AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

7-25-86
Vol. 51 No. 143
Pages 26685-26854

Federal Register

Friday
July 25, 1986

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

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota Regulations for the 1986 Through 1990 Crops of Peanuts

Correction

In FR Doc. 86-14122 beginning on page 22485 in the issue of Friday, June 20, 1986, make the following corrections:

1. On page 22485, third column, in the second complete paragraph, thirteenth line, "from" should read "for".

2. On page 22486, third column, in the second complete paragraph, the fifth line should read "prohibited by the Act.".

§ 729.313 [Corrected]

3. On page 22488, in the third column, in § 729.313(b)(1), the first line should read "(b) *Areas.* (1) The southeastern area".

4. On the same page and in the same column, in § 729.313(b)(2), in the first line, "southeastern" should read "southwestern".

BILLING CODE 1505-01-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 373]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 373 establishes the quantity of California-Arizona Valencia oranges that may be shipped to market during the period July 25–31, 1986. The regulation is needed to balance the supply of fresh Valencia oranges with market demand for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 373 (§ 908.673) is effective for the period July 25–31, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The regulation is 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 Agricultrual Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1985-86. The committee met publicly on July 22, 1986, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges is somewhat improved but remains slow.

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 this regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given opportunity to submit information and views on 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 regulation and the effective date.

List of Subjects in 7 CFR Part 908

Marketing Agreements and Orders, California, Arizona, Oranges, Valencias.

PART 908—[AMENDED]

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

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

2. Section 908.673 is added to read as follows:

§ 908.673 Valencia Orange Regulation 373.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period July 25, 1986, through July 31, 1986, are established as follows:

(a) District 1: 345,000 cartons;

(b) District 2: 405,000 cartons;

(c) District 3: Unlimited cartons.

Dated: July 23, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-16892 Filed 7-24-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1260

Beef Promotion and Research Order

Correction

In FR Doc. 86-16280, beginning on page 26132, in the issue of Friday, July 18, 1986, make the following corrections:

1. On page 26132, third column, third paragraph, fifth line, "action" should read "auction".

§ 1260.202 [Corrected]

2. On page 26145, second column, § 1260.202, first line, "subject" should read "subpart".

§ 1260.203 [Corrected]

3. On the same page, same column, § 1260.203, third line from the bottom, "subject" should read "subpart".

§ 1260.211 [Corrected]

4. On the same page, same column, § 1260.211, fifth line, "purchase" should read "purpose".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 12-86]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final Rule.

SUMMARY: On February 7, 1986 (51 FR 4764), the Department of Justice issued proposed regulations to amend Title 28 of the Code of Federal Regulations, Part 16, to exempt a Privacy Act system of records from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g) of the Privacy Act, 5 U.S.C. 552a. This sytem is the "Declassification Review System (JUSTICE/OLP-004)." Information in this sytem relates to official Federal investigations and matters of law enforcement The exemption is needed to protect ongoing investigations, material which has been properly classified pursuant to Executive Order 12356, the privacy of third parties, and the identities of confidential sources involved in such investigations.

DATE: This rule will be effective July 25, 1986.

ADDRESS: Address all comments to J. Michael Clark, Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 9002, 601 D Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 272-6474.

SUPPLEMENTARY INFORMATION: The notice of the proposed rule with invitation to comment was published in the **Federal Register** on February 7, 1986 (51 FR 4764). The public was given 30 days to comment and one comment was received within that time.

The commenter suggested a reconsideration of exempting the Declassification Review System from subsection (g) of the Privacy Act. The exemption of subsection (g) which pertains to civil remedies is appropriate because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure, Courts, Freedom of Information, Privacy, and Sunshine Acts.

Pursuant to the authority invested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR 16.73 is amended by adding paragraphs (g) and (h) as set forth below.

Dated: 10 July, 1986.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. 28 CFR 16.73 is amended by adding paragraphs (g) and (h) as follows:

§ 16.73 Exemption of Office of Legal Policy System—limited access.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g):

(1) *Declassification Review System (JUSTICE/OLP-004).* These exemptions apply only to the extent that information in this system is subject to exemption pursuant fo 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department of Justice as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) to the extent that information in this record system relates to official Federal investigations and matters of law enforcement and/or is properly classified pursuant to Executive Order 12356. Individual access to these records might compromise ongoing investigations, reveal confidential sources or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation, or jeopardize national security or foreign policy interests. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information which may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection,

apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H), and (g) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[FR Doc. 86-16793 Filed 7-24-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 941

Operations Under a Federal Program for South Dakota; Availability of Responses to Public Comments

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

ACTION: Notice of Availability of Responses to Public Comments on the Interim Federal Program for South Dakota.

SUMMARY: On April 19, 1983 (48 FR 16818) the Office of Surface Mining Reclamation and Enforcement (OSMRE) published the interim final rule regulating surface coal mining and exploration for the State of South Dakota. At that time it was announced that OSMRE would accept comments on the program until August 17, 1983. An interim final program was published because revisions to the permanent program on which the South Dakota program is based had not yet been published. A public comment period was, therefore, provided to allow interested citizens to comment on the new regulations and their effect on South Dakota as applied through the South Dakota Federal program. Comments were received from two parties during the comment period.

Because a hearing was held for the South Dakota Federal program, none was scheduled for the interim final rule comment period. However, OSMRE did provide the opportunity for interested persons to request a public meeting with OSMRE officials if they so desired. No meetings were requested.

This notice is published to announce that responses to the comments received between April 19, 1983 and August 17, 1983 on the interim final South Dakota Federal program are available in the Administrative Record; and announce that the South Dakota Federal program is final with a retroactive effective date of May 19, 1983 as announced at 48 FR 19818 (April 19, 1983).

For further information on the background and the cross-referencing of permanent program regulations for the South Dakota Federal program, see 48 FR 16818 (April 19, 1983).

ADDRESSES: For a copy of OSMRE's response to the public comments by mail, write to the Office of Surface Mining Reclamation and Enforcement, Administrative Records, Room 5315–A, 1951 Constitution Ave., NW., Washington, DC 20240. A copy may be obtained in person; at 1100 L Street, Room 5315–A, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Room 5401–L, Washington, DC 20240; telephone (202) 343–7953.

Dated: July 21, 1986.

Brent Wahlquist,

Assistant Director, Program Operations.

[FR Doc. 86-16727 Filed 7-24-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations

Correction

In FR Doc. 86-16033, beginning on page 25634, in the issue of Tuesday, July 15, 1986, make the following corrections:

§ 550.605 [Corrected]

1. On page 25634, third column, § 550.605(b)(1), second line, "in" should read "is", and in the fourth line, "Transactions" should read "transactions".

2. On the same page, same column, § 550.605(b)(2) second line, "or" should read "of".

3. On the same page, same column, § 550.605(c)(3) introductory text, second line, "Date" should read "Data".

4. On page 25635, first column, § 550.605(c)(3)(i) second line, "of" should read "or".

5. On the same page, same column, § 550.605(e)(3) last line, "July" should read "June".

BILLING CODE 1505-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 401

State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education

Correction

In FR Doc. 86-15758, beginning on page 25492 in the issue of Monday, July 14, 1986, make the following correction: On page 25493, in the middle column, in the first line of amendatory instruction 7, "(8)" should read "(b)".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6619

[ES 32707]

Wisconsin; Withdrawal of Public Land for National Wildlife Refuge

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,107 acres of public lands from surface entry for 20 years for use by the U.S. Fish and Wildlife Service in conjunction with the Necedah National Wildlife Refuge. The land has been and will remain open to the mineral leasing laws.

EFFECTIVE DATE: July 25, 1986.

FOR FURTHER INFORMATION CONTACT: Joyce Troy, Bureau of Land Management, Eastern States Office, 350 South Pickett St., Alexandria, Virginia 22304, 703–274–0122.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land which is under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from settlement, sale, location and entry under the general land laws, but not from leasing under the mineral leasing laws, and reserved for use of the U.S. Fish and Wildlife Service as national wildlife refuge land.

Fourth Principal Meridian, Wisconsin

T. 18 N., R. 2 E.,
Secs. 1 and 12.
T. 18 N., R. 3 E.,
Secs. 6, 7, 8, 9, and 15 (Those parts lying south and west of Grand Dike Road).
T. 18 N., R. 3 E.,
Secs. 16 and 17.

The land described aggregates approximately 4,107 acres in Juneau County, Wisconsin.

2. Effective on the date of publication of this order, the Cooperative and License Agreement, dated June 19, 1940, as amended March 25, 1942, between the State of Wisconsin and the United States of America is amended according to the provisions of Amendment No. 2 dated May 2, 1983.

3. Effective on the date of publication of this order, the above described lands will be subject to the provisions of the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd, as national wildlife refuge lands.

4. The above described lands will be withdrawn from the operation of the public land laws, but not the mineral leasing laws.

5. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

6. Executive Order 6763 which established the Necedah Wildlife Management Area is subordinate to the overlying refuge established by this public land order.

July 3, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86-16731 Filed 7-24-86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. 74-14; Notice 45]

Anthropomorphic Test Dummies; Hybrid III Test Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice adopts the Hybrid III test dummy as an alternative to the Part 572 test dummy in testing done in accordance with Standard No. 208, *Occupant Crash Protection.* The notice sets forth the specifications, instrumentation, calibration test procedures, and calibration performance criteria for the Hybrid III test dummy. The notice also amends Standard No. 208 so that effective October 23, 1986, manufacturers have the option of using either the existing Part 572 test dummy or the Hybrid III test dummy until August 31, 1991. As of September 1, 1991, the Hybrid III will replace the Part 572 test dummy and be used as the exclusive means of determining a vehicle's conformance with the performance requirements of Standard No. 208.

The notice also establishes a new performance criterion for the chest of the Hybrid III test dummy which will limit chest deflection. The new chest deflection limit applies only to the Hybrid III since only that test dummy has the capability to measure chest deflection.

These amendments enhance vehicle safety by permitting the use of a more advanced test dummy which is more human-like in response than the current test dummy. In addition, the Hybrid III test dummy is capable of making many additional sophisticated measurements of the potential for human injury in a frontal crash.

DATES: The notice adds a new Subpart E to Part 572 effective on October 23, 1986. This notice also amends Standard No. 208 of § 571.208 so that effective October 23, 1986, manufacturers have the option of using either the existing Part 572 test dummy or the Hybrid III test dummy until August 31, 1991. As of September 1, 1991, the Hybrid III will replace the Part 572 test dummy and be used as the exclusive means of determining a vehicle's conformance with the performance requirements of Standard No. 208 of § 571.208. Petitions for reconsideration must be received by August 25, 1986. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of October 23, 1986.

ADDRESS: Petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, Room 5221, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley H. Backaitis, Office of Vehicle Safety Standards, NRM-12, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-4912.

SUPPLEMENTARY INFORMATION: In December, 1983, General Motors (GM) petitioned the agency to amend Part 572. *Anthropomorphic Test Dummies*, to adopt specifications for the Hybrid III test dummy. GM also petitioned for an amendment of Standard No. 208, *Occupant Crash Protection*, to allow the use of Hybrid III as an alternative test device for compliance testing. The agency granted GM's petition on July 20, 1984. The agency subsequently received a petition from the Center for Auto Safety to propose making Standard No. 208's existing injury criteria more stringent for the Hybrid III and to establish new injury criteria so as to take advantage of the Hybrid III's superior measurement capability. The agency granted the Center's petition on September 17, 1984.

On April 12, 1985 (50 FR 14602), NHTSA proposed amendments to Part 572 and Standard No. 208 that were responsive to the petitioners and which, in the agency's judgment, would enhance motor vehicle safety. Twenty eight individuals and companies submitted comments on the proposed requirements. This notice presents the agency's analysis of the issues raised by the commenters. The agency has decided to adopt the use of the Hybrid III test dummy and some of the proposed injury criteria. The agency has also decided to issue another notice on the remaining injury criteria to gain additional information about the potential effects of adopting those criteria.

This notice first discusses the technical specifications for the Hybrid III, its calibration requirements, its equivalence with the existing Part 572 test dummy, and the applicable injury criteria. Finally, it discusses the test procedure used to position the dummy for Standard No. 208 compliance testing and the economic and other effects of this rule.

Test Dummy Drawings and Specifications

Test dummies are used as human surrogates for evaluation of the severity of injuries in vehicle crashes. To serve as an adequate surrogate, a test dummy must be capable of simulating human impact responses. To serve as an objective test device, the test dummy must be adequately defined through technical drawings and performance spcifications to ensure uniformity in construction, impact response, and measurement of injury in identical crash conditions.

Virtually all of the commenters, with the exception of GM, said that they have not had sufficient experience with the Hybrid III to offer comments on the validity of the technical specifications for the test dummy. Since the issuance of the notice, GM has provided additional technical drawings and a Society of Automotive Engineers-developed user's manual to further

define the Hybrid III. These new drawings do not alter the basic nature of the test dummy, but instead provide additional information which will enable users to make sure that they have a correctly designed and correctly assembled test dummy. The user's manual provides information on the inspection, assembly, disassembly, and use of the test dummy. Having the user's manual available will assist builders and users of the Hybrid III in producing and using the test dummy. GM also provided information to correct the misnumbering of several technical drawings referenced in the notice.

