No. 22D standard lug box" measures 2⅞ to 7⅛ x 13½ x 16⅛ inches and "No. 22G standard lug box" measures 7⅜ to 7½ x 13¼ x 15⅞ inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimensions).

Dated: July 25, 1985.

Thomas R. Clark,

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

[FR Doc. 85-17977 Filed 7-29-85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-081]

African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Exension of comment period for proposed rule.

SUMMARY: A document published in the **Federal Register** on June 28, 1985, proposed to amend the regulations to provide a mechanism to allow, under certain conditions, pork and pork products originating in a country believed to be free of African swine fever (ASF) to be imported into the United States after being processed in a country where ASF exists or is reasonably believed to exist. This document extends the comment period for this proposed rule for an additional 30 days. The extension of the comment period is needed to allow industry representatives and other interested persons adequate time in which to prepare comments.

DATE: Written comments must be received on or before August 29, 1985.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-034. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION: On June 28, 1985, the Department published in the **Federal Register** (50 FR 26782-26785) a document which proposed to amend the regulations to provide a mechanism to allow, under certain conditions, pork and pork products originating in a

country believed to be free of African swine fever (ASF) to be imported into the United States after being processed in a country where ASF exists or is reasonably believed to exist.

The proposed rule provided for receipt of comments on or before July 29, 1985. An industry representative has requested additional time to allow several industry committees an opportunity to review the proposal and offer comments. It has been determined that additional time is needed to provide industry representatives and other interested persons an adequate opportunity to provide meaningful comments. Therefore, the comment period is extended for an additional 30 days. Accordingly, any additional written comments must be received on or before August 29, 1985.

Done at Washington, DC, this 25th day of July 1985.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-18031 Filed 7-29-85; 8:45 am]

BILLING CODE 3410-34-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-22243; S7-37-85]

Public Reference Facilities in Regional Offices of the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendment of rule.

SUMMARY: The Commission proposes to revise the rule which requires certain categories of records to be maintained on file for reference by members of the public in regional offices other than New York and Chicago. Because of the increasing availability of information through private sector services, Commission resource limitations and changes in the needs of the public for information, certain corporate filings will no longer be maintained for public use in these offices. Various reference materials generated by the agency concerning Commission activities will continue to be available.

DATE: Comments must be received by August 29, 1985.

ADDRESS: Interested persons should submit three copies of their comments to John Wheeler, Secretary, SEC, Washington, D.C. 20549. Reference should be made to File No. S7-37-85.

FOR FURTHER INFORMATION CONTACT: Jonathan G. Katz (202) 272-7440, Director, Office of Consumer Affairs and Information Services, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public amendments to rule 80(c)(1)(ii) of the Commission's regulations regarding information and requests (17 CFR 200.80(c)(1)(ii), by which regional offices other than those in New York and Chicago would no longer be required to maintain certain regional firm information. The Commission's regional offices in New York and Chicago have public references facilities containing microform records of all public filings made with the Commission. Present Commission regulations (See 17 CFR 200.80(c)(1)(ii) also require regional offices to maintain certain documents on file and available for public reference, principally the public filings of all registered companies headquartered in the Region, broker/dealer and investment adviser applications and Regulation A filings by firms within each respective region.

Most regional offices other than New York and Chicago do not have 302.019 adequate staff resources or facilities to accommodate public access to these records. Some of the items are no longer available in all regional offices or are maintained for very limited periods of time. There is not significant public interest in reference facilities which specialize only in information on companies headquartered in a given region.

For these reasons, Regional offices other than those in New York and Chicago will no longer be required to maintain for public access the reports by entities headquartered in the region. Such records will be available through the Commission's Public Reference Branch in Washington, D.C., or through any of a number of private firms offering such information to the public. The Commission believes that these changes will have no significant impact on any substantial number of small entities. It seems that there is little or no utilization of those services proposed to be eliminated. However, the Commission requests in particular comments specifically addressing the issue of public utilization of the *SEC Docket* and the *SEC News Digest*. Availability of other reference materials in the regional offices will be left to the discretion of each Regional Administrator.

The proposed amendment does not affect the maintenance of microform records at the New York and Chicago regional offices which will continue to make available copies of all filing with the Commission, nor does the amendment affect the availability of records through the Commission's Public Reference Branch in Washington, D.C. The Commission will simultaneously update its regulations at §§ 200.80(c)(1), 200.80(c)(1)(iii), and 200.90e, to reflect the closing of public reference facilities at the Los Angeles Regional Office.

Regulatory Flexibility Certification

Pursuant to section 605(b) of the Regulatory flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the proposed amendments to Rule 80(c)(1)(ii) of the Commission's regulations regarding information and requests [17 CFR 200.80(c)(1)(ii)] will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy Securities.

Statutory Basis and Text of Proposed Amendment

Pursuant to the Securities Exchange Act of and particularly Section 23(a) thereof, 15 U.S.C. 78w(a), the Commission proposes to amend § 200.80 of Title 17, Chapter II, of the Code of Federal Regulations to read as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS: AND INFORMATION AND REQUEST

1. The authority citation for Part 200, Subpart D is amended by adding a citation for § 200.80 as follows:

Authority: 60 Stat. 383, as amended, 31 Stat. 54, secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 5 U.S.C. 552, 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11. Section 200.80 also issued under 5 U.S.C. 552b; Pub. L. 87-592, 76 Stat. 394, 15 U.S.C. 78d-1 78d-2; Pub. L. 93-502; Pub. L. 93-579; 15 U.S.C. 78a et seq., as amended by Pub. L. 84-29 and by secs. 11a, 15, 19 anmd 23 of Pub. L. 98-38 (15 U.S.C. 76k-1, 78o, 78s and 78w); 11 U.S.C. 901, 1109(a). * * *

2. In § 200.80 by revising the second sentence of paragraph (c)(1) introductory text, and paragraph (c)(1)(ii), and by amending paragraph (c)(1)(iii) introductory text, by revising the phrase, "In the New York, Chicago and Los Angeles regional offices," to read "In the New York and Chicago regional offices."

§ 200.80 Commission records and information.

(c)(1) * * * Coin-operated machines, which are available to requesters on a self-service basis, can be used to make immediate copies up to 8½ by 14 inches in size of materials that are available for inspection in the Washington, D.C., New York and Chicago offices.

* * * * *

(ii) All regional Offices of the Commission have available for public examination the materials set forth in paragraph (a)(2) of this section and the *SEC Docket, SEC News Digest* and other SEC publications. Blank forms as well as other general information about the operations of the Commission described in paragraph (a)(1) of this section may also be available at particular regional offices.

* * * * *

3. In § 200.80e by revising the first sentence in the paragraph captioned *"Public reference copying facilities"* to read as follows:

§ 200.80e Appendix E—Schedule of fees for records services.

* * * * *

Public reference copying facilities. In addition to the demand-order facsimile copying services described above, the service contractor maintains customer operated paper-to-paper and fiche-to-paper copiers in the public reference rooms of the Commission in Washington, D.C., New York City and Chicago. * * *

* * * * *

By the Commission.

John Wheeler,

Secretary.

July 15, 1985.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to 17 CFR 200.80 pertaining to material maintained for public reference in regional offices other than New York and Chicago published in Release No. 34-22243 (July 18, 1985) will not, if promulgated, have a significant economic impact on a substantial number of small entities. There is no evidence of significant utilization of public reference facilities in the affected regional offices by a substantial number of issuers, broker/dealers, transfer agents, investment companies or other small entities.

John S.R. Shad,

Chairman.

July 16, 1985.

[FR Doc. 85-17813 Filed 7-29-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM85-7-000]

Revised Procedures for Stripper Gas Well Category Determinations Under the NGPA; Proposed Rulemaking

July 25, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend its stripper gas well regulations to eliminate certain burdensome filing requirements. The proposed rule would eliminate the requirement in 18 CFR 271.804(c) (1984) that new applications for temporary pressure build-up determinations be filed each time a well overproduces as a result of temporary pressure build-up. Instead, the producer could obtain a one-time pressure build-up determination which would permit continued qualification for stripper gas well prices so long as total production during any 90-day production period did not exceed 5400 Mcf. The Commission is also proposing to eliminate the requirement that producers file subsequent notices of disqualification for stripper gas wells determined to be subject to pressure build-up, unless total production for a 90-day period exceeds 5400 Mcf.

DATE: Comments on the proposed rule are due on September 30, 1985. Any requests for public hearing must be received by Augusrt 26, 1985.

ADDRESS: Comments and requests for hearing must be addressed to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should refer to Docket No. RM85-7-000. An original and fourteen copies should be filed.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8308.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is proposing to amend its stripper gas well regulation [1] to permit producers to obtain a one-time determination that a stripper gas well is subject to temporary overproduction caused by pressure build-up during shut-in (a pressure build-up determination).[2] Such a determination will permit the well to continue to qualify for stripper gas well prices after all future shut-ins, as long as production does not exceed 5400 Mcf during a 90-day production period, without requiring the producer to file new applications for temporary pressure build-up determinations. The Commission is also proposing to eliminate the requirement that producers file subsequent notices of disqualification for stripper gas wells determined to be subject to pressure build-up, unless total production for a 90-day period exceeds 5400 Mcf.

II. Background

Section 108 of the Natural Gas Policy Act of 1978 (NGPA)[3] defines a stripper gas well generally as a well producing non-associated natural gas at a rate not exceeding an average of 60 Mcf per production day for a 90-day production period. A production day includes days during which gas is produced or production is prohibited by State law or state-approved conservation practice.[4] A 90-day production period is any period of 90 consecutive days, including days in which gas is not produced as a result of voluntary action by the operator by excluding other days of non-production.[5] A producer must file an application with the appropriate jurisdictional agency for a determination that a well qualifies as a stripper well.[6]

When a producer temporarily shuts in a well, for example to permit maintenance or repair work, pressure builds up in the well bore. This cause greater than normal production for a period after the well is reopened. Such shut-in days are included in a 90-day production period. However, unless required by state law or state-approved conservation practice, the shut-in days are not production days for purposes of determining the well's average rate of

[1] 18 CFR Part 271, Subpart H (1984).

[2] A well is considered to be "shut-in" when a producer stops production from it.

[3] 15 U.S.C. 3318 (1982).

[4] 18 CFR 271.803(d) (1984).

[5] 18 CFR 271.803(c)(2) (1984). In order to avoid the necessity of bringing additional days into a 90-day production period when some are excluded pursuant to the above definition, the Commission has provided that, where records for a 90-consecutive-calendar-day period indicate that the well produced 60 Mcf or less per production day during that period, a rebuttable presumption is created that the well produced 60 Mcf or less during the statutory 90-day production period. 18 CFR 271.803(c)(2) (1984).

[6] 15 U.S.C. 3413 (1982) (section 503 of the NGPA).

production during the 90-day period. Therefore, if a temporary pressure build-up causes average production from a previously qualified well to exceed 60 Mcf per day for the actual production days in any 90-day period during part of which the well had been shut in, the well would be disqualified as a stripper gas well.[7]

The Commission has determined that short-term overproduction resulting from temporary pressure build-up should not disqualify a stripper well. It issued an interim rule,[8] later finalized,[9] permitting a previously-qualifying stripper well which produces an average of more than 60 Mcf per production day during a 90-day period to continue to qualify, if the producer obtains a determination from the jurisdiction agency that: (1) Average production exceeded 60 Mcf because of a pressure build-up resulting from a temporary shut-in, (2) total production for the relevant 90-day period did not exceed 5400 Mcf, and (3) the well would likely have produced at no more than an average of 60 Mcf per production day during the 90-day period but for the shut-in.[10] Under the rule, the producer must obtain a new temporary pressure build-up determination for each 90-day period the well overproduces after a shut-in in order to avoid disqualification during the period of temporary overproduction. Also, the operator of the well and any purchaser must give notice to one another and the Commission that production has averaged more than 60 Mcf per day for a 90-day period even though the well eventually receives a temporary pressure build-up determination.[11]

III. Discussion

The Commission continues to believe that stripper gas wells should not be disqualified if their overproduction is caused by temporary pressure build-up. The Commission has tentatively determined that the present regulations permitting such continued qualification impose unduly burdensome filing requirements on producers and purchasers. Accordingly, it is proposing reductions in those filing requirements.

A. Pressure Build-Up Determinations

Reduced market demand in recent years has required an increasing number of producers to shut in their wells periodically. This has caused many stripper gas wells to regularly overproduce when reopened, as a result of temporary pressure build-up. Currently, the Commission's regulations require new applications for pressure build-up determinations each time a well overproduces; thus, many producers must file such applications for the same well as often as once a month. The Commission believes that its regulations maybe unduly burdensome since the producer must repeatedly compile the necessary supporting data, pay state filing fees, if applicable, and a $25 fee for Commission review. The financial burden is particularly significant, since most stripper gas wells are of marginal profitability.

Additionally, the increase in applications for pressure build-up determinations has significantly increased the workload of the Commission and the jurisdictional agencies. Requests for the Commission to review pressure build-up determinations have increased dramatically, from 266 in fiscal year 1982 to 3,463 in fiscal year 1984. The Commission believes that this burden may not be justified.

In order to reduce this burden on producers, jurisdictional agencies, and the Commission, the Commission proposes to eliminate the requirement that new applications for pressure build-up determinations be filed each time a well overproduces after a shut-in. Instead, the Commission proposes to permit a stripper gas well which has received one such determination to retain its stripper status during all future periods of temporary overproduction due to shut-in without filing new applications, provided that total production during the relevant 90-day period does not exceed 5400 Mcf.[12]

Eliminating the requirement for new applications should not adversely affect compliance with the NGPA. Applications for pressure build-up determinations are usually routine. To obtain a determination, a producer generally need only show that a qualifying well was shut in and thereafter temporarily overproduced.[13] Since these facts can be verified by reviewing a producer's or a pipeline's records, there is generally no dispute whether a well qualifies for a pressure build-up determination. In fact, the Commission has never reversed any of the 5,097 pressure build-up determinations it has reviewed.[14] In addition, the risk that a producer could violate NGPA ceiling prices by charging stripper prices for an overproducing well based on temporary pressure build-up, when not entitled to do so, is small since purchasers and pipelines know current market requirements and almost always know the production histories of the wells.[15]

Furthermore, under the proposed rule, the producer will still have to obtain (1) an original determination that the well is a stripper gas well and (2) an initial pressure build-up determination before the well can retain its stripper status during a future period of temporary overproduction without a pressure build-up determination. Also, the 5400 Mcf limit on production during a 90-day period will remain in effect.

Finally, elimination of the requirement for more than the initial pressure build-up determination is consistent with the Commission's decision in Order No. 336 to permit stripper gas wells which have desqualified altogether to requalify once production returns to appropriate levels without a new jurisdictional agency determination. The Commission stated that this would alleviate the burden on producers of filing new applications for stripper gas well determinations, but not undermine compliance with the NGPA.[16]

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[7] For example, if a producer shut in a well for the first 45 days of a 90-day period and then reopened it and that well then produced 3150 Mcf during the remaining 45 days of the period, average daily production for the 90-day period would be 70 Mcf (total production of 3150 divided by 45 production days equals 70). Therefore, even though total production for the 90-day period was well below 5400 Mcf, the well would be disqualified because average production per production day exceeded 60 Mcf.

[8] Interim Rule under Section 108 of the NGPA Concerning Temporary Pressure Buildup in Qualifying Stripper Wells, 46 FR 6901 (Jan. 22, 1981).

[9] Reduction in Filing Requirements for Well Category Applications under sections 102, 103, 107, and 108 of the Natural Gas Policy Act of 1978; Regulations for Temporary Pressure Buildup Determinations Under section 108 of the Natural Gas Policy Act, 48 FR 44 508 (Sept. 29, 1983) (Order No. 336), *reh'g denied*, 49 FR 566 (Jan. 5, 1984) (Order No. 336–A).

[10] 18 CFR 271.804(e) (1984).

[11] 18 CFR 271.805(d) (1984).

[12] If production from a well did exceed 5400 Mcf during a 90-day period, the producer could not again charge stripper well prices until production decreased to a level not exceeding an average of 60 Mcf per production day for a new 90-day period. 19 CFR 271.805(c) (1984). However, once that well did requalify pursuant to § 271.805(c), if it subsequently overproduced as a result of temporary pressure build-up, it could continue to qualify for stripper prices based on a temporary pressure build-up determination obtained before the first disqualification so long as it otherwise met the requirements of the temporaty pressure build-up rule.

[13] *See* 18 CFR 274.206(e)(6) (1984).

[14] The applicant or the jurisdictional agency has withdrawn eight of those determinations in response to Commission letters requesting further information.

[15] In many cases, the purchaser is the one who keeps the production records and determines the price to which the producer is entitled.

[16] Reduction in Filing Requirements for Well Category Applications Under sections 102, 103, 107, and 108 of the Natural Gas Policy Act of 1978; Regulations for Temporary Pressure Buildup Determinations Under Section 108 of the Natural Gas Policy Act, 48 FR 44,506 (Sept. 29, 1983) (Order No. 336), *reh'g denied*, 49 FR 566 (Jan. 5, 1984) (Order No. 336–A).

This has proven to be the case. The Commission is not aware that Order No. 336 has resulted in any significant increase in producers' charging stripper well prices when not entitled to do so. There appears no reason why the same should not be true with respect to the elimination of new applications for pressure build-up determinations.[17]

B. Notices of Disqualification

The Commission's regulations now require that the operator and any purchaser of gas give written notice when a stripper gas well produces an average of more than 60 Mcf per production day during any 90-day period.[18] These notices must be filed even if the well eventually receives a pressure build-up determination permitting stripper gas well prices to be charged despite the overproduction. The Commission proposes to remove this requirement for wells which would retain their stripper status by virtue of an earlier pressure build-up determination. Since such wells will continue to qualify for stripper prices without any action by jurisdictional agencies or the Commission, notices that overproduction has occurred are unnecessary. Elimination of the notice requirement will reduce filing burdens on the industry and lessen the Commission's workload by substantially reducing the number of notices of disqualification which the Commission must review.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[19] requires certain statements, descriptions, and analyses of rules that will have "a significant economic impact on a substantial number of small entities."[20] The Commission is not required to make an RFA analysis if it certifies that a rule will not have a "significant economic impact on a substantial number of small entities."[21]

There are approximately 10,000 natural gas producers in the United States, many of which would be classified as small entities under the appropriate RFA definition.[22] This proposed rule could affect most of these entities by eliminating filing requirements that are unnecessary. In addition, this proposal does not impose any additional regulatory burdens. Thus, while this proposal has a beneficial impact on small entities, the Commission believes that this impact will not be "significant," within the meaning of the RFA. Accordingly, the Commission certifies that this proposal will not have a "significant economic impact on a substantial number of small entities."

V. Paperwork Reduction Act

The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR 1320.13 (1985). Inquiries relating to the information collection provisions in this rule can be made to Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426 (202) 357–8308. Comments on these information collection provisions should be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Written Comment Procedure

The Commission invites all interested persons to submit written data, views and other information concerning the matters set out in this Notice. All comments in response to this Notice should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NW. Washington, D.C. 20426, and should refer to Docket No. RM85–7–000. An original and 14 copies should be filed. All comments received before 4:30 p.m. EST, on September 30, 1985, will be considered by the Commission.

All written submissions will be placed in the public file which has been established in this docket and which is available for public inspection during regular business hours in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NW., Washington, D.C. 20426.

In addition, an opportunity for a public hearing to receive oral comments will be afforded, if requested, in accordance with section 502(b) of the NGPA. Any person requesting an opportunity to appear to give oral comments must file with the Secretary a request to do so by August 26, 1985.

List of Subjects in 18 CFR Part 271

Ceiling prices, continental shelf, natural gas, price controls, reporting and recordkeeping requirements.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

In consideration of the foregoing, the Commission proposes to amend Part 271, Title 18, Code of Federal Regulations, as set forth below.

1. The authority citation for Part 271 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), unless otherwise noted.

2. Section 271.804(e) is amended by adding new paragraphs (3) and (4) to read as follows:

§ 271.804 Special rule.

* * * * *

(e) *Temporary pressure build-up in previously qualified stripper wells.*

* * * * *

(3) If a jurisdictional agency has made an affirmative determination for a well pursuant to paragraph (e)(1) and that well subsequently produces in excess of an average of 60 Mcf per production day for a 90-day period because of pressure build-up occurring during a temporary shut-in, a new determination pursuant to paragraph (e)(1) need not be obtained to avoid disqualification of the well so long as production does not exceed 5400 Mcf for a 90-day production period. If a well is disqualified as a stripper well after an affirmative determination pursuant to paragraph (e)(1) but requalifies before subsequent 90-day production period in which a temporary pressure build-up occurs, it will continue to qualify pursuant to this paragraph based on the prior affirmative determination.

(4) If a well which produces in excess of 60 Mcf per production day continues to qualify for stripper well prices under paragraph (e)(3), the operator of such well and the purchaser of production from such well are exempt from the

[17] Until the effective date of a final rule in this docket, the producer must continue to obtain new pressure build-up determinations for each 90-day period the well overproduces in order to continue to collect stripper prices under the temporary pressure build-up rule as now in effect. If a final rule is promulgated, however, after the effective date of the rule, a stripper gas well may retain its stripper status based on a temporary pressure build-up determination obtained before the rule's effective date so long as all other conditions of the pressure build-up rule are satisfied.

[18] 18 CFR 271.805(d) (1984).

[19] 5 U.S.C. 601–612 (1982).

[20] *Id.* at section 603(a).

[21] *Id.* at section 605(b).

[22] ID. at section 601(3) *citing* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

filing requirements of § 271.805 for subsequent periods.

* * * * *

§ 271.805 [Amended]

3. Section 271.805(d)(1) is amended by removing the words "Unless exempt under § 271.804(d)(3)" and replacing them with the words "Unless exempt under §§ 271.804(d)(3) or 271.804(e)(4)".

[FR Doc. 85-18042 Filed 7-29-85; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Permanent State Regulatory Program of Illinois; Consideration of Modification of Deadline for Conditions of Approval

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining (OSM) is considering modifying the deadline until July 31, 1986, for Illinois to meet two conditions of the Secretary of the Interior's approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Condition (b) concerns covering the pit floor and highest coal seam with water and condition (c) concerns sedimentation ponds.

DATE: Written comments not received on or before 4:00 p.m. August 29, 1985 will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments must be mailed or hand-delivered to the Office of Surface Mining, Springfield Field Office, 600 E. Monroe Street, Room 20, Springfield, Illinois 62701.

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Field Office Director, Springfield Field Office, Office of Surface Mining, 600 East Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492-4495.

SUPPLEMENTARY INFORMATION:

Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982. Information pertinent to the general background, revisions, modifications and amendments to the proposed program submission, as well as the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval can be found in the June 1, 1982 **Federal Register** (47 FR 23858).

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, according to a schedule set forth in the notice of conditional approval. The Schedule is established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

In accepting the Secretary's conditional approval, Illinois agreed to satisfy conditions (a), (d), and (e) by December 1, 1982 and conditions (b) and (c) by June 1, 1983. Conditions (a), (d), and (e) have been removed (48 FR 23412, May 25, 1983, and 48 FR 51619, November 10, 1983).

On May 23, 1983, Illinois requested a six-month extension of the June 1, 1983 deadline to satisfy conditions (b) and (c). On August 19, 1983, OSM announced the decision to extend the deadline to December 1, 1983 (48 FR 37625).

On December 1, 1983, Illinois requested a further extension of the deadline for satisfying conditions (b) and (c), until June 1, 1984. In its request, the State pointed to certain developments in the litigation on the approval of the Illinois program. The State noted that the United States District Court for the Central District of Illinois had granted, on November 30, 1983, the Secretary's motion to remand the *Illinois South Project* v. *Watt*, (Civ. No. 82-2229) case to the Secretary for review in light of legal developments that have occured since the approval date. Conditions (b) and (c) concern subjects that are directly at issue in the litigation and which may be affected by the Secretary's review on remand. In order to avoid rulemaking proceedings which may prove to be unnecessary, the State requested a six-month extension of the December 1, 1983 deadline. On February 22, 1984, OSM announced the decision to extend the deadline to June 1, 1984 (49 FR 6487).

On May 31, 1984, Illinois requested a further extension of the deadline, until November 30, 1984. The State noted that the conditions are directly affected by two cases which are still unresolved—*Illinois South Project* v. *Watt* and *Illinois Department of Mines and Minerals* v. *Watt*. The State indicated that it had hoped that the cases would have been resolved by June 1, 1984, but as they have not been, Illinois requested that possibly unnecessary rulemaking proceedings be delayed for six months. In the interim, Illinois stated that it would continue to enforce its regulations in accordance with the Federal regulations. On August 24, 1984, OSM announced the decision to extend the deadline to November 30, 1984 (49 FR 33645).

On November 28, 1984, Illinois requested a further extension of the deadline until May 30, 1985. The State noted that the remaining conditions were and remain directly affected by two cases which are still unresolved: *Illinois South Project et al.* v. *Watt* and the Federal District Court Case of the *Illinois Department of Mines and Minerals* v. *Watt*. On March 11, 1985, OSM granted an extension to Illinois to May 30, 1985. (50 FR 9621).

Condition (b) stipulates that Illinois must amend its program to require a cover of the pit floor and highest coal seam with a minimum of ten meters (33 feet) of water, and that pending completion of the above, Illinois may not use its authority to approve covering with less than 10 meters of water or the approval will terminate. Condition (c) stipulates that Illinois must amend its program to demonstrate that Illinois understands that at the present time the best technology currently available for sediment control is sedimentation ponds and should Illinois wish to approve any other technology, the State will first send the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above Illinois may not use its authority to approve siltation structures other than sedimentation ponds or the approval will terminate.

Proposal to Extend Deadline

Illinois has informed OSM that the litigation affecting these two conditions is ongoing. The State is preparing for oral arguments in the case in October and cannot estimate when a decision would be made by the Court. Therefore, Illinois is requesting that the deadline to submit material for the removal of these conditions be extended to July 31, 1986. It is hoped that this extension will be sufficient for the court to render a decision and the State to propose program amendments which would enable the Secretary to remove the conditions on program approval.

Therefore, OSM is seeking comment on the State's request to extend the deadline until July 31, 1986, for Illinois to submit material to satisfy the two conditions of approval.

Procedural Matters

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

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

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

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

List of Subjects in 30 CFR Part 913

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

Dated: July 24, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85-18017 Filed 7-29-85; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modification to the Ohio Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of proposed revisions to Ohio's Reclamation Board of Review's (RBR) rules of procedures.

This notice sets forth the times and locations that the Ohio program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m., August 29, 1985 will not necessarily be considered in the decision on whether the proposed amendment should be approved and incorporated into the Ohio regulatory program. The public hearing on the proposed amendment has been scheduled for August 26, 1985. Any person interested in speaking at the hearing should contact Ms. Nina Rose Hatfield at the address or telephone number listed below by August 14, 1985. If no person has contacted Ms. Hatfield by that date to express an interest in the hearing, the hearing will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing is scheduled for 1:00 p.m., in Room 202, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43227.

Written comments and requests for an opportunity to speak at the hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

Copies of the Ohio program, the proposed modifications to the program, a list of any scheduled public meetings, 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 and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Columbus Field Office.

Office of Surface Mining, Room 5124, 1100 L Street, NW., Washington, D.C. 20240

Ohio Division of Reclamation, Building B-3, Fountain Square, Columbus, Ohio 43224

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION: The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.**

On May 23, 1985, OSM approved several amendments submitted by Ohio on February 27, 1985, revising rules 1513-13-01 through 1513-3-22 which establish the Reclamation Board of Review's (RBR) rules of procedures (50 FR 21256). On July 3, 1985, Ohio requested that OSM consider an informal submittal of amendments dated May 20, 1985, as a formal request for a program amendment. OSM is responding to that request with this announcement of a public comment period on the RBR proposed amendments.

The proposed amendments include revisions or modifications of Ohio rules 1513-3-01—definitions, 1513-3-02—internal regulations, 1513-3-0—appearances and practices before the board, 1513-3-04—appeals to the RBR, 1413-3-06—computation on and extension of time, 1513-3-08—temporary relief, 1513-3-10—discovery, 1513-3-11—motions, 1513-3-12—pre-hearing procedures, 1513-3-13—notice of hearings and continuance of hearing, 1513-3-14—site views and location of hearings, 15-3-16—conduct of evidentiary hearings, 1513-3-17—voluntary dismissal and settlement, 1513-3-18—reports and recommendations of the hearing officer, and 1513-3-20—costs. The revisions made to 1513-3-19—decisions of the board and 1513-3-21—awards of costs and expenses, were approved by OSM on May 23, 1985 (50 FR 21256).

The full text of the proposed program amendments submitted by Ohio is available for public inspection at the addresses listed above. Upon request to OSM's Field Office Director, each person may receive, free of charge, one single copy of the proposed amendments. The Director now seeks

public comment on whether the proposed amendments are no less stringent than SMCRA and no less effective than the Federal regulations. If approved the amendments will become part of the Ohio permanent regulatory program.

Procedural Matters

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, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

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

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

List of Subjects in 30 CFR Part 935

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

Dated: July 24, 1985.

Jed D. Christensen,

Director, Office of Surface Mining.

[FR Doc. 85-18018 Filed 7-29-85; 8:45 am]

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Notices

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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.

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rule and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:30 p.m. on August 26, 1985, at the Executive Tower Building, 1405 Curtis Street, Denver, Colorado. The purpose of the meeting is to view presentations by Federal and State civil rights enforcement personnel and plan programs for coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or William Muldrow, Director of the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., July 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–17948 Filed 7–29–85; 8:45 am]

BILLING CODE 6335–01–M

Hawaii Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Hawaii Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:00 noon on August 19, 1985, at the State Capitol Building, 415 South Beratania Street, Conference Room #3, Honolulu, Hawaii. The purpose of the meeting is to conduct orientation activities for new members and discuss program planning for fiscal year 1986.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Andre Tatibouet or Philip Montez, Director of the Western Regional Office at (213) 688–3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 23, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–17944 Filed 7–29–85; 8:45 am]

BILLING CODE 6335–01–M

Nevada Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:00 noon on August 3, 1985, at the Dunes Hotel, 3650 Las Vegas Boulevard, South, Las Vegas, Nevada. The purpose of the meeting is to discuss current projects and engage in further program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Elizabeth Nozero or Philip Montez, Director of the Western Regional Office, at (213) 688–3437.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., July 23, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–17945 Filed 7–29–85; 8:45 am]

BILLING CODE 6335–01–M

New York Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on September 12, 1985, at the Buffalo Hilton, Church and Terrace, Buffalo, New York. The purpose of the meetings is to discuss civil rights concerns in the city of Buffalo.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Archer Puddington or Ruth Cubero, Director of the Eastern Regional Office at (212) 264–0400.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., July 23, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–17947 Filed 7–29–85; 8:45 am]

BILLING CODE 6335–01–M

Wisconsin Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on August 14, 1985, at the Pfister Hotel, 424 E. Wisconsin Avenue, Milwaukee, Wisconsin. The purpose of the meeting is to discuss future program plans.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Kwame S. Salter or Clark Roberts, Director of the Midwestern Regional Office, at (312) 353–7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 23, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–17946 Filed 7–29–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-469-405]

Oil Country Tubular Goods From Spain; Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order.