In addition, the agency has reviewed the proposed drawings and specifications. While NHTSA believes the proposed drawings are adequate for producing the test dummy, the agency has identified and obtained additional information which should make production and use of the test dummy even more accurate. For example, the agency has obtained information on the range of motions for each moving body part of the test dummy. Finally, to promote the ease of assembly, NHTSA has made arrangements with GM to ensure that the molds and patterns for the test dummy are available to all interested parties. Access to the molds will assist other potential builders and users of the Hybrid III since it is difficult to specify all of the details of the various body contours solely by technical drawings.

The agency has adopted the new drawings and user manual in this rule and has made the necessary corrections to the old drawings. The agency believes that the available drawings and technical specifications are more than sufficient for producing, assembling, and using the Hybrid III test dummy.

Commerical Availability of the Hybrid III

A number of commenters raised questions about the commerical availability of the Hubrid III test dummy, noting problems they have experienced in obtaining calibrated test dummies and the instrumentation for the neck and lower leg of the Hybrid III. For example, Chrsyler said that it had acquired two Hybrid III test dummies, but has been unable to obtain the lower leg and neck instrumentation for five months. Likewise, Ford said that it has been unable to obtain the knee displacement and chest deflection measurement devices for the Hybrid III. It also said that of the test dummies it had received, none had sufficient spine stiffness to meet the Hybrid III specifications. Ford claimed to have problems in retaining a stable dummy posture which would make it difficult to carry out some of the specified calibration tests. Subsequent investigation showed that the instability was caused by out-of-specification rubber hardness of the lumber spine, and was eliminated when spines of correct hardness were used. In addition, Ford said that the necks and ribs of the test dummy would not pass the proposed calibration procedures. Finally, Ford said that the equipment needed for calibrating the dummy is not commerically available.

Although the commenters indicated they had experienced difficulty in obtaining the instrumentation for the Hybrid III's neck and lower legs, they did not indicate that there is any problem in obtaining the instrumentation needed to measure the three injury criteria presently required by Standard No. 208, the head injury criterion, chest acceleration, and femur loading and which are being adopted by this rule for the Hybrid III. For example, Volkswagen said it had obtained Hybrid III test dummies with sufficient instrumentation to measure the same injury criteria as with the Part 572. VW did say it had ordered the additional test devices and instrumentation for the Hybrid III but was told the instrumentation would not be available for six months.

The agency notes that there are now two commerical suppliers of the Hybrid III test dummy, Alderson Reserach Labs (ARL) and Humanoid Systems. Humanoid has built nearly 100 test dummies and ALR has produced five prototype test dummies as of the end of December 1985. Both manufacturers have indicated that they are now capable of producing sufficient Hybrid IIIs to meet the demand for those dummies. For example, Humanoid Systems said that while the rate of production is dependent on the number of orders, generally three test dummies per week are produced. Thus, in the case of the basic test dummy, there appears to be sufficient commerical capacity to provide sufficient test dummies for all vehicle manufacturers.

As to test dummy instrumentation, the agency is aware that there have been delays in obtaining the new neck, thorax, and lower leg instrumentation for the Hybrid III. However, as Humanoid commented, while there have been delays, the supplies of the needed parts are expected to increase. Even if the supply of the lower leg instrumentation is slow to develop, this will not pose a problem, since the agency is not adopting, at this time, the proposed lower leg injury criteria. In the case of the neck instrumentation, the supply problem should be minimized because each test facility will only need one neck transducer to calibrate all of its dummies. The neck instrumentation will not be needed for a manufacturer's crash testing since at this time, the agency is not adopting any neck injury criteria. In the case of the instrumentation for measuring thoracic deflection, the supplier has indicated that it can deliver the necessary devices within 3 months of the time an order is placed. As to Ford's comment about calibration test equipment, the agency notes that current equipment used for calibrating the existing Part 572 test dummy can be used, with minor modification, to calibrate the Hybrid III test dummy.

Calibration Requirements.

In addition to having complete technical drawings and specifications, a test dummy must have adequate calibration test procedures. The calibration tests involve a series of static and dynamic tests of the test dummy components to determine whether the reponses of the test dummy fall within specified performance requirements for each test. The testing involves instrumenting the head, thorax and femurs to measure the test dummy's responses. In addition, there are tests of the neck, whose structural properties may have considerable influence on the kinematics and impact responses of the instrumented head. Those procedures help ensure that the test dummy has been properly assembled and that, as assembled, it will provide repeatable and reproducible results in crash testing. (Repeatability refers to the ability of the same test dummy to produce the same results when subjected to several identical tests. Reproducibility refers to the ability of one test dummy to provide the same results as another test dummy built to the same specifications.)

Lumbar Spine Calibration Test

The technical specifications for the Hybrid III set out performance requirements for the hardness of the rubber used in the lumbar spine to ensure that the spine will have appropriate regidity. NHTSA's test data show that there is a direct relationship between rubber hardness and stiffness of the spine and that the technical specification on hardness is sufficient to ensure appropriate spine stiffness. Accordingly, the agency believes that a separate calibration test for the lumbar spine is not necessary. Humanoid supported the validity of relying on the spine hardness specification to assure

adequate stability of the dummy's posture, even though it found little effect on the dummy's impact response. Humanoid's support for this approach was based on tests on Hybrid III dummies which were equipped with a variety of lumbar spines having different rubber hardnesses.

Subsequent to issuance of the notice, the agency has continued its testing of the Hybrid III test dummy. Through that testing, the agency found that commercially available necks either cannot meet or cannot consistently meet all of the calibration tests originally proposed for the neck. To further evaluate this problem, NHTSA and GM conducted a series of round robin tests in which a set of test dummies were put through the calibration tests at both GM's and NHTSA's test laboratories.

The test results, which were placed in the docket after the tests were completed, showed that none of the necks could pass all of the originally specified calibration tests.

In examining the test data, the agency determined that while some of the responses of the necks fell slightly outside of the performance corridors proposed in the calibration tests, the responses of the necks showed a relatively good match to existing biomechanical data on human neck responses. Thus, while the necks did not meet all of the calibration tests, they did respond as human necks are expected to respond.

In discussions with GM, the agency learned that the calibration performance requirements were originally established in 1977 based on the responses of three prototype Hybrid III necks. GM first examined the existing biomechanical data and established several performance criteria that reflected human neck responses. GM then built necks which would meet the biomechanically based performance critiera. GM established the calibration tests that it believed were necessary to ensure that the necks of the prototype test dummies would produce the required biomechanical responses.

Although extensive performance specifications may have been needed for the development of specially-built prototype necks, not all of the specifications appear to be essential once the final design was estabished for the mass-produced commercial version. Based on the ability of the commercially-available test dummies to meet the biomechanical response criteria, NHTSA believes that the GM-derived calibration requirements should be adjusted to reflect the response characteristics of commercially, available test dummies and simplified as much as possible to reduce the complexity of the testing.

Based on the results of the NHTSA-GM calibration test series, the agency is making the following changes to the neck calibration tests. In the flexion (forward bending) calibration test, the agency is:

1. Increasing the time allowed for the neck to return to its preimpact position after the pendulum impact test from a range of 109–119 milliseconds to a range of 113–128 milliseconds.

2. Changing the limits for maximum head rotation from a range of 67°–79° to a range of 64°–78°

3. Expanding the time limits during which maximum moment must occur from range 46–56 milliseconds to 47–58 milliseconds.

4. Modifying the limits for maximum moment from a range of 72–90 ft-lbs to a range of 65–80 ft-lbs.

5. Increasing the time for the maximum moment to decay from a range of 95–105 milliseconds to a range of 97–107 milliseconds.

In the extension (backward bending) calibration test, the agency is:

1. Expanding the time allowed for the neck to return to its preimpact position after the pendulum impact test from a range of 157–167 milliseconds to a range of 147–174 milliseconds.

2. Changing the limits for maximum head rotation from a range of 90°–106° to a range of 81°–106°.

3. Expanding the time limit during which the minimum moment must occur from a range of 69–77 milliseconds to 65–79 milliseconds.

4. Modifying the limits for minimum moment from a range of -52 to -63 ft-lbs to a range of -39 to -59 ft-lbs.

5. Increasing the time for the minimum moment to decay from the range of 120–144 milliseconds, contained in GM's technical specifications for the Hybrid III, to a range of 120–148 milliseconds.

In reviewing the NHTSA-GM test data, the agency also identified several ways of simplifying the neck's performance requirements. In each case, the following calibration specifications appear to be redundant and their deletion should not affect the performance of the neck. The agency has thus deleted the requirement for minimum moment in flexion and the time requirement for that moment. For extension, the agency has eliminated the limit on the maximum moment permitted and the time requirement for that moment. The agency has deleted those requirements since the specification on maximum rotation of the neck in flexion and minimum rotation of the neck in extension appear to adequately measure the same properties of the neck.

Similarly, the agency has simplified the test by eliminating the pendulum braking requirement for the neck test, since GM's testing shows that the requirement is not necessary to ensure test consistency. Finally, the agency is clarifying the test procedure by deleting the specification in the GM technical drawings for the Hybrid III calling for two pre-calibration impact tests of the neck. GM has informed the agency that the two pre-calibration tests are not necessary.

Based on the NHTSA-GM calibration test data, the agency is making two additional changes to the neck calibration test procedure. Both NHTSA and GM routinely control the calibration pendulum impact speed to within plus or minus one percent. Currently available dummy necks are able to meet the calibration response requirements consistently when the pendulum impact speed is controlled to that level. Thus, NHTSA believes that the proposed range of allowable velocities (±8.5 percent) for the pendulum impact is excessive. Reducing the allowable range is clearly feasible and will help maintain a high level of consistency in dummy neck responses. The agency has therefore narrowed the range of permissible impact velocities to the neck to ±2 percent. This range is readily obtainable with commercially-available test equipment. In reviewing the neck calibration test data, GM and NHTSA noted a slight sensitivity in the neck responses to temperature variation. In its docket submission of January 27, 1986, GM recommended controlling the temperature during the neck calibration test to 71°±1°. NHTSA agrees that controlling the temperature for the neck calibration test will reduce variability, but the agency believes that a slightly wider temperature range of 69° to 72°, which is the same range used in the chest calibration test, is sufficient.

Neck Durability

Nissan commented that, in sled tests of the two test dummies, the neck bracket of one of the Hybrid III test dummies experienced damage after 10 tests, while the Part 572 test dummy had no damage. The agency believes that Nissan's experience may be the result of an early neck design which has been subsequently modified by GM. (See GM letter of September 16, 1985, Docket 74-14, Notice 39, Entry 28) The agency has conducted numerous 30 mile per hour vehicle impact tests using the Hybrid III test dummy and has not had any neck bracket failures.

Thorax Calibration Test

As a part of the NHTSA–GM calibration test series, both organizations also performed the proposed calibration test for the thorax on the same test dummies. That testing showed relatively small differences in the test results measured between the two test facilities. The test results from both test facilities show that the chest responses of the Hybrid III test dummies were generally within the established biomechanical performance corridors for the chest. In addition, the data showed that the Hybrid III chest responses fit those corridors substantially better than the chest responses of the existing Part 572 test dummy. The data also showed that the chest responses in the high speed (22 ft/sec) pendulum impact test more closely fit the corridors than did the chest responses in the low speed (14 ft/sec) test. In addition, the data showed that if a test dummy performed satisfactorily in the low speed pendulum test, it also performed satisfactorily in the more severe high speed test.

Based on those results, GM recommended in a letter of January 27, 1986, (Docket No. 74–14, Notice 39, Entry 41) that only the low speed pendulum impact be used in calibration testing of the Hybrid III chest. GM noted that deleting the more severe pendulum impact test "can lead to increasing the useful life of the chest structure."

Based on the test data, the agency agrees with the GM recommendation that only one pendulum impact test is necessary. NHTSA recognizes that using only the low speed pendulum impact will increase the useful life of the chest. However, the agency has decided to retain the high speed rather than the low speed test. While NHTSA recognizes that the high speed test is more severe, the agency believes the high speed test in more appropriate for a number of reasons. First, the data showed that the high speed chest impact responses compared more closely with the biomechanical corridors than the low speed responses. Thus, use of the high speed test will make it easier to identify chests that do not have the correct biofidelity. In addition, since the higher speed test is more severe it will subject the ribcage to higher stresses, which will help identify chest structural degradation. Finally, the high speed impact test is more representative of the range of impacts a test dummy can receive in a vehicle crash test.