SUMMARY: On June 10, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on oil country tubular goods from Spain and announced its tentative determination to revoke the order. The review covers the period from October 18, 1984.

We gave interested parties an opportunity to coment. We received no comments. We determine that domestic interested parties are no longer interested in continuation of the order. Therefore, we will revoke the order. In accordance with petitioners' notification the revocation will apply to all oil country tubular goods entered, or withdrawn from warehouse, for consumption on or after October 18, 1984.

EFFECTIVE DATE: October 18, 1984.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 24277) the preliminary results of its changed circumstances administrative review of the antidumping duty order on oil country tubular goods from Spain (50 FR 21479, May 24, 1985). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Spanish oil country tubular goods. Such merchandise is currently classifiable under items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244 of the Tariff Schedules of the United States Annotated. The review covers the period from October 18, 1984.

Final Results of the Review and Revocation

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received no comments.

As a result of our review, we determine that the domestic interested parties are no longer interested in continuation of the antidumping duty order on oil country tubular goods from Spain and that the order should be revoked on this basis.

Therefore, we are revoking the order on oil country tubular goods from Spain effective October 18, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 18, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This administrative review, revocation and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c) and sections 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: July 23, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-18000 Filed 7-29-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-003]

Stainless Clad Steel Plate From Japan; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Intention to review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on stainless clad steel plate from Japan. The review covers the period from October 1, 1984. The petitioner to this proceeding has notified the Department that it is no longer interested in the antidumping duty order. This affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to all stainless clad steel plate entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interest parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 34178-79), an antidumping duty order on stainless clad steel plate from Japan.

In a letter dated June 25, 1985, Lukens Steel Company, the petitioner in this proceeding, informed the Department that it was no longer interested in the order and stated its support for revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of stainless clad steel plate currently classifiable under item 607.9400 of the Tariff Schedules of the United States Annotated. The review covers that period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that Lukens

Steel Company's affirmative statement of no interest in continuation of the antidumping duty order on stainless clad steel plate from Japan provides a reasonable basis for revocation of the order. In light of the October 1, 1984, effective date for revocation requested by the petitioner, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on stainless clad steel plate from Japan effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of stainless clad steel plate from Japan which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

July 23, 1985.

[FR Doc. 85-17999 Filed 7-29-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receiving Sets, Monochrome and Color, From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration; Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On September 12, 1984, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on television receiving sets, monochrome and color, from Japan. The review covers television receiving sets manufactured by Orion Electric Co., Ltd., exported to the United States by Otake Trading Co., Ltd., and the period of review from April 1, 1981, through March 31, 1982.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination to revoke in part. We received no comments on the preliminary results or the tentative determination to revoke.

EFFECTIVE DATE: July 30, 1985.

FOR FURTHER INFORMATION CONTACT: Michael A. Hudak or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202)-377-2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 35821), the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on television receiving sets, monochrome and color, from Japan (36 FR 4597, March 10, 1971). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of television receiving sets, monochrome and color, from Japan. Television receiving sets include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all the parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units (combinations of television receivers with other electrical entertainment components such as tape recorders, radio receivers, etc.), and certain sub-assemblies not containing the components essential for receiving a broadcast television signal and producing a video image.

The review covers television receiving sets manufactured by Orion Electric Co., Ltd., exported to the United States by Otake Trading Co., Ltd., and the period April 1, 1981 through March 31, 1982.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results and the tentative determination to revoke in part. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of review and we determine that no margins exist for the period April 1, 1981 through March 31, 1982.

As provided for in § 353.48(b) of the Commerce Regulations, no cash deposit of estimated antidumping duties shall be required on entries of television receiving sets, manufactured in Japan by Orion Electric Co., Ltd., and exported to the United States by Otake Trading Co., Ltd. A cash deposit of 0.86 percent shall be required on future entries of this merchandise for any shipment from a new exporter not covered in this or prior reviews whose first shipment occurred after March 31, 1981. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible.

We will examine exports by Otake Trading Co., Ltd., made during the period April 1, 1982 through September 12, 1984, the date of our tentative determination to revoke in part, in our next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

July 16, 1985.

[FR Doc. 85-18001 Filed 7-29-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901, 302/674–2331

David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–1366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818, 609/753–6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228–2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201, 503/221–6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 411 W. Fourth Avenue, Suite 2D, Anchorage, AK 99510, 907/271–4060

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368.

For further information contact John D. Kelly (Fees, Permits, and Regulations Division, 202–634–7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1985 have been received between June 1, 1985, and July 16, 1985, from the Government(s), shown below.

Dated: July 25, 1985.

William G. Gordon,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

Fishery codes designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic Billfishes and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA	Gulf of Alaska	Do.
NWA	Northwest Atlantic Ocean	New England, Mid-Atlantic.
SMT	Seamount Groundfish	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific
PBS	Pacific Billfishes and Sharks.	Western Pacific

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
4	"Joint venture" in support of U.S. vessels.

Nation, vessel name, vessel type	Application No.	Fishery	Activity
The Government of the Federal Republic of Germany			
Alaska, cargo transport.	GE-85-0017	BSA, GOA, WOC	3
The Government of Greece			
Oceania Finezar, cargo transport.	GR-85-0004	BSA, GOA, WOC	3
The Government of Japan			
Tasman Rex, cargo transport.	JA-85-0077	BSA, GOA, WOC	3
Tokachi Maru, cargo transport.	JA-85-0358	BSA, GOA, NWA, SNA	3
The Government of the Polish People's Republic			
Plock, cargo transport.	PL-85-0109	BSA, GOA, WOC	3
Burn Sin Ho, cargo transport.	KS-85-0136	BSA, GOA	3
The Government of Spain			
Ria Depontevedra, medium stern trawler.	SP-85-0076	NWA	2(4)
Beiramar Dos, small stern trawler.	SP-85-0179	NWA	2(4)
Moradina, small stern trawler.	SP-85-0180	NWA	2(4)
The Government of the Union of the Soviet Socialist Republics			
Okhotskoe More, cargo transport.	UR-85-0252	BSA, GOA	3
Ostrov Karaginsky, cargo transport.	UR-85-0255	BSA, GOA, WOC	3
Mys Babushkini, largo stern trawler.	UR-85-0780	BSA, GOA, WOC	3
Vyackogorsy, cargo transport.	UR-85-0791	BSA, GOA, WOC	3

Joint Venture

Spain—The Spanish vessels, *Ria Depontevedra, Beiramar Dos,* and the *Isla Montana Clara* will replace the vessels, *Pescapuerta Tercero, Pescapuerta Segundo,* and *Campa De Torres,* in the joint venture operation published February 15, 1985, at 50 FR 6374 in the Nortwest Atlantic Ocean fishery. The vessels being replaced received a permit May 8, 1985, authorizing them for joint venture as well as directed fishing. Although the *Moradina* was originally included in this application, it was withdrawn, and the vessel will not be used in this operation. Notification of receipt of the permit application for the *Isla Montana Clara* was published December 3, 1984, at 49 FR 47317. The American partner is Stonavar Trading, Inc., Bristol, Rhode Island.

For the Information of the Reader

USSR—The Soviet vessel, *Mys Babushkini,* is a large stern trawler; however, its intended use is for other support activities only.

[FR Doc. 85–18038 Filed 7–29–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Officials of the Government of the Socialist Republic of Romania Authorized To Issue Export Visas

July 25, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 31, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Government of the Socialist Republic of Romania has notified the United States Government that changes have been made in the officials authorized to issue export visas for textile and apparel products under the terms of the Bilateral Cotton Textile Agreement of January 28, and March 31, 1983, and the Bilateral Wool and Man-Made Fiber Textile Agreement of September 2 and November 3, 1980, as amended. A complete list of currently authorized officials follows this notice.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Official Authorized by the Government of the Socialist Republic of Romania To Issue Visas for Textile and Apparel Products Exported to the United States

Atanasiu Bodan
Petre Boldisor
Stefan Ciobanescu
Petruta Cretu
Vladimir Doru Gabor
Adrian Marinescu
Magdalena Strimbu
Petre Tomulescu

[FR Doc. 85-17993 Filed 7-29-85; 8:45 am]
BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With Portugal on Categories 339 and 340; Correction

July 25, 1985.

On July 11, 1985 a notice was published in the **Federal Register** (50 FR 28243) which announced that, on June 26, 1985, the Government of the United States had requested the Government of Portugal to enter into consultations concerning exports to the United States of women's girls', and infants' cotton knit shirts in Category 339 and men's and boy's cotton shirts in Category 340, producted or manufactured in Portugal.

The level noted for Category 340 in the final line of paragraph 2 of the notice document should have been 133,773 dozen, instead of 133,733 dozen.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-17994 Filed 7-29-85; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 21-23 August 1985, 9:00 a.m. to 5:00 p.m.

ADDRESS: 21 August—The DIAC, Washington, D.C. 22-23 August—Pentagon, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on nuclear test yield determination.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 25, 1985.

[FR Doc. 85-17989 Filed 7-29-85; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Small ICBMs; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Small ICBMs will meet in closed session on 20 September 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive classified briefings on Small ICBMs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 25, 1985.

[FR Doc. 85-17988 Filed 7-29-85; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Special Operations; Change in Date of Advisory Committee Meeting

SUMMARY: The meeting place for the Defense Science Board Task Force on Special Operations scheduled for 9 September 1985 in the Pentagon, Washington, D.C. as published in the **Federal Register** (Vol. 50, No. 87, Monday, May 6, 1985, FR Doc. 85-10953) has been changed to 28-29 August 1985. In all other respects the original notice remains unchanged.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 25, 1985.

[FR Doc. 85-17987 Filed 7-29-85; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Discretionary Grant Programs Under the Indian Education Act of 1972, as Amended; Application Notice Establishing Closing Dates for Transmittal of Certain Fiscal Year 1986 Applications

AGENCY: Department of Education.

ACTION: Application notice for new awards under the Indian Education Act of 1972, as amended.

SUMMARY: The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of applications for new projects under certain programs administered by the Department of Education under the Indian Education Act, Title IV of Pub. 92-318, as amended.

Organization of Notice

This notice contains three parts. Part I includes general information on mailing and delivering instructions. Part II includes the list of all application closing dates for new awards covered by this notice. Part III consists of individual application announcement for each program.

PART I—INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS

Applicants should note specifically the instructions for the transmittal of applications included below:

Closing date for transmittal of applications: Applications for new awards must be mailed or hand delivered on or befor ethe closing date given in the individual application announcements included in this document.

Applications delivered by mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (insert appropriate CFDA Number), 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping lable, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretry of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Applications that are hand delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Intergovernmental review: All programs in this notice are subject to the requirements of the Executive Order 12372 and the regulations in 34 CFR Part 79 except 84.072A, Indian-Controlled Schools—Enrichment and 84.061F, Education Personnel Development. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected these programs for review:

State

Alabama	Missouri	Oregon
Arizona	Montana	Pennsylvania
Arkansas	Nebraska	South Carolina
California	Nevada	Texas
Connecticut	New Jersey	South Dakota
Deleware	New Mexico	Utah
Florida	New York	Vermont
Hawaii	North Dakota	Virginia
Indiana	Northern Mariana Islands	Washington
Kansas	Ohio	Wisconsin
Louisiana	Oklahoma	Wyoming
Maine		Guam
Michigan		

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single points of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application packages for these programs.

In States that have not established a process or chosen these programs for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by November 19, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181 (Insert appropriate CFDA No.), 400 Maryland Avenue SW., Washington, D.C. 20202.

Proof of mailing will be determined on the same basis as applications.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT MUST SUBMIT ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

APPLICATION FORMS: Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intened to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested.

PART II—PROGRAMS

CFDA No.	Program	Closing date
84.072A	Indian-Controlled Schools—Enrichment.	Sept. 20, 1985.
84.061A	Educational Services for Indian Children.	Do.
84.061C	Planning Projects for Indian Children.	Do.
84.061D	Pilot Projects for Indian Children.	Do.
84.061E	Demonstration Projects for Indian Children.	Do.
84.061F	Educational Personnel Development.	Do.
84.062A	Educational Services for Indian Adults.	Do.
84.062C	Planning Projects for Indian Adults.	Do.
84.062D	Pilot Projects for Indian Adults.	Do.
84.062E	Demonstration Projects for Indian Adults.	Do.

PART III—INDIVIDUAL ANNOUNCEMENTS FOR PROGRAMS LISTED IN PART II

84.072A—Indian Education Act—Part A—Indian-Controlled Schools—Enrichment

Closing date: September 20, 1985.

Applications are invited for new grants under the Indian Education Act—Indian Controlled Schools—Enrichment Projects.

Authority for this program is contained in section 303(b) of Part A of the Act, as amended.

(20 U.S.C. 241bb(b)).

The purpose of the enrichment grants is to provide financial assistance for educational enrichment projects designed to meet the special educational and culturally related academic needs of Indian children in Indian-controlled elementary and secondary schools or local educational agencies that are located on or geographically near one or more reservations. The requirement that a school be on or near a reservation does not apply to schools serving Indian children in California, Oklahoma, or Alaska.

Grants for enrichment projects may be to Indian tribes, Indian organizations, and local educational agencies that have been in existence not more than three years.

Program information: In Fiscal Year (FY) 1985, 35 enrichment projects were awarded grants totaling $4,410,000. The average grant amount was $126,000.

Application forms: Application forms and program information packages are expected to be available by August 8, 1985. These may be obtained by writing to Indian Education Programs, U.S. Department of Education 400 Maryland Avenue SW., Room 2177, FOB–6, Washington, D.C. 20202.

(Approved by the Office of Management and Budget under control number 1810–0021)

Available funds: The President's budget request for FY 1986 was for $4,410,000 for this program. The Congress has not passed the FY 1986 appropriation act covering this program. If the Congress appropriates the request amount, it is estimated that the awards would range from $79,000 to $289,000. The estimated average grant would be $147,000 and approximately 30 projects would be supported. Projects supported under this program would be for a period of one year.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing the Indian Education Programs in 34 CFR Part 250 and 253, published in the **Federal Register** on June 7, 1984 at 49 FR 23761 and 23767, and as amended, published in the **Federal Register** on March 18, 1985 at 50 FR 10925.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78.

Further information: For further information contact: Elsie Janifer, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, FOB–6, Washington, D.C. 20202. Telephone: (202) 732–1918.

(20 U.S.C. 241bb(b))

84.061A—Indian Education Act—Part B—Educational Services for Indian Children

Closing date: September 20, 1985.

Applications are invited for new grants under the Educational Services for Indian Children program.

Authority for this program is contained in section 1005(a) and (c) of the Act, as amended.

(20 U.S.C. 3385 (a), (c))

This program provides financial assistance for:

(1) Projects designed to improve educational opportunities for Indian children by providing educational services that are not available in sufficient quantity or quanity to those children; and

(2) Enrichment projects that introduce innovative and exemplary approaches, methods, and techniques into the education of Indian children in elementary and secondary schools.

Grants may be made to State educational agencies, local educational agencies, Indian tribes, Indian organizations, and Indian institutions.

Program information: In Fiscal Year (FY) 1985, 33 projects were awarded service grants totaling $3,430,000. The average grant award amount was $103,939.

Application forms: Application forms and program information packages are expected to be available by August 8, 1985. These my be obtained by writing to Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, FOB–6, Washington, D.C. 20202.

(Approved by the Office of Management and Budget under control number 1810–0021).

Available funds: The President's budget request for FY 1986 was for $3,430,000 for this program. The Congress has not passed the FY 1986 appropriation act covering this program. If the Congress appropriates the requested amount, it is estimated that the awards would range from $43,000 to $300,000. The estimated average grant would be $100,882 and approximately 34 projects would be supported. Projects supported under this program would be for a period of one year.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing the Indian Education Program in 34 CFR Parts 250 and 254, published in the **Federal Register** on June 7, 1984 at 49 FR 23761 and 23769.

(b) The Educational Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78 and 79.

Further information: For further information contact Elise Janifer, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, FOB–6, Washington, D.C. 20202. Telephone: (202) 732–1918.

(20 U.S.C. 3385(a), (c))

84.061C—Indian Education Act—Part B—Planning Projects for Indian Children

Closing date: September 20, 1985.

Applications are invited for new planning projects under the Planning, Pilot, and Demonstration Projects for Indian Children program.

Authority for this program is contained in section 1005(a)(1) and (b) of the Act, as amended.

(20 U.S.C. 3385(a)(1), (b))

This program provides financial assistance for projects designed to create programs for improving educational opportunities for Indian children.

Grants may be made to State educational agencies, local educational agencies, Indian tribes, Indian

organizations, Indian institutions, and federally supported elementary and secondary schools for Indian children.

Program information: In Fiscal Year (FY) 1985, eight projects were awarded planning grants totaling $531,180. The average grant amount was $66,398.

Application forms: Application forms and program information packages are expected to be available by August 8, 1985. These may be obtained by writing to Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, FOB–6, Washington, D.C. 20202.

(Approved by the office of Management and Budget under control number 1810–0021)

Available funds: Under the President's budget request for FY 1986 about $532,180 would be alocated to this program. The Congress has not passed the FY 1986 appropriation act covering this program. If the Congress appropriates the requested amount, it is estimated that the awards would range from $28,000 to $115,000. The average grant would be $66,398 and approximately eight projects would be supported. Projected supported under this program would be for a period of one year.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing the Indian Education Programs in 34 CFR Parts 250 and 255, published in the **Federal Register** on June 7, 1984 at 49 FR 23761 and 23770.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79.

Further information: For further information contact Elsie Janifer, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, FOB–6, Washington, D.C. 20202. Telephone: (202) 732–1918.

(20 U.S.C. 3385(a)(1), (b))

84.061D—Indian Education Act—Part B—Pilot Projects for Indian Children

Closing date: September 20, 1985.

Applications are invited for new pilot projects under the Planning, Pilot, and Demonstration Projects for Indian Children program.

Authority for this program is contained in section 1005 (a)(1) and (b) of the Act, as amended.

(20 U.S.C. 3385(a)(1), (b))

This program provides financial assistance for projects designed to test the effectiveness of programs for improving educational opportunities for Indian children.

Grants may be made to State educational agencies, local educational agencies, Indian tribes, Indian organizations, Indian institutions, and federally supported elementary and secondary schools for Indian children.

Program information: In Fiscal Year (FY) 1985, four projects were awarded pilot grants totaling $613,569. The average grant amount was $153,392.

Application forms: Application forms and program information packages are expected to be available by August 8, 1985. These may be obtained by writing to Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, FOB–6, Washington, D.C. 20202.

(Approved by the Office of Management and Budget under control number 1810–0021)

Available funds: Under the President's budget request for FY 1986 about $613,569 would be allocated to this program. The Congress has not passed the FY 1986 appropriation act covering this program. If the Congress appropriates the requested amount, it is estimated that the awards would range from $32,000 to $153,000. The average grant would be $102,094 and approximately six projects would be supported. Projects supported under this program would be for a period of one year.

These estimates, however, do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program: (a) The regulations governing Indian Education Programs in 34 CFR Parts 250 and 255, published in the **Federal Register** on June 7, 1984 at 49 FR 23761 and 23770.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further information: For further information contact Elsie Janifer, Indian Education Programs, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue SW., Room 2177, FOB–6, Washington, D.C. 20202. Telephone: (202) 732–1918.

(20 U.S.C. 3385(a)(1), (b))

84.061E—Indian Education Act—Part B—Demonstration Projects for Indian Children

Closing date: September 20, 1985.

Applications are invited for new demonstration projects under the Planning, Pilot, and Demonstration Projects for Indian children program.

Authority for this program is contained in section 1005 (a)(1) and (b) of the Act, as amended.

(20 U.S.C. 3385(a)(1), (b))

This program provides financial assistance for projects designed to demonstrate the effectiveness of programs for improving educational opportunities for Indian children.

Grants may be made to State educational agencies, local educational agencies, Indian tribes, Indian organizations, Indian institutions, and federally-supported elementary and secondary schools for Indian children.

Program information: In Fiscal Year (FY) 1985, ten projects were awarded demonstration grants totaling $1,304,251. The average grant amount was $130,425.

Application forms: Application forms and program information packages are expected to be available by August 8, 1985. These may be obtained by writing to Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, FOB–6, Washington, D.C. 20202.

(Approved by the Office of Management and Budget under control number 1810–0021)

Available funds: Under the President's budget request for FY 1986 about $1,304,251 would be allocated for this program. The Congress has not passed the FY 1986 appropriation act covering this program. If the Congress appropriates the requested amount, the awards would range from $42,000 to $253,000. The estimated average grant would be $130,425 and approximately ten projects would be supported. Projects supported under this program would be for a period of one year.

These estimates, however, do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing Indian Education Programs in 34 CFR Parts 250 and 255, published in the **Federal Register** on June 7, 1984 at 49 FR 23761 and 23770.

(b) The Education Department General Administrative Regulations

(EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further information: For further information contact Elsie Janifer, Indian Education Programs, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue SW., Room 2177, FOB–6, Washington, D.C. 20202. Telephone: (202) 732–1918.

(20 U.S.C. 3385 (a)(1), (b))

84.061F—Indian Education Act—Part B—Educational Personnel Development

Closing date: September 20, 1985.

Applications are invited for new grants under the Educational Personnel Development program.

Authority for the Educational Personnel Development program is contained in section 1005(d) and section 422 of the Indian Education Act, as amended.

(20 U.S.C. 3385(d), 3385a)

This program provides financial assistance to projects designed to (1) prepare persons to serve Indian students as teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and (2) improve the qualifications of persons serving Indian students in such capacities.

Under the section 1005(d) program, grants may be made to institutions of higher education, and to State educational agencies and local educational agencies in combination with those institutions.

Under the section 422 program, grants may be made to institutions of higher education, Indian tribes, and Indian organizations.

The estimated maximum stipend for participants in projects in Fiscal Year (FY) 1986 will be $600 per month at the graduate level and $375 per month at the undergraduate level. An estimated maximum allowance of $90 per month will be allowed for each dependent.

Program information: In Fiscal Year (FY) 1985, six grants were awarded under section 1005(d) totaling $1,176,000. The average grant amount was $196,000. Under section 422, nine grants were awarded totaling $980,000. The average grant amount was $108,889.

Application forms: Application forms and program information packages are expected to be available by August 8, 1985. These may be obtained by writing to Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, FOB–6, Washington, D.C. 20202.

(Approved by the Office of Management and Budget under control number 1810–0021)

Available funds: The President's budget request for FY 1986 was for $1,176,000 for section 1005 and $980,000 for section 422. The Congress has not passed the FY 1986 appropriation act covering this program. If the Congress appropriates the requested amount, it is estimated that the awards for section 1005 would range from $162,000 to $265,000 and awards for section 422 will range from $84,000 to $216,000. The estimated average grant would be $168,000 for section 1005 and $108,889 for section 422. It is estimated that approximately seven projects would be supported under section 1005, and nine under section 422. Projects supported under this program would be for a period of one year.

These estimates, however, do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing Indian Education Programs in 34 CFR Parts 250 and 256, published in the **Federal Register** on June 7, 1984 at 49 FR 23761 and 23774.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

Further information: For further information contact Elsie Janifer, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, FOB–6, Washington, D.C. 20202. Telephone: (202) 732–1918.

(20 U.S.C. 3385(d), 3385a)

84.062A—Indian Education Act—Part C—Educational Services for Indian Adults

Closing date: September 20, 1985.

Applications are invited for new projects under the Educational Services for Indian Adults program.

Authority for this program is contained in section 315(b) of Part C of the Act, as amended.

(20 U.S.C. 1211a(b))

This program issues awards to Indian tribes, Indian organizations, and Indian institutions for educational service projects.

The purpose of the projects is to improve educational opportunities for Indian adults.

Program information: In Fiscal Year (FY) 1985, thirteen projects were awarded grants under this program totaling $1,176,000. The average grant amount was $90,462.

Application forms: Application forms and program information packages are expected to be available by August 8, 1985. These may be obtained by writing to Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, FOB–6, Washington, D.C. 20202. (Approved by the Office of Management and Budget under control number 1810–0021).

Available funds: The President's budget request for FY 1986 was for $1,176,000 for this program. The Congress has not passed the FY 1986 appropriation act covering this program. If the Congress appropriates the requested amount, it is estimated that the award would range from $10,000 to $300,000. The estimated average grant would be $98,000 and approximately twelve projects would be supported. Projects supported under this program would be for a period of one year.

These estimates, however, do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing Indian Education Programs in 34 CFR Parts 250 and 257, published in the **Federal Register** on June 7, 1984 at 49 FR 23761 and 23776.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further information: For further information contact Elsie Janifer, Indian Education Programs, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue SW., Room 2177, FOB–6, Washington, D.C. 20202. Telephone: (202) 732–1918.

(20 U.S.C. 1211a(b))

84.062C—Indian Education Act—Part C—Planning Projects for Indian Adults

Closing date: September 20, 1985.

Applications are invited for new planning projects under the Planning, Pilot, and Demonstration Projects for Indian Adults program.

Authority for this program is contained in section 315(a)(1), (2) of Part C of the Act, as amended.

(20 U.S.C. 1211a(a)(1), (2))

This program provides financial assistance for projects designed to create effective programs for improving

employment and educational opportunities for Indian adults.

Grants may be made to State educational agencies, local educational agencies, Indian tribes, Indian organizations, and Indian institutions.

Program information: In Fiscal Year (FY) 1985, three planning projects were awarded grants under this program totaling $332,379. The average grant amount was $110,793.

Program priorities: Under 34 CFR 75.105(c)(1), "Annual Priorities," the Secretary invites applicants to submit applications that address the special needs of Indian adults who reside in rural or isolated areas where adult educational services are not provided by a private organization, local educational agency, State agency, or the Bureau of Indian Affairs, Department of the Interior.

This priority, however, is not weighted. An application that meets this priority receives no competitive or absolute preference over applications that do not meet the priority.

Application forms: Application forms and program information packages are expected to be available by August 8, 1985. These may be obtained by writing to Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, FOB-6, Washington, D.C. 20202.

(Approved by the Office of Management and Budget under control number 1810-0021)

Available funds: Under the President's budget request for FY 1986 about $332,379 would be allocated to this program. The Congress has not passed the FY 1986 appropriation act covering this program. If the Congress appropriates the requested amount, it is estimated that the awards would range from $78,688 to $162,000. The estimated average grant would be $110,793 and approximately three projects would be supported. Projects supported under this program would be for a period of one year.

These estimates, however, do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing Indian Education Programs in 34 CFR Parts 250 and 258, published in the **Federal Register** on June 7, 1984 at 49 FR 23761 and 23777.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further information: For further information contact Elsie Janifer, Indian Education Programs, U.S. Department of Education, Office of Elementary and Secondary Education, Room 2177, FOB-6, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 732-1918.

(20 U.S.C. 1211a(a)(1), (2))

84.062D—Indian Education Act—Part C—Pilot Projects for Indian Adults

Closing date: September 20, 1985.

Applications are invited for new pilot porjects under the Planning, Pilot, and Demonstration Projects for Indian Adults program.

Authority for this program is contained in section 315(a)(1), (2) of Part C of the Act, as amended.

(20 U.S.C. 1211a(a)(1), (2))

This program provides financial assistance for projects designed to test the effectiveness of programs for improving employment and educational opportunities for Indian adults.

Grants may be made to State educational agencies, local educational agencies, Indian tribes, Indian organizations, and Indian institutions.

Program information: In Fiscal Year (FY) 1985, six pilot projects were awarded grants totaling $621,661. The average grant amount was $103,610.

Program priorities: Under 34 CFR 75.105(c)(1), "Annual Priorities," the Secretary invites applicants to submit applications that address the special needs of Indian adults who reside in rural or isolated areas where adult educational services are not provided by a private organization, local educational agency, State agency, or the Bureau of Indian Affairs, Department of the Interior.

This priority, however, is not weighted. An application that meets this priority receives no competitive or absolute preference over applications that do not meet the priority.

Application forms: Application forms and program information packages are expected to be available by August 8, 1985. These may be obtained by writing to Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, FOB-6, Washington, D.C. 20202.

(Approved by the Office of Management and Budget under control number 1810-0021)

Available funds: Under the President's budget request for FY 1986 about $621,661 would be allocated to this program. The Congress has not passed the FY 1986 appropriation act covering this program. If the Congress appropriates the requested amount, it is estimated that the awards would range from $92,000 to $123,000. The estimated average grant would be $103,610 and approximately six projects would be supported. Projects supported under this program would be for a period of one year.

These estimates, however, do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing Indian Education Programs in 34 CFR Parts 250 and 258, published in the **Federal Register** on June 7, 1984 at 49 FR 23761 and 23777.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further information: For further information contact Elsie Janifer, Indian Education Programs, U.S. Department of Education, Office of Elementary and Secondary Education, Room 2177, FOB-6, 400 Maryland Avenue SW., Washington, DC. 20202. Telephone: (202) 732-1918.

(20 U.S.C. 1211a(a)(1), (2))

84.062E—Indian Education Act—Part C—Demonstration Projects for Indian Adults

Closing date: September 20, 1985.

Applications are invited for new demonstration projects under the Planning, Pilot, and Demonstration Projects for Indian Adults program.

Authority for this program is contained in section 315(a)(1), (2) of Part C of the Act, as amended.

(20 U.S.C. 1211a(a)(1), (2))

This program provides financial assistance for projects designed to demonstrate the effectiveness of programs for improving employment and educational opportunities for Indian adults.

Grants may be made to State educational agencies, local educational agencies, Indian tribes, Indian organizations, and Indian institutions.

Program Information: In Fiscal Year (FY) 1985, seven demonstration projects were awarded grants totaling $809,960. The average grant amount was $115,709.

Program priorities: Under 34 CFR 75.105(c)(1), "Annual Priorities," the Secretary invites applicants to submit applications that address the special needs of Indian adults who reside in rural or isolated areas where adult educational services are not provided by

a private organization, local educational agency, State agency, or the Bureau of Indian Affairs, Department of the Interior.

This priority, however, is not weighted. An application that meets this priority receives no competitive or absolute preference over applications that do not meet this priority.

Application forms: Application forms and program information packages are expected to be available by August 8, 1985. These may be obtained by writing to Indian Education Programs, U.S. Department of Education, Room 2177, FOB 6, 400 Maryland Avenue, SW., Washington, D.C. 20202.

(Approved by the Office of Management and Budget under control number 1810-0021)

Available funds: Under the President's budget request for FY 1986 about $809,960 would be allocated to this program, the Congress has not passed the FY 1986 appropriation act covering this program. If the Congress appropriates the requested amount, it is estimated that the awards would range from $30,000 to $165,000. The estimated average grant would be $115,709 and approximately seven projects would be supported. Projects supported under this program would be for a period of one year.

These estimates, however, do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing Indian Education Programs in 34 CFR Parts 250 and 258, published in the **Federal Register** on June 7, 1984 at 49 FR 23761 and 23777.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further information: For further information contact Elsie Janifer, Indian Education Programs, U.S. Department of Education, Office of Elementary and Secondary Education, Room 2177, FOB-6, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 732-1918.

(20 U.S.C. 1211a(a)(1), (2))

Dated: July 24, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-18005 Filed 7-29-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposal To Implement the Industrial Incentive Rate for the Direct-Service Industrial Customers of the Bonneville Power Administration

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and request for comments. *BPA File No:* INCENT-3.

SUMMARY: On July 19, 1985, BPA proposed implementation of the Industrial Incentive Rate for BPA's direct-service industrial customers (DSIs) as provided in BPA's 1985 Wholesale Power Rate Schedules. The market price for aluminum is at an historically low level in real terms. At this time, the U.S. Market price is approximately 47 cents per pound. Several DSIs are expected to curtail production from current levels beginning in September 1985 when BPA's industrial rate increases as a result of the winter energy charge taking effect.

In an effort to maintain as much of the existing load as possible, BPA has investigated whether BPA's revenues would increase as a result of implementing an Industrial Incentive Rate. Based on the results of this study, BPA proposes adopting an Incentive Rate. The rate would include a demand charge equal to that included in the Standard Industrial Rate and an energy charge which has been reduced by 5 mills per kilowatthour. If adopted, the Industrial Incentive Rate would become effective for a 9-month period beginning September 1, 1985, and would be applied on a take-or-pay basis to the committed loads of those DSIs who elect to purchase under this arrangement. Additional power could be purchased by the DSIs at either the Standard or Premium Industrial Rate. BPA proposes to implement the Industrial Incentive Rate only if, in the aggregate, the DSIs committed to purchasing approximately 1900 megawatts or more of Industrial Firm Power. BPA has provided notice of this proposed action to its customers as required by BPA's General Rate Schedule Provisions (GRSPs).

Responsible Official: Janet W. McLennan, Assistant Power Manager for Natural Resources and Public Services, is the official responsible for implementation of the Industrial Incentive Rate.

DATE: A Public Information and Comment Forum on this proposal will be held from 9 a.m.—12 noon, Tuesday, August 6, in Room 464 of the BPA Headquarters Building located at 1002 NE. Holladay, Portland, Oregon.

ADDRESS: Address comments to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Written comments must be received by 5 p.m. on August 12, 1985, in order to be considered in determining the appropriateness of implementing the Industrial Incentive Rate.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Baker, Public Involvement Office, at the address listed above. Telephone numbers, voice/TTY for the Public Involvement Office are: 503-230-3478 in Portland; toll-free 800-452-8429 for Oregon outside of Portland; 800-547-6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379

Mr. Reginald Kaiser, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4131

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-434-6226, extension 701

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208-334-9137.

SUPPLEMENTARY INFORMATION:

I. Background

The Industrial Incentive Rate is a reduced rate designed to increase BPA's revenues during periods of adverse market conditions for the aluminum industry over those revenues which would otherwise be expected to result from application of BPA's Standard Industrial Rate. The rate is also intended

to stimulate industrial production and maintain employment in the Pacific Northwest. Under the terms of the GRSPs, the Industrial Incentive Rate can be offered to the DSIs only if BPA can demonstrate that the net result of implementing the rate would be to increase total BPA revenues. The proposed Incentive Rate would take effect in September, the first month that BPA's winter energy charge applies to power sales. The rate would remain in effect for a 9-month period, ending May 31, 1986. Although BPA has not yet implemented the Incentive Rate pursuant to the 1985 wholesale power rate schedules, this Incentive Rate will, if implemented, be the third such rate to be adopted by BPA.

For the week ending July 12, 1985, the U.S. market price for aluminum was approximately 47 cents per pound as contrasted to the January 1984 price of slightly more than 77 cents per pound. In response to reduced prices for their products and high worldwide inventories, several of BPA's industrial customers are expected to curtail production on September 1, 1985, when BPA's winter energy charges first apply. BPA is concerned about the effect of such curtailments on its revenues and believes that implementation of another Industrial Incentive Rate may prevent serious erosion of BPA's revenues.

BPA has conducted a feasibility study which concludes that it is appropriate to propose implementing another Industrial Incentive Rate effective in September. In conducting this study, BPA used various computer programs to determine whether total BPA revenues would be greater under the Standard Industrial Rate or under an Incentive Rate.

II. Proposal

BPA is proposing to adopt an Industrial Incentive Rate which would result in a 5 mill per kilowatthour discount from the Standard Industrial Rate for the months of September 1985 through May 1986. This discount would result in an average DSI rate of 19.08 mills per kilowatthour for the Incentive Rate period.

BPA's proposal stipulates that any offer of the Industrial Incentive Rate be conditioned on a total DSI take-or-pay commitment level averaging approximately 1900 megawatts over the 9-month period. If the rate were adopted, BPA would expect to earn $1.3 million more over the Incentive Rate period than would be earned were the Standard Industrial Rate to remain in effect.

Copies of the feasibility study and draft contract are available from the BPA Public Involvement office listed under ADDRESSEES.

III. Receipt of Comments

BPA is now accepting public comments on its proposed implementation of the Industrial Incentive Rate. BPA will accept both oral and written comment at the Public Information and Comment Forum listed under DATES. BPA will accept written comment received by 5 p.m. on August 12, 1985, at the address listed above. Comments received by the Public Involvement Manager or presented at the Public Information and Comment Forum will be considered in determining the appropriateness of BPA's implementation of the Industrial Incentive Rate. Should BPA adopt an Incentive Rate for the period September 1, 1985, through May 31, 1986, BPA will publish a notice of its final action on this matter in the **Federal Register** after September 1, 1985.

Issued in Portland, Oregon, on July 19, 1985.

James J. Jura,

Acting Administrator.

[FR Doc. 85-17983 Filed 7-29-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-625-000, et al.]

Electric Rate and Corporate Regulation Filings; Altech Energy III, et al.

July 25, 1985.

Take notice that the following filings have been made with the Commission:

1. Altech Energy III

[Docket No. ER85-625-000]

Take notice that on July 12, 1985, Altech Energy III (Altech), a California limited partnership, submitted for filing a long term contract for the sale of power to Southern California Edison Company (Edison). The power will be made available from some 390 wind powered turbine generators now under construction in Riverside County, California. The anticipated capacity of the generators is 38,121 kw. the generators will comprise a small power production facility. The rates for the power and energy will be based on Edison's avoided costs as approved by the California Public Service Commission.

Altech has a requested waiver of the cost support requirements of the Commission's Regulations and has requested an effective date of October 1, 1985.

Comment date: August 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Centel Corporation

[Docket No. ER85-622-000]

Take notice that on July 9, 1985, Centel Corporation (Centel) tendered for filing revised Rate Schedule 85-D for Off-Peak service to generating and distribution municipals (the Firm Municipals).

Comment date: August 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Cliffs Electric Service Company

[Docket No. ER85-624-000]

Take notice that on July 12, 1985, Cliffs Electric Service Company (Service Company) tendered for filing an unexecuted wheeling agreement which provides the rate at which Upper Peninsula Power Company will be entitled to use Service Company's Plains Forsyth transmission line for non-firm transmission services. Service Company proposes a rate of 2.49 mills/kwh.

Service Company requests an effective date 60 days from the date of the filing.

Comment date: August 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Middle South Energy, Inc.

[Docket No. ER82-616-004]

Take notice that on June 28, 1985, Middle South Energy, Inc. (MSE) tendered for filing pursuant to Ordering Paragraph (L) of FERC Opinion No. 234, 31 FERC ¶ 61,305 (1985), six copies of the Unit Power Sales agreement dated June 10, 1982 between MSE, as seller, and Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service Inc., as purchasers, (MSE Rate Schedule FERC No. 1) and related Billing Format (Exhibit A thereto) which have been revised as required by Opinion No. 234.

The Unit Power Sales Agreement establishes rates, terms and conditions of service for the sale of capacity and energy available to MSE from Unit 1 of the Grand Gulf Nuclear Electric Station which MSE has constructed near Port Gibson, Miss. In Opinion No. 234, the Commission ordered certain modifications in the Agreement and related Billing Format applicable to sales of such capacity and energy.

As the FERC has previously been advised, Grand Gulf Unit 1 will commence commercial operation on July 1, 1985. The revised Unit Power Sales

Agreement and related Billing Format will be applicable to sales of capacity and energy from Grand Gulf Unit 1 Unit made thereafter by MSE to the purchasers.

Comment date: August 6, 1985, in accordance with Standard Paragraph H at the end of this notice.

5. Mississippi Power Company

[Docket No. ER85-620-000]

Take notice that on July 11, 1985, Mississippi Power Company tendered for filing an Amendment to the Contract between Mississippi Power Company and Singing River Electric Power Association providing for an additional delivery point.

Comment date: August 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Orange and Rockland Utilities, Inc.

[Docket No. ER85-634-000]

Take notice that on July 16, 1985, Orange and Rockland Utilities, Inc. (O&R) tendered for filing as an initial rate schedule a contract dated July 12, 1985 between O&R and the County of Orange, New York, through its agent, the Orange County Municipal Distribution Agency (MDA).

O&R states that the contract is for the purpose of delivery of "Preference Power" made available to the MDA by the New York Power Authority.

O&R requests an effective date of July 15, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: August 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Public Service Company

[Docket No. ER84-604-005]

Take notice that on June 19, 1985, Southwestern Public Service Company submitted for filing six (6) copies of its revised rates and revised cost of service statements in compliance with the Commission's order which was issued May 20, 1985.

Comment date: August 6, 1985, in accordance with Standard Paragraph H at the end of this notice.

8. Vermont Electric Power Company, Inc.

[Docket No. ER85-604-000

Take notice that Vermont Electric Power Company, Inc. ("VELCO") on July 5, 1985 filed a notice of cancellation of its FERC Rate Schedule No. 9, entitled "Agreement re Charges for Additional Facilities Constructed by VELCO for Transmission for Central Vermont of Firm Power Other Than State Allocated Power" dated October 2, 1962 and amended November 18, 1965 (Supplement No. 1), August 2 1966 (Supplement No. 2) and August 1, 1967 (Supplement No. 3). This notice of cancellation is requested to be permitted to become effective as of end-of-day June 30, 1985, when the agreement terminates by its terms. Waiver of the Commission's notice requirements is requested to allow the June 30, 1985 effective date. If waiver is not granted, the notice of cancellation is requested to be permitted to become effective on September 3, 1985, sixty days after filing.

Comment date: August 6, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Bonneville Power Administration

[Docket No. ER85-2021-002]

Take notice that on July 16, 1985, Bonneville Power Administration (BPA) submitted for filing a request for approval of its impact aid methodology, which was promulgated pursuant to section 7(m) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). 16 U.S.C. § 839e(m). Section 7(m) provides that the Administrator may make annual impact aid payments to local governments within the region with respect to major transmission facilities which are located within the boundaries of such governments, and which are determined to have a substantial impact on such governments. Section 7(m)(2) states: "Such rule shall become effective on its approval, after considering its effect on rates established pursuant to this section, by the Federal Energy Regulatory Commission."

BPA requests approval of the methodology at the earliest possible date, for a period extending through June 30, 1990 the end of the rate period for which BPA has requested approval of the power and transmission rates filed in this docket. BPA requests that approval of the methodology not be delayed pending final confirmation and approval of the rates.

Comment date: August 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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 the comment date. 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.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18041 Filed 7-29-85; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010789.

Title: Israel Westbound Conference.

Parties:

Farrell Lines, Inc.

Lykes Bros. Steamship Co., Inc.

Zim Israel Navigation Co., Ltd.

Synopsis: The proposed agreement would establish a port-to-port and intermodal rate-making arrangement between the parties in the trade from Mediterranean ports of Israel to U.S. Atlantic, Great Lakes, Gulf and Pacific ports.

Agreement No.: 202-010790.
Title: Israel Eastbound Conference.
Parties:
Farrell Lines, Inc.
Lykes Bros. Steamship Co., Inc.
Zim Israel Navigation Co., Ltd.
Synopsis: The proposed agreement would establish a port-to-port and intermodal rate-making arrangement between the parties in the trade from U.S. Atlantic, Gulf, Great Lakes and Pacific ports to Mediterranean ports of Israel.

Agreement No.: 202-010791.
Title: Wallenius/Transroll Joint Service Agreement.
Parties:
Rederi AB Soya
Transroll Navegacao S.A.
Synopsis: The proposed agreement would establish a joint service arrangement between the parties to participate jointly in the carriage of vehicles and other cargoes in the trade between Brazil and the United States, and to share the profits and losses of the service. It would permit the parties to publish a joint tariff, to charter vessels or space owned or chartered by each other and form one or more corporations to build, buy, operate or charter tonnage.

Dated: July 25, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-18007 Filed 7-29-85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-006190-046.
Title: United States Atlantic and Gulf/Venezuela Freight Association.
Parties:
Compania Anonima Venezolana de Navigacion Coordinated Caribbean Transport, Inc.
United States Lines (S.A.) Inc.
Synopsis: The proposed amendment would reduce the amount of the required security deposit from $50,000 to $25,000. The parties have requested a shortened review period.

Agreement No.: 203-007970-006.
Title: Pacific Coast Committee of Inward Trans-Pacific Steamship Lines.
Parties:
Barber Blue Sea Line
Hapag-Lloyd AG
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines Ltd.
Nippon Yusen Kaisha
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.
American President Lines, Ltd.
Synopsis: The proposed amendment would add American President Lines, Ltd. as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 202-006900-029.
Title: The "8900" Lines Agreement.
Parties:
Barber Blue Sea
A.P. Moller-Maersk Line
The National Shipping Company of Saudi Arabia
Nedlloyd Lijnen, B.V.
Sea-Land Service, Inc.
United Arab Shipping Co. (S.A.G.)
Waterman Steamship Corp.
Synopsis: The proposed amendment would enlarge the scope of the agreement to include Tampa, Florida, and would allow each party to have two receiving locations at each bill of lading port instead of one.

Dated: July 25, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-18008 Filed 7-29-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Commerce & Energy Bank Holding Co., 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 office 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 August 21, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Commerce & Energy Bank Holding Company*, Lafayette, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Commerce & Energy Bank of Lafayette, Lafayette, Louisiana.

2. *First Polk Bankshares, Inc.*, Cedartown, Georgia; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Polk County, Cedartown, Georgia.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens Fidelity Corporation*, Louisville, Kentucky; to acquire 100 percent of the voting shares of Central Kentucky Bancorp, Inc., Elizabethtown, Kentucky, thereby indirectly acquiring First Hardin National Bank & Trust, Elizabethtown, Kentucky.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *St. Charles Bancshares, Inc.*, St. Charles, Minnesota; to acquire 99.5 percent of the voting shares of First National Bank of Blooming Prairie, Blooming Prairie, Minnesota.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Duncanville Bancshares, Inc.*, Duncanville, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First

State Bank of Texas, Duncanville, Texas.

2. *Valley Bancorp, Inc.*, El Paso, Texas; to acquire 80 percent of the voting shares of Montwood Bancshares, Inc., El Paso, Texas, thereby indirectly acquiring Montwood National Bank, El Paso, Texas.

Board of Governors of the Federal Reserve System, July 24, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-17964 Filed 7-29-85; 8:45 am]

BILLING CODE 6210-01-M

Financial Trust Corp et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 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 outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 1985.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Financial Trust Corp* (formerly Financial Trans Corp), Carlisle, Pennsylvania; to engage through its subsidiary, Financial Trust Life Insurance Company, Phoenix, Arizona, in acting as underwriter with respect to insurance limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death of disability of the debtor, pursuant to section 4(c)(8)(A) of the Act. These activities will be conducted in Cumberland, Franklin, and Perry Counties in the State of Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Landmark Banking Corporation of Florida*, Ft. Lauderdale, Florida, and *Citizens and Southern Georgia Corporation*, Atlanta, Georgia; to engage *de novo* through their subsidiary, Capital Group Leasing, Inc., Ft. Lauderdale, Florida, in leasing personal property, acting as agent with respect to insurance limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act.

Board of Governors of the Federal Reserve System, July 24, 1985

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-17963 Filed 7-29-85; 8:45 am]

BILLING CODE 6210-01-M

First Railroad and Banking Co.; Applications To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under 225.23(a)(1) of the Board's Regulation Y (12 CFR § 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 15, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Railroad & Banking Company*, Augusta, Georgia: To engage *de novo* directly in the activity of consumer financing.

Board of Governors of the Federal Reserve System, July 24, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-17962 Filed 7-29-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85P-0314]

Canned Green Beans Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to The Larsen Co., and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the

temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than October 28, 1985.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under seciton 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to The Larsen Co., 529 North Broadway, P.O. Box 19027, Green Bay, WI 54307–9027, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904–2004.

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test product is to be manufactured at The Larsen Co. plant in Cambria, WI.

The principal display panel of the label states the product name as "Cut Green Beans" and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than October 28, 1985.

Dated: July 19, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–17960 Filed 7–29–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85P–0319]

Canned Green Beans Deviating From Identity Standard; Temporary Permit for Marketing Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Green Gaint Co., a subsidiary of the Pillsbury Co., and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than October 28, 1985.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Green Gaint Co., a subsidiary of the Pillsbury Co., Pillsbury Center, Minneapolis, MN 55402, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904–2004.

The permit covers limitied interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be dstributed in the continental United States. The test product is to be manufactured at the Green Gaint Co. plant located in Beaver Dam, WI.

The principal display panel of the label states the product name as "Cut Green Beans" and each of the ingredients used is state on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but not later than October 28, 1985.

Dated: July 19, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–17961 Filed 7–29–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85P–0315]

Canned Green Beans Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Comstock Foods, a division of Curtice-Burns, Inc., and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but not later than October 28, 1985.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of indentity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Comstock Foods, a division of Curtice-Burns, Inc., P.O. Box 670, Rochester, NY 14602, and Continental Can Co., Inc., 51 Harbor Plaza, Box No. 10004, Stamford, CT 06904–2004.

This permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21

CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the product (up to 75 parts per million of zinc in the finshed food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test product is to be manufactured at the Comstock Foods plants located in South Dayton, NY, and Leicester, NY.

The principal display panel of the label states the product name as "Cut Green Beans" and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but not later than October 28, 1985.

Dated: July 19, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-17959 Filed 7-29-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85P-0316]

Canned Green Beans Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Agripac, Inc., and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than October 28, 1985.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Agripac, Inc., P.O. Box 5346, Salem, OR 97304, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904-2004.

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test product is to be manufactured at the Agripac, Inc., plant in Salem, OR.

The principal display panel of the label states the product name as "Cut Green Beans" and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than October 28, 1985.

Dated: July 19, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-17958 Filed 7-29-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85P-0317]

Canned Green Beans Deviating From Identity Standards; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Stokely USA, Inc., and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than October 28, 1985.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Stokely USA, Inc., P.O. Box 248, Oconomowoc, WI 53066, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904-2004.

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 case of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test production is to be manufactured at the Stokely USA, Inc., plant located in Scottsville, MI.

The principal display panel of the label states the product name as "Cut Green Beans" and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than October 28, 1985.

Dated: July 19, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-17957 Filed 7-29-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85P-0318]

Canned Green Beans Deviating From Identity Standard: Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a termporary permit has been issued to Furman Foods, Inc., and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than October 28, 1985.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Furman Foods, Inc., R.D. No. 2, Northumberland, PA 17857, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904-2004.

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of test product will be distributed in the continental United States. The test product is to be manufactured at the Furman Foods, Inc., plant located in Northumberland, PA.

The principal display panel of the label states the product name as "Cut Green Beans" and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later the October 28, 1985.

Dated: July 19, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-17956 Filed 7-29-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcement for Grants for Graduate Training in Family Medicine

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1986 Grants for Graduate Training in Family Medicine are being accepted under the authority of section 786(a) of the Public Health Service Act, as amended.

Section 786(a) authorizes the Secretary to make grants to public or nonprofit private hospitals, accredited schools of medicine or ostreopathy, and other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating or participating in approved graduate training programs in the field of family medicine. In addition, section 786(a) authorizes assistance in meeting the cost of supporting trainees in such programs who plan to specialize or work in the practice of family medicine.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q.

In the funding of approved applications, preference will be given to projects in which:

1. Substantial training experience is in settings which exemplify interdependent utilization of physicians and physician assistants and/or nurse practioners; and/or

2. Substantial portions of the training program are conducted in a primary medical manpower shortage area which is part of a health manpower shortage area(s) designated under section 332 of the Public Health Service Act or in an Area Health Education Center, funded at least in part, under section 781 of the Act.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-15), Bureau of Health Professions, Health Resources and Service Administration, 5600 Fishers Lane, Rm. 8C-22, Rockville, Maryland 20857. Telephone: (301) 443-6960.

If additional programmatic information is needed, please contact: Primary Care Graduate, Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rm. 4C-04, Rockville, Maryland. Telephone: (301) 443-6820.

The deadline date for receipt of applications is September 27, 1985. Applications shall be considered as meeting the deadline date if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applicants should be advised that the application announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

This program is listed at 13.379 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs of 45 CFR Part 100.

Dated: July 24, 1985.

John H. Kelso,

Acting Administration.

[FR Doc. 85-17955 Filed 7-29-85; 8:45 am]

BILLING CODE 4160-16-M

Public Health Service

Cooperative Agreement Award to the Boys Clubs of America for a National Prevention Initiative

This notice is to provide information to the public concerning a planned cooperative agreement award by the Office of Disease Prevention and Health Promotion (ODPHP) to the Boys Clubs of America. This award will be made in response to an unsolicited proposal from this organization.

The Boys Clubs will undertake a national prevention demonstration and utilization project to test our strategies for preventing alcohol and drug abuse among its members. Prevention programs, involving Boys Clubs members and their parents, will be established at multiple demonstration sites across the country, and the results of these programs will be compared with control sites where there are regular Boys Clubs programs. The demonstration programs will emphasize the prevention techniques and life skills which prepare young people to understand and resist the social influences that promote alcohol use, drug use, and related behaviors. This project will be supported under a cooperative agreement award for a three-year period.

The cooperative agreement mechanism is being used because it has been determined that a substantial Federal role in the performance of the project will help to ensure results consistent with the Federal goal of developing models for national disease prevention and health promotion approaches. This award mechanism will also facilitate the involvement of a variety of Federal Government organizations with programs relevant to the proposed Boys Clubs program. The Office of Disease Prevention and Health Promotion, which will administer this award, will coordinate the involvement of staff from the National Institute on Drug Abuse and the National Institute on Alcohol Abuse and Alcoholism, as well as staff from other relevant programs within and outside HHS. Federal staff will assist in developing curricula, detailed evaluation plans, materials for use in the project and broader dissemination.

Because of their direct involvement with a national network of community programs, the Boys Clubs of America is in a unique position to carry out this proposed program with its affiliate organizations.

Supplemental information about this project may be obtained from: James A. Harrell, Deputy Director, Office of Disease Prevention and Health Promotion, 330 C Street, SW., Room 2132, Washington, D.C. 20201.

Dated: July 22, 1985.

J. Michael McGinnis,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. 85-17995 Filed 7-29-85; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Confederated Tribes of the Goshute Reservation Ordinance Providing for the Introduction, Use, Possession, and Consumption of Alcohol

July 16, 1985.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Goshute Business Council has duly adopted Ordinance No. 85-G-04 on April 12, 1985. The ordinance provides for the introduction, possession, use and consumption of alcohol within the areas of Indian country under the jurisdiction of the Confederated Tribe of Goshute in Utah and Nevada. The ordinance reads as follows:

John W. Fritz,

Deputy Assistant Secretary, Indian Affairs.

Ordinance No. 85-G-04

Now, Therefore, be it enacted by the Confederated Tribes of the Goshute Reservation, that pursuant to the authority vested in it by Article VII, Section 1(f) of the Constitution of the Confederated Tribes of the Goshute Reservation that the introduction, possession, use and consumption of alcoholic beverages shall be lawful within the exterior boundaries of those lands in the State of Nevada and Utah under the territorial jurisdiction of the Confederated Tribes of the Goshute Reservation, provided that such introduction, possession, use and comsumption shall be in conformity both with the laws of the State in which such act or transaction occurs and in accordance with the following:

Section 1

It shall be unlawful to sell alcoholic beverages by the bottle, drink, can or other package within the exterior boundaries of those lands of the States of Nevada and Utah, under the territorial jurisdiction of the Confederated Tribes of the Goshute Reservation.

Section 2

It shall be unlawful for any person to use or consume any alcoholic beverages while operating a motor vehicle.

Section 3

It shall be unlawful to open any container of alcoholic beverages in the passenger compartment of a motor vehicle when such vehicle is being driven.

Section 4

It shall be unlawful for any person(s) to manifestly consume alcoholic beverages, while under the influence of alcoholic beverages to the degree that he/she may endanger himself/herself or other persons or property.

Section 5

It shall be unlawful to consume, use, possess any alcoholic beverages within the restricted premises of the Goshute Tribal Building, Goshute Enterprise Welding Shop, and the Goshute Farming Enterprises (former Halstead Ranches), and at any other [sic] designated by the Goshute Business Council by the adoption of a tribal resolution.

Section 6

It shall be unlawful for any person to furnish any alcoholic beverages to any person under the age of twenty-one (21) years or to leave or to deposit any alcoholic beverages with the intent that the alcoholic beverages shall be procured by any person under the age of twenty-one (21 years).

Section 7

It shall be unlawful for any person under the age of twenty-one (21) years of age to introduce, possess, use or consume alcoholic beverages.

Section 8

Any Indian who violates any of the provisions of this ordinance shall be deemed guilty of an offense and upon conviction thereof, shall be punished by a fine of not more than $150 or by imprisonment of not more than thirty (30) days or both such fine and imprisonment: Provided, however, that any person under the age of eighteen (18) years may, in the discretion of the judge, be treated as a juvenile and have the charge(s) disposed of pursuant to applicable juvenile law and procedures.

Section 9

When any provisions of this ordiance is [sic] violated by a non-Indian, he or she will be referred to State, County, and/or Federal authorities for prosecution under applicable law.

Section 10

All ordinances, resolutions or acts that have previously been enacted by the Business Council of the Confederated Tribes of the Goshute Reservation which are in conflict with any provision(s) of this ordinance are hereby repealed.

Certification

I, the undersigned, as Vice-Chairman of the Business Council of the Confederated Tribes of the Goshute Reservation, do hereby certify that the Business Council of the Confederated Tribes of the Goshute Reservation, is composed of 5 members, of whom 4 constituting a quorum were present at a duly held meeting on the 12th day of April 1985 and that the foregoing ordinance was adopted and approved at such meeting by the affirmative vote of 3 FOR; 0 ABSTENTIONS; pursuant to the authority contained under Article VII, Section 1(f) of the Constitution of the Confederated Tribes of the Goshute Reservation, approved November 25, 1940.

Dated: April 15, 1985.

Henry Pete,

Vice-Chairman, Goshute Business Council.

Recommended Approval:

Steven D. Tibbetts,

Superintendent, Eastern Nevada Agency.

Ordinance No. 85–G–04.

[FR Doc. 85–17984 Filed 7–29–85; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AA–6698–B]

Alaska Native Claims Selection

Correction

In the FR Doc. 85–17447 appearing on page 30018 in the issue of Tuesday, July 23, 1985, make the following correction: In the third column, in the heading, the docket number should have read as set forth above.

BILLING CODE 1505–01–M

Camping Stay Limit on Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of camping stay limit for public lands administered by the BLM in the Butte District, Montana. Persons may occupy any one site or miltiple sites within a 5 mile radius on public lands not closed or otherwise restricted to camping within the Butte District for a total period of not more than fourteen days during any 28-day period. Following the fourteen day period persons may not relocate within a distance of five (5) miles of the site that was just previously occupied until completion of the 28-day period. The fourteen day limit may be reached either through a number of separate visits or through a period of continuous occupations of a site. Under special circumstances and upon request, the authorized officer may give written permission for extension to the fourteen day limit.

Additionally, no person may leave personal property unattended in designated campgrounds, recreation developments or elsewhere on public lands within the Butte District for a period of more than 24 hours without written permission from the authorized officer.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established in order to assist the Bureau in reducing the incidence of long-term occupancy trespass being conducted under the guise of camping on public lands within the Butte District. Of equal importance is the problem of long-term camping, which precludes equal opportunities for other members of the public to camp in the same area, which creates user conflicts.

DATE: This camping stay limit will be effective immediately upon publication in the **Federal Register.**

FOR MORE INFORMATION CONTACT: Jack McIntosh, District Manager, Butte District Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702, telephone (406) 494–5059.

Authority for this stay limit is contained in CFR Title 43, Chapter II Part 8365, subparts 8365.1–2 and 8365.2–3.

Jack A. McIntosh,

District Manager Butte District.

[FR Doc. 85–17968 Filed 7–29–85; 8:45 am]

BILLING CODE 4310–84–M

Coeur d'Alene District; Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council Meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 940579 and 43 CFR Part 1780, that a meeting of the Coeur d'Alene District Advisory Council will be held on Tuesday, August 27, 1985 at 10:00 a.m., at the Bureau of Land Management Office, 1808 North Third, Coeur d'Alene, ID 83814.

Agenda for the meeting will include:

1. Discussion of potential land actions;
2. Update on BLM/USFS Interchange;
3. Briefing on hazardous waste activities;
4. Update on Lower Salmon River withdrawal;
5. Discussion of nominations for expiring Council terms;
6. Arrangement for next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11:30 a.m. and 12:00 noon, or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the above address by August 23, 1985.

Depending on the number of persons wishing to make an oral statement, a per person time limit may be established.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: July 19, 1985.

Wayne Zinne,

District Manager.

[FR Doc. 85–17982 Filed 7–29–85; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

National Register of Historic Places; Arizona et al.; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 20, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by August 14, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Santa Cruz County

Nogales, *10 Cottages on Short Street (Nogales MRA)*, 117–126 Short

Nogales, *Arizona-Sonora Manufacturing Company Machine Shop (Nogales MRA)*, Grand Ave. at Arroyo Blvd.

Nogales, *Bowman Hotel (Nogales MRA)*, 314–316 Grand Ave.