Although the NHTSA–GM test data showed that the production version of the Hybrid III chest had sufficient biofidelity, the data indicated that proposed calibration performance requirements should be slightly changed to account for the wider range in calibration test responses measured in commercially-available test dummies. Accordingly, the agency is adjusting the chest deflection requirement to increase the allowable range of deflections from 2.51–2.75 inches to 2.5–2.85 inches. In addition, the agency is adjusting the resistive force requirement from a range of 1186–1298 pounds to a range of 1080–1245 pounds. Also, the hysteresis requirement is being adjusted from a 75–80 percent range to a 69–85 percent range. Finally, the agency is clarifying the chest calibration test procedure by deleting the specification in GM's technical drawing for the Hybrid III that calls for two pre-calibration impact tests of the chest. GM has informed the agency that these tests are not necessary. These slight changes will not affect the performance of the Hybrid III chest, since the NHTSA–GM test data showed that commercially-available test dummies meeting these calibration specifications had good biofidelity.

Chest Durability

Testing done by the agency's Vehicle Research and Test Center has indicated that the durability of the Hybrid III's ribs in calibration testing is less than that of the Part 572 test dummy. ("State-of-the-Art Dummy Selection, Volume I" DOT Publication No. HS 806 722) The durability of the Hybrid III was also raised by several commenters. For example, Toyota raised questions about the durability of the Hybrid III's ribs and suggested the agency act to improve their durability.

The chest of the Hybrid III is designed to be more flexible, and thus more human-like, than the chest of the Part 572 test dummy. One of the calibration tests used for the chest involves a 15 mph impact into the chest by a 51.5 pound pendulum; an impact condition which is substantially more severe than a safety belt or airbag restrained occupant would experience in most crashes. The chest of the Hybrid III apparently degrades after such multiple impacts at a faster rate than the chest of the Part 572 test dummy. As the chest gradually deteriorates, the amount of acceleration and deflection measured in the chest are also affected. Eventually the chest will fall out of specification and will require either repair or replacement.

In its supplemental comments to the April 1985 notice, GM provided additional information about the durability of the Hybrid III ribs. GM said that it uses the Hybrid III in unbelted testing, which is the most severe test for the dummy. GM said that the Hybrid III can be used for about 17 crash tests before the ribs must be replaced. GM explained that it does not have comparable data for the Part 572 test dummy since it does not use that test dummy in unbelted tests. GM said, however, that it believes that the durability of the Part 572 test dummy ribs in vehicle crash testing would be comparable to that of the Hybrid III.

Having reviewed all the available information, the agency concludes that both the Hybrid III and existing Part 572 test dummy ribs will degrade under severe impact conditions.

Although the Hybrid III's more flexible ribs may need replacement more frequently, particularly after being used in unrestrained testing, the Hybrid III's ribs appear to have reasonable durability. According to GM's data, which is in line with NHTSA's crash test experience, the Hybrid III's ribs can withstand approximately 17 severe impacts, such as found in unrestrained testing, before they must be replaced. Ford, in a presentation at the MVMA Hybrid III workshop held on February 5, 1986, noted that one of its belt restrained Hybrid III test dummies was subjected to 35 vehicle and sled crashes without any failures. The potential lower durability of the ribs in unrestrained testing should be of little consequence if the Hybrid III test dummy is used in air bag or belt testing.

Chest Temperature Sensitivity

The April 1985 notice said NHTSA tests have indicated that the measurements of chest deflection and chest acceleration by the Hybrid III are temperature sensitive. For this reason, GM's specifications for the Hybrid III recognize this problem and call for using the test dummy in a narrower temperature range (69° to 72°F) to ensure the consistency of the measurements. GM has also suggested the use of an adjustment factor for calculating chest deflection when the Hybrid III is used in a test environment that is outside of the temperature range specified for the chest. While this approach may be reasonable to account for the adjustment of the deflection measurement, there is no known method to adjust the acceleration measurement for variations in temperature. For this reason, the agency is not adopting GM's proposed adjustment factor, but is instead retaining the proposed 69 to 72°F temperature range.

A number of commenters addressed the feasibility and practicability of maintaining that temperature range. BMW said that although it has an

enclosed crash test facility, it had reservations about its ability to control the test temperature within the proposed range. Daihatsu said that it was not sure it could assure the test dummy's temperature will remain within the proposed range. Honda said that while it had no data on the temperature sensitivity of the Hybrid III, it questioned whether the proposed temperature range was practicable. Mercedes-Benz said it is not practical to maintain the proposed temperature range because the flood lights necessary for high speed filming of crash tests can cause the test dummy to heat up. Nissan said it was not easy to maintain the current 12 degree range specified for the existing Part 572 test dummy and thus it would be hard to maintain the three degree range proposed for the Hybrid III. Ford also said that maintaining the three degree range could be impracticable in its current test facilities.

Other manufacturers tentatively indicated that the proposed temperature range may not be a problem. VW said the temperature range should not be an insurmountable problem, but more experience with the Hybrid III is necessary before any definite conclusions can be reached. Volvo said it could maintain the temperature range in its indoor test facilities, but it questioned whether outdoor test facilities could meet the proposed specification. Humanoid indicated in its comments, that it has developed an air conditioning system individualized for each test dummy which will maintain a stable temperature in the test dummy up to the time of the crash test.

The agency believes that there are a number of effective ways to address the temperature sensitivity of the Hybrid III chest. The test procedure calls for placing the test dummy in an area, such as a closed room, whose temperature is maintained within the required range for at least four hours before either the calibration tests or the use of the test dummy in a crash test. The purpose of the requirement is to ensure that the primary components of the test dummy have reached the correct temperature before the test dummy is used in a test. As discussed, below, analytical techniques can be used to determine the temperature within the test dummy, to calculate how quickly the test dummy must be used in a crash test before its temperature will fall outside the required temperature range.

Testing done by the agency with the current Part 572 test dummy, whose construction and materials are similar to the Hybrid III, has determined how long it takes for various test dummy components to reach the required temperature range once the test dummy is placed in a room within that range. ("Thermal Responses of the Part 572 Dummy to Step Changes in Ambient Temperature" DOT Publication No. HS–801–960, June 1976). The testing was done by placing thermocouples, devices to measure temperature, at seven locations within the dummy and conducting a series of heating and cooling experiments. The tests showed that the thermal time constants (the thermal time constant is the time necessary for the temperature differential between initial and final temperatures to decrease from its original value to 37% of the original differential) varied from 1.2 hours for the forehead to 6.2 hours for the lumbar spine. Using this information it is possible to estimate the time it takes a test dummy originally within the required temperature range to fall out of the allowable range once it has been exposed to another temperature. The rib's thermal time constant is 2.9 hours. This means, for example, that if a test dummy's temperature has been stabilized at 70.5 °F and then transferred to a test environment at 65 °F, it would take approximately 0.8 hours for the rib temperature to drop to 69 °F, the bottom end of the temperature range specified in Part 572.

Thus, the NHTSA test results cited above show that the chest can be kept within the range proposed by the agency if the test dummy is placed in a temperature-controlled environment for a sufficient time to stabilize the chest temperature. Once the chest of the test dummy is at the desired temperature, the test data indicate that it can tolerate some temperature variation at either an indoor or outdoor crash test site and still be within the required temperature range as long as the crash test is performed within a reasonable amount of time and the temperature at the crash site, or within the vehicle, or within the test dummy is controlled close to the 69 to 72 degrees F range. Obviously, testing conducted at extremely high or low temperatures can move the test dummy's temperature out of the required range relatively quickly, if no means are used to maintain the temperature of the test dummy within the required range. However, auxiliary temperature control devices can be used in the vehicle or the test environment to maintain a stabilized temperature prior to the crash test. Therefore, the agency has decided to retain the proposed 69 to 72 degree F temperature range.

Chest Response to Changes in Velocity

The April notice raised the issue of the sensitivity of the Hybrid III's chest to changes in impact velocities. The notice pointed out that one GM study on energy-absorbing steering columns ("Factors Influencing Laboratory Evaluation of Energy-Absorbing Steering Systems", Docket No. 74–14, Notice 32, Entry 1666B) indicated that the Hybrid III's chest may be insensitive to changes in impact velocities and asked commenters to provide further information on this issue.

Both GM and Ford provided comments on the Hybrid III's chest response. GM said that since the Hybrid III chest is designed to have a more human-like thoracic deflection than the Part 572 test dummy, the Hybrid III's response could be different. GM referenced a study ("System Versus Laboratory Impact Tests for Estimating Injury Hazard" SAE paper 680053) which involved cadaver impacts into energy-absorbing steering columns. The study concluded that the force on the test subject by the steering assembly was relatively constant despite changes in test speeds. GM said that this study indicated that "rather than the Hybrid III chest being insensitive to changes in velocity in steering system tests, it is the Part 572 which is too sensitive to changes in impact velocity to provide meaningful information for evaluating steering systems."

GM also presented new data on chest impact tests conducted on the Hybrid III and Part 572 test dummies. The tests involved chest impacts by three pendulum impact devices with different masses and three impact speeds. GM said that the test results show that "the Hybrid III chest deflection is sensitive to both changes in impact velocity and impactor mass."

Ford also noted that the Hybrid III appears sensitive in the range of speed and deflections that are relevant to Standard No. 208 testing with belt-restrained dummies. Ford noted that the GM testing referenced in the April notice was conducted at higher impact speeds than used in the calibration testing of the Hybrid III. Ford said it agreed with GM that the indicated insensitivity of chest acceleration to speed and load is a reflection of the constant-force nature of the steering column's energy absorption features. After reviewing the information provided by Ford and GM, NHTSA agrees that in an impact with a typical steering column, once the energy-absorbing mechanism begins to function, the test dummy's chest will

receive primarily constant force. The lower stiffness of the Hybrid III chests would make it respond in a more human-like manner to these forces than the existing Part 572 test dummy.

Chest Accelerometer Placement

Volvo pointed out that the chest accelerometer of the Hybrid III is located approximately at the center of gravity of the chest, while the accelerometer is higher and closer to the back in the Part 572 test dummy. Volvo said that since the biomechanical tolerance limits for the chest were established using a location similar to that in the Part 572, it questioned whether the acceleration limits should apply to the Hybrid III. Volvo recommended changing the location of the accelerometer in the Hybrid III or using different chest acceleration criteria for the Hybrid III.

The agency recognizes that Hybrid III accelerometer placement should more correctly reflect the overall response of the chest because it is placed at the center of gravity of the chest. However, the dimensional differences between the accelerometer placements in the two test dummies are so small that in restrained crash tests the differences in acceleration response, if any, should be minimal.

Repeatability and Reproducibility

As discussed previously, test dummy repeatability refers to the ability of one test dummy to measure consistently the same responses when subjected to the same test. Reproducibility refers to the ability of two or more test dummies built to the same specifications to measure consistently the same responses when they are subjected to the same test.

Ford said that it is particularly concerned about the repeatability of the chest acceleration and deflection measurements of the Hybrid III and about the reproducibility of the Hybrid III in testing by different laboratories. Ford said that once a test dummy positioning procedure has been established, the agency should conduct a series of 16 car crash tests to verify the repeatability and reproducibility of the Hybrid III.

In its comments, GM provided data showing that the repeatability of the Hybrid III is the same as the existing Part 572 test dummy. Volvo, the only other commenter that addressed repeatability, also said that its preliminary tests show that the Hybrid III has a repeatability comparable to the Part 572. The agency's Vehicle Research and Test Center has also evaluated the repeatability of the Hybrid III and the Part 572 in a series of sled tests. The data from those test show that the repeatability of the two test dummies is comparable. ("State-of-the-Art Dummy Selection, Volume I" DOT Publication No. HS 806 722)

GM also provided data showing that the reproducibility of the Hybrid III is significantly better than the Part 572. In its supplemental comments filed on September 16, 1985, GM also said that Ford's proposed 16 car test program was not needed. GM said that "in such test the effects of vehicle build variability and test procedure variability would totally mask any effect of Hybrid III repeatability and reproducibility."

The agency agrees with GM that additional testing is unnecessary. The information provided by GM and Volvo shows that the repeatability of the Hybrid III is at least as good as the repeatability of the existing Part 572 test dummy. Likewise, the GM data show that the reproducibility of the Hybrid III is better than that of the existing Part 572 test dummy. Likewise, the recent NHTSA–GM calibration test series provides further confirmation that tests by different laboratories show the repeatability and reproducibility of the Hybrid III.

Equivalence of Hybrid III and Part 572

As noted in the April 1985 notice, the Hybrid III and the Part 572 test dummies do not generate identical impact responses. Based on the available data, the agency concluded that when both test dummies are tested in lap/shoulder belts or with air cushions, the differences between the two test dummies are minimal. The agency also said that it knew of no method for directly relating the response of the Hybrid III to the Part 572 test dummy.

The purpose of comparing the response of the two test dummies is to ensure that the Hybrid III will meet the need for safety by adequately identifying vehicle designs which could cause or increase occupant injury. The agency wants to ensure that permitting a choice of test dummy will not lead to a degradation is safety performance.

As mentioned previously, one major improvement in the Hybrid III is that it is more human-like in its responses than the current Part 572 test dummy. The primary changes to the Hybrid III that make it more human-like are to the neck, chest and knee. Comparisons of the responses of the Part 572 and Hybrid III test dummies show that responses of the Hybrid III are closer than the Part 572 to the best available data on human responses. (See Chapter II of the Final Regulatory Evaluation on the Hybrid III.)

In addition to being more human-like, the Hybrid III has increased measurement capabilities for the neck (tension, compression, and shear forces and bending moments), chest (deflection), knee (knee shear), and lower leg (knee and tibia forces and moments). The availability of the extra injury measuring capability of the Hybrid III gives vehicle manufacturers the potential for gathering far more information about the performance of their vehicle designs than they can obtain with the Part 572.

To evaluate differences in the injury measurements made by the Hybrid III and the existing Part 572 test dummy, the agency has reviewed all of the available data comparing the two test dummies. The data come from a variety of sled and barrier crash tests conducted by GM, Mercedes-Benz, NHTSA, Nissan, and Volvo. The data include tests where the dummies were unrestrained and tests where the dummies were restrained by manual lap/shoulder belts, automatic belts, and air bags. For example, subsequent to issuance of the April 1985 notice, NHTSA did additional vehicle testing to compare the Part 572 and Hybrid III test dummies. The agency conducted a series of crash tests using five different types of vehicles to measure differences in the responses of the test dummies. Some of the tests were frontal 30 mile per hour barrier impacts, such as are used in Standard No. 208 compliance testing, while others were car-to-car tests. All of the tests were done with unrestrained test dummies to measure their impact responses under severe conditions. The agency's analysis of the data for all of the testing done by NHTSA and others is fully described in the Final Regulatory Evaluation for this rulemaking. This notice will briefly review that analysis.

One of the reasons for conducting the analysis was to address the concern raised by the Center for Auto Safety (CAS) in its original petition and the Insurance Institute for Highway Safety (IIHS) in its comments that the Hybrid III produces lower HIC responses than the existing Part 572 test dummy. As discussed in detail below, the test data do not show a trend for one type of test dummy to consistently measure higher or lower HIC's or femur readings than the other. Based on these test data, the agency concludes that the concern expressed by CAS and IIHS that the use of the Hybrid III test dummy will give a manufacturer an advantage in meeting the HIC performance requirement of Standard No. 208 is not valid.

In the case of chest acceleration measurements, the data again do not show consistently higher or lower measurements for either test dummy, except in the case of unrestrained tests. In unrestrained tests, the data show that the Hybrid III generally measures lower chest g's than the existing Part 572 test dummy. This difference in chest g's measurement is one reason why the agency is adopting the additional chest deflection measurement for the Hybrid III, as discussed further below.

HIC measurements

The April 1985 notice specifically invited comments on the equivalence of the Head Injury Criterion (HIC) measurements of the two test dummies. Limited laboratory testing done in a University of California at San Diego study conducted by Dr. Dennis Schneider and others had indicated that the Hybrid III test dummy generates lower acceleration responses than either the Part 572 test dummy or cadaver heads in impacts with padded surfaces. The notice explained that the reasons for those differences had not yet been resolved.

In its comments, GM explained that it had conducted a series of studies to address the Schneider results. GM said that those studies showed that the Schneider test results are: "complicated by the changing characteristics of the padding material used on his impact surface. As a result, his tests do not substantiate impactor response difference between the Hybrid III head, the Part 572 head and cadaver heads. After examining our reports, Dr. Schneider agreed with the finding that padding degradation resulting from multiple impact exposures rendered an input-response comparison invalid between the cadaver and the dummies." (The GM and Schneider letters are filed in Docket 74–14, General Reference, Entry 556)

The agency's Vehicle Research and Test Center has also conducted head drop tests of the current Part 572 and Hybrid III heads. The tests were conducted by dropping the heads onto a two inch thick steel plate, a surface which is considerably more rigid than any surface that the test dummy's head would hit in a vehicle crash test. One purpose of the tests was to assess the performance of the heads in an impact which can produce skull fractures in cadavers. The tests found that the response of the Hybrid III head was more human-like at the fracture and subfracture acceleration levels than the Part 572 head. The testing did show that in these severe impacts into thick steel plates, the HIC scores for the Hybrid III were lower than for the Part 572. However, as discussed below, when the Hybrid III is tested in vehicle crash and sled tests, which are representative of occupant impacts into actual vehicle structures, the HIC scores for the Hybrid III are not consistently lower than those of the Part 572 test dummy.

The agency examined crash and sled tests, done by GM, Mercedes-Benz, NHTSA and Volvo, in which both a Hybrid III and the existing Part 572 test dummy were restrained by manual lap/shoulder belts. (The complete results from those and all the other tests reviewed by the agency are discussed in Chapter III of the Final Regulatory Evaluation on the Hybrid III.) The HIC responses in those tests show that the Hybrid III generally had higher HIC responses than the Part 572 test dummy. Although the data show that the Hybrid III's HIC responses are generally higher, in some case 50 percent higher than the Part 572, there are some tests in which the Hybrid III's responses were 50 percent lower than the responses of the Part 572.

For two-point automatic belts, the agency has limited barrier crash test data and the direct comparability of the data is questionable. The test using the existing Part 572 test dummy were done in 1976 on 1976 VW Rabbits for compliance purposes. The Hybrid III tests were done in 1985 by the agency's Vehicle Research and Test Center as part of the SRL–98 test series on a 1982 and a 1984 VW Rabbit. Differences in the seats, safety belts, and a number of other vehicle parameters between these model years and between the test set-ups could affect the results. In the two-point automatic belt tests, the data show that the Hybrid III measured somewhat higher head accelerations than the existing Part 572 test dummy. In two point automatic belts, the differences appear to be minimal for the driver and substantially larger for the passenger. In air bag sled tests, the Hybrid III's HIC responses were generally lower; in almost all the air bag tests, the HIC responses of both the Hybrid III and the Part 572 test dummies were substantially below the HIC limit of 1,000 set in Standard No. 208. Because of the severe nature of the unrestrained sled and barrier tests, in which the uncontrolled movement of the test dummy can result in impacts with different vehicle structures, there was no consistent trend for either test dummy to measure higher or lower HIC responses than the other.

Chest measurements

For manual lap/shoulder belts, NHTSA compared the results from GM, Mercedes-Benz, NHTSA, and Volvo sled tests, and GM frontal barrier tests. The NHTSA sled test results at 30 and the Volvo sled test results at 31 mph are very consistent, with the mean Hybrid III chest acceleration response being only 2–3 g's higher than the response of the existing Part 572 test dummy. In the 35 mph Volvo sled tests, the Hybrid III chest acceleration response was up to 44 percent higher than the existing Part 572 response. The GM 30 mph sled and barrier test data were fairly evenly divided. In general, the Hybrid III chest's acceleration response is slightly higher than that of the existing Part 572 test dummy. The agency concludes from these data that at Standard No. 208's compliance test speed (30 mph) with manual lap/shoulder belts there are no large differences in chest acceleration responses between the two dummies. In some vehicles, the Hybrid III may produce slightly higher responses and in other vehicles it may produce slightly lower responses.

As discussed earlier, the agency has limited test data on automatic belt tests and their comparability is questionable. The Hybrid III chest's acceleration responses are up to 1.5 times higher than those for the existing Part 572 test dummy. Only very limited sled test data are available on air bags alone, air bag plus lap belt, and air bag plus lap/shoulder belt. In all cases, the Hybrid III chest acceleration responses were lower than those for the existing Part 572 test dummy.

For unrestrained occupants, the Hybrid III produces predominantly lower chest acceleration responses than the existing Part 572 test dummy in sled and barrier tests, and in some cases the difference is significant. In some tests, the Hybrid III chest acceleration response can be 40 to 45 percent lower than the Part 572 response, although in other tests the acceleration measured by the Hybrid III can exceed that measured by the Part 572 test dummy by 10 to 15 percent.

In summary, the test data indicate the chest acceleration responses between the Hybrid III and the existing Part 572 test dummy are about the same for restrained occupants, but differ for some cases of unrestrained occupants. This is to be expected since a restraint system would tend to make the two dummies react similarly even though they have different seating postures. The different seating postures, however, would allow unrestrained dummies to impact different vehicle surfaces which would in most instances produce different responses. Since the Hybrid III dummy is more human-like, it should experience

loading conditions that are more human-like than would the existing Part 572 test dummy. One reason that the agency is adding a chest deflection criterion for the Hybrid III is that the unrestrained dummy's chest may experience more severe impacts with vehicle structures than would be experienced in an automatic belt or air bag collision. Chest deflection provides an additional measurement of potential injury that may not be detected by the chest acceleration measurement.

Femur Measurements

The test data on the femur responses of the two types of test dummies also do not show a trend for one test dummy to measure consistently higher or lower responses than the other.

In Lap-Shoulder belt tests, GM's sled and barrier tests from 1977 show a trend toward lower measurements for the Hybrid III, but GM's more recent tests in 1982–83 show the reverse situation. These tests, however, are of little significance unless there is femur loading due to knee contact. These seldom occur to lap/shoulder belt restrained test dummies. Also, in none of the tests described above do the measurements approach Standard No. 208's limit of 2,250 pounds for femur loads. The air bag test data are limited, however, they show little difference between the femur responses of the two test dummies. As would be expected, the unrestrained tests showed no systematic differences, because of the variability in the impact locations of an unrestrained test dummy.

Injury Criteria

Many manufacturers raised objections to the additional injury criteria proposed in the April 1985 notice. AMC, Ford, and MVMA, argued that adopting the numerous injury criteria proposed in the April 1985 notice would compound a manufacturer's compliance test problems. For example, Ford said it "would be impracticable to require vehicles to meet such a multitude of criteria in a test with such a high level of demonstrated variability. Notice 39 appears to propose 21 added pass-fail measurements per dummy, for a total of 25 pass-fail measurements per dummy, or 50 pass-fail measurements per test. Assuming these measurements were all independent of one another, and a car design had a 95% chance of obtaining a passing score on each measurement, the chance of obtaining a passing score on all measurements in any single test for a single dummy would be less than 28% and for both dummies would be less than 8%." Ford, Nissan, VW and Volvo also said that with the need for additional measurements, there will be an increase in the number of tests with incomplete data. BMW, while supporting the use of the Hybrid III as a potential improvement to safety, said that the number of measurements needed for the additional injury criteria is beyond the capability of its present data processing equipment.

VW said there is a need to do additional vehicle testing before adopting any new criteria. It said that if current production vehicles already meet the additional criteria then the criteria only increase testing variability without increasing safety. If current vehicles cannot comply, then additional information is needed about the countermeasures needed to meet the criteria. Honda said there are insufficient data to determine the relationship between actual injury levels and the proposed injury criterion.

As discussed in detail below, the agency has decided to adopt only one additional injury criterion, chest deflection, at this time. The agency plans to issue another notice on the remaining criteria proposed in the April 1985 notice to gather additional information on the issues raised by the commenters.

Alternative HIC Calculations

The April 1985 notice set forth two proposed alternative methods of using the head injury criterion (HIC) in situations when there is no contact between the test dummy's head and the vehicle's interior during a crash. The first proposed alternative was to retain the current HIC formula, but limit its calculation to periods of head contact only. However, in non-contact situations, the agency proposed that a HIC would not be calculated, but instead new neck injury criteria would be calculated. The agency explained that a crucial element necessary for deciding whether to use the HIC calculation or the neck criteria was an objective technique for determining the occurrence and duration of head contact in the crash test. As discussed in detail in the April 1985 notice, there are several methods available for establishing the duration of head contact, but there are questions about their levels of consistency and accuracy.

The second alternative proposed by the agency would have calculated a HIC in both contact and non-contact situations, but it would limit the calculation to a time interval of 36 milliseconds. Along with the requirement that a HIC not exceed 1000, this would limit average head acceleration to 60 g's or less for any durations exceeding 36 milliseconds.

Almost all of the commenters opposed the use of the first proposed alternative. The commenters uniformly noted that there is no current technique that can accurately identify whether head contact has or has not occurred during a crash test in all situations. However, the Center for Auto Safety urged the agency to adopt the proposed neck criteria, regardless of whether the HIC calcuation is modified.

There was a sharp division among the commenters regarding the use of the second alternative; although many manufacturers argued that the HIC calculation should be limited to a time interval of approximately 15 to 17 milliseconds (ms), which would limit average long duration (i.e., greater than 15–17 milliseconds) head accelerations to 80–85 g's. Mercedes-Benz, which supported the second alternative, urged the agency to measure HIC only during the time interval that the acceleration level in the head exceeds 60 g's. It said that this method would more effectively differentiate results received in contacts with hard surfaces and results obtained from systems, such as airbags, which provide good distribution of the loads experienced during a crash. The Center for Auto Safety, the Insurance Institute for Highway Safety and State Farm argued that the current HIC calculation should be retained; they said that the proposed alternative would lower HIC calculations without ensuring that motorists were still receiving adequate head protection.