Nogales, *Bowman, W.C., House (Nogales MRA)*, 112 Sierra

Nogales, *Burton Building (Nogales MRA)*, 322–324

Nogales, *Cranz, Frank F., House (Nogales MRA)*,408 Arroyo

Nogales, *Crawford Hill Historic Residential District (Nogales MRA)*, Roughly bounded by Oak St., Terrace Ave., Compound St., & Interstate 19 & Grindell

Nogales, *Dunbar, George, House (Nogales MRA)*, 118 Sierra

Nogales, *Harrison, Sen. James A., House (Nogales MRA)*, 449 Morley
Nogales, *Hotel Blanca (Nogales MRA)*, 701 Morley
Nogales, *House at 220 Walnut Street (Nogales MRA)*, 220 Walnut St.
Nogales, *House at 334—338 Walnut Street (Nogales MRA)*, 334—338 Walnut St.
Nogales, *House at 665 Morley Avenue (Nogales MRA)*, 665 Morley Ave.
Nogales, *Kress, S.H., & Co., Building (Nogales MRA)*, 119—121 Morley
Nogales, *Las Dos Naciones Cigar Factory (Nogales MRA)*, 331 Morley
Nogales, *Marsh Heights Historic Residential District (Nogales MRA)*, Roughly bounded by Court St., Summit Ave., S. Court St. and Morley Ave.
Nogales, *Marsh, George B., Building (Nogales MRA)*, 213—225 Grand
Nogales, *Mediterranean Style House (Nogales MRA)*, 124 Walnut
Nogales, *Mediterranean Style House (Nogales MRA)*, 116 Walnut
Nogales, *Miller, Hugo, House (Nogales MRA)*, 750 Petrero
Nogales, *Montezuma Hotel (Nogales MRA)*, 217 Morley
Nogales, *Nogales Electric Light, Ice & Water Company Power House (Nogales MRA)*, 498 Grand
Nogales, *Nogales High School (Nogales MRA)*, 209 Plum
Nogales, *Nogales Steam Laundry Building (Nogales MRA)*, 223—219 East
Nogales, *Noon, A.S., Building (Nogales MRA)*, 246 Grande
Nogales, *Piscorski, Jose, Building (Nogales MRA)*, 315 Morley
Nogales, *Three Mediterranean Cottages on Parjarito Street (Nogales MRA)*, 102—104 Parjarito
Nogales, *Wise, J.E., Building (Nogales MRA)*, 134 Grande

CALIFORNIA

Los Angeles County

Avalon, *Wrigley, William, Jr., Summer Cottage*, 76 Wrigley Rd.

San Francisco County

San Francisco, *Krotoszyner, Dr. Martin M., Medical Offices and House*, 995—999 Sutter St.

GEORGIA

Chatham County

Savannah, *Ardsley Park-Chatham Crescent Historic District*, Roughly bounded by Ardsley Pk., Chatham Crescent, Bull St., Baldwin Pk. and Ardmore

MAINE

Androscoggin County

Lewiston, *Peck's Department Store (Lisbon Street MRA)*, 184 Main St.
Lewiston, *Bergin Block (Lisbon Street MRA)*, 330 Lisbon St.
Lewiston, *Block at 379 Lisbon Street (Lisbon Street MRA)*, 379 Lisbon St.
Lewiston, *Callahan Building #2 (Lisbon Street MRA)*, 282 Lisbon St.
Lewiston, *Callahan Building (Lisbon Street MRA)*, 276 Lisbon St.
Lewiston, *Lewiston Trust & Safe Deposit Co. (Lisbon Street MRA)*, 46 Lisbon St.
Lewiston, *Lisbon Block-College Block (Lisbon Street MRA)*, 248–274 Lisbon St.
Lewiston, *Lyceum Hall (Lisbon Street MRA)*, 49 Lisbon St.
Lewiston, *Maine Supply Company Building (Lisbon Street MRA)*, 415–417 Lisbon St.
Lewiston, *Manufacturer's National Bank (Lisbon Street MRA)*, 145 Lisbon St.
Lewiston, *McGillicuddy Block (Lisbon Street MRA)*, 133 Lisbon St.
Lewiston, *Odd Fellows Block (Lisbon Street MRA)*, 182—190 Lisbon St.
Lewiston, *Osgood Building (Lisbon Street MRA)*, 129 Lisbon St.
Lewiston, *Union Block (Lisbon Street MRA)*, 21–29 Lisbon St.

MINNESOTA

Big Stone County

Artichoke Township, *District 13 School*, CR 25
Graceville, *Shannon Hotel*, Studdart Ave. & Second St.
Ortonville, *Big Stone County Courthouse*, 20 S.E. Second St.
Ortonville, *Columbian Hotel*, 305 N.W. Second St.
Ortonville, *Ortonville Commercial Historic District*, Madison & Monroe Aves. & Second St. between Jefferson & Jackson Aves.
Ortonville, *Ortonville Free Library*, 412 N.W. Second St.

Carlton County

Cloquet, *Cloquet City Hall*, Ave. B & Arch St.

Douglas County

Alexandria, *Cowing, John B., House*, 415 7th Ave. E.
Alexandria, *Great Northern Passenger Depot*, N. Broadway & Agnes Blvd.

Fillmore County

Chatfield, *Dickson, Samuel Thompson, House*, 225 Southwest Third St.

Jackson County

Heron Lake, *Heron Lake Public School*, Sixth Ave. & Tenth St.

Lac qui Parle County

Dawson, *Dawson Carnegie Library*, 677 Pine St.
Madison, *Lac qui Parle County Courthouse*, 600 Sixth St.

McLeod County

Hutchinson, *Goodnow, Merton S., House*, 446 S. Main St.

Roseau County

Rosean, *Roseau County Courthouse, 216 Center St. W.*

Swift County

Benson, *Christ Church, 310 13th St. N.*
Benson, *Church of St. Francis Xavier, 13th St N. & Montana Ave.*
DeGraff, *Church of St. Bridget*, Third St. & Ireland Ave
Murdock, *Murdock, Sabin S., House, Clara Ave.*

Traverse County

Browns Valley, *Browns Valley Carnegie Public Library*, Broadway Ave. & Second St.
Lake Valley Township, *Larson's Hunters Resort-Larsen, Andrew and Bertha, Farm, CR 76*

OHIO

Champaign County

Mechanicsburg, *Baker, Major John C., House (Mechanicsburg MRA)*, 202 W. Main St.
Mechanicsburg, *Barr House (Mechanicsburg MRA)*, Locust & Sandusky Sts.
Mechanicsburg, *Burnham, Henry, House, (Mechanicsburg MRA)*, N. Main St. & Rt. 559
Mechanicsburg, *Church of our Savior (Mechanicsburg MRA)*, S. Main St.
Mechanicsburg, *Clark, Dr., House (Mechanicsburg MRA)*, 21 N. Main St.
Mechanicsburg, *Culbertson, William, House (Mechanicsburg MRA)*, 103 Race St.
Mechanicsburg, *Demand-Gest House (Mechanicsburg MRA)*, 37 N. Main St.
Mechanicsburg, *Hamer's General Store (Mechanicsburg MRA)*, 88 S. Main St.
Mechanicsburg, *Hunter, Norvall, Farm (Mechanicsburg MRA)*, S. Main St.
Mechanicsburg, *Kimball House (Mechanicsburg MRA)*, 115 N. Main St.
Mechanicsburg, *Lowler's Tavern (Mechanicsburg MRA)*, N. Main St.
Mechanicsburg, *Magruder Building (Mechanicsburg MRA)*, 16 S. Main St.
Mechanicsburg, *Masonic Temple (Mechanicsburg MRA)*, N. Main St.
Mechanicsburg, *Mechanicsburg Baptist Church (Mechanicsburg MRA)*, Walnut & Sandusky Sts.
Mechanicsburg, *Mechanicsburg Commercial Historic District (Mechanicsburg MRA)*, 1—11 S. Main St.
Mechanicsburg, *Ninchelser, Dr., (Mechanicsburg MRA)*, 28 N. Main St.
Mechanicsburg, *Rathburn, Levi, House (Mechanicsburg MRA)*, Locust & Sandusky Sts.
Mechanicsburg, *Second Baptist Church (Mechanicsburg MRA)*, Sandusky St.
Mechanicsburg, *St. Michael Catholic Church (Mechanicsburg MRA)*, 40 Walnut St.
Mechanicsburg, *United Methodist Church, (Mechanicsburg MRA)*, N. Main & Race Sts.
Mechanicsburg, *Village Hobby Shop (Mechanicsburg MRA)*, N. Main St.

VIRGINIA

Fairfax County

Clifton, *Clifton Historic District*, Roughly bounded by Popes Head Creek, Water St., Dell Ave., Chestnut & Chapel Rds.

[FR Doc. 85-18043 Filed 7-29-85; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

A.I.D. Mission Directors in Jordan, Morocco, Tunisia and Yemen; Redelegation of Authority No. 113.9

Pursuant to the authority delegated to me by A.I.D. Delegations of Authority No. 5, dated December 29, 1961 (27 FR 449), as amended, with respect to Loan Agreements; No. 38, dated June 21, 1977 (42 FR 31511), as amended, with respect to Project Agreements, Trust Fund Agreements, and Grant Agreements; No. 40 dated December 29, 1981 (47 FR 1049) with respect to Source, Origin and Nationality for Procurement; No. 113, dated October 15, 1975, and No. 133 dated December 11, 1981, I hereby redelegate to the Directors of the A.I.D. Missions in Jordan, Morocco, Tunisia and Yemen authority to exercise any of the following functions assigned to me for the country to which such official is assigned, retaining for myself concurrent authority to exercise any of the functions herein redelegated:

1. The authority to approve project identification documents (PIDs) and program assistance initial proposals (PAIPs) for non-project assistance if such PIDs or PAIPs:

(a) Do not have an anticipated life of project funding of more than $2.5 million;

(b) Have been included in the Mission's annual action plan approved by AID/W; and

(c) Do not have a life of project in excess of ten years.

2. Authority to authorize a project or activity if such project or activity:

(a) Does not exceed $20 million over the approved life of the project (except as provided in paragraph 3 below);

(b) Does not present significant policy issues;

(c) Does not require waivers which may only be approved in AID/W or, if such waivers are required, that they have been approved prior to such authorization; and

(d) Does not have a life of project in excess of ten years and that such life of project has been approved in the PID review;

3. Authority to amend project or non-project assistance authorizations executed by any A.I.D. official, if the amendment:

(a) Does not result in a total life of project funding of more than $30 million;

(b) Does not present significant policy issues; and

(c) Does not require issuance of waivers which may only be approved in AID/W or, if such waivers are required, that they have been approved prior to such authorization.

4. Authority to negotiate, execute and implement trust fund agreements, project and non-project assistance agreements (both loan and grant) and amendment thereto duly authorized under the Foreign Assistance Act of 1961, as amended, in accordance with regulations, policies and procedures now or hereafter established or modified and promulgated within A.I.D. This authority shall include, without limitation, the following:

(a) Authority to prepare, negotiate, and execute letters of implementation;

(b) Authority to review and approve documents and other evidence submitted by borrowers or grantees in satisfaction of conditions precedent to financing under such agreements;

(c) Authority to negotiate, execute and implement all documents ancillary to such agreements.

5. Authority to sign or approve Project Implementation Orders.

6. Authority to review and approve the terms of country contracts, contractors, amendments and modifications to such contracts, and invitations for bids and request for proposals with respect thereto.

7. Authority to waive, in accordance with the criteria prescribed in Supplement B of A.I.D. Handbook 1:

(a) U.S. source, origin, and nationality requirements to permit A.I.D. financing of procurement of goods and services, other than transportation services, in countries included in A.I.D. Geographic Code 941 (Selected Free World) and the cooperating country when the cost of the goods and services does not exceed $5,000,000 per transaction (exclusive of transportation costs); and

(b) U.S. or Code 941 source, origin, and nationality requirements for specific transactions to permit A.I.D. financing of the procurement of goods and services, other than transportation services, in any country included in A.I.D. Geographic Code 899 (Free World) or A.I.D. Geographic Code 935 (Special Free World) when the cost of the goods and services does not exceed $5,000,000 per transaction (exclusive of transportation costs); provided, however:

(1) That all waivers of source, origin, and nationality for procurement of goods authorized pursuant to section 6(b) shall contain a certification by the approving official that "Exclusion of procurement from free world countries other than the cooperating country and countries included in Code 941 would seriously impede attainment of U.S. foreign policy objectives and objectives of the foreign assistance program";

(2) That all waivers of the nationality requirements for services, other than ocean transportation services, authorized pursuant to section 6(b) shall contain a certification by the approving official that "The interests of the United States are best served by permitting the procurement of services from free world countries other than the cooperating country and countries included in Code 941"; and

(3) That authority to waive source and origin requirements under 6 (a) or (b) above for motor vehicles shall be limited to $50,000 per transaction (exclusive of transportation costs).

8. Authority to waive competition in the procurement of goods and services for country contracts and approve single-source negotiated contracts therefor if the estimated value of the procurement does not exceed $1,000,000 (exclusive of transportation costs); provided, however that the Mission's non-competitive review board finds such waiver justified in accordance with Handbook 11.

9. Authority to waive advertising in the Commerce Business Daily and A.I.D. Bulletin for project funded transactions up $500,000 for professional and technical services, construction services and commodities (excluding transportation costs); provided, however that such waivers shall be granted only where required to avoid serious delay in project implementation. Efforts shall be made, in any event, to secure proposals from a reasonable number of potential contractors.

10. Authority to extend terminal dates for signing such agreements, and meeting initial and additional conditions precedent for a cumulative period of not to exceed 180 days for each, and to extend terminal dates for requesting disbursement authorizations, terminal disbursement dates and Project Assistance Completion Dates (PACDs) for a cumulative period of not to exceed 730 days for each. Provided that such authority shall not be exercised if the result of doing so would:

(a) Cause the total life of the project (e.g. from point of initial obligation and revised PACD) to be in excess of 10 years.

(b) Require additional funding for the project unless the project authorization is formally amended to provide the additional funds; and

(c) Cause a significant change in project purpose.

11. The authorities herein redelegated shall be exercised in accordance with agency handbooks, regulations and

other official guidance as modified from time to time. Each officer exercising this authority must obtain necessary engineering, economic, financial, legal and other technical clearances calling on regional or AID/W offices and personnel as appropriate.

12. The authorities herein redelegated shall be exercised by an officer serving in an "Acting" capacity and may also be redelegated by the Director to his or her principal deputy. The authorities contained in section 5 and 6 above may be further redelegated under the general supervision of the Mission Director. This redelegation shall be effective immediately and shall remain in effect until modified or revoked with application to the principal officer in each of the affected countries notwithstanding any change in the name of the A.I.D. office or the title of its principal officer.

13. The signature of the Mission Director or other A.I.D. officer as appropriate under this Redelegation is required for all project or non-project assistance agreements and amendments thereto. The Ambassador or Charge d'Affairs may also sign such project and non-project assistance agreements as have been signed by the Mission Director.

14. The following Redelegation of Authority is hereby revoked: No. 113.3A dated March 10, 1982 in its entirety.

15. This Redelegation shall be effective immediately and shall remain in effect until modified or revoked.

Dated: April 4, 1985.

W. Antoinette Ford,

Assistant Administrator Bureau for Near East.

[FR Doc. 85-17978 Filed 7-29-85; 8:45 am]

BILLING CODE 6116-01-M

A.I.D. Representative in Oman; Redelegation of Authority No. 113.11

Pursuant to the authority delegated to me by A.I.D. Delegations of Authority No. 5, dated December 29, 1961 (27 FR 449), as amended, with respect to Loan Agreements; No. 38, dated June 21, 1977 (42 FR 31511), as amended, with respect to Project Agreements, Trust Fund Agreements, and Grant Agreements; No. 40 dated December 29, 1981 (47 FR 1049) with respect to Source, Origin and Nationality for Procurement; No. 113, dated October 15, 1975, and No. 133 dated December 11, 1981, I hereby redelegate to the A.I.D. Representative in Oman authority to exercise any of the following functions assigned to me for the country to which such official is assigned, retaining for myself concurrent authority to exercise any of the functions herein redelegated:

1. Authority to authorize a project or activity if such project or activity:

(a) Does not exceed $10 million over the approved life of the project (except as provided in paragraph 2 below);

(b) Does not present significant policy issues;

(c) Does not require waivers which may only be approved in AID/W or, if such waivers are required, that they have been approved prior to such authorization; and

(d) Does not have a life of project in excess of ten years and that such life of project has been approved in the PID review;

2. Authority to amend project or non-project assistance authorizations executed by any A.I.D. official, if the amendment:

(a) Does not result in a total life of project funding of more than $20 million.

(b) Does not present significant policy issues; and

(c) Does not require waiver which may only be approved in AID/W or, if such waiver are required, that they have been approved prior to such authorization.

3. Authority to negotiate, excute and implement trust agreements, project and non-project assistance agreements (both loan and grant) and amendments thereto duly authorized under the Foreign Assistance Act of 1961, as amended, in accordance with regulations, policies and procedures now or hereafter established or modified and promulgated within A.I.D. This authority shall include, without limitation, the following:

(a) Authority to prepare, negotiate, and excute letters of implementation;

(b) Authority to review and approve documents and other evidence submitted by borrowers or grantees in satisfaction of conditions precedent to financing under such agreements;

(c) Authority to negotiate, execute and implement all documents ancillary to such agrements.

4. Authority to sign or approve Project Implementation Orders.

5. Authority to review and approve the terms of country contracts, contractors, amendments and modifications to such contracts, and invitations for bids and requests for proposals with respect thereto.

6. Authority to waive, in accordance with the criteria prescribed in Supplement B of A.I.D. Handbook 1:

(a) U.S. source, origin, and nationality requirements to permit A.I.D. financing of the procurement of goods and services, other than transportation services, in countries included in A.I.D. Geographic Code 941 (Selected Free World) and the cooperating country when the cost of the goods and services does not exceed $5,000,000 per transaction (exclusive of transportation costs); and

(b) U.S. or Code 941 source, origin, and nationality requirements for specific transactions to permit A.I.D. financing of the procurement of goods and services, other than transportation services, in any country included in A.I.D. Geographic Code 899 (Free World) or A.I.D. Geographic Code 935 (Special Free World) when the cost of the goods and services does not exceed $5,000,000 per transaction (exclusive of transportation costs); provided, however:

(1) That all waivers of source, origin, and nationality for procurement of goods authorized pursuant to section 6(b) shall contain a certification by the approving official that "Exclusion of procurement from free world countries other than the cooperating country and countries included in Code 941 would seriously impede attainment of U.S. Foreign policy objectives and objectives of the foreign asistance program",

(2) That all waivers of the nationality requirements for services, other than ocean transportation services, authorized pursuant to section 6(b) shall contain a certification by the approving official that "The interests of the United States are best served by permitting the procurement of services from free world countries other than the cooperating country and countries included in Code 941", and

(3) That authority to waive source and origin requirements for motor vehicles shall be limited to $50,000 per transaction (exclusive of transportation costs).

7. Authority to waive competition in the procurement of goods and services for country contracts and approve single-source negotiated contracts therefore if the estimated value of the procurement does not exceed $1,000,000 (exclusive of transportation); provided however that the Mission's non/competitive review board finds such waiver justified in accordance with Handbook 11.

8. Authority to waive advertising in the Commerce Business Daily and A.I.D. Bulletin for project funded transactions up to $500,000 for professional and technical services, construction services and commodities (excluding transportation costs); provided however that such waivers shall be granted only where required to avoid serious delay in project implementation. Efforts shall be made, in any event, to secure proposals

from a reasonable number of potential contractors.

9. Authority to extend terminal dates for signing such agreements and meeting initial and additional conditions precedent for a cumulative period of not to exceed 180 days for each, and to extend terminal dates for requesting disbursement authorizations, terminal disbursement dates and Project Assistance Completion Dates (PACDs) for a cumulative period of not to exceed 730 days for each. Provided that such authority shall not be exercised if the result of doing so would:

(a) Cause the total life of the project (e.g. from point of initial obligation to revised PACD) to be in excess of 10 years;

(b) Require additional funding for the project, unless the project authorization is formally amended to provide the additional funds; and

(c) Cause a significant change in project purpose.

10. The authorities herein redelegated shall be exercised in accordance with agency handbooks, regulations and other official guidance as modified from time to time. Each officer exercising this authority must obtain necessary engineering, economic, financial, legal and other technical clearances calling on regional or AID/W offices and personnel as appropriate.

11. The authorities herein redelegated may be exercised by an officer serving in an "Acting" capacity and may also be redelegated by the Director to his or her principal deputy. The authorities contained in sections 4 and 5 above may be further redelegated under the general supervision of the Mission Director. The redelegation shall be effective immediately and shall remain in effect until modified or revoked, with application to the principal officer in each of the affected countries notwithstanding any change in the name of the A.I.D. office of the title of its principal officer.

12. The signature of the Mission Director or other A.I.D. officer as appropriate under this Redelegation is required for all project and non-project assistance agreements and amendments thereto. The Ambassador or Charge d'Affairs may also sign such project and non-project assistance agreement as has been signed by the Mission Director.

13. The following Redelegations of Authority are hereby revoked:

(a) No. 113.3B dated March 10, 1982 as it affects the subject mission

Dated: April 4, 1985.

W. Antoinette Ford,

Assistant Administrator Bureau of Near East.

[FR Doc. 85-17979 Filed 7-29-85; 8:45 am]

BILLING CODE 6116-01-M

A.I.D. Representatives in Italy, Lebanon and Portugal; Redelegation of Authority No. 113.10

Pursuant to the authority delegated to me by A.I.D. Delegations of Authority No. 5, dated December 29, 1961 (27 FR 449), as amended, with respect to Loan Agreements; No. 38, dated June 21, 1977 (42 FR 31511), as amended, with respect to Project Agreements, Trust Fund Agreements, and Grant Agreements; No. 40 dated December 29, 1981 (47 FR 1049) with respect to Source, Origin and Nationality for Procurement; No. 113, dated October 15, 1975, and No. 133 dated December 11, 1981, I hereby redelegate to the A.I.D. Representatives in Italy, Lebanon and Portugal authority to exercise any of the following functions assigned to me for the country to which such official is assigned, retaining for myself concurrent authority to exercise any of the functions herein redelegated:

1. Authority to negotiate, execute and implement trust fund agreements, and project and non-project assistance agreements (both loan and grant) and amendments thereto duly authorized under the Foreign Assistance Act of 1961, as amended, in accordance with regulations, policies and procedures now or hereafter established or modified and promulgated within A.I.D. This authority shall include, without limitation, the following:

(a) Authority to prepare, negotiate, and execute letters of implementation;

(b) Authority to review and approve documents and other evidence submitted by borrowers or grantees in satisfaction of conditions precedent to financing under such agreements;

(c) Authority to negotiate, execute and implement all documents ancillary to such agreements.

2. Authority to sign or approve Project Implementation Orders.

3. Authority to review and approve the terms of country contracts, contractors, amendments and modifications to such contracts, and invitations for bids and requests for proposals with respect thereto.

4. Authority to waive, in accordance with the criteria prescribed in Supplement B of A.I.D. Handbook 1:

(a) U.S. source, origin, and nationality requirements to permit A.I.D. financing of the procurement of goods and services, other than transportation services, in countries included in A.I.D. Geographic Code 941 (Selected Free World) and the cooperating country when the cost of the goods and services does not exceed $5,000,000 per transaction (exclusive of transportation costs); and

(b) U.S. or Code 941 source, origin, and nationality requirements for specific transactions to permit A.I.D. financing of the procurement of goods and services, other than transportation services, in any country included in A.I.D. Geographic Code 899 (Free World or A.I.D. Geographic Code 935 (Special Free World) when the cost of the goods and services does not exceed $5,000,000 per transaction (exclusive of transportation costs); provided, however:

(1) That all waivers of source, origin, and nationality for procurement of goods authorized pursuant to this section 4(b) shall contain a certification by the approving official that "Exclusion of procurement from free world countries other than the cooperating country and countries included in Code 941 would seriously impede attainment of U.S. foreign policy objectives and objectives of the foreign assistance program";

(2) That all waivers of the nationality requirements for services, other than ocean transportation services, authorized pursuant to section 4(b) shall contain a certification by the approving official that "The interests of the United States are best served by permitting the procurement of services from free world countries other than the cooperating country and countries included in Code 941"; and

(3) That authority to waive source and origin requirements for motor vehicles shall be limited to $50,000 per transaction (exclusive of transportation costs).

5. Authority to waive competition in the procurement of goods and services for country contracts and approve single-source negotiated contracts therefor if the estimated value of the procurement does not exceed $1,000,000 (exclusive of transportation costs); provided, however, that the field post's non-competitive review board finds such waiver justified in accordance with Handbook 11.

6. Authority to waive advertising in the Commerce Business Daily and A.I.D. Bulletin for project funded transactions up to $500,000 for professional and technical services, construction services and commodities (excluding transportation costs); provided however that such waivers shall be granted only where required to avoid serious delay in

project implementation. Efforts shall be made, in any event, to secure proposals from a reasonable number of potential contractors.

7. Authority to extend terminal dates for signing such agreements, and meeting initial and additional conditions precedent for a cumulative period of not to exceed 180 days for each, and to extend terminal dates for requesting disbursement authorizations, terminal disbursement dates and Project Assistance Completion Dates (PACDs) for a cumulative period of not to exceed 730 days for each. Provided that such authority shall not be exercised if the result of doing so would:

(a) Cause the total life of the project (e.g. from point of initial obligation to revised PACD) to be in excess of 10 years;

(b) Require additional funding for the project unless the project authorization is formally amended to provide the additional funds; and

(c) Cause a significant change in project purpose.

8. The authorities herein redelegated shall be exercised in accordance with agency handbooks, regulations and other official guidance as modified from time to time. Each officer exercising this authority must obtain necessary engineering, economic, financial, legal and other technical clearances calling on regional or AID/W offices and personnel as appropriate.

9. The authorities herein redelegated may be exercised by an officer serving in an "Acting" capacity. The authorities contained in sections 4 and 5 above may be further redelegated under the general supervision of the respective principal officer in each of the affected countries. this redelegation shall be effective immediately and shall remain in effect until modified or revoked, with application to the principal officer in each of the affected countries notwithstanding any change in the name of the A.I.D. office or the title of its principal officer.

10. The signature of the A.I.D. Representative, or other A.I.D. officer as appropriate under this Redelegation is required for all project or non-project assistance agreements and amendments thereto. The Ambassador or Charge d' Affairs may also sign such project and non-project assistance agreement as has been signed by the A.I.D. Representative.

11. The following Redelegations of Authority are hereby revoked: (a) Nos. 113.B, dated March 10, 1982 in its entirety.

Dated: April 4, 1985.

W. Antoinette Ford,

Assistant Administrator, Bureau for Near East.

[FR Doc. 85-17980 Filed 7-29-85; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[No. MC-F-16248]

Burlington Northern, Inc.—Control Exemption-Victory Freightway System, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 1143(e), the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition of control by Burlington Northern, Inc., and Burlington Northern Motor Carriers, Inc. of Victory Freightway System, Inc.

DATE: This exemption will be effective on July 26, 1985.

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, Room 2229, Interstate Commerce Commission Building, Washington, D.C. 20423 or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: July 11, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Chairman Taylor and Commissioner Simmons dissented in part with separate expressions. Commissioner Lamboley dissented with a separate expression.

James E. Bayne,

Secretary.

[FR Doc. 85-17988 Filed 7-29-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Idaho

This notice announces the ending of the Extended Benefit Period in the State of Idaho, effective on June 29, 1985.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Idaho on March 31, 1985, and has now triggered off.

Determination of an "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on June 8, 1985, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending June 29, 1985.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for

Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office in their locality.

Signed at Washington, D.C., on July 23, 1985.

Robert T. Jones,

Acting Deputy Assistant Secretary of Labor.

[FR Doc. 85-18028 Filed 7-29-85; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15,061]

Philadelphia Steel and Wire Corp., Philadelphia, PA; Negative Determination on Reconsideration

On August 1, 1984, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers producing lockwashers at the Philadelphia Steel and Wire Corporation, Philadelphia, Pennsylvania. This determination was published in the **Federal Register** on August 19, 1984 (49 FR 32919).

A company official in his application for reconsideration claims that the Department's denial was based on imports of washers in general and not specifically on lockwashers. It is also claimed that Philadelphia Steel and Wire's customers may not have been aware of the extent of their imported lockwasher usage.

The Department's denial notice was based on the facts that not only did U.S. imports of washers decrease absolutely in the first nine months of 1983 compared to the same period in 1982 but that customers of Philadelphia Steel and Wire, in general, do not import lockwashers. The survey revealed that the customers which increased purchases of imported washers while decreasing purchases from the subject firm in 1982 compared to 1981 and in 1983 compared to 1982 did not represent a significant proportion of Philadelphia Steel and Wire's sales decline during the relevant period.

On reconsideration, the Department found that U.S. imports of lockwashers decreased, in quantity and value, in the first nine months of 1983 compared to the same period in 1982.

Findings in the Department's survey do not show that Philadelphia Steel and Wire's customers were purchasing imported lockwashers through their domestic suppliers.

Conclusion

After reconsideration, I affirm the original denial of eligibility to apply for adjustment assistance to former workers producing lockwashers at Philadelphia Steel and Wire Corporation, Philadelphia, Pennsylvania.

Signed at Washington, D.C., this 22nd day of July 1985.

Robert A. Schaerfl,

Director, Office of Program Management, UIS.

[FR Doc. 85-18029 Filed 7-29-85; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15,782; TA-W-15,782A and TA-W-15,782B]

Smith-Corona, Cortland, NY, Syracuse, NY, New Canaan, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 20, 1985 applicable to all workers of the Cortland, New York plant of Smith-Corona. The Notice of Certification was published in the **Federal Register** on June 4, 1985. (50 FR 23539).

Information and data furnished to the Department show that workers separated at Smith-Corona's Syracuse, New York and New Canaan, Connecticut provided support services to the Cortland production facility and that the decline in production of portable electronic typewriters which was related to increased imports of like or directly competitive articles, reduced the demand for their services. Therefore, the certification is being amended to include workers at the Syracuse and New Canaan facilities.

The certification applicable to TA-W-15,782 is hereby amended and issued as follows:

All workers of Smith-Corona, Cortland, New York, Syracuse, New York, and New Canaan, Connecticut who became totally or partially separated from employment on or after February 11, 1984 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of July 1985.

Robert A. Schaerfl,

Director, Office of Program Management, UIS.

[FR Doc. 85-18027 Filed 7-29-85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Catalogue/Utilization Section) to the National Council on the Arts will be held on August 20-22, 1985, from 9:00 a.m.-5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC.

This meeting is for the purpose of Panel Review, discussion, evaluation, and recommendation on application for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

July 23, 1985.