NHTSA is in the process of reexamining the potential effects of the two alternatives proposed by the agency and of the two additional alternatives suggested by the commenters. Once that review has been completed, the agency will issue a separate notice announcing its decision.

Thorax

At present, Standard No. 208 uses an acceleration-based criterion to measure potential injuries to the chest. The agency believes that the use of a chest deflection criterion is an important supplement to the existing chest injury criterion. Excessive chest deflection can produce rib fractures, which can impair breathing and inflict damage to the internal organs in the chest. The proposed deflection limit would only apply to the Hybrid III test dummy, since unlike the existing Part 572 test dummy, it has a chest which is designed to deflect like a human chest and has the capability to measure deflection of the sternum relative to the spine, as well as acceleration, during an impact.

The agency proposed a three-inch chest deflection limit for systems, such as air bags, which symmetrically load the chest during a crash and a two-inch limit for all other systems. The reason for the different proposed limits is that a restraint system that symmetrically and uniformly applies loads to the chest increases the ability to withstand chest deflection as measured by the deflection sensor, which is centrally located in the dummy.

The commenters generally supported adoption of a chest deflection injury criterion. For example, Ford said it supported the use of a chest deflection criterion since it may provide a better means of assessing the risk of rib fractures. Likewise, the Insurance Institute for Highway Safety said the chest deflection criteria "will aid in evaluating injury potential especially in situations where there is chest contact with the steering wheel or other interior components." IIHS also supported adoption of a three-inch deflection limit for inflatable systems and a two-inch limit for all other systems. However, most of the other commenters addressing the proposed chest deflection criteria questioned the use of different criteria for different restraint systems.

GM supported limiting chest deflections to three inches in all systems. GM said that it uses a two-inch limit as a guideline for its safety belt system testing, but it had no data to indicate that the two-inch limit is appropriate as a compliance limit.

Renault/Peugeot also questioned the three inch deflection limit for systems that load the dummy symmetrically and two inches for systems that do not. It said that the difference between those systems should be addressed by relocation of the deflection sensors. It also asked the agency to define what constitutes a symmetrical system. VW also questioned the appropriateness of setting separate limits for chest compression for different types of restraint systems. It recommended adoption of a three inch limit for all types of restraint systems.

Volvo also raised questions about the appropriateness of the proposed deflection criteria. Volvo said that the GM-developed criteria proposed in the April 1985 notice were based on a comparison of accident data gathered by Volvo and evaluated by GM in sled test simulations using the Hybrid III test dummy. Volvo said that the report did not analyze "whether the chest injuries were related to the chest acceleration or the chest deflection, or a combination of both."

The agency recognizes that there are several different types of potential chest injury mechanisms and that it may not be possible to precisely isolate and measure what is the relevant contribution of each type of mechanism to the final resulting injury. However, there is a substantial amount of data indicating that chest deflection is an important contributing factor to chest injury. In addition, the data clearly demonstrate that deflection of greater than three inches can lead to serious injury. For example, research done by Neathery and others has examined the effects of frontal impacts to cadaver chests with an impactor that represents the approximate dimensions of a steering wheel hub. Neathery correlated the measured injuries with the amount of chest deflection and recommended that for a 50th percentile male, chest deflection not exceed three inches. (Neathery, R.F., "Analysis of Chest Impact Response Data and Scaled Performance Recommendations," SAE Paper No. 741188)

Work by Walfisch and others looked at crash tests of lap/shoulder belt restrained cadavers. They found that substantial injury began to occur when the sternum deflection exceeded 30 percent of the available chest depth ("Tolerance Limits and Mechanical Characteristic of the Human Thorax in Frontal and Side Impact and Transposition of these Characteristics into Protective Criteria," 1982 IRCOBI Conference Proceedings). With the chest of the average man being approximately 9.3 inches deep, the 30 percent limit would translate into a deflection limit of approximately 2.8 inches.

Since the chest of the Hybrid III test dummy deflects somewhat less than a human chest under similar loading conditions, the chest deflection limit for systems which do not symmetrically and uniformly load the chest, such as lap/shoulder belts, must be set at a level below 2.8 inches to assure an adequate level of protection.

To determine the appropriate level for non-symmetrical systems, the agency first reviewed a number of test series in which cadaver injury levels were measured under different impact conditions. (All of the test results are fully discussed in Chapter III of the Final Regulatory Evaluation on the Hybrid III.) The impact conditions included 30 mph sled tests done for the agency by Wayne State University in which a pre-inflated, non-vented air bag system symmetrically and uniformly spread the impact load on the chest of the test subject. NHTSA also reviewed 30 mph sled tests done for the agency by the University of Heidelberg which used a lap/shoulder belt system, which does not symmetrically and uniformly spread chest loads. In addition, the agency reviewed 10 and 15 mph pendulum impact tests done for GM to evaluate the effects of concentrated loadings, such as might occur in passive interior impacts. The agency then compared the chest deflection results for Hybrid III test dummies subjected to the same impact conditions. By comparing the cadaver and Hybrid III responses under identical impact conditions, the agency was able to relate the deflection measurements made by the Hybrid III to a level of injury received by a cadaver.

The test results show that when using a relatively stiff air bag, which was pre-inflated and non-vented, the average injury level measured on the cadavers corresponded to an Abbreviated Injury Scale (AIS) of 1.5. (The AIS scale is used by researchers to classify injuries, an AIS of one is a minor injury, while an AIS of three represents a serious injury.) In tests with the Hybrid III under the same impact conditions, the measured deflection was 2.7 inches. These results demonstrate that a system that symmetrically and uniformly distributes impact loads over the chest can produce approximately three inches of deflection and still adequately protect an occupant from serious injury.

The testing in which the impact loads were not uniformly or symmetrically spread on the chest or were highly concentrated over a relatively small area indicated that chest deflection measured on the Hybrid III must be limited to 2 inches to assure those systems provide a level of protection comparable to that provided by systems that symmetrically spread the load. In the lap/shoulder belt tests, the average AIS was 2.6. The measured deflection for the Hybrid III chest in the same type of impact test was 1.6 inches. Likewise, the results from the pendulum impact tests showed that as the chest deflection measured on the Hybrid III increased, the severity of the injuries increased. In the 10 mph pendulum impacts, the average AIS was 1.3 and the average deflection was 1.3 inches. In the 15 mph pendulum impacts the average AIS rose to 2.8. Under the same impact conditions, the chest deflection measured on the Hybrid III was 2.63 inches.

Based on these test results NHTSA has decided to retain the two inch limit on chest deflection for systems that do not symmetrically and uniformly distribute impact loads over a wide area of the chest. Such systems include automatic safety belts, passive interiors

and air bag systems which use a lap and shoulder belt. For systems, such as air bag only systems or air bag combined with a lap belt, which symmetrically and uniformly distribute chest forces over a large area of the chest, the agency is adopting the proposed three inch deflection limit. This should assure that both symmetrical and non-symmetrical systems provide the same level of protection in an equivalent frontal crash.

In addition to the biomechanical basis for the chest deflection limits adopted in this notice, there is another reason for adopting a two inch deflection limit for systems that can provide concentrated loadings over a limited area of the test dummy. The Hybrid III measures chest deflection by a deflection sensor located near the third rib of the test dummy. Tests conducted on the Hybrid III by NHTSA's Vehicle Research and Test Center have shown that the deflection sensor underestimates chest displacement when a load is applied to a small area away from the deflection sensor. (The test report is filed in Docket No. 74–14, General Reference, Entry 606.)

In a crash, when an occupant is not restrained by a system which provides centralized, uniform loading to a large area, such as an airbag system, the thorax deflection sensor can underestimate the actual chest compression. Thus, in a belt-restrained test dummy, the deflection sensor may read two inches of deflection, but the actual deflection caused by the off-center loading of a belt near the bottom of the ribcage may be greater than two inches of defletion. Likewise, test dummies in passive interior cars may receive substantial off-center and concentrated loadings. For example, the agency has conducted sled tests simulating 30 mile per hour frontal barrier impacts in which unrestrained test dummies struck the steering column, as they would do in a passive interior equipped car. Measurements of the pre- and post impact dimensions of the steering wheel rim showed that there was substantial non-symmetrical steering wheel deformation, even though these were frontal impacts. (See, e.g., "Frontal Occupant Sled Simulation Correlation, 1983 Chevrolet Celebrity Sled Buck," Publication No. DOT HS 806 728, February 1985.) The expected off-center chest loadings in belt and passive interior systems provide a further basis for applying a two inch deflection limit for those systems to assure they provide protection comparable to that provided by symmetrical systems.

Use of Acceleration Limits for Air Bag Systems

Two commenters raised questions about the use of an acceleration-based criterion for vehicles which use a combined air bag and lap/shoulder belt system. Mercedes-Benz said that acceleration-based criteria are not appropriate for systems that reduce the deflection of the ribs but increase chest acceleration values. Ford also questioned the use of acceleration-based criteria. Ford said that its tests and testing done by Mercedes-Benz have shown that using an airbag in combination with a lap/shoulder belt can result in increased chest acceleration readings. Ford said it knew of no data to indicate that combined airbag-lap/shoulder belt system loads are more injurious than shoulder belt loads alone. Ford recommended that manufacturers have the option of using either the chest acceleration or chest deflection criterior until use of the Hybrid III is mandatory.

As discussed previously, acceleration and deflection represent two separate types of injury mechanisms. Therefore, the agency believes that it is important to test for both criteria. Although the tests by Mercedes-Benz and Ford show higher chest accelerations, the tests also show that it is possible to develop an air bag and lap/shoulder belt systems and meet both criteria. Therefore, the agency is retaining the use of the acceleration based criterion.

Use of Additional Sensors

Mercedes-Benz said the deflection measuring instrumentation of the Hybrid III cannot adequately measure the interaction between the chest and a variety of vehicle components. Mercedes-Benz said that it is necessary to use either additional deflection sensors or strain gauges. Renault/Peugeot recommended that the agency account for the difference between symmetrical systems and asymmetrical systems by relocating the deflection sensor.

The agency recognizes that the use of additional sensors could be beneficial in the Hybrid III to measure chest deflection. However, such technology would require considerable further development before it could be used for compliance purposes. NHTSA believes that, given the current level of technology, use of a single sensor is sufficient for the assessment of deflection caused injuries in frontal impacts.

Femurs

The April 1985 notice proposed to apply the femur injury reduction criterion used with the Part 572 test dummy to the Hybrid III. That criterion limits the femur loads to 2250 pounds to reduce the possibility of femur fractures. No commenter objected to the proposed femur limit and it is accordingly adopted.

Ford and Toyota questioned the need to conduct three pendulum impacts for the knee. They said that using one pendulum impact with the largest mass impactor (11 pounds) was sufficient. GM has informed the agency that the lower mass pendulum impactors were used primarily for the development of an appropriate knee design. Now that the knee design is settled and controlled by the technical drawings, the tests with the low mass impactors are not needed. Accordingly, the agency is adopting the suggestion from Ford and Toyota to reduce the number of knee calibration tests and will require only the use of the 11 pound pendulum impactor.

Hybrid III Positioning Procedure

The April notice proposed new positioning procedures for the Hybrid III, primarily because the curved lumbar spine of that test dummy requires a different positioning technique than those for the Part 572. Based on its testing experience, NHTSA proposed adopting a slightly different version of the positioning procedure used by GM. The difference was the proposed use of the Hybrid III, rather than the SAE J826 H-Point machine, with slightly modified leg segments, to determine the H-point of the seat.

GM urged the agency to adopt its dummy positioning procedure. GM said that users can more consistently position the test dummy's H-point using the SAE H-point machine rather than using the Hybrid III. Ford, while explaining that it had insufficient experience with the Hybrid III to develop data on positioning procedures, also urged the agency to adopt GM's positioning procedure. Ford said that since GM has developed its repeatability data on the Hybrid III using its positioning procedure, the agency should use it as well. Ford also said that the use of GM's method to position the test dummy relative to H-point should reduce variability.

Based on a new series of dummy positioning tests done by the agency's Vehicle Research and Test Center (VRTC), NHTSA agrees that use of the SAE H-point machine is the most consistent method to position the

dummy's H-point on the vehicle seat. Accordingly, the agency is adopting the use of the H-point machine.

In the new test series, VRTC also evaluated a revised method for positioning the Hybrid III test dummy. The testing was done after the results of a joint NHTSA-SAE test series conducted in November 1985 showed that the positioning procedure used for the current Part 572 test dummy and the one proposed in the April 1985 notice for the Hybrid III does not satisfactorily work in all cars. (See Docket 74–14, Notice 39, Entry 39) The positioning problems are principally due to the curved lumbar spine of the Hybrid III test dummy. In its tests, VRTC positioned the Hybrid III by using the SAE H-point machine and a specification detailing the final position of the Hybrid III body segments prior to the crash test. The test results showed that H-point of the test dummy could be consistently positioned but that the vertical location of the Hybrid III H-point is ¼ inch below the SAE H-point machine on average. Based on these results, the agency is adopting the new positioning specification for the Hybrid III which requires the H-point of the dummy to be within a specified zone centered ¼ inch below the H-point location of the SAE H-point machine.