[FR Doc. 85-17966 Filed 7-29-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Long Range Plan for NRC; Revised

The **Federal Register** published on Friday, July 19, 1985 (50 FR 29497) contained notice of a meeting of the ACRS Subcommittee on Long Range Plan for NRC to be held on Wednesday, August 7, 1985, 8:30 a.m., Room 1046, 1717 H Street, NW., Washington, DC. To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss predecisional information provided by the NRC Staff. All other items regarding this meeting remain the same as previously announced.

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 therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. 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: July 25, 1985.

John C. McKinley,

Chief, Project Review Branch No. 1.

[FR Doc. 85–18025 Filed 7–29–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

General Public Utilities Nuclear Corp. (Three Mile Island, Unit 1); Order Modifying License To Confirm Additional Licensee Commitments on Emergency Response Capability

I

The General Public Utilities Nuclear Corporation (GPUN) (the licensee) is the holder of Facility Operating License No. DPR–50 which authorizes the operation of the Three Mile Island, Unit 1 (TMI–1) (the facility) at steady-state power levels not in excess of 2535 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Dauphin County, Pennsylvania.

II

Following the accident at Three Mile Island, Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modification, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

GPUN responded to Generic Letter 82–33 by letter dated April 15, 1983. By letters dated July 12 and September 1, 1983, GPUN modified several dates as a result of negotiations with the NRC staff. In these submittals, GPUN made commitments to complete the basic requirements. GPUN's commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. The staff found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On June 14, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed GPUN's commitments.

IV

The June 14, 1984, Order stated that for those requirements for which GPUN committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the June 14, 1984 Order, GPUN's letters dated October 1 and November 9, 1984, provided completion schedules for the Regulatory Guide 1.97 requirements (Items 3a. and 3b. of the Table attached to the June 14, 1984 Order). All upgrade modifications required to meet Regulatory Guide 1.97 requirements are scheduled to be completed by the second refueling after restart, designated Refueling Outage 7 (estimated date July 1988, depending on the time of restart).

The NRC staff finds that Refueling Outage 7 is a reasonable and achievable date for meeting the Commission requirements for Regulatory Guide 1.97. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of GPUN's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that License No. DPR–50 is modified to provide that the licensee shall:

Implement the specific requirements of Regulatory Guide 1.97 as described in the Licensee's submittals dated October 1 and November 9, 1984, no later than the completion of Refueling Outage 7.

Extension of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

VI

The licensee or any other person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in section V of this Order.

Dated in Bethesda, Maryland this 18th day of July 1985.

This Order is effective upon issuance.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-18021 Filed 7-29-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power and Light Co. (Arkansas Nuclear One, Unit No. 1); Order Modifying License Confirming Additional Licensee Commitment on Emergency Response Capability

I

Arkansas Power and Light Company (AP&L or the licensee) is the holder of Facility Operating License No. DPR-51 which authorizes the operation of Arkansas Nuclear One, Unit No. 1 (the facility) at steady-state power levels not in excess of 2568 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Pope County, Arkansas.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modification, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following informtion, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

AP&L responded to Generic Letter 82-33 by letter dated April 15, 1983. In this submittal, AP&L made commitments to complete the basic requirements. AP&L's commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements.

The NRC staff reviewed AP&L's April 15, 1983 letter and entered into discussions with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these discussions, the NRC staff found that these dates were reasonable and achievable dates for meeting the Commission requirements. The NRC staff concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On June 14, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed AP&L's commitments.

IV

The June 14, 1984, Order stated that for those requirements for which AP&L committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by subsequent order. In conformance with the milestones in the June 14, 1984 Order, AP&L's letter dated June 25, 1984, provided a completion schedule for the following requirement:

3. Regulatory Guide 1.97—Application to Emergency Response Facilities.

3b. Implement (installation or upgrade) requirements.

The attached Table summarizing AP&L's schedular commitment for the above item was developed by the NRC staff from the information provided by AP&L. The staff reviewed AP&L's June 25, 1984 letter and discussed the implementation date with the licensee.

As a result of this discussion, the NRC staff finds that the implementation date is a reasonable and achievable date for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of AP&L's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

Accordingly, pursuant to Sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that License DPR-51 is modified to provide that the licensee shall:

Implement the specific item described in the Attachment to this Order in the manner described in AP&L's submittal noted in Section IV herein no later than the date in the Attachment.

Extension of time for completing this item may be granted by the Director, Division of Licensing, for good cause shown.

VI

The licensee or any other person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Excutive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should comply with the requirements set forth in section V of this Order

Dated in Bethesda, Maryland, this 19th day of July 1985.

This Order is effective upon issuance.

For the Nuclear Regulatory Commission.

Frank Miraglia,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

ARKANSAS NUCLEAR ONE, UNIT NO. 1; LICENSEE'S ADDITIONAL COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirements	Licensee's completion schedule (or status)
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3b. Implement (installation or upgrade) requirements.	During the seventh refueling outage (estimated to end March 1986).

[FR Doc. 85-18023 Filed 7-29-85; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-368]

Arkansas Power and Light Co. (Arkansas Nuclear One, Unit No. 2); Order Modifying License Confirming Additional Licensee Commitment on Emergency Response Capability

I

Arkansas Power and Light Company (AP&L or the licensee) is the holder of Facility Operating License No. NPF-6 which authorizes the operation of Arkansas Nuclear One, Unit No. 2 (the facility), at steady-state power levels not in excess of 2815 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Pope County, Arkansas.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "requirements for Emergency Response Requirements Capability." Among these requirements are a number of items consisting of emergnecy response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modification, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter, operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

AP&L responded to Generic Letter 82-33 by letter dated April 15, 1983. In this submittal, AP&L made commitments to complete the basic requirements. AP&L's commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements.

The NRC staff reviewed AP&L's April 15, 1983 letter and entered into discussions with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these discussions, the NRC staff found that the proposed dates were reasonable and achievable dates for meeting the Commission requirements. The NRC staff concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On June 14, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed AP&L's commitments.

IV

The June 14, 1984, Order stated that, for those requirements for which AP&L committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the June 14, 1984 Order, AP&L's letter dated April 13, 1984 and as supplemented by letter dated November 9, 1984 provided a completion schedule for the following requirement:

3. Regulatory Guide 1.97—Application to Emergency Response Facilities.

3b. Implement (installation or upgrade) requirements.

The attached Table summarizing AP&L's schedular commitment for the above item was developed by the NRC staff from the information provided by AP&L. The staff reviewed AP&L's April 13 and November 9, 1984 letters and discussed the implementation date with the licensee.

As a result of this discussion, the NRC staff finds that the implementation date is a reasonable and achievable date for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of AP&L's commitment is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby Ordered, effective immediately, that License NPF-6 is modified to provide that the licensee shall:

Implement the specific item described in the Attachment to this Order in the manner described in AP&L's submittals noted in Section IV herein no later than the date in the Attachment.

Extension of time for completing this item may be granted by the Director, Division of Licensing, for good cause shown.

VI

The licensee or any other person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee

should comply with the requirements set forth in section V of this Order.

Dated in Bethesda, Maryland, this 19th day of July 1985.

This Order is effective upon issuance.

For the Nuclear Regulatory Commission.

Frank Miraglia,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

ARKANSAS NUCLEAR ONE, UNIT NO. 2; LICENSEE'S ADDITIONAL COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirements	Licensee's completion schedule (or status)
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3b. Implement (installation or upgrade) requirements.	During the sixth refueling outage (estimated to end August 1988).

[FR Doc. 85-18024 Filed 7-29-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co. (Palisades Plant); Exemption

I

The Consumers Powers Company (CPC, the licensee) is the holder of Provisional Operating License No. DPR-20 which authorizes operations of the Palisades Plant. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises one pressurized water reactor at the licensee's site located in Van Buren County, Michigan.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsections, III.G., is the subject of the licensee's exemption request. Section III.G.2.d. requires separation of cable and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards.

III

By letter dated July 20, 1984 the licensee requested an exemption from section III.G.2.d. of Appendix R inside of containment. The exemption was requested from the requirement to separate redundant trains with no intervening combustibles.

Inside of containment left and right channel cable trays containing redundant instrumentation circuitry are routed such that they enter containment in separate penetration areas and then pass through containment with at least 35 feet of horizontal separation. At one location inside containment two cable trays containing intervening combustibles (i.e., cables) connect the two redundant sets of trays. To prevent a fire from propagating from one redundant cable tray to the other via the intervening combustibles, fire stops have been installed in the intervening cable trays. The design of the fire stops was reviewed and approved by the staff in a supplement to the Appendix A Fire Protection Safety Evaluation dated March 11, 1980. The intervening combustibles and other in-situ combustibles in the area of the redundant cable tray compile a light fuel load. Strict administrative controls limit transient combustibles being brought into containment during operation. Administrative controls also require removal of all transient combustibles from the containment prior to startup. There are no ignition sources in the area of the redundant cable trays. Fire protection inside containment consists of early warning fire detectors installed in areas of cable concentrations, hose reels and portable fire extinguishers.

Due to the light fuel load, separation of the redundant cable trays and the fire stops installed in the intervening cable trays, the staff has reasonable assurance that one train of instrumentation circuits will be free on fire damage for anticipated fires inside containment. The early warning fire detectors will provide rapid detection of fires inside containment. The light fuel load and strict administrative controls on transient combustibles assure that anticipated fires will be limited in size and duration. The separation of the redundant cable trays and the fire stops installed in the intervening cable trays provide adequate passive protection for the redundant circuits prior to the arrival of the fire brigade and their effective extinguishment of the fire. Based on the above evaluation, the staff concludes that the removal of the intervening combustibles between the redundant cable trays would not significantly increase the level of fire protection inside containment. Therefore, the exemption request should be granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of section III.G.2.d. of Appendix R to 10 CFR Part 50 to the extent it requires separation of cables and equipment and associated non-safety circuits of redundant trains with no intervening cumbustibles installed between the redundant cable trays identified in section III above.

Pursuant to 10 CFR 51.32, the Commission had determined that the granting of this exemption will have no significant impact on the environment (July 5, 1985, 50 FR 27707).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 23th day of July 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-18022 Filed 7-29-85; 8:45 am]

BILLING CODE 7590-01-M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

Correction

In FR Doc. 85-16988 beginning on page 29006 in the issue of Wednesday, July 17, 1985, make the following correction: On page 29025, in the second column, under Northeast Nuclear Energy Company, in the seventeenth line under the heading, "*Amendment No. 03*" should read "*Amendment No. 103*".

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-14003]

Application and Opportunity For Hearing; Citicorp

July 24, 1985.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the

trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures, and two Pooling and Servicing Agreements dated as of May 1, 1985 under which certificates evidencing interests in a pool of mortgage loans have been issued, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under either of such indentures or the Agreements.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures in which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989, the Indenture dated as of March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes, the Indentures dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A and the Indenture dated as of April 21, 1980 involved the issuance of various series of unsecured subordinated Notes. Said Indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2-42915, 2-58355, 2-59396 and 2-64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said four Indentures are hereinafter called the Indentures and the securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On May 28, 1985, the Trust Company entered into a Pooling and Servicing Agreement dated as of May 1, 1985 (the "1985-D Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on April 25, 1985 Mortgage Pass-Through Certificates, Series 1985-D 12.25% Pass-Through Rate (the "Series 1985-D Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1985-D Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $103,383,637.40 at the close of business on May 1, 1985, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985-D Certificates. On May 28, 1985, Applicant, the parent of Citibank, N.A., entered into a Guaranty of even date (the "1985-D Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1985-D Certificates, to be liable for 8% of the initial aggregate principal balance of the 1985-D Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1985-D Guaranty. The 1985 Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1985-D Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1985-D Certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S-1 and S-3, File No. 2-96656) as part of a delayed or continuous offering of $350,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1985-D Certificates were offered by a Prospectus Supplement dated May 15, 1985, supplemental to a Prospectus dated March 28, 1985. The 1985-D Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) On May 31, 1985, the Trust Company entered into a Pooling and Servicing Agreement dated as of May 1, 1985 (the "1985-E Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on May 31, 1985 Mortgage Pass-Through Certificates, Series 1985-E, 11.50% Pass-Through Rate (the "Series 1985-E Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1985-E Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $52,180,446.40 at the close of business on May 1, 1985, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985-E Certificates. On May 31, 1985, Applicant entered into a Guaranty of even date (the "1985-E Guaranty") pursuant to which applicant agreed, for the benefit of the holders of the Series 1985-E Certificates, to be liable for 10% of the initial aggregate principal balance of the 1985-E Mortgage Pool and for lesser amounts in later years pursuant to the provisions for the 1985-E Guaranty. The 1985-E Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1985-E Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1985-E Certificates were registered under the Securities Act of 1933 (Registration Statements on Form S-11 and S-3, File Nos. 2-96656 and 2-80415) as part of a delayed or continuous offering of $500,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1985-E Certificates were offered by a Prospectus Supplement dated May 24, 1985, supplemental to a Prospectus dated May 15, 1985. The 1985-E Agreement has not been qualified under the Trust Indenture Act of 1939.

The 1985-D Agreement and the 1985-E Agreement are hereinafter called the 1985 Agreements, and the 1985-D Guaranty and the 1985-E Guaranty are hereinafter called the 1985 Guarantees, and the 1985-D Certificates and the 1985-E Certificates are hereinafter called the 1985 Certificates.

(5) The obligations of Applicant under the Indentures and the 1985 Guarantees are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1985 Guarantees are unlikely to cause any conflict of interest among the trusteeship of the Trust Company under the Indentures and the 1985 Agreements.

(6) Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14003, which is a public document on file in the Office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Notice is Further given that any interested person may, not later than August 22, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-18037 Filed 7-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Rel. 35-23772; 70-7127]

Arkansas Power & Light Co.; Notice of Proposal To Enter Into Pollution Control Financing

July 23, 1985.

Arkansas Power & Light Company ("AP&L"), a wholly owned subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application-declaration subject to sections 6(a), 7, 9(a), 10, and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) thereunder.

AP&L proposes to enter into one or more installment sale agreements ("Agreement") with Pope County, Arkansas ("County") which contemplate the issuance by the County of one or more series of its pollution control revenue bonds ("Bonds") in an aggregate principal amount not to exceed $150 million with a maturity of from 5 to 30 years.

The proceeds of the sale of the Bonds, net of any underwriters' discount or other expenses payable from proceeds, will be deposited by the County with the indenture trustee ("Trustee"). The net proceeds will be applied to permanently finance the costs of that portion of the Pollution Control Facilities ("Facilities") at Arkansas Nuclear One Generating Station, Pope County, Arkansas ("Station") not previously financed by pollution control revenue bonds and additional costs of construction of the Facilities.

Under the Agreement, AP&L is to sell the Facilities to the County for cash, and is to simultaneously repurchase the Pollution Control Facilities from the County for a purchase price, payable on an installment payment basis over a period of years, sufficient (together with any other moneys held by the Indenture Trustee under the Indenture and available for the purpose for the particular series of Bonds involved) to pay the principal or purchase price of, the premium, if any and the interest on such series of Bonds as the same due and payable. Such installment payments are to be made directly to the Trustee pursuant to an assignment and pledge thereof by the County to the Trustee as set forth in the Indenture. Under the Agreement the Company will also be obligated to pay certain fees incurred in the transactions.

Upon the occurrence of certain events relating to the construction or operation of the Station or the Facilities, the Bonds will be redeemable by the County, at the direction of AP&L. Any series of the Bonds may be subject to a mandatory cash sinking fund and they may be subject to mandatory redemption in other cases. The payment by AP&L in such circumstances shall be sufficient to pay the principal of all the Control Bonds, the premium, if any, together with interest accrued or to accrue to the redemption date. The indenture may provide for the application of such of the proceeds of the Bonds which, after completion of the Facilities, may remain unused for the redemption or purchase of the Bonds at the direction of AP&L. The Agreement and the Indenture may provide for an adjustment interest rate for one or more series of the Bonds. The Agreement and the Indenture would also provide that holders of the Bonds would have the right to tender their Bonds for purchase at a price equal to the principal amount plus accured and unpaid interest thereon. Under the Agreement, AP&L would be obligated to pay amounts equal to the amounts to be paid by the Remarketing Agent or the Tender Agent, if appointed to facilitate the transfer of Bonds delivered by holders exercising their right to tender.

In order to obtain a favorable rating on any series of the Bonds to improve their marketability, AP&L may arrange for an irrevocable letter of credit from a bank or banks ("Banks") in favor of the Trustee. In such event, payments with respect to principal, premium, if any, interest and purchase obligations in connection with such series of the Bonds would be secured by, or payable from, funds drawn under the letter of credit. In order to induce the Bank to issue such letter of credit, AP&L would enter into a reimbursement agreement ("Reimbursement Agreement") with the Bank pursuant to which AP&L would agree to reimburse the Bank for all amounts drawn under its letter of credit. As an alternative to securing the Bonds with a letter of credit, AP&L may arrange to have such Bonds secured by a commercial bond insurance company or, in order to obtain security accorded to holders of first mortgage bonds outstanding, AP&L may seek to obtain the authentication of one or more new series of first mortgage bonds. The first mortgage bonds would be issued on the basis of unfunded net property additions and/or previously-retired first mortgage bonds. AP&L requests an exception from the competitive bidding requirements of Rule 50 pursuant Rule 50(a)(5) with respect to the issuance and pledge of the first mortgage bonds insofar as competitive bidding would be inappropriate under the circumstances.

The application-declaration and any amendments thereto is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 16, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-18034 Filed 7-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-22268; File No. SR-OCC-85-12]

Self-Regulatory Organizations; Options Clearing Corp. Notice of Proposed Rule Change

The Options Clearing Corporation ("OCC") on July 15, 1985 submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). OCC's proposal would give OCC's Chairman express authority to designate a substitute to perform the Chairman's functions at meetings of OCC's Securities Committee. The Commission is publishing this notice to solicit public comment on the proposal.

OCC's Securities Committee meets on an *ad hoc* basis to determine the appropriateness of adjustments to the terms of outstanding options. Under OCC By-Law Article VI, Section 11, the Committee is comprised of two designated representatives from each exchange on which the subject options are traded, plus the Chairman of OCC.[1] OCC states in its filing that it believes that the Chairman already has implied power under OCC By-Laws to designate a substitute when it is impractical or impossible for the Chairman to participate personally. Nevertheless, to clarify the Chairman's authority in this regard, OCC proposes to give OCC's Chairman express authority to designate any OCC officer [2] to take the Chairman's place at Securities Committee meetings.

OCC believes the proposal will ensure that OCC can continue to react quickly to events affecting outstanding OCC options and therefore to act fairly to all holders and writers of those options in determining the appropriateness of adjustments. OCC therefore believes that the proposal is consistent with section 17A of the Act.

Copies of all documents relating to the propsal, except those that may be withheld under 5 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room 450 Fifth Street, NW., Washington, D.C., and at OCC's principal office.

OCC's proposal has become effective under section (19)(b)(3)(A) of the Act. Nevertheless, at any time within 60 days of the filing of the proposal the Commission may summarily abrogate the proposal 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. To assist the Commission in making this determination, the Commission is soliciting comment on the proposal. Please refer to File No. SR-OCC-85-12 and send six copies of comments to the Secretary of the Commission, Securities and Exchange Commission 450 Fifth Street, NW, Washington, D.C. 20549. Comments are invited until August 20, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 24, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-18035 Filed 7-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-22267; File No. SR-OCC-85-11]

Self-Regulatory Organizations; Options Clearing Corp.; Notice of Proposed Rule Change

The Options Clearing Corporation ("OCC") on July 9, 1985 submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). OCC's proposal would amend OCC By-Laws and Rules to enable OCC to issue, clear and settle European style options on foreign currencies.[1] In addition, OCC's proposal would amend OCC Rule 1606A to broaden the availability of OCC's alternative settlement procedure for large foreign currency option exercises and would amend OCC Rule 1804 to reflect current price intervals for automatic exercise of index options.[2]

The Commission is publishing this notice to solicit public comment on the proposal.

OCC states in its filing that European style foreign currency options will be processed similarly to American style (conventional) options. Specifically, OCC states that clearance and settlement of opening and closing trades in European style foreign currency options will be identical to clearance and settlement of trades in American style foreign currency options. Exercises of European style foreign currency options on their expiration date will be processed under the same rules and procedures that currently apply to exercise of American style foreign curency options at expiration. No exercise of European style foreign currency options will be permitted before their expiration date, however. Since OCC expiration dates always fall on Saturdays, the proposal would amend OCC Rule 1605 to clarify that European style options can be exercised on Saturdays rather than a business day. Procedures for assignment of exercise notices to clearing members with open short positions in European style foreign currency options will be identical to procedures for assignment of American style foreign currency option exercise notices.

In OCC By-Law Article XV, Section 1, the definiton of "class of options" with respect to foreign currency options would be amended to include the style of option and the unit of trading for the option. OCC states that it is including the unit of trading within the definition of class of options because the units of trading for foreign currency options proposed by the Chicago Board Options Exchange ("CBOE") are different than those proposed by the Philadelphia Stock Exchange ("PHLX").[3] Consequently, a short foreign currency contract traded on one of the exchanges cannot be paired with a long foreign currency contract traded on the other exchange for purposes of calculating OCC margin.

OCC's proposal also would amend By-Law Article XV, Section 2, to distinguish the rights of holders of European style foreign currency options from those of holders of American style foreign currency options. The only difference in rights is that European style foreign currency options cannot be exercised before their expiration date.

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[1] Under OCC By-Law Article VI, Section 11, the Securities Committee acts by majority vote, with the OCC Chairman voting only in the case of a tie. The Committee may transact its business over the telephone. OCC represented to Commission staff that to date OCC's Chairman has not had to vote in a Committee meeting.

[2] OCC has represented to Commission staff that while the Chairman normally would choose a substitute from OCC's legal department, any OCC Assistant Vice President or higher officer would be eligible for designation.

[1] European style options are options that can be exercised only on their expiration date. In a related filing, OCC has proposed By-Law and Rule amendments to enable it to issue, clear and settle European style options. *See* File No. SR-OCC-85-9. Neither filing includes the issuance, clearance or settlement of European style stock options.

[2] The proposal also would correct typographical errors in OCC's By-Laws and Rules.

[3] For convenience, OCC is including "Interpretations and Policies" to By-Law Article XV, Section 1, to enumerate the units of trading proposed by the two exchanges. CBOE units of trading are twice those of the PHLX.

OCC Rule 1601 would be amended to clarify that foreign currency cannot be deposited with OCC in lieu of margin on foreign currency options positions. OCC will continue to allow the deposit of underlying securities in lieu of margin on short call option positions, and the deposit of Treasury bills in lieu of margin on short put option positions, for options other than foreign currency options.

OCC Rule 1605 would be amended to accommodate different foreign currency option units of trading in the exercise settlement procedures. Specifically, subparagraph (a)(2) would be amended to permit discharge of a clearing member's settlement obligations prior to the exercise settlement date where the obligations result from netted exercised options of identical terms. Netting of obligations in respect of exercised options whose terms are not identical also discharges a clearing member's settlement obligations, but only on the exercise settlement date and only after the clearing member has paid any remaining required settlement amount.

OCC Rule 1606A would be amended to allow all OCC clearing members obligated to deliver or receive foreign currency on an exercise settlement date to use OCC's alternative settlement procedures for any amount of foreign currency. Those procedures were implemented on a pilot basis in September 1984, and were limited to clearing members receiving more than 100 units of trading of a foreign currency.[4] The proposal would establish the alternative settlement procedure permanently.

Unrelated to foreign currency options, the proposal would amend OCC Rule 1804 to codify price intervals previously established for automatic exercise of index options. Current Rule 1804 allows the OCC Board of Directors to establish such intervals, but does not contain the actual intervals already established and in effect ($25 for customer accounts and $1 for all other accounts). OCC's Board of Directors would continue to have discretion to set different intervals on 30 days notice to all index options clearing members.

OCC believes that its proposal facilitates the prompt and accurate clearance and settlement of European style foreign currency options by applying to those options substantially the same clearing system and rules currently used for American style foreign currency options. OCC believes that expansion of the alternative foreign currency options settlement procedure, on a permanent basis, would reduce clearing members' financing costs by allowing them to submit a bank guarantee two days in advance of settlement date rather than making actual payment two days in advance. OCC therefore believes that the proposal is consistent with Section 17A of the Act.

Copies of all documents relating to the proposal, except those that may be withheld under 5 U.S.C. 522, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C., and at OCC's principal office.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, the Commission is soliciting public comment on the proposal. Please refer to File No. SR-OCC-85-11 and send six copies of comments to the Secretary of the Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments are invited until August 20, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 24, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-18036 Filed 7-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-22263; File No. SR-PSE-85-18]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Inc. Relating to Pilot Program for the Appointment and Evaluation of Specialists and the Creation of New Specialist Posts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 8, 1985, the Pacific Stock Exchange Incorporated ("PSE"or "Exchange") filed with the Securities and Exchange Commission ("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 the interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE filed its Pilot Program for the Appointment and Evaluation of Specialists and the Creation of New Specialist Posts ("Pilot Program") with the Commission on May 4, 1981. The Pilot Program was amended in 1982, and is scheduled to terminate on June 30, 1985. The Exchange is currently preparing proposed amendments to the Pilot Program for review by its Board of Governors. To permit the Exchange to finalize these revisions and submit them to the Commission, the PSE is requesting that the term of the Pilot Program be extended for a period of three months, through September 30, 1985.

In connection with the proposed extension of the Pilot Program, the PSE proposes to amend sections 1(l) and 11 (t) of Rule II of the Rules of the Board of Governors of the PSE, which currently reflect the Pilot Program's scheduled expiration date of June 30, 1985.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Pilot Program was initially filed with the Commission on May 4, 1981, and approved for a period of one year on May 27, 1981. The term of the Pilot Program was subsequently extended several times by the Commission. In December 1982, the Pilot Program was amended. It is currently scheduled to terminate on June 30, 1985.

The PSE's Board of Governors and the Equity Allocation Committee have reviewed certain proposed modifications to the Pilot Program. To permit the Exchange to finalize these proposed modifications and to submit appropriate filings to the Commission, the PSE is requesting a three-month extension of the Pilot Program, to and including September 30, 1985.

The PSE believes that the proposed rule change is consistent with section 6(b) of the Act in general, and in particular section 6(b)(5) and (6)(b)(7).

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[4] See Securities Exchange Act Release No. 21359 (September 27, 1984), 49 FR 39138 (October 3, 1984).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, participants or Others*

Comments on the proposed rule change were neither solicited nor received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Time Period for Commission Action

To permit the Pilot Program to remain in effect without interruption, the PSE has requested that this filing be approved on an accelerated basis, effective July 1, 1985.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that it will provide the Exchange with the additional time necessary to complete its review of proposed amendments to the Pilot Program and to submit appropriate filings to the Commission, while permitting the Pilot Program to remain in effect without interruption.

I. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submnisison, 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. 522, wil be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filings 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 August 20, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 23, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-18033 Filed 7-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23769; 70-7080]

Jersey Central Power & Light Company et al., Notice of Proposal To Amend Credit Agreement

July 23, 1985.

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Mahlenburg Township, Berks County, Pennsylvania 19605, and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsyvania 15907, wholly owned subsidiaries of General Public Utilities Corporation ("GPU"), a registered holding company, have filed a post-effective amendment to their declaration in this proceeding subject to secions 6(a), and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44 and 50(a)(2) thereunder.

By order dated March 27, 1985 (HCAR No. 23644), the Commission authorized GPU, JCP&L, Met-Ed and Penelec (collectively "GPU Companies") to enter into a New Credit Agreement dated March 31, 1985 with a group of commercial banks for whom Citibank, N.A. is acting as agent and Chemical Bank is acting as co-agent. The New Credit Agreement provides, among other things, for borrowing by the GPU Companies thereunder, up to a maximum aggregate amount of $150 million, subject to certain conditions, with sublimits applicable to borrowings by GPU and Met-Ed.

The agent and co-agent have previously advised the GPU companies that changes in governmental regulations affecting the determination of the DMM-Bid Rate may, under certain circumstances, increase the cost to the bank, or certain of them, in making advances under the New Credit Agreement bearing interest at the DMM-Bid Rate. Provisions for such a contingency were not provided in the New Credit Agreement.

It is now proposed that the GPU Companies amend the New Credit Agreement to provide for the reimbursement to the banks for the increased cost incurred by the banks in making, funding or maintaining DMM-Bid Rate borrowings under the New Credit Agreement which result from any change in law or governmental regulation or the compliance therewith by any bank. In all other respects, the authorization heretofore granted by the Commission would remain unchanged.

The declaration and any amendments thereto is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 16, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or oder issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-17998 Filed 7-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22264; (SR-NASD-85-11)]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

July 23, 1985.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street NW., Washington, D.C. 20006, submitted on May 24, 1985, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Schedule D of its By-Laws. Specifically, the proposal provides that data pertaining to the value of mutual funds and yields of money market funds will be collected and disseminated through the National Association of Securities Dealers Automated Quotation System's central computers under the Mutual Fund Quotation Program.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22161, June 21, 1985) and by publication in the **Federal Register** (50 FR 26650, June 27, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85-17997 Filed 7-29-85; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980 Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524, FTS 856-2524.

Type of Request: Regular Submission

Title of Information Collection: Norris Tailwater Landowner Survey

Frequency of Use: Non-recurring

Type of Affected Public: Individuals or households

Small Businesses or Organizations Affected: No

Federal Budget Functional Category Code: 452

Estimated Number of Annual Responses: 80

Estimated Total Annual Burden Hours: 20

Need For and Use of Information: TVA's efforts to improve water quality and flows below Norris Dam have created an improved fishery and a subsequent increase in the number of fishermen using the Clinch River. This questionnaire will provide information which will be used to identify the need for a detailed assessment of perceived benefits or conflicts that may be related to improving water quality in the Norris tailwater.

Dated: July 22, 1985.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 85-17981 Filed 7-29-85; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Conference

The Department of Transportation hereby announces a Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Conference. This 2-day conference will commence at 8:30 a.m. on August 14, 1985, in the FAA Auditorium, 3rd floor, FOB-10A, 800 Independence Avenue, SW., Washington, DC.

The purpose of the conference is to present the FAA R,E&D Plan to the aviation community in draft form and to discuss the draft plan with conference attendees. This discussion is expected to solicit the views of individuals on R,E&D needs in general and the draft plan in particular. These individual views will provide guidance in completing the plan.

Copies of the draft plan will be distributed at the conference. In addition to views expressed during conference discussions, written comments on the draft plan will be accepted through September 10, 1985. Comments should be mailed to the address below.

Further information concerning the conference may be obtained from the Systems Studies and Advanced Concepts Division, AES-302, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 426-3280. Copies of the draft plan may be obtained from this address after August 14, 1985.

Issued in Washington, DC, on July 24, 1985.

Jerry W. Bradley,

Acting Manager, Systems Studies/Advanced Concepts Division.

[FR Doc. 85-18009 Filed 7-29-85; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Final Procedures for Considering Environmental Impacts

AGENCY: Maritime Administration (MARAD), (DOT).

ACTION: Notice—Publication of Final MARAD Procedures for Considering Environmental Impacts, MAO 600-1.

SUMMARY: The Maritime Administration announces its final procedures for considering environmental impacts under the National Environmental Policy Act and implementing regulations of the Council of Environmental Quality and the Department of Transportation. The procedures are issued as Maritime Administrative Order (MAO) 600-1, "Procedures for Considering Environmental Impacts."

EFFECTIVE DATE: These procedures are effective July 30, 1985.

FOR FURTHER INFORMATION CONTACT: Michael E. Myrtle, U.S. Department of Transportation, Maritime Administration, MAR-318, Room 7225, 400 Seventh Street, SW., Washington, D.C.; telephone (202) 426-5816.

SUPPLEMENTARY INFORMATION: The Council on Environmental Quality (CEQ) published regulations (40 CFR Parts 1500-1508, 43 FR 55978, November 29, 1978) establishing uniform procedures for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.). Under part 1507 of the CEQ regulations, Federal agencies must adopt any necessary implementing procedures after publishing them for public comment and submitting them to CEQ for review. The final MAO 600-1 is issued in accordance with that requirement.

The proposed MAO 600-1 was prepared in response to the CEQ regulations and Department of Transportation Order 5610.1C, "Procedures for Considering Environmental Impacts," to provide in a single document the basic MARAD policies and procdures for consideration

of environmental impacts in decisionmaking on proposed MARAD actions. The order was reviewed within the Department of Transportation and by the CEQ. It was then published for public comment in the **Federal Register** March 22, 1985 (50 FR 11606) with a correction April 1, 1985 (50 FR 12887). The comment period closed April 22, 1985. Comments were received only from the United States Environmental Protection Agency (EPA) and the National Trust for Historic Preservation (NTHP).

The EPA, by letter dated April 22, 1985, suggested minor editorial changes to clarify that: (1) Actions other than those listed in appendix 1 require National Environmental Policy Act documentation, i.e., preparation of an environmental assessment, and finding of no significant impact or environmental impact statement; and (2) appendix 2 is onlyt to be used for actions specifically listed in appendix 1, i.e., categorical exclusions. We have revised the language in section 4.05 and appendix 2 of the final MAO 600–1 to accommodate that suggested changes.

The NTHP, by letter dated April 16, 1985, and signed by its President, commented that actions qualifying under nearly all ten of the proposed categorical exclusions could affect National Register of Historic Places properties, Accordingly, the NTHP recommended that rather than providing qualifying language in each of the ten exclusions, as was proposed for two of them, a qualifying paragraph applicable to all exclusions should be inserted just before the exclusion list. We have added such qualifying language to the second sentence of the introductory paragraph of appendix 1 of the final MAO 600–1. Also, since this added language adequately qualifies all exclusions, we have deleted the previously proposed qualification language from exclusions 6 and 9.

The final order has been reviewed within the Department of Transportation and in consideration of the comments received and their accomodation in the final order, no further review is deemed necessary for issuance of the order.

Accordingly, MARAD publishes the following final MAO 600–1 entitled "Procedures for Considering Environmental Impacts." (National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.); the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.); sections 176 and 309 of the Clean Air Act, as amended (42 U.S.C. 7401 et seq.); section 4(F), Department of Transportation Act of 1966, as amended (49 U.S.C. 1653(f)); section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.); sections 303 and 307 of the Coastal Zone Management Act of 1972 (43 U.S.C. 1241); section 2 of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.); section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531 et seq.); the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.); Executive Order 11514, dated March 4, 1970, as amended by Executive Order 11991, dated May 24, 1977; Executive Order 12114, dated January 4, 1979; 40 CFR Parts 1500–1508; DOT Order 5610.1C, as amended (44 FR 56420, October 1, 1979)).

By Order of the Maritime Administrator.

Dated: July 25, 1985.

Georgia P. Stamas,

Secretary, Maritime Administration.

Maritime Administrative Order 600–1—Procedures for Considering Environmental Impacts

Section 1. Purpose:

This order prescribes the policies and procedures for consideration of environmental impacts in decisionmaking on proposed Maritime Administration actions. This order supplements Department of Transporation Order DOT 5610.1C, "Procedures for Considering Environmental Impacts," which is the basic reference document.

Section 2. Background:

2.01 The National Environmental Policy Act (NEPA) established certain policies and goals concerning the environment and requires that, to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with those policies and goals. Section 102 of NEPA is designed to insure that environmental considerations are given careful attention and appropriate weight in all decisions of the Federal Government.

2.02 The Council on Environmental Quality (CEQ) has issued regulations for implementation of the procedural provisions of NEPA (40 CFR Parts 1500–1508). These regulations apply uniformly to and are binding upon all Federal agencies, and direct each agency to adopt implementing procedures which relate the CEQ regulations to the specific needs of that agency's programs and operating procedures.

2.03 This order implements within the Maritime Administration the mandate of NEPA, as defined and elaborated upon by CEQ's regulations, and by DOT 5610.1C. These directives provide that information on environmental impacts of proposed actions will be made available to public officials and citizens through environmental documents (namely, environmental assessments, findings of no significant impact, and environmental impact statements).

Section 3. Responsibilities:

3.01 The *Associate Administrator for Shipbuilding, Operations, and Research* is the Coordinator of Environmental Activities for the Maritime Administration (Coordinator); and as such, shall direct the functions required of the Maritime Administration to implement the provisions of NEPA, CEQ regulations, and DOT 5610.1C. This includes serving as a focal point where interested persons can get information or status reports on environmental documents and other elements of the NEPA process.

3.02 The *Chief Counsel* shall:

1 Act as legal advisor to the Coordinator with respect to all environmental matters;

2 Upon request, review and comment upon any tentative determination by the Coordinator that a proposed action by the Maritime Administration requires the initiation of an environmental assessment or environmental impact statement; and;

3 Perform a legal review of all proposed final environmental assessments, draft and final environmental impact statements, and final findings of no significant impact.

3.03 *Associate Administrators, Independent Office Directors, and Other Officials* shall, at the earliest possible time, inform the Coordinator through proper channels of all proposed actions (including actions proposed by nonfederal applicants) under their jurisdiction which may have an impact on the environment. They shall assist the Coordinator in the review of such actions and in the preparation of environmental documents, as applicable, and shall assure implementation of mitigation measures identified in these documents.

3.04 *All Maritime Administration personnel* engaged in programs and projects which may have an environmental impact shall become thoroughly familiar and comply with this order, DOT 5610.1C, and the CEQ regulations.

Section 4. Procedures—Maritime Administration Actions:

4.01 The Coordinator, or designated representative, shall conduct a preliminary analysis of any proposed action received pursuant to this order to determine whether the preparation of an environmental document (see section 2.03, above) is required.

1 If preparation of an environmental document is not required on the part of the Maritime Administration, i.e., the proposed action is a categorical exclusion (see section 4.05, below), the Coordinator shall so notify the referring official.

2 If the preparation of an environmental document is required on the part of the Maritime Administration, the Coordinator shall direct the preparation of either an environmental assessment or an environmental impact statement (if it is obvious that an impact statement is required), obtaining the assistance and clearance of cognizant officials as necessary.

3 Based on the results of the environmental assessment, the Coordinator shall direct preparation of either an environmental impact statement or a finding of no significant impact.

4.02 In preparing and processing draft and final environmental assessments, findings of no significant impact, and environmental impact statements, the Coordinator and all other officials involved shall comply with the applicable procedures set forth in DOT 5610.1C and this order.

4.03 When programmatic and legal clearances have been obtained for a final environmental assessment, draft or final finding of no significant impact, or *draft* environmental impact statement, the Coordinator may approve the document(s). The Coordinator shall submit all *final* environmental impact statements to the Maritime Adminstrator for approval.

4.04 An environmental impact statement shall be prepared for any proposed Maritime Administration action which could significantly affect the environment. Environmental impact statements have been prepared for such major Maritime Administration programs as: (1) Tanker Construction Program, (2) Tank Vessels Engaged in Domestic Trade, (3) Bulk Chemical Carrier Program, (4) Vessels Engaged in Offshore Oil and Gas Drilling Operations, and (5) Chemical Waste Incinerator Ship Program.

4.05 Categorical exclusions are Maritime Administration actions or groups of actions that do not have a significant effect on the quality of the human environment, individually or cumulatively. Categorical exclusions do not require preparation of environmental documents. Appendix 1 of this order describes the Maritime Administration's categorical exclusions. Appendix 2 provides a means for determining whether specific circumstances exist in exceptional cases which render the exclusion in Appendix 1 inoperative. The Coordinator's determination that an action qualifies under a categorical exclusion shall be final.

Section 5. Procedures—Requests for Comments Relative to Actions of Other Agencies:

5.01 The Coordinator shall be the Maritime Administration's receiving official for all requests from the Department for comments on environmental assessments and environmental impact statements of other agencies both within and outside the Department. Such requests are normally received from the Environmental Division, Office of Transportation Regulatory Affairs (OST). If a Maritime Administration official receives a request for comments from other than the Coordinator, the request shall be forwarded promptly to the Coordinator. All requests shall be reviewed by the Coordinator to determine whether the Maritime Administration can provide useful and constructive comments concerning the action involved. This review and comment process shall be coordinated with Associate Administrators and other officials, as required. All Associate Administrators and other cognizant officials shall cooperate with the Coordinator in providing comments on a timely basis so that the Coordinator may respond to the Department or requesting agency in a similar manner (see paragraph 9., DOT 5610.1C).

5.02 The Coordinator shall assess the comments received from Associate Administrators and other officials and prepare a coordinated Maritime Administration response to the request. When considered appropriate, such response shall be forwarded to the Chief Counsel and to Associate Administrators and other officials involved for concurrence prior to its being forwarded to the Department. If the response is direct to the requesting agency, the Coordinator shall provide a copy of the response to the Assistant Secretary for Policy and International Affairs (OST).

Section 6. International Actions:

Due to the international character of merchant shipping, program officials should take special note of the provisions of paragraph 16., DOT 5610.1C.

Garrett E. Brown, Jr.,

Acting Deputy Maritime Administrator.

Appendix 1—Maritime Administration Actions Which Are Not Normally Major Actions Significantly Affecting the Environment (i.e., Categorical Exclusions)

Actions that do not individually or cumulatively have a significant effect on the environment are categorically excluded and thus do not require an environmental assessment or an environmental impact statement. The below listed actions are categorical exclusions for the Maritime Administration, except actions having an effect on properties on or eligible for listing on the National Register of Historic Places and in specific cases where there is or may be a significant environmental impact. In such exceptional cases, appendix 2 should be used to determine if preparation of an environmental assessment or impact statement is required.

1. Administrative procurements (e.g., general supplies), contracts for personal services, personnel actions, project amendments which do not significantly alter the environmental impact of an action; and operating or maintenance subsidies, ship financing guarantees, deferred tax programs, etc., not resulting in a change in the effect on the environment.

2. Research studies and activities, including those at the Computer-Aided Operations Research Facility, which do not involve the direct construction of facilities.

3. Internal orders and procedures not required to be published in the **Federal Register**, promulgation of rules, regulations, directives, and amendments thereto which do not require a regulatory impact analysis under section 3 of Executive Order 12291 or do not have a potential to cause a significant effect on the environment; routine enforcement of statutes, rules, and safety and environmental standards and requirements, e.g., enforcement of statutes and rules regarding transfer of certain U.S.-flag vessels to any person not a citizen of the United States (sections 9, 37 when operative, and 41, Shipping Act, 1916, as amended) and enforcement of requirements for admission to the United States Merchant Marine Academy (section 1303, Merchant Marine Act, 1936, as amended and 46 CFR Part 310, Subpart C); and hearings, meetings and public affairs activities.

4. Reconstruction, modification, modernization, replacement, repair, and maintenance (including emergency replacement, repair, or maintenance) of equipment, facilities, or structures which do not change substantially the existing character of the equipment/facility/structure.

5. Purchase, installation, or replacement of operating or maintenance equipment to be located within a Maritime Administration facility and with no significant physical impacts off the site.

6. Acquisition of land in which the property will not be modified, its use will not be changed, and displacements will not occur.

7. Project or program actions for which applicable environmental documentation has been prepared previously and environmental circumstances have not subsequently changed.

8. Excessing and disposing of Maritime Administration personal or real property to the General Services Administration or otherwise; use of space in Maritime Administration-owned buildings or buildings which are constructed for or controlled by the General Services Administration; lease of existing buildings; lease of space for a term of one year or less; and renewal of existing leases that do not involve significant changes in use of the property.

9. Demolition and removal of buildings and other structures; water, sewage, electrical, gas, or other utility extensions of temporary duration; new gardening or landscaping, or the maintenance of existing landscape; filling of earth into previously excavated land with material compatible with the natural features of the site; minor trenching and backfilling where the surface is restored and excavated material is protected against wash and runoffs; grading on land with a slope of less than 10 percent; removal of obstructions on Maritime Administration property; and erosion control actions with no off-Maritime Administration property impact.

10. Construction on Maritime Administration installations of small (30,000 square feet or less) structures such as storage buildings, garages, small parking areas, foot or bicycle path; installation of signs, fences, and security lighting; minor expansion of facilities which require no additional land; and where expansion is due to remodeling of space in current quarters or existing buildings.

Appendix 2.—Categorical Exclusion Checklist _____

Project(s): _____

Date: _____

Nature of Action(s): _____

Exclusion Category: No. _____ _____

Topic _____ _____

Instructions: For the above action(s) under the subject project or group of homogeneous projects, check the appropriate answer to each of the questions below. If all the answers on this list are checked "No," then the action(s) meet the criteria for categorical exclusion. If any answer is checked "Yes" or "Uncertain," then an environmental assessment will be prepared unless there is no doubt that an environmental impact statement is required.

1. This action would have significant effect on public health or safety.

No ____ Uncertain ____ Yes ____

2. This action would have significant effect on wildlife resources or would affect unique geographical features such as: wetlands, wild or scenic rivers, refuges, floodplains, etc., or lands protected by section 4(f) of the DOT Act.
No ___ Uncertain ___ Yes ___
3. This action will have highly controversial environmental effects.
No ___ Uncertain ___ Yes ___
4. This will have highly uncertain environmental effects or involve unique or unknown environmental risk.
No ___ Uncertain ___ Yes ___
5. This action will establish a precedent for future actions.
No ___ Uncertain ___ Yes ___
6. This action is related to other actions with individually insignificant but cumulatively significant effects.
No ___ Uncertain ___ Yes ___
7. This action will affect properties listed or eligible for listing in the National Register of Historic Places, or otherwise protecterd by section 106 of the National Historic Preservation Act.
No ___ Uncertain ___ Yes ___
8. This action will affect a species listed or proposed to be listed as Endangered or Threatened.
No ___ Uncertain ___ Yes ___
9. This action is inconsistent with Federal, State, local or tribal law or requirements imposed for protection of the environment.
No ___ Uncertain ___ Yes ___
10. This action or group of actions would involve unresolved conflicts concerning alternative uses of available resources.
No ___ Uncertain ___ Yes ___

Conclusion:
NEPA Action-Categorical Exclusion ———
EA Required———
EIS Required———
Explanation and/or Remarks: ———
Preparer's Name and Title: ———
Concur: ———
Date: ———
(Signature, Name, and Title of Program Official)
Concur: ———
Date: ———
(Signature, Name, and Title of Environmental Activities Coordinator)

[FR Doc. 85-18019 Filed 7-29-85; 8:45 am]
BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1984 Rev., Supp. No. 29]

Aetna Fire Underwriters Insurance Co.; Surety Companies Acceptable on Federal Bonds: Termination of Authority

Notice is hereby given that the Certificate of Authority issued by the Treasury to Aetna Fire Underwriters Insurance Company, under sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds in hereby terminated effective June 30, 1985.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27248, July 2, 1984.

With respect to any bonds currently in force with Aetna Fire Underwriters Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634-2349.

Dated: July 19, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-17952 Filed 7-29-85; 8:45 am]
BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 30]

Aetna Insurance Co. Surety Companies Acceptable on Federal Bonds: Termination of Authority

Notice is hereby given that the Certificate of Authority issued by the Treasury to Aetna Insurance Company, under Sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective June 30, 1985.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27248, July 2, 1984.

With respect to any bonds currently in force with Aetna Insurance Company, bond-approving officers for the Government may let bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Managment Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634-2349.

Dated: July 19, 1985.

W. E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-17951 Filed 7-29-85; 8:45 am]
BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 27]

Covenant Insurance Co.; Surety Companies Acceptable on Federal Bonds: Termination of Authority

Notice is hereby given that the Certificate of Authority issued by the Treasury to Covenant Insurance Company, under sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds was terminated effective June 30, 1985.

The Company was last listed as an acceptable surety on Federal bonds at 49 FR 27252, July 2, 1984.

With respect to any bonds currently in force with Covenant Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, now bonds should be accepted from the Company.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634-2349.

Dated: July 19, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-17954 Filed 7-29-85; 8:45 am]
BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 31]

Florida Farm Bureau Mutual Insurance Co.; Surety Companies Acceptable on Federal Bonds: Termination of Authority

Notice is hereby given that the Certificate of Authority issued by the Treasury to Florida Farm Bureau Mutual Insurance Company, of Gainesville, Florida, under Sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective June 30, 1985.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27253, July 2, 1984.

With respect to any bonds currently in force with Florida Farm Bureau Mutual Insurace Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the

Treasury, Washington, D.C. 20226, telephone (202) 634–2319.

Dated: July 19, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85–17949 Filed 7–29–85; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 32]

Northern Insurance Company of New York; Surety Companies Acceptable on Federal Bonds: Termination of Authority

Notice is hereby given that the Certificate of Authority issued by the Treasury to Northern Insurance Company of New York, of Baltimore, Maryland, under Sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective June 30, 1985.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27258, July 2, 1984.

With respect to any bonds currently in force with Northen Insurance Company of New York bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–2319.

Dated: July 19, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85–17950 Filed 7–29–85; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 28]

The Canadian Indemnity Co.; Surety Companies Acceptable on Federal Bonds: Termination of Authority

Notice is hereby given that the Certificate of Authority issued by the Treasury to The Canadian Indemnity Company, under Sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds was terminated effective May 31, 1985.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27263 July 2, 1984.

With respect to any bonds currently in force with The Canadian Indemnity Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–2349.

W.E. Douglas,

Commissioner, Financial Management Service.

Dated: July 19, 1985.

[FR Doc. 85–17953 Filed 7–29–85; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority No. 85–5 of June 27, 1985 [50 FR 27393, July 2, 1985], I hereby determine that the objects to be included in the exhibit entitled, "Ramses the Great" or "Ramses II: The Pharaoh and His Time" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between the Egyptian Antiquities Organization and the participating United States cities and organizations. I also determine that the temporary exhibition or display of the listed exhibit objects at the Brigham Young University, Provo, Utah, beginning on or about October 25, 1985, to on or about April 8, 1986; by the Jacksonville Art Museum in Jacksonville, Florida, beginning on or about November 15, 1986, to on or about March 15, 1987; and in the City of Memphis, Tennessee, beginning on or about April 15, 1987, to on or about August 31, 1987, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 24, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85–17967 Filed 7–29–85; 8:45 am]

BILLING CODE 8230-01-M

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[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 50, No. 146
Tuesday, July 30, 1985

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).

CONTENTS

1

FEDERAL COMMUNICATIONS COMMISSION

July 25, 1985.

The Federal Communications Commission considered an additional item on the subject listed below at the Open Meeting scheduled for 9:30 a.m. Thursday, July 25, 1985, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—8—Title: Applications for authority to construct, launch and/or operate space stations in the domestic Fixed-Satellite Service filed by Alascom, Inc., American Satellite Company, American Telephone and Telegraph Company, Cablesat General Corporation, Columbia Communications Corporation, COMSAT General Corporation, Digital Telesat, Inc., Equatorial Communication Services, Federal Express Corporation, Ford Aerospace Satellite Services Corporation, GTE Satellite Corporation, GTE Spacenet Corporation, Hughes Communications Galaxy, Inc., Martin Marietta Communications Systems, Inc., National Exchange, Inc., Rainbow Satellite, Inc., RCA American Communications, Inc., Satellite Business Systems, Systematics General Corporation, United States Satellite Systems, Inc., and The Western Union Telegraph Company. Summary: The Commission will consider the appropriate actions to be taken on the pending space station applications filed by the companies listed above.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this additional item.

Action by the Commission July 25, 1985: Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider this additional item.

Additional information concerning this item may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–18044 Filed 7–26–85; 9:18 am]

BILLING CODE 6712-01-M

2

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10:00 a.m., Thursday, August 1, 1985.

PLACE: Board Room, 6th Floor, 1700 G Street, NW., Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Martha Gravlee.

MATTERS TO BE CONSIDERED: ARM Booklet Distribution.

Jeff Sconyers,

Secretary.

[FR Doc. 85–18134 Filed 7–26–85; 3:50 pm]

BILLING CODE 6720-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 5, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Building renovation proposals regarding the Federal Reserve Bank of Cleveland.
2. Proposed purchase of computers within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–18152 Filed 7–26–85; 4:20 pm]

BILLING CODE 6210-01-M

federal register

Tuesday
July 30, 1985

Part II

Environmental Protection Agency

40 CFR Parts 261 and 271

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 271

[SWN-FRL 2835-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to amend its regulations under the Resource Conservation and Recovery Act (RCRA) by adding four spent solvents and distillation bottoms from the recovery of these solvents to the current hazardous waste listings. The Agency also is proposing to amend the list of commercial chemical products which are hazardous wastes when discarded by adding one of these solvents, as well as adding two of these solvents to the list of hazardous constituents in Appendix VIII of Part 261. The effect of this proposed regulation, if promulgated, would be to subject these wastes to the hazardous waste management standards contained in 40 CFR Parts 262–266, Part 124, and the permitting requirements of Parts 270 and 271.

DATES: EPA will accept public comments on this proposed rule until September 13, 1985. Any person may request a hearing on this amendment by filing a request with Eileen B. Claussen, whose address appears below, by August 14, 1985.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should identify the regulatory docket "Listing Four Spent Solvents and Still Bottoms from the Recovery of These Solvents." Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460.

The public docket for this amendment is located in Room S-212E, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Mr. Robert Scarberry, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4761.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published a list of hazardous wastes generated from non-specific sources. This list has been amended several times, and is published in 40 CFR 261.31. It includes 27 commonly used organic solvents. These solvents are identified as EPA Hazardous Wastes Nos. F001, F002, F003, F004, and F005.

Today EPA is proposing to add spent 1,1,2-trichloroethane and the still bottoms from the recovery of this spent solvent to the generic F002 listing, and benzene, 2-ethoxyethanol, and 2-nitropropane, as well as still bottoms from the recovery of these spent solvents to the generic F005 listing. These wastes are described below and in the listing background document.[1] The hazardous constituents in these wastes are the solvents themselves, which are known to cause either carcinogenic, teratogenic, adverse reproductive, or other chronic toxic effects in laboratory animals. Also, benzene has been determined to cause leukemia in humans.

These solvents typically are present at concentrations ranging from 1 to 95 percent in the wastes, are moderately to highly mobile in air and water, are expected to be persistent in ground water, and can reach environmental receptors in harmful concentrations if these wastes are mismanaged. In addition, these solvents tend to degrade liners and thus may leach from land disposal facilities into ground or surface water, or form solutions of other hazardous substances, thereby rendering those compounds more mobile in the environment. Furthermore, three of these solvents (benzene, 2-ethoxyethanol, and 2-nitropropane) are also ignitable in their pure form and it is expected that the corresponding spent solvent will also exhibit the characteristic of ignitability as these wastes typically contain significant concentrations (*i.e.*, between 50 and 95 percent) of the solvent. The data collected by the Agency show that the still bottoms from the recovery of the subject solvents typically contain between 1 to 20 percent of these toxic solvents; in general, these recovery still bottoms are not expected to be ignitable.

EPA has evaluated these wastes against the criteria for listing hazardous wastes provided in 40 CFR 261.11(a)(3), and has determined that these wastes are hazardous because they are capable of posing a substantial present or potential threat to human health and the environment when improperly treated, stored, transported, disposed of, or otherwise managed. Also, it should be noted that section 222 of the Hazardous and Solid Waste Amendments of 1984 requires the Agency to determine whether or not to list wastes from a number of industrial sectors and operations, including the use of solvents. This proposal responds to Congress' request to consider listing additional solvents.

These proposed spent solvent listings will apply to wastes which result from the use of individual solvents identifiable as any technical grades of the solvents that are produced or marketed. These solvents are considered "spent" and are regulated under Subtitle C of RCRA when they no longer meet the specifications for which the solvent was originally used because they have become contaminated with physical or chemical impurities and are no longer fit for use without being regenerated, reclaimed, or otherwise reprocessed. This proposed listing does not cover manufacturing process wastes which are contaminated with solvents. Such wastes, if determined to be hazardous, would be listed individually.

The Agency realizes that a major regulatory loophole exists which allows wastes which result from the use of solvent mixtures containing one or more of the spent solvents to remain unregulated. In another regulatory action, however, the Agency proposed to consolidate the F001 through F005 listings into F001 and to amend the subsequent F001 listing by establishing a quantity and volume "cut-off" for solvent mixtures. See 50 FR 18378, April 30, 1985. Specifically, the Agency is proposing to expand the universe of wastes considered "spent solvents" to include any solvent mixture or blend which contains, in total, 10 percent or more of one or more listed solvents. The Agency intends to incorporate the four solvents which are the subject of this **Federal Register** notice under the consolidated F001 listing when this solvent mixture rule is promulgated.

[1] The listing background document is available in the public docket at the address cited above.

II. Summary of the Regulation

A. List of Wastes

This proposed regulation would list as hazardous the following wastes generated in conjunction with the use of four solvents:

F002—
- Spent 1,1,2-trichloroethane (T) and still bottoms from its recovery (T).

F005—
- Spent 2-ethoxyethanol (I,T) and still bottoms from its recovery (T),
- Spent benzene (I,T) and still bottoms from its recovery (T), and
- Spent 2-nitropropane (I,T) and still bottoms from its recovery (T).

The total quantities of the organic residual wastes from the use of these four solvents are estimated to be as follows:

Solvent	Spent solvent generation (kkg/yr)	Recovery still bottoms (kkg/yr)
Benzene	7,720	2,320
1,1,2-trichloroethane	9,470	2,840
2-nitropropane	2,330	1,110
2-ethoxyethanol	3,420	2,500

The listing background document and the sources cited there describe the sources of the wastes in more detail. The Agency has waste characterization data which show that typical spent solvent wastes contain between 50 and 95 percent solvent and the still bottoms from spent solvent recovery have a solvent content of between 1 and 20 percent. Table I lists the constituents of concern for the subject wastes along with their toxic effects of concern, concentrations, exposure pathways of concern, mobility in soil, solubility in water, and estimated persistence in ground water.

1. Effects of Concern. There is sufficient evidence from available studies on the toxicological properties of the subject solvents to list the spent solvents and the still bottoms which result from their recovery as hazardous. Specifically, these solvents have been demonstrated to cause either carcinogenic, teratogenic, adverse reproductive, or other chronic health effects in laboratory animals. In addition, benzene has been determined to cause leukemia in humans.

TABLE I.—CONSTITUENTS OF CONCERN IN THE SPENT SOLVENTS AND STILL BOTTOMS

Waste/constituent of concern	Concentration range (percent)	Effects of concern	Exposure pathway of concern	Mobility in soil	Log K_{ow}[1]	Persistence (ground water)	Solubility in water
F002:							
Spent 1,1,2-trichloroethane	50–95	Carcinogenic	Ground water	Moderate	2.5	High	High.
Still bottoms	1–20	Chronic					
F005:							
Spent benzene	50–95	Carcinogenic	Ground water	Moderate	2.15	Moderate	High.
Still bottoms	1–20						
F005:							
Spent 2-ethoxyethanol	50–95	Teratogenic	Ground water	High	−0.54	Moderate	High.
Still bottoms	1–20	Reproductive					
F005:							
Spent 2-nitropropane	50–95	Carcinogenic	Ground water	High	0.65	Moderate	High.
Still bottoms	1–20	Chronic					

[1] Leo, *et al.*, 1971. Calculated by the regression equation of Briggs, *et al.*, 1973 ($\log K_{ow} = 0.524 (\log K_{ow}) + 0.618$).

These four constituents are present in the wastes at levels of regulatory concern. Ambient Water Quality Criteria (AWQC) have been established (see 45 FR 79318, November 28, 1980) for benzene and 1,1,2-trichlorethane. The AWQC developed for these substances to protect against health risks to humans resulting from the consumption of water and aquatic organisms are 0.66 μg/L and 0.6 μg/L, respectively. (These AWQC correspond to the 10^{-6} excess lifetime cancer risk levels.) As seen above, benzene and 1,1,2-trichloroethane are present in the wastes at concentrations millions of times greater than their AWQC values. Although no health-based standards have been developed yet for 2-ethoxyethanol and 2-nitropropane, the Agency believes that the levels expected in the wastes also are significant. In particular, since the concentrations of the solvents in the waste streams can be as high as 50 to 95 percent, and considering the toxicity of these two solvents, we believe that 2-ethoxyethanol and 2-nitropropane would reach human receptors at levels of regulatory concern.

Benzene and 1,1,2-trichloroethane are recognized by the Agency's Carcinogen Assessment Group as substances which present a significant potential for human carcinogenesis (USEPA, 1980a). In the case of benezene, there is epidemiological evidence that benzene causes leukemia in humans (Vigliani and Saita, 1964; Cavignaux 1962; and Ishimaru *et al.*, 1971). 1,1,2-trichloroethane has been shown to be carcinogenic in mice, causing hepatocellular carcinomas and adrenal pheochromocytomas (NCI, 1978; Parker, *et al.*, 1979).

2-nitropropane also is recognized by the International Agency for Research on Cancer as having exhibited significant evidence of carcinogenicity in laboratory animals; in particular, the compound has been shown to cause hepatocellular carcinomas and hepatic adenomas in rats (IARC, 1982). The American Conference of Governmental Industrial Hygienists also has designated 2-nitropropane [2] as an industrial substance suspected of having carcinogenic potential in man (ACGIH, 1981).