GM also urged the agency to make another slight change in the test procedures. GM said that when it settles the test dummy in the seat it uses a thin sheet of plastic behind the dummy to reduce the friction between the fabric of the seat back and the dummy. The plastic is removed after the dummy has been positioned. GM said this technique allows the dummy to be more repeatably positioned. The agency agrees that use of the plastic sheet can reduce friction between the test dummy and the seat. However, the use of the plastic can also create problems, such as dislocating the test dummy during removal of the plastic. Since the agency has successfully conducted its positioning tests without using a sheet of plastic, the agency does not believe there is a need to require its use.

Ford noted that the test procedure calls for testing vertically adjustable seats in their lowest position. It said such a requirement was reasonable for vertically adjustable seats that could not be adjusted higher than seats that are not vertically adjustable. However, Ford said that new power seats can be adjusted to positions above and below the manually adjustable seat position. It said that testing power seats at a different position would increase testing variability. Ford recommended adjusting vertically adjustable seats so that the dummy's hip point is as close as possible to the manufacturer's design H-point with the seat at the design mid-point of its travel.

The agency recognizes that the seat adjustment issue raised by Ford may lead to test variability. However, the agency does not have any data on the effect of Ford's suggested solution on the design of other manufacturers' power seats. The agency will solicit comments on Ford's proposal in the NPRM addressing additional Hybrid III injury criteria.

Volvo said that the lumbar supports of its seats influence the positioning of the Hybrid III. It requested that the test procedure specify that adjustable lumbar supports should be positioned in their rearmost position. Ford made a similar request. GM, however, indicated that it has not had any problems positioning the Hybrid III in seats with lumbar supports. To reduce positioning problems resulting from the lumbar supports in some vehicles, the agency is adopting Ford's and Volvo's suggestion.

Test Data Analysis

The Chairman of the Society of Automotive Engineers Safety Test Instrumentation Committee noted that the agency proposed to reference an earlier version of the SAE Recommended Practice on Instrumentation (SAE J211a, 1971). He suggested that the agency reference the most recent version (SAE J211, 1980), saying that better data correlation between different testing organizations would result. The agency agrees with SAE and is adopting the SAE J211, 1980 version of the instrumentation Recommended Practice.

Ford and GM recommended that the figures 25 and 26, which proposed a standardized coordinate system for major body segments of the test dummy, be revised to reflect the latest industry practice on coordinate signs. Since those revisions will help ensure uniformity in data analysis by different test facilities, the agency is making the changes for the test measurements adopted in this rulemaking.

Both GM and Ford also recommended changes in the filter used to process electronically measured crash data. GM suggested that a class 180 filter be used for the neck force transducer rather than the proposed class 60 filter. Ford recommended the use of a class 1000 filter, which is the filter used for the head accelerometer.

NHTSA has conducted all of the testing used to develop the calibration test requirement for the neck using a class 60 filter. The agency does not have any data showing the effects of using either the class 180 filter proposed by GM or the class 1000 filter proposed by Ford. Therefore the agency has adopted the use of a class 60 filter for the neck transducer during the calibration test. The agency also used a class 60 filter for the accelerometer mounted on the neck pendulum and is therefore adopting the use of that filter to ensure uniformity in measuring pendulum acceleration.

Optional and Mandatory Use of Hybrid III

AMC, Chrysler, Ford, Jaguar and Subaru all urged the agency to defer a decision on permitting the optional use of the Hybrid III test dummy until manufacturers have had more experience with using that test dummy. AMC said it has essentially no experience with the Hybrid III and urged the agency to postpone a decision on allowing the optional use of that test dummy. AMC said this would give small manufacturers time to gain experience with the Hybrid III.

Chrysler also said that it has no experience with the Hybrid III test dummy and would need to conduct two years of testing to be able to develop sufficient information to address the issues raised in the notice. Chrysler said that it was currently developing its 1991 and 1992 models and has no data from Hybrid III test dummies on which to base its design decisions. It said that allowing the optional use of the Hybrid III before that time would give a competitive advantage to manufacturers with more experience with the test device and suggested indefinitely postponing the mandatory effective date.

Ford said that the effective date proposed for optional use of the Hybrid III should be deferred to allow time to resolve the problems Ford raised in its comments and to allow manufacturers time to acquire Hybrid III test dummies. It suggested deferring the proposed optional use until at least September 1, 1989. Ford also recommended that the mandatory use be deferred. Jaguar also said it has not had experience with the Hybrid III and asked that manufacturers have until September 1, 1987, to accumulate information on the performance of the test dummy. Subaru said that it has exclusively used the Part 572 test dummy and does not have any experience with the Hybrid III. It asked the agency to provide time for all manufacturers to gain experience with the Hybrid III, which in its case would be two years, before allowing the Hybrid III as an alternative.

A number of manufacturers, such as GM, Honda, Mercedes-Benz, Volkswagen, and Volvo, that supported optional use of the Hybrid III, urged the agency not to mandate its use at this time. GM asked the agency to permit the immediate optional use of the Hybrid III, but urged NHTSA to provide more time for all interested parties to become familiar with the test dummy before mandating its use. Honda said that while it supported optional use, it was just beginning to assess the performance of the Hybrid III and needed more time before the use of the Hybrid III is mandated. Mercedes-Benz also supported the use of the Hybrid III as an alternative test device because of its capacity to measure more types of injuries and because of its improved biofidelity for the neck and thorax. However, Mercedes recommended against mandatory use until issues concerning the Hybrid III's use in side impact, the biofidelity of its leg, durability and chest deflection measurements are resolved. Nissan opposed the mandatory use of the Hybrid III saying there is a need to further investigate the differences between the Hybrid III and the Part 572. Toyota said that it was premature to set a mandatory effective date until the test procedure and injury criteria questions are resolved. Volkswagen supported the adoption of the Hybrid III as an alternative test device, but it opposed mandating its use. Volvo supported the optional use of the Hybrid III. It noted that since NHTSA is developing an advanced test dummy, there might not be a need to require the use of the Hybrid III in the interim.

The agency recognizes that manufacturers are concerned about obtaining the Hybrid III test dummy and gaining experience with its use prior to the proposed September 1, 1991 date for mandatory use of that test dummy. However, information provided by the manufacturers of the Hybrid III shows that it will take no longer than approximately one year to supply all manufacturers with sufficient quantities of Hybrid III's. This means that manufacturers will have, at a minimum, more than four years to gain experience in using the Hybrid III. In addition, to assist manufacturers in becoming familiar with the Hybrid III, NHTSA has been placing in the rulemaking docket complete information on the agency's research programs using the Hybrid III test dummy in crash and calibration tests. Since manufacturers will have sufficient time to obtain and gain experience with the Hybrid III by September 1, 1991, the agency has decided to mandate use of the Hybrid III as of that date.

As discussed earlier in this notice, the evidence shows that the Hybrid III is more human-like in its responses to impacts than the existing Part 572 test dummy. In addition, the Hybrid III has the capability to measure far more potential injuries than the current test dummy. The agency is taking advantage of that capability by adopting a limitation on chest deflection which will enable NHTSA to measure a significant source of injury that cannot be measured on the current test dummy. The combination of the better biofidelity and increased injury-measuring capability available with the Hybrid III will enhance vehicle safety.

Adoption of the Hybrid III will not give a competitive advantage to GM, as claimed by some of the commenters, such as Chrysler and Ford. As the developer of the Hybrid III, GM obviously has had more experience with that test dummy than other manufacturers. However, as discussed above, the agency has provided sufficient leadtime to allow all manufacturers to develop sufficient experience with the Hybrid III test dummy. In addition, as discussed in the equivalency section of this notice, there are no data to suggest that it will be easier for GM or other manufacturers to meet the performance requirements of Standard No. 208 with the Hybrid III. Thus GM and other manufacturers using Hybrid III during the phase-in period will not have a competitive advantage over manufacturers using the existing Part 572 test dummy.

Finally, in its comments GM suggested that the agency consider providing manufacturers with an incentive to use the Hybrid III test dummy. GM said that the agency should consider providing manufacturers with extra vehicle credits during the automatic restraint phase-in period for using the Hybrid III. The agency does not believe it is necessary to provide any additional incentive to use the Hybrid III. The mandatory effective date for use of the Hybrid III provides sufficient incentive, since manufacturers will want to begin using the Hybrid III as soon as possible to gain experience with the test dummy before that date.

Optional use of the Hybrid III may begin October 23, 1986. The agency is setting an effective date of less than 180 days to facilitate the efforts of those manufacturers wishing to use the Hybrid III in certifying compliance with the automatic restraint requirements.

Use of Noninstrumented Test Dummies

Ford raised a question about whether the Hybrid III may or must be used for the non-crash performance requirements of Standard No. 208, such as the comfort and convenience requirements of §§ 7.4.3, 7.4.4, and 7.4.5 of the standard. Ford said that manufacturers should be given the option of using either the Part 572 or Hybrid III test dummy to meet the comfort and convenience requirements. The agency agrees that until September 1, 1991, manufacturers should have the option of using either the Part 572 or Hybrid III test dummy. However, since it is important the crash performance requirements and comfort and convenience requirements be linked together through the use of a single test dummy to measure a vehicle's ability to meet both sets of requirements. Therefore, beginning on September 1, 1991, use of the Hybrid III will be mandatory in determining a vehicle's compliance with any of the requirements of Standard No. 208.

In addition, Ford asked the agency to clarify whether manufacturers can continue to use Part 572 test dummies in the crash test for Standard Nos. 212, 219, and 301, which only use non-instrumented test dummies to simulate the weight of an occupant. Ford said that the small weight difference and the small difference in seated posture between the two test dummies should have no effect on the results of the testing for Standard Nos. 212, 219, and 301. The agency agrees that use of either test dummy should not affect the test results for those standards. Thus, even after the September 1, 1991 effective date for use of the Hybrid II in the crash and non-crash testing required by Standard No. 208, manufacturers can continue to use, at their option, either the Part 572 or the Hybrid III test dummy in tests conducted in accordance with Standard Nos. 212, 219, and 301.

Economic and Other Impacts

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other impacts of this rulemaking action are not significant. A final regulatory evaluation describing those effects has been placed in the docket.

In preparing the regulatory evaluation, the agency has considered the comments from several manufacturers that the agency had underestimated the

costs associated with using the Hybrid III. Ford said that the cost estimates contained in the April 1985 notice did not take into account the need to conduct sled tests during development work. Ford said that for 1985, it estimated it will conduct 500 sled tests requiring 1000 test dummy applications. Ford also said that NHTSA's estimate of the test dummy inventory needed by a manufacturer is low. It said that it currently has an inventory of 31 Part 572 test dummies and would expect to need a similar inventory of Hybrid IIIs. In addition, Ford said that NHTSA's incremental cost estimate of $3,000 per test dummy was low. It said that the cost for monitoring the extra data generated by the Hybrid III is $2,700. Ford said that it also would have to incur costs due to upgrading its data acquisition and data processing equipment.

GM said that NHTSA's estimate of a 30-test useful life for the test dummy substantially underestimates its actual useful life, assuming the test dummy is repaired periodically. It said that some of its dummies have been used in more than 150 tests. GM also said that the agency's assumption that a large manufacturer conducts testing requiring approximately 600 dummy applications each year underestimates the actual number of tests conducted. In 1984, GM said it conducted sled and barrier tests requiring 1179 dummy applications. GM said that the two underestimates, in effect, cancel each other out, since the dummies are usable for at least five times as many tests, but they are used four times as often.

Mitsubishi said that its incremental cost per vehicle is $7 rather than 40¢ as estimated by the agency. Mitsubishi explained the reason for this difference is that the price of an imported Hybrid III is approximately two times the agency estimate and its annual production is about one-tenth of the amount used in the agency estimate. Volvo also said the agency had underestimated the incremental cost per vehicle. Volvo said it conducts approximately 500–600 test dummy applications per year in sled and crash testing, making the incremental cost in the range of $15–18 per vehicle based on its export volume to the United States.

NHTSA has re-examined the costs associated with the Hybrid III test dummy. The basic Hybrid III dummy with the instrumentation required by this final rule costs $35,000 or approximately $16,000 more than the existing 572 test dummy.

Assuming the useful life for the test dummy of 150 tests, the total estimated incremental capital cost is approximately $107 per dummy test.

To determine the incremental capital cost per test, the agency had to estimate the useful life of the Hybrid III. Based on NHTSA's test experience, the durability of the existing Part 572 test dummy and the Hybrid III test dummy is essentially identical with the exception of the Hybrid III ribs. Because the Hybrid III dummy chest was developed to simulate human chest deflection, the ribs had to be designed with much more precision to reflect human impact response. This redesign uses less metal and consequently they are more susceptible to damage during testing than the Part 572 dummy.