2-ethoxyethanol is known to be teratogenic in animals by oral, inhalation, and dermal routes, causing skeletal variants and cardiovascular malformations (Hardin *et al.*, 1981; Hardin *et al.*, 1982). As a reproductive toxin, 2-ethoxyethanol has been shown to cause testicular atrophy in rats (Morris *et al.*, 1942) and in dogs (Stenger *et al.*, 1971), as well as declining sperm counts and aberrant sperm morphology in rats (Zenick *et al.*, 1984). Therefore, these compounds exhibit toxicological properties of regulatory concern. Additional information on the toxicity of these solvents is provided in the Health and Environmental Effects Profiles (HEEPs) which are available in the public docket at the address noted above.

2. Mobility of the Constituents of Concern. The water solubility of a given hazardous constituent is indicative of its mobility potential (*i.e.*, the likelihood

[2] 2-nitropropane has already been included in the list of commercial chemical products which are hazardous wastes when discarded (§ 261.33(f)) due to its ignitability. Today's proposal would amend our basis for defining this compound as hazardous, namely, that it is both toxic and ignitable.

that it will be released from a management site and become dissolved in a water resource of concern). The exposure pathway of principal concern is leaching to ground water. Leaching is a concern because these compounds are soluble in water and so could leach out of the wastes, potentially contaminating ground water.

The water solubilities of benzene and 1,1,2-trichloroethane are significant as they are millions of times greater than their corresponding AWQC values. Benzene is soluble to 1800 mg/L (2.7 million times the AWQC) and 1,1,2-trichloroethane is soluble to 4500 mg/L (7.5 million times the AWQC). Although there are no health-based values for 2-nitropropane and 2-ethoxyethanol, their solubilities are much higher than benzene and 1,1,2-trichloroethane (2-nitropropane is soluble to 17,200 mg/L, and 2-ethoxyethanol is completely miscible with water); thus they are capable of existing at significant concentrations in water.

Another factor which can provide an indication of the mobility of the subject solvents is their log octanol/water partition coefficient. The log octanol/water partition coefficients for benzene, 2-ethoxyethanol, 2-nitropropane, and 1,1,2-trichloroethane are 2.15, –0.54, 0.65, and 2.5, respectively (Leo *et al.*, 1971). According to Briggs (1983), these values mean that the subject solvents have a moderate to high affinity for water (see Table I) and are not expected to be immobilized to a significant degree by sorption to soil or sediments with a high organic content. Thus, the solvents are expected to leach with the water phase, and tend not to adsorb to soils.

Soil attenuation factors, such as soil binding, biodegradation, and other environmental degradative processes are expected to decrease the amount of the constituents available for migration. Even so, these solvents are expected to present a substantial hazard because they are present in the wastes in such high concentrations that only a small fraction need migrate from the wastes and reach environmental receptors to pose a potential for substantial harm.

3. Persistence of the Constituents of Concern. Persistence in the environment is an important criterion which the Agency considers when determining whether a waste has the potential to create a hazard. The chemical reactivity of the subject solvents indicate that they are persistent and thus pose a significant potential to human health and the environment.

Benzene does not react with water in the pH range of 2 through 14. Although benzene will readily burn if ignited (flash point = −11°C; Riddick and Bunger, 1970), it does not spontaneously react with oxygen at ordinary temperatures and pressures. Benzene does not absorb visible light; therefore, it will not be directly photolyzed in the lower atmosphere (troposphere) or surface water. Benzene can be attacked by hydroxyl radicals in the atmosphere (Hansen *et al.*, 1975), but event in bright sunlight, under optimal conditions for photooxidation, it will have a half-life of several hours (Darnall *et al.*, 1976).

Benzene is subject to biodegradation in aerobic soil and water (Gibson, 1968). Bacteria convert benzene to catechol using a dioxygenase enzyme in the first step of oxidation (Axcell and Geary, 1973). Also, there is evidence of some anaerobic degradation, but the mode in which it occurs is not clear.

Although benzene is expected to degrade through hydroxyl radical oxidation in the atomosphere and biodegradation in surface waters, it is expected to be moderately persistent in ground water due to its relatively high solubility in water and the relatively low level of biological activity in ground water. This has been demonstrated in that benzene has been found in ground water at a number of sites.

2-Nitropropane will readily burn if ignited (flash point-39°C; Riddick and Bunger, 1970), but it does not spontaneously react with oxygen at ordinary temperatures and pressures. 2-Nitropropane does not absorb visible light and will not directly photolyze in the lower atmosphere (troposphere) or surface water. 2-Nitropropane can be attacked by hydroxyl radicals in the atmosphere; an EPA reactivity classification ranks 2-nitropropane in a group that is not particularly reactive (Darnall *et al.*, 1976). Thus, 2-nitropropane should have a half-life of several hours even in bright sunlight under optimal conditions for photo-oxidation by hydroxyl radicals.

Little is known about the possible biodegradation of 2-nitropropane. It seems likely that it could be metabolized by microorganisms both in aerobic and anaerobic environments, but its half-life in typical unacclimated environmental ecosystems is probably long enough for significant movement to take place.

Although 2-nitropropane is expected to degrade through hydroxyl radical oxidation in the atmosphere and biodegradation in water, these processes probably are not fast enough, even under optimal conditions, to prevent migration of 2-nitropropane in the environment. 2-Nitropropane is expected to be moderately persistent in ground water because of its relatively high solubility in water, its resistance to hydrolysis, and the relatively low level of biological activity in ground water.

1,1,2-Trichloroethane does not react with water under ambient conditions. At high temperatures in the presence of a strong base, elimination of HCl would occur, yielding a dichloroethene, but this is not a significant process in the environment. 1,1,2-Trichloroethane does not absorb visible light and therefore, it will not be directly photolyzed in the lower atmosphere (troposphere) or surface water. 1,1,2-Trichloroethane can be attacked by hydroxyl radicals in the atmosphere. Drilling *et al.* (1976) studied the degradation of 1,1,2-trichloroethane under simulated atmospheric conditions, and their data allow the estimation of the half-life of this compound to be 41 hours under conditions of bright sunlight.

1,1,2-Trichloroethane resists biodegradation in surface water. Jensen and Rosenberg (1975) found that the half-life of 1,1,2-trichloroethane in sea water was much more than 200 hours. Volatilization was more important than biodegradation under these conditions. Bouwer and McCarty (1983) found that 1,1,2,2-tetrachloroethane was dehalogenated to 1,1,2-trichloroethane under anaerobic conditions. It is possible that 1,1,2-trichloroethane also is dehalogenated under these conditions.

1,1,2-Trichloroethane is expected to persist in the atmosphere, surface water, and ground water for long periods of time. It would move freely in the environment, and would be particularly difficult to control in ground water, where it would persist indefinitely.

2-Ethoxyethanol does not react with water in the pH range of 2 to 14. Although 2-ethoxyethanol is ignitable (flash point=44.4°C), it does not spontaneously react with oxygen under ambient conditions. 2-Ethoxyethanol also does not absorb visible light and will not be directly photolyzed in the lower atmosphere (troposphere) or surface water. However, 2-ethoxyethanol belongs to the structural class of ethers, and ethers are rapidly attacked by hydroxyl radicals in the atmosphere. Experiments by Dilling *et al.* (1976) on compounds like trioxane, dioxane and 1-methoxy-2-propanol, which have some structural similarity to 2-ethoxyethanol, indicate that these compounds would have half-lives on the order of about 10 hours in bright sunlight due to photooxidation by hydroxyl radicals.

Although 2-ethoxyethanol is fairly easily biodegraded under aerobic conditions in water, anaerobic degradation is expected to be quite slow. Its theoretical oxygen demand is

1.96 g O_2/g. In a 5-day BOD test with unacclimated cultures, the oxygen demand was 1.03 g O_2/g (53%); with acclimated cultures the BOD_5 was 1.27 g O_2/g (65%) (Verschueren, 1977).

2-Ethoxyethanol is expected to degrade through hydroxyl radical oxidation in the atmosphere and biodegradation in surface water; however, the processes are not fast enough to prevent the migration of 2-ethoxyethanol in the environment. 2-Ethoxyethanol is expected to be moderately persistent in ground water because of its miscibility with water, its low affinity for soil, its resistance to hydrolysis, and the relatively low level of biological activity in ground water.

4. Other Characteristics of the Wastes. Three of the solvents addressed in today's proposed rule also exhibit the characteristic of ignitability as their flash points are below 60 °C (see 40 CFR 261.21). Benzene, 2-ethoxyethanol, and 2-nitropropane are liquids that have flash points of −11 °C, 39 °C, and 44.4 °C, respectively. As spent solvents, these wastes would contain 50 to 95 percent of these solvents and thus, many of the spent solvents are expected to also exhibit the characteristic of ignitability. Still bottoms from the recovery of spent solvents have a lower concentration of solvent (1 to 20 percent); generally, the still bottoms are not expected to be ignitable.

Therefore, due to the high concentrations of the hazardous constitutents in these wastes, the toxic effects of these constituents, their moderate to high mobility (via leaching and volatilization), and the expected persistence in ground water in the environment, EPA concludes that these wastes have the capability to pose a substantial present or potential hazard to human health and the environment when improperly stored, transported, disposed of, or otherwise managed. The Agency, therefore, is proposing to add these spent solvents as well as the still bottoms from their recovery to the hazardous waste list in 40 CFR 261.31.

B. Addition of 2-Ethoxyethanol to § 261.33(f)

Section 261.33(f) is a list of commercial chemical products or manufacturing intermediates which are identified as hazardous wastes when discarded. The Agency has determined that 2-ethoxyethanol satisfies the criteria for hazardous waste listing contained in 40 CFR 261.11(a)(3). When sold as a commercial product, this substance is more than 85% pure (technical grade). The unsupervised disposal of such high concentrations of a toxic, mobile, and persistent chemical could lead to a substantial threat to human health and the environment. Accordingly, the Agency proposes to add 2-ethoxyethanol to the list of commercial chemical products that are hazardous when discarded.

C. Toxicants Added to Appendix VIII

This action also proposes to add 2-nitropropane and 2-ethoxyethanol to Appendix VIII based on the toxic effects these chemicals have on humans or other life forms (see 40 CFR 261.11(a)(3)). By adding these new compounds, the Agency also is increasing the number of hazardous constituents for which land disposal facilities must monitor ground water under compliance monitoring programs (see 40 CFR 264.99). Land disposal permittees also may be required to monitor for these constituents under ground-water detection monitoring programs (see 40 CFR 264.98).

D. Test Methods for Compounds Added to Appendices VII and VIII

The addition of compounds to Appendices VII and VIII requires that the Agency promulgate test methods for use in detecting specified substances by applicants who wish to conduct waste evaluations in support of delisting petitions and by owners or operators of hazardous waste management facilities who must conduct ground-water monitoring (see 40 CFR 264.99) or incinerator monitoring (see 40 CFR 264.341). In 40 CFR Part 261, Appendix III, the Agency has already established test methods for benzene (Method Numbers 8020 and 8240) and 1,1,2-trichloroethane (Method Numbers 8010 and 8240).

The Agency has performed a literature search and evaluated the currently established EPA test methods [3] with the objective of determining the suitability of these analytical methods for 2-ethoxyethanol and 2-nitropropane. This evaluation involved a review of methods historically used for the quantification of 2-ethoxyethanol and 2-nitropropane as well as a comparison of Appendix III methods already established for compounds with chemical structures similar to 2-ethoxyethanol and 2-nitropropane. Based on this evaluation, we have determined that these solvents may be separated by gas chromatographic (GC) methods with subsequent mass spectrometric (MS) or flame ionization detection (FID).

Gas chromatography is appropriate because these organic compounds exhibit characteristic retention times and subsequently are well separated in the GC column and easily identified. When combusted by the FID, 2-ethoxyethanol and 2-nitropropane will produce ionic intermediates that can be detected with excellent sensitivity. The mass spectrometer also is an appropriate detector for these compounds as they have a unique mass spectrum that allows for definitive identification and quantification. Therefore, the Agency is proposing Method Number 8030, which involves the use of a gas chromatograph with a flame ionization detector (GC/FID), and Method Number 8240, which involves the use of a gas chromatograph with mass spectrometric detection (GC/MS) for 2-ethoxyethanol and 2-nitropropane.

The Agency notes that Method Numbers 8010, 8020, 8030, and 8240 require that the concentration of the constituent in the sample be below 0.01 percent. The subject wastes are expected to have concentrations of the constituents in excess of 1 percent; therefore, the sample introduction method for the previously mentioned gas chromatographic methods are restricted to direct injection or dilution of the sample in the appropriate solvent followed by direct injection.

The Agency is inviting the public to comment on these proposed methods if they have industrial experience with the determination of these compounds in environmental media.

III. CERCLA Impacts

All hazardous wastes designated by today's proposed rule will, upon the effective date of promulgation, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101(14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center (at (800) 424–8802 or (202) 426–2675) of the release. (See CERCLA section 103 and 50 FR 13456–13522, April 4, 1985.)

RQs have already been designated for three of the four solvents addressed in today's proposed listing: benzene has an RQ of 1000 pounds; while 1,1,2-trichloroethane and 2-nitropropane have

[3] See "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW–846, 2nd edition, July 1982, as amended; copies of this document are available from: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 783–3238, Document number: 055–002–81001–2.

RQs of 1 pound.[4] According to CERCLA section 102(b), the RQ for any hazardous substance as defined in Section 101(14) (including those listed pursuant to RCRA section 3001) will be one pound or the RQ established pursuant to section 311 of the Clean Water Act, unless and until superseded by regulations establishing an RQ under section 102(a). With respect to 2-ethoxyethanol, an RQ has not yet been set. Thus, upon the effective date of promulgation of this proposal, 2-ethoxyethanol will be added to 40 CFR § 261.33(f), and pursuant to CERCLA section 101, automatically will have an RQ of one pound, unless and until adjusted by regulation under CERCLA.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain authorization, the HSWA applies in authorized States in the interim.

Today's rule would be added to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA. The Agency believes that it is extremely important to clearly specify which regulations implement HSWA since these requirements are immediately effective in authorized States. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1 as discussed in the following section of this preamble.

B. Effect on State Authorizations

Today's announcement proposes regulations that would be effective in all States since the requirements are imposed pursuant to section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(e)(2). Thus, EPA will implement the regulations in nonauthorized States, and in authorized States until they revise their programs to adopt these rules and the revision is approved by EPA.

A State may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State adoption of these regulations is described in 40 CFR 271.21. See 49 FR 21678 (May 22, 1984).

Applying § 271.21(e)(2), States that have final authorization must revise their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs may have listings similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these listings in lieu of EPA until the State program is approved. As a result, the standards proposed today, if promulgated, will apply in all States, including States with listings similar to those in today's rule. States with existing listings may continue to administer and enforce their standards as a matter of State law.

In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a State must revise its program to include standards substantially equivalent or equivalent to EPA's within the time period discussed above.

V. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This proposed rule is not a major rule because it is not expected to result in an effect on the economy of $100 million or more. Although some generators may be newly regulated, data from the RCRA notification data base indicate that many solvent generators also generate other RCRA hazardous wastes. The Agency believes that many of the generators of the spent solvents proposed for listing in today's notice already manage these wastes in compliance with RCRA. The Agency expects that the proposed rule will minimize the competitive advantage experienced by those facilities that presently are not managing these solvent wastes as hazardous.

The Agency has completed a preliminary screening impact analysis of the potential impacts of today's proposal.[5] The analysis indicates that the total impact from this proposed rule, if promulgated, will be less than $7.5 million. This cost will be borne by approximately 1200 manufacturers of paint and coatings, inks, and organic chemicals. The analysis considered each of these industrial segments separately and found that the proposed listings will not result in either a significant increase in prices or a significant decrease in profits.

A worst case scenario was used to provide a conservative cost estimate of the economic impact. The analysis included the costs associated with the following: establishment of a manifest system, the maintenance of an on-site hazardous waste storage area, off-site incineration and transportation of the waste 250 miles to an incinerator, and initial costs of conducting chemical waste analysis and rewriting waste analysis plans.

[4] See Reportable Quantity Final Rule, 50 FR 13456-13522, April 4, 1985.

[5] A copy of the screening impact analysis is available in the public docket at the address cited above.

The addition of the new hazardous constituents to Appendix VIII also will not result in any significant increased burden in groundwater monitoring or incineration monitoring requirements because the analytical techniques currently employed to test for the presence and concentration of other Appendix VIII constituents also would detect and quantify these additional compounds.

The cost of adding 2-ethoxyethanol to 40 CFR 261.33(f), the list of commercial chemical products which are hazardous wastes when discarded, also will be minimal, because these commercial chemical products are rarely discarded due to their inherent value.

In addition, the Agency does not expect that there will be an adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is being conducted.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available to the public, a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant impact on small entities.

Although some generators will be newly regulated and some will experience an increased regulatory burden, this amendment is not expected to have a significant economic impact on a substantial number of small entities. The largest costs are more likely to be borne by generators with large quantities of difficult to manage wastes (*i.e.*, wastes not suitable for land disposal or recycling). Accordingly, I hereby certify that this proposed regulation would not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis. (See 5 U.S.C. 603.)

VII. List of Subjects

40 CFR Part 261

Hazardous waste, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 22, 1985.

Lee M. Thomas,

Administrator.

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For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

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

2. In § 261.31, revise the entries for F002 and F005 in the subgroup 'Generic' to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Generic:		
* * * * *		
F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2,-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; and still bottoms from the recovery of these solvents (T)	(T)
* * * * *		
F005	The following spent non-halogenated solvents (I,T): toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; and the still bottoms from the recovery of these solvents (T)	(I,T)
* * * * *		

§ 261.33 [Amended]

3. In § 261.33(f), add the following entry in alphabetical order:

Hazardous waste No.	Substance
* * * * *	
U359	2-Ethoxyethanol (ethylene glycol monoethyl ether).
* * * * *	

4. In § 261.33(f) change both entries for Hazardous Waste No. U171 "2-Nitropropane (I)" and "Propane, 2-nitro- (I)" to read "2-Nitropropane (I,T)" and "Propane, 2-nitro- (I,T)", respectively.

5. Add the following hazardous constituents in alphabetical order to Table 1 of Appendix III of Part 261:

Compound	First edition methods	Second edition methods
* * * * *		
2-Ethoxyethanol		8030, 8240
* * * * *		
2-Nitropropane		8030, 8240
* * * * *		

6. Revise the following entries in Appendix VII of Part 261 to read as follows:

Appendix VII—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constitutents for which listed
* * * * *	
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
* * * * *	
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethioxyethanol, benzene, 2-nitropropane.
* * * * *	

7. Add the following hazardous constituents (with CAS Numbers) in alphabetical order to Appendix VIII of Part 261:

Appendix VIII—Hazardous Constituents

* * * * *

Ethylene glycol monoethyl ether (Ethanol, 2-ethoxy) (CAS No. 110–80–5)

* * * * *

2-Nitropropane (Propane, 2-nitro) (CAS No. 79–46–9)

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

8. The authority citation for Part 271 continues to read as follows:

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

9. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation	"Federal Register" reference
* * * * *		
[Insert date of Federal Register publication].	Hazardous Waste Management System: Identification and listing of hazardous waste—Listing of four spent solvents and the still bottoms from their recovery.	50 FR [insert "Federal Register" page number].

[FR Doc. 85–17885 Filed 7–29–85; 8:45 am]

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federal register

Tuesday
July 30, 1985

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Surface Coal Mining and Reclamation Operations Under the Permanent Federal Lands Program; State-Federal Cooperative Agreements; Alabama; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Surface Coal Mining and Reclamation Operations Under the Permanent Federal Lands Program; State-Federal Cooperative Agreements; Alabama

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) adopts a cooperative agreement between the Department of the Interior and the State of Alabama for the regulation of surface coal mining and reclamation operations on lands subject to the Federal lands program in Alabama under the permanent regulatory program. Such a cooperative agreement is provided for by the Surface Mining Control and Reclamation Act of 1977. This notice provides the terms of the cooperative agreement and additional information on other issues. The Agreement is consistent with the July 1984, district court decision specifying various parameters for the Federal lands program.

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Murray Newton, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone (202) 343-5866.

SUPPLEMENTARY INFORMATION: This preamble is divided into three parts as follows:

I. Background

Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, and the implementing regulations at 30 CFR Part 745 allow a State and the Secretary of the Interior to enter into a permanent program cooperative agreement if the State has an approved State program for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands. Permanent program cooperative agreements are authorized by the first sentence of section 523(c), which provides that "[a]ny State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provision of this Act." 30 U.S.C. 1273(c).

On July 20, 1984, Alabama submitted a proposed amendment program cooperative agreement between the Department of the Interior and the State of Alabama to make Alabama the regulatory authority for the regulation of surface coal mining and reclamation operations on Federal lands in that State. OSM proposed, and solicited comment on, that cooperative agreement in the **Federal Register** of January 23, 1985 (50 FR 2988). Public comments received, and OSM's disposition of each, are described below.

The requirements for the development, approval and administration of permanent program cooperative agreements under section 523(c) of the Act are found in 30 CFR Part 745. For recent amendments of this Part, see 48 FR 6912 (February 16, 1983). Sectons 745.11 (b) and (f) of 30 CFR require a State to submit a request for a permanent program cooperative agreement, along with certain information relating to the State's ability to administer an agreement in accordance with the Act, except to the extent the information previously has been included in the approved State Program.

Alabama satisfied the requirements of 30 CFR 745.11(f)(1) when it obtained full program approval of its State Program on July 5, 1984 (49 FR 27500). The information required by 30 CFR 745.11(b)(1) and 30 CFR 745.11(f)(2) was included in Alabama's request for approval of its State Program, and in subsequent requests for administrative and enforcement funding under 30 CFR Part 735. The information relating to Alabama's authority to enter into a cooperative agreement was provided in a letter dated September 10, 1984, in which the Attorney General stated that there exists no statutory, regulatory, or legal constraint within the State of Alabama which would preclude the Alabama regulatory authority from fully carrying out the provisions of the cooperative agreement.

OSM proposed the Alabama cooperative agreement in a notice published in the **Federal Register** on January 23, 1985 (50 FR 2988). That notice announced that the public comment period would close on February 22, 1985, and tentatively scheduled a public hearing for February 18, 1985. Because no one asked to testify at the hearing, it was cancelled as provided in the January 23, 1985, notice. Three written comments were received during the comment period. They are described below, along with the terms of the Alabama cooperative agreement adopted here today.

The nature and extent of the Secretary's ability to delegate authority for surface coal mining operations on Federal lands to States through cooperative agreements was a subject of a recent Federal District Court opinion in *In Re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79-1144 (D.D.C., July 6, 1984). The Alabama cooperative agreement adopted here is consistent with that opinion and delegates the Secretary's authority under the Surface Mining Act which is required to be covered under the Federal lands program and retains the Secretary's non-delegable responsibilities under the Mineral Leasing Act.

Although OSM has not yet amended the scope of the Federal lands program, 30 CFR Part 740, to be consistent with the District Court decision, this Agreement encompasses the salient features of that decision. If changes to the Federal lands program are adopted which are not covered by this Agreement, OSM and the Secretary will promptly initiate the steps necessary to conform the Agreement.

II. Summary of Cooperative Agreement and Responses to Public Comments

Article I: Introduction, Purpose, and Responsible Agencies

Article I sets forth the legal authority for the Alabama Cooperative Agreement (the Agreement), which is provided by section 523(c) of the Act. The purposes of the Agreement and the responsible administrative agencies of the Department and of the State are also specified in Article I.

Article II: Effective Date

Article II provides that after it has been signed by the Secretary and the Governor, the Agreement becomes effective 30 days after publication as a final rule in the **Federal Register.** It will remain in effect until terminated as provided in Articles XI.

Article III: Definitions

Article III provides that any terms and phrases used in the Agreement have the same meaning as set forth in the Federal and States Acts, regulations promulgated pursuant to those Acts, 30 CFR Parts 700, 701, and 740, and the approved State Program. Defining terms and phrases in this manner ensures

consistency between applicable regulations and the Agreement. Where there are conflicts in definitions, those included in the approved State Program will apply, except where the term being defined relates to those responsibilities of the Secretary that cannot be assumed by the State under the Agreement.

Article IV: Applicability

Article IV states that the laws, regulations, terms, and conditions of Alabama's approved State Program are applicable to surface coal mining and reclamation operations subject to the Federal lands program in Alabama except as otherwise stated in the Agreement, the Act, 30 CFR 745.13, or other applicable laws or regulations. Thus, this provision is consistent with the Federal lands programs, which adopted the Alabama State Program as substantive Federal law on all Federal lands in Alabama and made it enforceable by the State and the United States. Because the applicability of this Agreement is keyed to the scope of the Federal lands program, when the Federal lands program is amended to conform with the district court decision, this Agreement will be so amended automatically. The reference to the Alabama State Program is intended to encompass the State's Program as approved on July 5, 1984 (49 FR 27500), and any amendments thereto which are approved in accordance with 30 CFR 732.17. Excluded from the scope of the Agreement are the authorities and responsibilities reserved to the Secretary pursuant to the Act and 30 CFR 745.13.

Article V: General Requirements

Article V mutually binds the Governor and the Secretary to comply with the provisions of the Agreement.

Paragraph A of Article V requires that the Alabama Surface Mining Commission (the agency designated by the Governor to administer the Agreement) continue to have authority under State law to carry out the Agreement.

Paragraph B of Article V provides that upon application for funds the State shall be reimbursed by OSM pursuant to section 705(c) of the Act if the necessary funds have been appropriated to OSM by Congress. Section 705(c) of the Act provides that a State with a cooperative agreement may receive an increase in its annual grant for the development, administration and enforcement of a State program on Federal lands by an amount which the Secretary determines is approximately equal to the amount the Federal government would otherwise have expended to regulate surface coal mining and reclamation operations on Federal lands within the State. See 30 U.S.C. 1285(c). The reference in section 705(c) to section 523(d) is obviously a typographical error; the correct reference is section 523(c). The regulations implementing section 705(c) appear at 30 CFR 735.16 through 735.26.

If, when requested by the State, adequate funds have not been appropriated, OSM and the Alabama Surface Mining Commission are to meet and decide on appropriate measures to ensure that mining operations are regulated in accordance with the approved State Program. Either party may terminate the Agreement if agreement cannot be achieved. Any funds granted to the State pursuant to the Agreement would be reduced by the amount of any fees collected by the State that are attributable to the Federal lands covered by the Agreement, in accordance with Office of Management and Budget (OMB) Circular A-102 (Uniform Requirements for Assistance to State and Local Governments), Attachment E (Program Income).

Paragraph V.B. as adopted differs from proposed paragraph V.B. Proposed paragraph V.B. described in detail a method of calculating the amount of the grant by comparing certain Federal/non-Federal ratios. The ASMC commented that the Agreement should instead use the more general phrasing in the State's initial submission, as later revised. OSM agrees and has modified final paragraph V.B. accordingly.

Paragraph C of Article V requires the State to make annual reports to OSM with respect to compliance with this Agreement. Paragraph C also provides for a general exchange of information developed under the Agreement, unless such an exchange is prohibited by Federal law. Final evaluation reports prepared by OSM on State administration and enforcement of this Agreement will be provided to ASMC.

Paragraph D of Article V requires ASMC to maintain the necessary personnel to fully implement this Agreement.

Paragraph E of Article V requires that ASMC avail itself of the facilities necessary to carry out the requirements of the Agreement. This provision ensures that the State will have access to and utilize any resources necessary to conduct inspections, investigations, studies, tests, and analyses required to fulfill the requirements of this Agreement.

Paragraph F of Article V concerns permit application fees. Fees will be determined according to section 15 of the Alabama Surface Mining Control and Reclamation Act of 1981, Section 880-X-8B-.07 of the State regulations, and the State Program or Federal law. The State will retain all permit application fees and civil penalties resulting from operations on Federal lands and deposit them in the Alabama Surface Mining Fund. The State will report the amount of these fees in the financial status report required under 30 CFR 735.26. State funding (under paragraph B of Article V) will be reduced by the amount collected from mining on Federal lands.

The ASMC commented that proposed paragraph V. F. contained an inaccurate citation to a State regulation which had been superseded by Section 880-X-8B-.07 of the State Regulations. Final paragraph V. F. has been corrected accordingly.

Readers should be aware that OSM has recently proposed rules governing the collection of fees for certain activities related to the review of permits and mining plans. (50 FR 7522; February 22, 1985). As proposed, the permit fee rule would involve recovery by the Department of costs incurred by the Department; it would not affect fees charged by the State. Should the final permit fees rule require modification of any cooperative agreement, OSM will propose appropriate changes in the **Federal Register**.

Article VI: Review of Permit Application Package

Paragraphs A through C of Article VI describe the procedures the State would follow in the review and analysis of a permit application package (PAP) for operations subject to the Federal lands program. "Permit application package" is a term adopted by OSM in revising the Federal lands program (48 FR 6912; February 16, 1983). It is the material submitted by an applicant proposing to mine on Federal lands, including permit revision and renewals.

OSM adopted the term because there are requirements for mining on Federal lands in addition to those required by a permit application under the approved State Program for non-Federal lands. For example, operations on Federal lands may be subject to requirements of the Federal land management agency under Federal laws other than the Act. The package concept allows such information to be included with the permit application required by the approved State Program. See the definition of "permit application package" under 30 CFR 740.5.

The cooperative agreement identifies ASMC as having the primary responsibility for the analysis, review,

and approval or disapproval of the permit application component of the PAP in Alabama for operations subject to the Federal lands program. In assuming primary responsibility for review, analysis, and approval or disapproval of permit applications, ASMC also becomes responsible for coordinating the review of a PAP where leased Federal coal is not involved with Federal agencies other than OSM affected by the proposed surface coal mining and reclamation operations to ensure compliance with Federal laws other than the Act and regulations other than those implementing SMCRA, if requested by the State, OSM would assist in identifying Federal agencies which may be affected by the proposed mining operation. Under Paragraph A, an operator on Federal lands will be required by ASMC and the Secretary to submit a PAP in an appropriate number of copies to ASMC. ASMC will provide to OSM an appropriate number of copies of the PAP.

At a minimum, a PAP must include the uniform necessary for ASMC to make a determination of compliance with the approved State Program and for appropriate Federal agency to make determinations of compliance with applicable requirements of other Federal laws and regulations for which it is responsible.

Paragraph B.1. assigns to ASMC the primary responsibility for analysis, review, and approval or disapproval of the permit application component of the PAP. ASMC will be the principal contact for the applicant on issues concerned with the development, review and approval of the PAP for mining on Federal lands in Alabama, and will be responsible for informing applicants of determinations.

Under Paragraph B.2., ASMC will send a copy of the PAP to the Federal land management agency with a request for review and will be responsible for obtaining the views of other Federal agencies that would be affected by the PAP. ASMC also will forward information to OSM to assist OSM in determining whether the proposed mining operation is limited or prohibited under section 522(e) (1) or (2) of the Federal Act. Under 30 CFR 740.4(a)(4), the Secretary remains responsible for determining valid existing rights (VER) for surface coal mining operations on Federal lands within the boundaries of any area specified under section 522(e)(1) or (e)(2) of the Act. In accordance with the July 6, 1984, and March 22, 1985, opinions in *In Re Permanent Surface Mining Regulations Litigation*, No. 79-1144 (D.D.C. 1984 and 1985), the Secretary will also perform VER determinations for proposed surface coal mining operations within section 522(e)(1) areas affecting the Federal interest within such areas.

Under Paragraph B.3., ASMC will receive, upon request, assistance from OSM. OSM will be responsible for forwarding information from applicants to ASMC. Any information in ASMC files concerning mines on Federal lands will be available to OSM.

Paragraph B.4. requires ASMC to review the PAP for compliance with the Program.

The U.S. Fish and Wildlife Service (FWS) commented that the proposed Agreement might bypass compliance with section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1536, for some surface coal mining and reclamation operations on Federal lands in Alabama. In response to this comment, a new paragraph B.5. has been added to Article VI of the Agreement.

New paragraph B.5. will ensure that section 7 of the ESA is complied with prior to the commencement of any operations covered by the Agreement. Where the Secretary must take a related action that is concurrent with a State permitting decision, the Secretary will comply with section 7 without involving the State. Where there would be no other concurrent Secretarial action, paragraph VI.B.5. will require the State to obtain the written concurrence of OSM regarding the effect the proposed operations would have on threatened and endangered species and critical habitat in the area affected by the proposed operations. It also will require the State to include in any permit that is issued for such operations any terms or conditions which OSM may require to avoid the likelihood of activities which would jeopardize the continued existence of any such species or result in the destruction or adverse modification of its critical habitat.

Section 7(a)(2) of the ESA, 16 U.S.C. 1536(a)(2), requires that "[e]ach Federal agency shall, in consultation with and with the assistance of the [FWS], insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species * * *." This requirement applies only to Federal agencies.

The promulgation of the Agreement in itself is an action which triggers the requirements of section 7. Because the proposed Agreement might have bypassed these requirements under some circumstances, the FWS originally requested formal consultation under section 7. After OSM and the State agreed to add new paragraph B.5. to the Agreement, however, the FWS withdrew this request.

The FWS was concerned that the proposed Agreement would bypass the requirements of section 7 in some circumstances by eliminating all of the Federal actions that would trigger compliance. In the absence of a Federal-State cooperative agreement, OSM must comply with section 7 before issuing a permit for operations on Federal lands. Under the Agreement, however, the State regulatory authority will issue the permit, and there will be no OSM permitting action to trigger section 7.

Where there were no other concurrent Federal action this delegation to the State would bypass entirely the requirements of section 7, which was the cause of the FWS concern.

The proposed Agreement would have had no effect on section 7 compliance where a concurrent action by the Secretary was required prior to the commencement of operations on Federal lands. This is because the Secretary would have to comply with section 7 notwithstanding the delegation of permitting authority to the State. A concurrent Secretarial action could result from various non-delegable responsibilities the Secretary has for most operations on Federal lands. For example, where Federal coal is to be mined the Secretary is required to approve a mining plan under the Mineral Leasing Act prior to commencement of mining. Also, operations on national forest lands may be conducted only where the Secretary has made certain determinations required by section 522(e) of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1272(e). For any of these concurrent actions, compliance with section 7 would be required.

The proposed Agreement would have bypassed section 7 for any State permitting decision for which there was no concurrent Federal action. Since the Secretary must comply with section 7 for operations that propose to mine Federal coal, this result would not occur for State permits issued under Article VI.C. of the Agreement, which specifies the review procedures that apply where Federal coal is involved. However, this result could occur for State permits issued under Article VI.B., which specifies the review procedures that apply where only Federal surface is involved. New paragraph VI.B.5. has been added to the Agreement to

eliminate this potential gap in section 7 compliance, and thus avoid the need for section 7 consultation with the FWS on the Agreement itself.

Paragraph VI.B.5. will apply to any State decision on a PAP for which there is no other concurrent Secretarial action that would trigger compliance with section 7 for the proposed surface coal mining and reclamation operation on Federal lands. Prior to making any such decision, the State must obtain the written concurrence of OSM regarding the effect the proposed operations would have on threatened and endangered species and critical habitat in the area affected by the proposed operations. The State may not make a decision on the PAP until written concurrence is received from OSM.

Under this concurrence procedure, the State must forward to OSM the PAP for the operations, including the information on threatened and endangered species and their critical habitats specified in 30 CFR 740.13(b)(3)(iii)(H). OSM will review the PAP to determine whether any listed species or critical habitat may be present in the area that would be affected. If either may be present, OSM will confer with the FWS on the need for formal consultation under section 7 of the ESA, 30 U.S.C. 1536.

If consultation is required, OSM will not make a decision on concurrence until it receives an FWS biological opinion. As a condition of concurrence, OSM may require, and the State must include in the permit, any terms or conditions that would avoid the likelihood of jeopardizing the continued existence of any threatened and endangered species that may be affected, or resulting in the destruction or adverse modification of its critical habitat. Where it is not otherwise possible for OSM to comply with section 7, OSM may withhold concurrence and the State shall not issue the permit.

Paragraph B.6. requires ASMC to include in a permit any terms or conditions imposed by the Federal land management agency. ASMC will send written notice to the Federal land management agency, the applicant, and OSM of its findings on the PAP and a copy of the permit.

Article VI.C. discusses review procedures where leased Federally-owned coal is involved and, consequently, where the Secretary must make a decision on a mining plan. Under paragraph C.1., ASMC has lead responsibility for analysis and review of the permit application component of the PAP for mining such coal. The Department retains those responsibilities that cannot be delegated to the State, including those under the Mineral Leasing Act (MLA) and the National Environmental Policy Act (NEPA). Working agreements between OSM and ASMC will specify those responsibilities that ASMC would assume. An industry commenter suggested that ASMC and OSM (rather than the Bureau of Land Management) review and approve permits "that meet all BLM's criteria" in order to save duplicate reviews.

Approval of a mining plan is a responsibility of the Secretary which may not be delegated to a State. Consequently, there must be a Federal review where leased Federal coal is involved. OSM has lead responsibility within the Department for such reviews and will coordinate with other Federal agencies to avoid or minimize unnecessary duplication.

Paragraph C.2. designates ASMC as the primary liaison for operators in matters regarding the PAP. As such, ASMC will inform the applicant of all joint State-Federal determinations. ASMC will provide OSM with any information affecting decisions on mining plans, and OSM will provide ASMC with information affecting decisions on PAPs. OSM will not ordinarily contact the applicant regarding the PAP, although there is no prohibition against doing so.

Under paragraph C.3., the responsibilities of OSM and ASMC are as follows:

1. ASMC will take on the responsibilities in 30 CFR 740.4(c) (1), (2), (4), (5), and (6).

2. OSM will retain the responsibilities in 30 CFR 740.4(c)(3) and (7).

3. OSM will assist the State by coordinating the review of the PAP between those Federal agencies involved. OSM will request that the involved Federal agencies submit their findings to OSM within 45 days of their receiving the PAP. OSM will then provide ASMC with these findings.

4. OSM will further assist the State by resolving conflicts of the involved Federal agencies and by helping to schedule meetings between the agencies and the State.

5. OSM will exercise its responsibilities in a timely manner and will provide ASMC with a work product within 45 days of receiving the State's request for assistance in reviewing the permit application.

6. OSM will be solely responsible for Federal lessee protection bond requirements.

Paragraph C.4. describes the procedures that OSM and the State will follow in reviewing the PAP. OSM and ASMC will coordinate their activities and exchange information during the review process. The State will review the PAP to ensure compliance with the Program, while OSM would review the PAP to ensure compliance with other Federal laws and regulations. Review of the MLA mining plan will include review of the operations and reclamation plan component of the SMCRA permit application. OSM and the State will plan and schedule PAP review and each will choose a project leader, with the OSM project leader designated as the primary point of contact between OSM and ASMC during the review process. OSM will provide the State with its preliminary findings within 50 days of receiving the PAP.

The State will provide OSM with its technical analysis of the PAP and its finding that the PAP complies with the Program. ASMC could then issue the permit before Secretarial approval. However, ASMC would have to advise the operator that it shall not conduct surface coal mining operations on Federal lands before the mining plan had been approved by the Secretary.

Paragraph C.5. assigns to ASMC sole authority to approve permit revisions not constituting modifications of a mining plan. However, OSM retains the responsibility to determine which revisions are mining plan modifications. ASMC will consult with OSM on whether any permit revisions constitute mining plan modifications. OSM must inform ASMC of its determination within 30 days. OSM may develop guidelines to determine which permit revisions are definitely not mining plan modifications.

Article VII: Inspections

Article VII specifies that ASMC must conduct inspections on lands covered by this agreement and prepare and file State inspection reports in accordance with its approved Program.

Article VII.C. designates ASMC as the point of contact and primary inspection authority in dealing with the operator. However, the Department retains the right to conduct inspections of surface coal mining and reclamation operations covered by the Federal lands program without prior notice to ASMC for the purpose of evaluating the manner in which the cooperative agreement is being carried out and ensuring that performance and reclamation standards are being met. OSM will ordinarily give ASMC reasonable notice before conducting an inspection so that State inspectors can join in the inspection. Under extraordinary circumstances, such as the threat of imminent harm to the public or the environment, OSM will

notify ASMC at least 24 hours prior to a Federal inspection, unless this proves impracticable.

This Article preserves OSM's obligation and authority to conduct inspections pursuant to 30 CFR Parts 842 and 843. The right of Federal and State agencies to conduct inspections for purposes outside the scope of the proposed cooperative agreement is not affected.

Article VIII: Enforcement

Article VIII sets forth the enforcement obligations and authorities of OSM and ASMC.

Under paragraph A, ASMC has primary enforcement authority on lands covered by the Federal lands program in accordance with the requirements of the cooperative agreement and the approved State Program.

Under paragraph B, ASMC has primary responsibility for enforcement during joint inspections with OSM. Paragraph B also includes a requirement that ASMC notify OSM prior to suspending or revoking a permit.

Paragraph C preserves OSM's authority to take enforcement action to comply with 30 CFR Parts 843 and 845 where OSM conducted an inspection or where, during a joint inspection with ASMC, the two could not agree on the appropriateness of a particular enforcement action. Such action would be based upon the Act or the substantive provisions contained in the approved State Program, but would use the Federal procedures and penalty system.

Paragraph D provides that OSM and ASMC will notify each other of all violations of applicable regulations and all actions taken on the violations. Paragraph E provides that personnel of the State and the Department are to be mutually available to serve as witnesses in enforcement actions taken by either party. Finally, paragraph F specifies that this agreement does not limit the Department's authority to enforce Federal laws other than the Act.

Article IX: Bonds

Under paragraph A, ASMC and the Secretary must require each operator covered by the Federal lands program to submit a single performance bond payable to both the State and the United States. All applicable State and Federal requirements must be fulfilled prior to releasing an operator from any obligation covered by the performance bond. If the cooperative agreement is terminated, paragraph A requires that the bond revert to being payable solely to the United States to the extent that lands covered by the Federal lands program are involved. ASMC will advise OSM of annual adjustments to the bond and release a bond only after OSM concurrence. Departmental concurrence will include coordination with other Federal agencies having jurisdiction over the lands involved.

Article IX.C. clarifies that the performance bond does not meet the requirement for a Federal lease bond under 43 CFR Part 3474, or for the lessee protection bond required in certain circumstances by section 715 of the Act.

Article X: Designating Land Areas Unsuitable For All or Certain Types of Surface Coal Mining Operations

Article X assigns to ASMC authority to designate State and private lands as unsuitable for surface coal mining, while reserving to the Secretary such authority over Federal lands. ASMC and OSM will each notify the other of any petition to designate lands as unsuitable, exchange information when either agency receives a petition that could impact surrounding Federal and non-Federal lands, and solicit and consider each other's views on a petition.

Article XI: Termination of Cooperative Agreement

Article XI specifies that this cooperative agreement may be terminated as specified under 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

Article XII provides that, if terminated, the cooperative agreement may be reinstated under 30 CFR 745.16. That provision allows for reinstatement of a cooperative agreement upon application by a State after remedying the defects for which the Agreement was terminated and the submission of evidence to the Secretary that the State can and will comply with all of the provisions of the Agreement.

Article XIII: Amendment of Cooperative Agreement

Article XIII provides that the cooperative agreement may be amended by mutual agreement of the Governor and Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

Paragraph A of Article XIV recognizes that the Department or the State may, from time to time, promulgate new or revised performance or reclamation requirements, or enforcement and administration procedures. If it is determined to be necessary to keep the Agreement in force, the State will request necessary legislative action and either the State or OSM will change or revise its regulations or promulgate new regulations, as applicable. Such changes will be made in accordance with 30 CFR Part 732 for changes to the approved State Program and section 501 of the Act for changes to the permanent regulatory program or to the Federal lands program.

Paragraph B requires the State and OSM to provide each other with copies of changes in their respective laws and regulations.

Article XV: Changes in Personnel and Organization

Article XV requires the State and the Department to advise each other of substantial changes in organization, funding, staff, or other changes which could affect administration or enforcement of the cooperative agreement.

Article XVI: Reservation of Rights

Article XVI recognizes that the Act, 30 CFR 745.13, and other legal authorities prohibit the Secretary from delegating certain responsibilities to the State. Article XVI states that this agreement does not delegate nor shall it be construed to delegate any responsibility that the Secretary has under 30 CFR 745.13, or under laws other than the Act, including those listed in Appendix A of this cooperative agreement.

III. Procedural Matters

1. E.O. 12291 and Regulatory Flexibility Act

In a "Determination of Significance" document prepared on December 31, 1979, and approved by the Assistant Secretary, Energy and Minerals, on January 7, 1980, the Department determined that the "promulgation of proposed or final rules for entering into a cooperative agreement with a State pursuant to 30 U.S.C. 1273 for State regulation of surface coal mining and reclamation operations on Federal lands was not a significant action and would not require a regulatory analysis." A copy of this determination was filed with the Department's Office of Policy Analysis and the Division of General Law in accordance with Departmental procedures.

The Department has reviewed this determination in light of Executive Order 12291, February 17, 1981; the Regulatory Flexibility Act (Pub. L. 96-354); and the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Having conducted this review, the Department has determined that this document is not a major rule and does not require a

regulatory impact analysis under Executive Order 12291. The document will not have a significant economic effect on a substantial number of small entities and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 605(b). This determination was made by the Director, OSM and approved by the then Assistant Secretary, Energy and Minerals. A copy is on file in the OSM Administrative Record Room, room 5315, 1100 L Street NW., Washington, D.C. 20005.

2. Recordkeeping and Reporting Requirements

There are recordkeeping and reporting requirements in the Alabama Cooperative Agreement which are the same as and required by the permanent program regulations. Those regulations received clearance from the Office of Management and Budget under 44 U.S.C. 3507 and were assigned the following clearance numbers:

Location of requirement	OMB clearance No.
Article VI.A. (Required by 30 CFR Part 773)	1029-0041
Article VII.A. (Required by 30 CFR Part 840)	1029-0051
Article IX.A. (Required by 30 CFR Part 800)	1029-0043

3. National Environmental Policy Act

Proceedings relating to adoption of a permanent program cooperative agreement are part of the Secretary's implementation of the Federal lands program pursuant to section 523 of the Act. Such proceedings are exempt under section 702(d) of the Act from the requirement to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Indexing Requirements

List of Subjects in 30 CFR Part 901

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

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

Dated: July 17, 1985.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Management.

PART 901—[AMENDED]

For the reasons set forth herein, 30 CFR Part 901 is amended as follows:

1. The Authority citation for Part 901 is revised to read as follows:

Authority: Pub. L. 95-87; 30 U.S.C. 1201 *et seq.*

2. Section 901.30 is added to read as follows:

§ 901.30 State-Federal cooperative agreement.

The Governor of the State of Alabama and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purpose and Responsible Agencies

A. *Authority:* This agreement is authorized by sectoin 523(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of surface coal mining and reclamation operations in Alabama subject to the Federal lands program (30 CFR Parts 740-746), consistent with State and Federal Acts governing such activities, and the Alabama State Program (Program).

B. *Purpose:* The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations; (b) minimize intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program on all lands in Alabama in accordance with the Act, the Program, and this Agreement.

C. *Responsible Administrative Agencies:* The Alabama Surface Mining Commission (ASMC) shall be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining (OSM) shall administer this Agreement on behalf of the Secretary.

Article II: Effective Date

After it has been signed by the Secretary and the Governor, this Agreement shall be effective 30 days after publication in the **Federal Register** as a final rule. This Agreement shall remain in effect until terminated as provided in Article XI.

Article III: Definitions

The terms and phrases used in this Agreement which are defined in the Act, 30 CFR 700, 701, and 740, the approved State Program and the State Act, and in the rules and regulations promulgated pursuant to those Acts, shall be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State Program will apply, except in the case of a term which defines the Secretary's continuing responsibilities under the Act and other laws.

Article IV: Applicability

In accordance with the Federal lands program in 30 CFR Part 745, the laws, regulations, terms and conditions of the Program are applicable to lands in Alabama subject to the Federal lands program except as otherwise stated in this Agreement, the Act, 30 CFR 745.13, or other applicable laws or regulations.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. *Authority of State Agency:* ASMC has and shall continue to have the authority under State law to carry out this Agreement.

B. *Funds:* Upon application by ASMC and subject to appropriations, OSM shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section 705(c) of the Act and 30 CFR 735.16. Such funds shall cover the full cost of carrying out these responsibilities provided that such cost does not exceed the estimated cost the Federal government would have expended in regulating surface coal mining operations on Federal lands in Alabama in the absence of an agreement. If the State requests funds and sufficient funds have not been appropriated to OSM, OSM and the ASMC shall promptly meet to decide on appropriate measures that will insure that mining operations are regulated in accordance with the Program. If agreement cannot be reached, then either party may terminate the Agreement in accordance with 30 CFR 745.15. Funds provided to the State under this Agreement shall be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E.

C. *Reports and Records:* ASMC shall make annual reports to OSM containing information with respect to compliance with the terms of this Agreement, pursuant to 30 CFR 745.12(d). Upon request, ASMC and OSM shall exchange information developed under this Agreement, except where prohibited by Federal law.

OSM shall provide ASMC with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement.

D. *Personnel:* ASMC shall have the necessary personnel to fully implement this agreement in accordance with the provisions of the Act and the approved State Program.

E. *Equipment and Laboratories:* ASMC will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed which are necessary to carry out the requirements of the Agreement.

F. *Permit Application Fees and Civil Penalties:* The amount of the fee accompanying an application for a permit shall be determined in accordance with Section 15 of the Alabama Surface Mining Control and Reclamation Act of 1981, Section 880-X-8B-.07 of the State regulations, and the applicable provisions of the State Program and Federal law. All permit fees and civil penalties collected from operations on Federal lands will be retained by the State and shall be deposited with the State Treasurer in the Alabama Surface Mining Fund. The financial status report submitted pursuant to 30 CFR 735.26 shall include the amount of fees collected during the prior State fiscal year.

Article VI: Review of Permit Application Package

A. *Submission of Permit Application Package:* ASMC and the Secretary shall require an operator proposing to conduct surface coal mining operations on Federal lands covered by this Agreement to submit a permit application package (PAP) in an appropriate number of copies to ASMC. ASMC shall furnish OSM with an appropriate number of copies of the PAP. The PAP shall be in the form required by ASMC and include any supplemental information required by OSM or the Federal land management agency. At a minimum, the PAP shall include the information necessary for ASMC to make a determination of compliance with the State Program and for the appropriate Federal agency to make a determination of compliance with applicable requirements of Federal laws and regulations for which it is responsible.

B. *Review Procedures Where Leased Federally-Owned Coal Is Not Involved:*

1. ASMC shall assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP required by 30 CFR 740.13 for surface coal mining and reclamation operations under the Federal lands program in Alabama not requiring a mining plan under 30 CFR 746.11. ASMC shall be the primary point of contact for operators regarding decisions on the PAP and will be responsible for informing the applicant of determinations.

2. Upon receipt of a PAP that involves surface coal mining and reclamation operations on Federal lands not containing leased Federal coal, ASMC shall (1) transmit a copy of the complete PAP to the Federal land management agency with a request for review pursuant to 30 CFR 740.13(c)(4), and (2) provide OSM with a complete copy of the PAP and any additional information necessary to allow OSM to determine whether the operations are prohibited or limited by the requirements of section 522(e) (1) or (2) of the Federal Act (30 U.S.C. 1272(e)) and 30 CFR Part 761 with respect to areas designated therein by Congress as unsuitable for mining. Except as specified by paragraph 5 of this article, ASMC shall be responsible for obtaining, in a timely manner, the views and determinations of any other Federal agencies with jurisdiction or responsibility over Federal lands affected by a PAP in Alabama.

3. OSM will provide technical assistance to ASMC when requested if available resources allow and will process requests for determinations of compatibility and valid existing rights under 30 CFR Part 761 relating to areas designated by Congress under section 522(e)(1) or (2) as unsuitable for mining. OSM will be responsible for ensuring that any information OSM receives from an applicant is promptly sent to ASMC. OSM shall have access to ASMC files concerning mines on Federal lands. The Secretary reserves the right to act independently of ASMC to carry out his responsibilities under laws other than the Federal Act. A copy of all resulting correspondence with the applicant that may have a bearing on decisions regarding the PAP shall be sent to the State.

4. ASMC shall review the PAP for compliance with the Program.

5. Prior to making a decision on a PAP for proposed surface coal mining and reclamation operations for which there is no other concurrent Secretarial action that would trigger compliance with Section 7 of the Endangered Species Act, 16 U.S.C. 1536, ASMC shall obtain the written concurrence of OSM regarding the effect the proposed operations would have on threatened and endangered species and critical habitat in the area affected by the proposed operations, and shall include in any permit that is issued for such operations any terms or conditions which OSM may require to avoid the likelihood of actions which would jeopardize the continued existence of any such species or result in the destruction or adverse modification of its critical habitat.

6. The permit issued by ASMC shall incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and shall condition the initiation of surface coal mining and reclamation operations on compliance with the requirements of the Federal land management agency. After issuing the decision on the PAP, ASMC shall send a notice to the applicant, the Federal land management agency, and OSM with a copy of the permit and written findings.

C. *Review Procedures Where Leased Federally-Owned Coal is Involved:*

1. ASMC shall assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations on Federal lands in Alabama where a mining plan is required by 30 CFR 746.11. OSM, as requested, shall assist the State in this analysis and review. The Department of the Interior (Department) shall concurrently carry out its responsibilities under the Mineral Leasing Act (MLA), the National Environmental Policy Act (NEPA), and other applicable Federal laws that cannot be delegated to the State. The Department shall carry out these responsibilities in accordance with the Federal lands program and this Agreement in a timely manner so as to avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSM and the State without amendment to this Agreement. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by the Federal Act, MLA, NEPA, and other Federal laws.

2. ASMC will be the primary point of contact for operators regarding the review of the PAP, except on matters concerned exclusively with 43 CFR Parts 3480–3487, administered by the Bureau of Land Management (BLM). ASMC will be responsible for informing the applicant of all joint State-Federal determinations. The Secretary may act independently of the State to carry out responsibilities under laws other than the Federal Act or provisions of the Act not covered by the Program, and in instances of disagreement over the Act and the Federal lands program. ASMC shall send to OSM, copies of any correspondence with the applicant and any information received from the applicant regarding the mining plan including the operation and reclamation plan portion of the permit application. OSM shall send to ASMC copies of all independent correspondence with the applicant which may have a bearing on the PAP. As a matter of practice, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of the PAP with respect to matters covered by the Program.

3. ASMC shall assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (4), (5), and (6). OSM shall retain the responsibilities listed in 30 CFR 740.4(c)(3) and the exceptions specified in (c)(7) (i) through (vii). OSM shall assist the State in carrying out its responsibilities by:

(a) Distributing copies of the PAP to, and coordinating the review of the PAP among, all Federal agencies which have responsibilities relating to decisions on the PAP. This shall be done in a manner which ensures timely identification, communication and resolution of issues relating to those Federal agencies' statutory requirements. OSM shall request that such other Federal agencies furnish their findings and any requests for additonal data to OSM within 45 calendar days of their receipt of the PAP.

(b) Providing ASMC with the analyses and conclusions of other Federal agencies.

(c) Addressing conflicts and difficulties of the other Federal agencies in a timely manner.

(d) Assisting in scheduling joint meetings as necessary between State and Federal agencies.

(e) Where OSM is assisting ASMC in reviewing the permit application, furnish the State with the work product within 45 calendar days of receipt of the State's request for such assistance, or earlier if mutually agreed upon by OSM and the State.

(f) Exercising its responsibilities in a timely manner as set forth in a mutually agreed upon schedule, governed to the extent possible by the deadlines established in the Program.

(g) Assuming all responsibility for ensuring compliance with any Federal lessee protection bond requirement.

4. Review of the PAP:

(a) OSM and ASMC shall coordinate with each other during the review process as needed. ASMC shall keep OSM informed of findings during the review process which bear on the responsibilities of other Federal agencies. OSM shall ensure that any information OSM receives which has a bearing on decisions regarding the PAP is promptly sent to ASMC.

(b) The State shall review the PAP for compliance with the Program.

(c) OSM shall review the PAP for compliance with the Act and the requirements of other Federal laws and regulations. OSM and ASMC shall develop a work plan and schedule for PAP review and each shall identify a person as the project leader. The OSM project leader shall serve as

the primary point of contact between OSM and ASMC throughout the review process. Not later than 50 days after receipt of the PAP, OSM shall furnish ASMC with its preliminary findings on the PAP and specify any requirements for additional data. To the extent practicable, the State shall provide OSM all available information that may aid OSM in preparing any findings.

(d) ASMC shall provide to OSM written findings indicating whether the PAP is in compliance with the Program, and a technical analysis of the PAP.

(e) ASMC may proceed to issue a permit in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that ASMC advises the operator in the permit that Secretarial approval of a mining plan must be obtained before the operator may conduct surface coal mining operations on Federal lands. ASMC shall reserve the right to amend or rescind any requirements of the approved permit to conform with any terms or conditions imposed by the Secretary in his approval of the mining plan.

5. Prior to acting on a permit revision or renewal, ASMC shall consult with OSM on whether such revision or renewal constitutes a mining plan modification under 30 CFR 746.18. OSM shall inform the State within 30 days of receiving notice of a proposed revision or renewal, whether any permit revision or renewal constitutes a mining plan modification. Permit revisions which do not constitute mining plan modifications shall be approved solely by the State.

OSM may establish criteria consistent with 30 CFR 746.18 to determine which permit revisions and renewals clearly do not constitute mining plan modifications. If such criteria are promulgated, revisions or renewals which do not constitute mining plan modifications in accordance with the criteria may be approved by ASMC before it submits copies of the revision or renewal to OSM.

Article VII: Inspections

A. ASMC shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with the Program.

B. ASMC shall, subsequent to conducting any inspection, and on a timely basis, file with OSM a legible copy of the completed State inspection report.

C. ASMC shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR Parts 842 and 843 and its obligations under laws other than the Act.

D. OSM shall ordinarily give the ASMC reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSM is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact ASMC no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an immfnent danger or significant imminent environmental harm shall be referred to ASMC for action. The Secretary reserves the right to conduct inspections without prior notice to ASMC to carry out his responsibilities under the Federal Act.

Article VIII: Enforcement

A. ASMC shall have primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program. Enforcement authority given to the Secretary under other laws and orders, including but not limited to those listed in Appendix A, is reserved to the Secretary.

B. During any joint inspection by OSM and ASMC, ASMC shall have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. The ASMC shall inform OSM prior to issuance of any decision to suspend or revoke a permit.

C. During any inspection made solely by OSM or any joint inspection where the ASMC and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845. Such enforcement actions shall be based on the standards in the approved Program, the Act, or both, and shall be taken using the procedures and penalty system contained in 30 CFR Parts 843 and 845.

D. The ASMC and the Department shall promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of the State and representatives of the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

F. This Agreement does not limit the Department's authority to enforce violations of Federal law which establish standards and requirements which are authorized by laws other than the Act.

Article IX: Bonds

A. ASMC and the Secretary shall require each operator covered by the Federal lands program to submit a single performance bond payable to Alabama and the United States to cover the operator's responsibilities under the Federal Act and the Program. Such performance bond shall be conditioned upon compliance with all requirements of the Federal Act, the Program and any other requirements imposed by the Department or the Federal land management agency. Such bond shall provide that if this Agreement is terminated, the bond shall be payable only to the United States to the extent that lands covered by the Federal lands program are involved.

B. Prior to releasing the operator from any obligation under such bond, the ASMC shall obtain the concurrence of OSM. The ASMC shall also advise OSM of annual adjustment to the performance bond, pursuant to the Program. Departmental concurrence shall include coordination with other Federal agencies having authority over the lands involved.

Such bond shall be subject to forfeiture with the consent of OSM, in accordance with the procedures and requirements of the Program.

C. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 30 CFR Subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by Section 715 of the Act.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining Operations

A. When either ASMC or OSM receives a petition to designate lands areas unsuitable for all or certain types of surface coal mining operations that could impact adjacent Federal and non-Federal lands, the agency receiving the petition shall (1) notify the other of receipt and the anticipated schedule for reaching a decision; and (2) request and fully consider data, information and views of the other.

B. Authority to designate State and private lands as unsuitable for mining is reserved to the State. Authority to designate Federal lands as unsuitable for mining is reserved to the Secretary.

Article XI: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

A. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party shall, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR Part 732 for changes to the State Program and under the procedures of Section 501 of the Act for changes to the Federal lands program.

B. ASMC and the Department shall provide each other with copies of any changes to their respective laws, rules, regulations and standards pertaining to the enforcement and administration of this Agreement.

Article XV: Changes in Personnel and Organization

Each party to this Agreement shall notify the other, when necessary, of any changes in personnel, organization and funding or other changes that will affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

Article XVI: Reservation of Rights

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or Secretary may have under other laws or regulations, including but not limited to those listed in Appendix A.

Dated: July 16, 1985.

Signed:

George C. Wallace,

Governor of Alabama.

Dated: June 28, 1985.

Signed:

Ann McLaughlin,

Under Secretary of the Interior.

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations including 43 CFR Parts 3480–3487.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR Part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR Part 402.

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR Part 800.

6. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

7. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

10. Executive Order 1593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

11. Executive Order 11988 (May 24, 1977), for flood plain protection. Executive Order 11990 (May 24, 1977), for wetlands protection.

12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

13. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

14. The Constitution of the United States.

15. The Constitution of the State and State Law.

[FR Doc. 85–18015 File 7–29–85; 8:45 am]

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