As discussed previously, GM estimates that the Hybrid III ribs can be used in severe unrestrained testing approximately 17 times before the ribs or the damping material needs replacement. In addition, GM's experience shows that the Hybrid III can withstand as many as 150 test applications as long as occasional repairs are made. Ford reported at the previously cited MVMA meeting that one of its belt-restrained Hybrid III test dummies underwent 35 crash tests without any degradation. Clearly, the estimated useful life of the test dummy is highly dependent on the type of testing, restrained or unrestrained, it is used for. Based on its own test experience and the experience of Ford and GM cited above, the agency has decided to use 30 applications as a conservative estimate of the useful life of the ribs. Assuming a life of 30 tests before a set of ribs must be replaced at a cost of approximately $2,000, the incremental per test cost of approximately $70.

The calibration tests for the Hybrid III test dummy have been simplified from the original specification proposed in the April 1985 notice. The Transportation Research Center of Ohio, which does calibration testing of the Hybrid III for the agency, vehicle manufacturers and others estimates the cost of the revised calibration tests is $1528. This is $167 less than the calibration cost for the existing Part 572 test dummy.

Numerous unknown variables will contribute to the manufacturers' operating expense, such as the cost of new or modified test facilities or equipment to maintain the more stringent temperature range of 69°F to 72°F for test dummies, and capital expenditures for lab calibration equipment, signal conditioning equipment, data processing techniques and capabilities, and additional personnel. Obviously, any incremental cost for a particular manufacturer to certify compliance with the automatic restraint requirements of Standard No. 208 will also depend on the extent and nature of its current test facilities and the size of its developmental and new vehicle test programs.

In addition to the costs discussed above, Peugeot raised the issue of a manufacturer's costs increasing because the proposed number of injury measurements made on the Hybrid III will increase the number of tests that must be repeated because of lost data. Since the agency is only adding one additional measurement, chest deflection, for the Hybrid III the number of tests that will have to be repeated due to lost data should not be substantially greater for the Hybrid III than for the Part 572.

Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act and I hereby certify that it will not have a significant economic effect on a substantial number of small entities. The changes affect motor vehicle manufacturers, few, if any, of which is a small business entity. The effect on small organization and governmental units would not be significant. The minimal, if any price increase associated with this rulemaking should not affect the purchasing of new cars by these entities.

Potential Environmental Impact

NHTSA has analyzed the rulemaking action for this purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

The Hybrid III test dummy is made of nearly identical materials as the Part 572 test dummy. The change to the Hybrid III test dummy will have no effects on the environment.

Effective Date

NHTSA has determined that it is in the public interest to make the optional use of the Hybrid III test dummy effective in 90 days. This will allow manufacturers time to order the new test dummy to use in their new vehicle development work.

Mandatory use of the Hybrid III does not begin until September 1, 1991.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, and Motor vehicles.

49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, Part 572, *Anthropomorphic Test Dummies,* and Part 571, Federal Motor Vehicle Safety Standards, of Title 49 of the Code of Federal Regulations are amended as follows:

PART 572—[AMENDED]

1. The authority citation for Part 572 is revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; delegation of authority at 49 CFR 1.50.

2. A new Subpart E, consisting of §§ 572.30 through 572.36 is added to Part 572 to read as follows:

Subpart E—Hybrid III Test Dummy

Sec.

572.30 Incorporated materials.
572.31 General description.
572.32 Head.
572.33 Neck.
572.34 Thorax.
572.35 Limbs.
572.36 Test conditions and instrumentation.

Subpart E—Hybrid III Test Dummy

§ 572.30 Incorporated materials.

(a) The drawings and specifications referred to in this regulation that are not set forth in full are hereby incorporated in this part by reference. The Director of the Federal Register has approved the materials incorporated by reference. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation are incorporated. A notice of any change will be published in the Federal Register. As a convenience to the reader, the materials incorporated by reference are listed in the Finding Aid Table found at the end of this volume of the Code of Federal Regulations.

(b) The materials incorporated by reference are available for examination in the general reference section of Docket 74–14, Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Copies may be obtained from Rowley-Scher Reprographics, Inc., 1216 K Street, NW., Washington, DC 20005 ((202) 628–6667). The drawings and specifications are also on file in the reference library of the Office of the Federal Register, National Archives and Records Administration, Washington, D.C.

§ 572.31 General description.

(a) The Hybrid III 50th percentile size dummy consists of components and assemblies specified in the Anthropomorphic Test Dummy drawing and specifications package which consists of the following six items:

(1) The Anthropomorphic Test Dummy Parts List, dated July 15, 1986, and containing 13 pages, and a Parts List Index, dated April 26, 1986, containing 6 pages,

(2) A listing of Optional Hybrid III Dummy Transducers, dated April 22, 1986, containing 4 pages,

(3) A General Motors Drawing Package identified by GM drawing No. 78051–218 revision P and subordinate drawings,

(4) Disassembly, Inspection, Assembly and Limbs Adjustment Procedures for the Hybrid III dummy, dated July 15, 1986,

(5) Sign Convention for the signal outputs of Hybrid III dummy transducers, dated July 15, 1986,

(6) Exterior Dimensions of the Hybrid III dummy, dated July 15, 1986.

(b) The dummy is made up of the following component assemblies:

Drawing No.		Revision
78051–61	Head Assembly—Complete	(T)
78051–90	Neck Assembly—Complete	(A)
78051–89	Upper Torso Assembly—Complete	(I)
78051–70	Lower Torso Assembly—Without Pelvic Instrumentation Assembly, Drawing No. 78051–59.	(C)
86–5001–001	Leg Assembly—Complete(LH)—	
86–5001–002	Leg Assembly—Complete(RH)—	
78051–123	Arm Assembly—Complete(LH)	(D)
78051–124	Arm Assembly—Complete(RH)	(D

(c) Any specifications and requirements set forth in this part supercede those contained in General Motors Drawing No. 78051–218, revision P.

(d) Adjacent segments are joined in a manner such that throughout the range of motion and also under crash-impact conditions, there is no contact between metallic elements except for contacts that exist under static conditions.

(e) The weights, inertial properties and centers of gravity location of component assemblies shall conform to those listed in drawing 78051–338, revision S.

(f) The structural properties of the dummy are such that the dummy conforms to this part in every respect both before and after being used in vehicle test specified in Standard No. 208 of this Chapter (§ 571.208).

§ 572.32 Head.

(a) The head consists of the assembly shown in the drawing 78051–61, revision T, and shall conform to each of the drawings subtended therein.

(b) When the head (drawing 78051–61, revision T) with neck transducer structural replacement (drawing 78051–383, revision F) is dropped from a height of 14.8 inches in accordance with paragraph (c) of this section, the peak resultant accelerations at the location of the accelerometers mounted in the head in accordance with § 572.36(c) shall not be less than 225g, and not more than 275g. The acceleration/time curve for the test shall be unimodal to the extent that oscillations occurring after the main acceleration pulse are less than ten percent (zero to peak) of the main pulse. The lateral acceleration vector shall not exceed 15g (zero to peak).

(c) *Test Procedure.* (1) Soak the head assembly in a test environment at any temperature between 66 degrees F to 78 degrees F and at a relative humidity from 10% to 70% for a period of at least four hours prior to its application in a test.

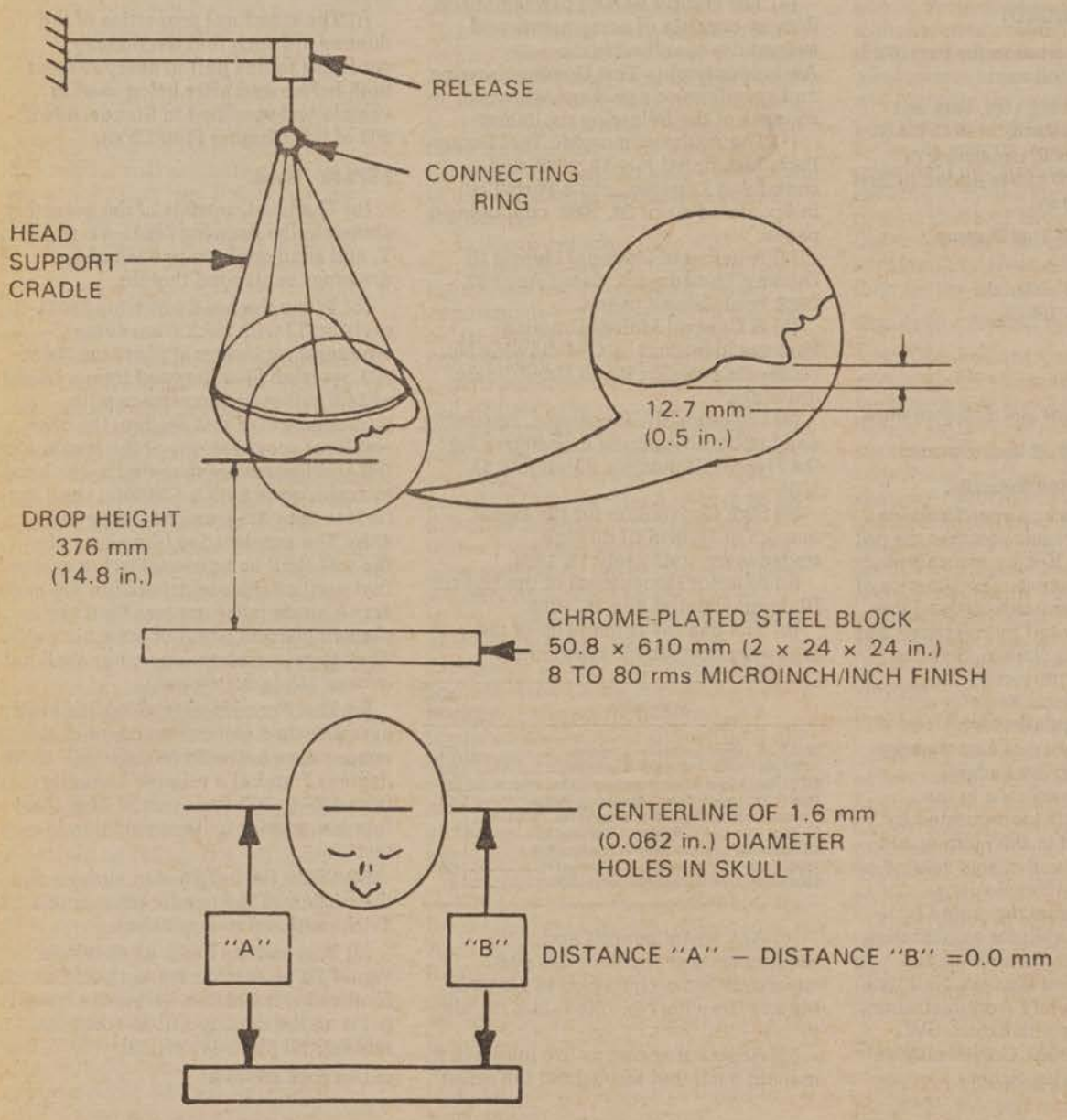
(2) Clean the head's skin surface and the surface of the impact plate with 1,1,1 Trichlorethane or equivalent.

(3) Suspend the head, as shown in Figure 19, so that the lowest point on the forehead is 0.5 inches below the lowest point on the dummy's nose when the midsagittal plane is vertical.

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FIGURE 19

TEST SET-UP SPECIFICATIONS



NOTE: TOLERANCE ON TEST SETUP DIMENSIONS ±1 mm (0.04 in.)

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(4) Drop the head from the specified height by means that ensure instant release into a rigidly supported flat horizontal steel plate, which is 2 inches thick and 2 feet square. The plate shall have a clean, dry surface and any microfinish of not less than 8 microinches (rms) and not more than 80 microinches (rms).

(5) Allow at least 3 hours between successive tests on the same head.

§ 572.33 Neck.

(a) The neck consists of the assembly shown in drawing 78051–90, revision A and conforms to each of the drawings subtended therein.

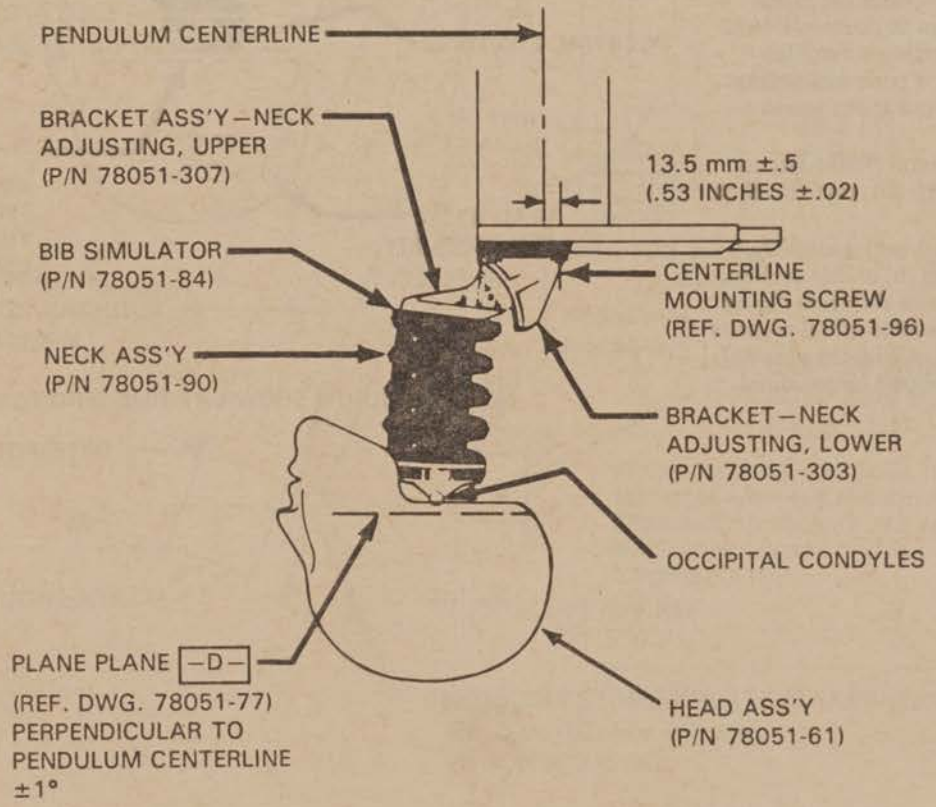
(b) When the neck and head assembly (consisting of the parts 78051–61, revision T; –84; –90, revision A; –96; –98; –303, revision E; –305; –306; –307, revision X) which has a neck transducer (drawing 83–5001–008) installed in conformance with § 572.36(d), is tested in accordance with paragraph (c) of this section, it shall have the following characteristics:

(1) *Flexion* (i) Plane D, referenced in Figure 20, shall rotate, between 64 degrees and 78 degrees, which shall occur between 57 milliseconds (ms) and 64 ms from time zero. In first rebound, the rotation of plane D shall cross 0 degree between 133 ms and 128 ms.

(ii) The moment measured by the neck transducer (drawing 83–5001–008) about the occipital condyles, referenced in Figure 20, shall be calculated by the following formula: Moment (lbs-ft) $= M_y + 0.02875 \times F_x$, where M_y is the moment measured in lbs-ft by the moment sensor of the neck transducer and F_x is the force measure measured in lbs by the x axis force sensor of the neck transducer. The moment shall have a maximum value between 65 lbs-ft and 80 lbs-ft occurring between 47 ms and 58 ms, and the positive moment shall decay for the first time to 0 lb-ft between 97 ms and 107 ms.

FIGURE 20

FLEXION—TEST SET-UP SPECIFICATIONS



NOTE: PENDULUM SHOWN AT TIME ZERO POSITION

(2) *Extension* (i) Plane D, referenced in Figure 21, shall rotate between 81 degrees and 106 degrees, which shall occur between 72 and 82 ms from time zero. In first rebound, the rotation of plane D shall cross 0 degrees between 147 and 174 ms.

(ii) The moment measured by the neck transducer (drawing 83–5001–008) about the occipital condyles, referenced in Figure 21, shall be calculated by the following formula: Moment (lbs-ft) = $M_y + 0.02875 \times F_x$, where M_y is the moment measured in lbs-ft by the moment sensor of the neck transducer and F_x is the force measure measured in lbs by the x axis force sensor of the neck transducer. The moment shall have a maximum value between –39 lbs-ft and –59 lbs-ft, which shall occur between 65 ms and 79 ms., and the negative moment shall decay for the first time to 0 lb-ft between 120 ms and 148 ms.

(3) Time zero is defined as the time of contact between the pendulum striker plate and the aluminum honeycomb material.

(c) *Test Procedure.* (1) Soak the test material in a test environment at any temperature between 69 degrees F to 72 degrees F and at a relative humidity from 10% to 70% for a period of at least four hours prior to its application in a test.

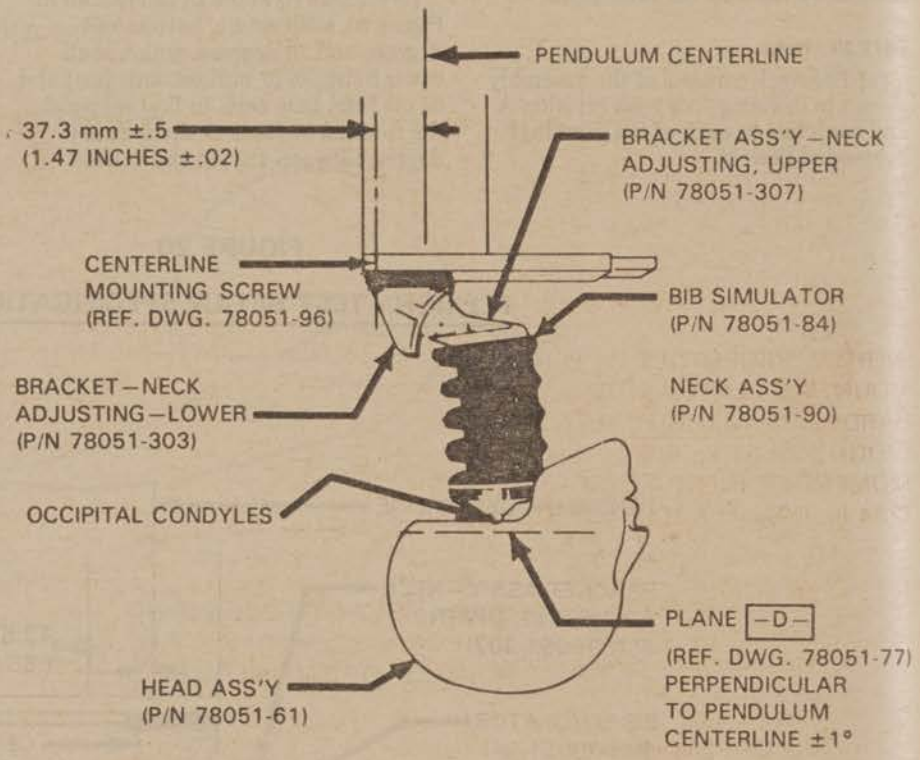
(2) Torque the jamnut (78051–64) on the neck cable (78051–301, revision E) to 1.0 lbs-ft ±.2 lbs-ft.

(3) Mount the head-neck assembly, defined in paragraph (b) of this section, on a rigid pendulum as shown in Figure 22 so that the head's midsagittal plane is vertical and coincides with the plane of motion of the pendulum's longitudinal axis.

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FIGURE 21

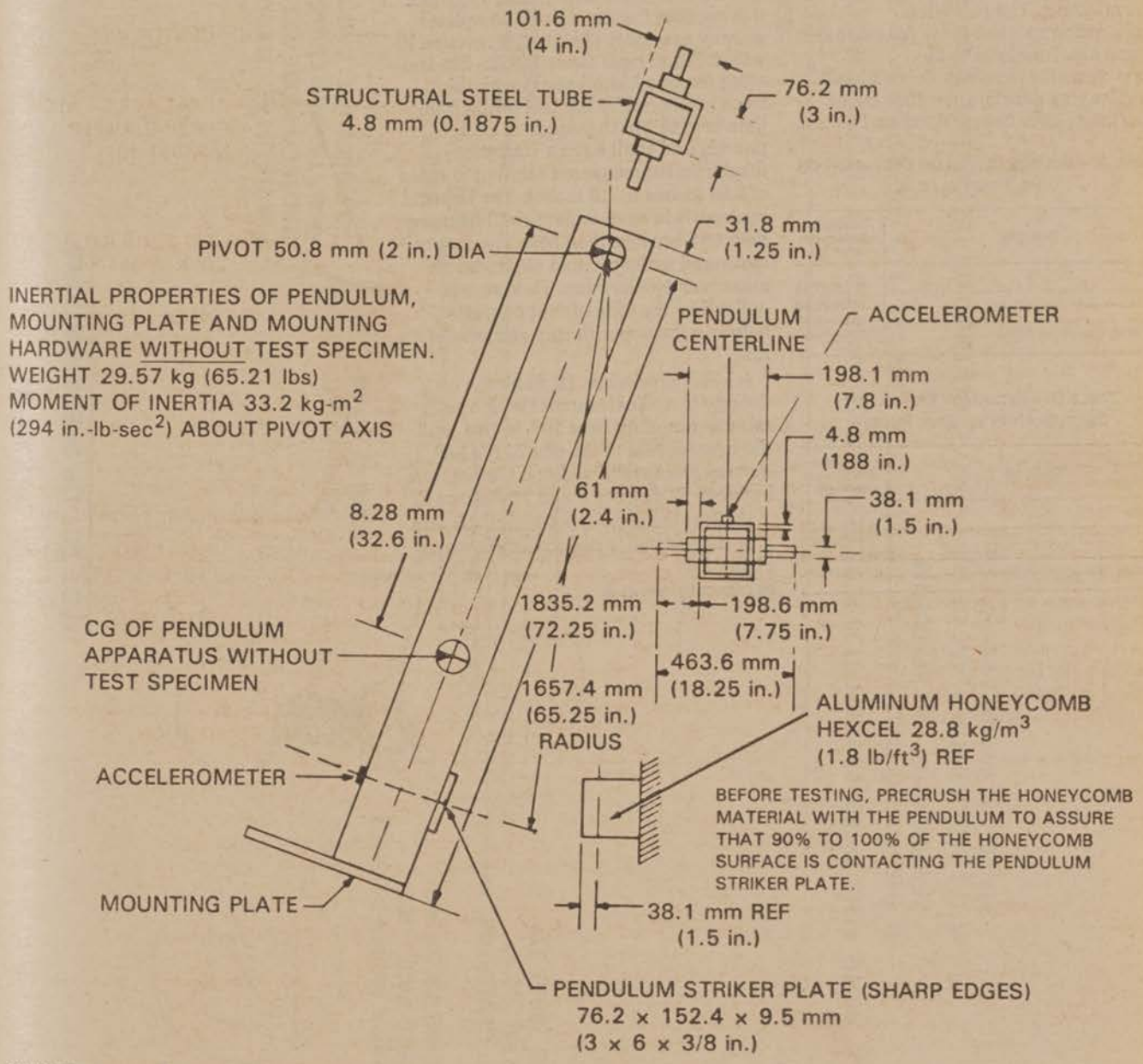
EXTENSION—TEST SET-UP SPECIFICATIONS



NOTE: PENDULUM SHOWN AT TIME ZERO POSITION

FIGURE 22

PENDULUM SPECIFICATIONS



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(4) Release the pendulum and allow it to fall freely from a height such that the tangential velocity at the pendulum accelerometer centerline at the instance of contact with the honeycomb is 23.0 ft/sec ± 0.4 ft/sec. for flexion testing and 19.9 ft/sec. ± 0.4 ft/sec. for extension testing. The pendulum deceleration vs. time pulse for flexion testing shall conform to the characteristics shown in Table A and the decaying deceleration-time curve shall first cross 5_g between 34 ms and 42 ms. The pendulum deceleration vs. time pulse for extension testing shall conform to the characteristics shown in Table B. and the decaying deceleration-time curve shall cross 5g between 38 ms and 46 ms.

TABLE A.—FLEXION PENDULUM DECELERATION VS. TIME PULSE

Time (ms)	Flexion deceleration level (g)
10	22.50–27.50
20	17.60–22.60
30	12.50–18.50
Any other time above 30 ms	29 maximum.

TABLE B.—EXTENSION PENDULUM DECELERATION VS. TIME PULSE

Time (ms)	Extension deceleration level (g)
10	17.20–21.20
20	14.00–19.00
30	11.00–16.00
Any other time above 30 ms	22 maximum.

(5) Allow the neck to flex without impact of the head or neck with any object during the test.

§ 572.34 Thorax.

(a) The thorax consists of the upper torso assembly in drawing 78051–89, revision I and shall conform to each of the drawings subtended therein.

(b) When impacted by a test probe conforming to § 572.36(a) at 22 fps ± .40 fps in accordance with paragraph (c) of this section, the thorax of a complete dummy assembly (78051–218, revision P) with left and right shoes (78051–294 and –295) removed, shall resist with the force measured by the test probe from time zero of 1162.5 pounds ± 82.5 pounds and shall have a sternum displacement measured relative to spine of 2.68 inches ± .18 inches. The internal hysteresis in each impact shall be more than 69% but less than 85%. The force measured is the product of pendulum mass and deceleration. Time zero is defined as the time of first contact between the upper thorax and pendulum face.

(c) *Test procedure.* (1) Soak the test dummy in an environment with a relative humidity from 10% to 70% until the temperature of the ribs of the test dummy have stabilized at a temperature between 69 degrees F and 72 degrees F.

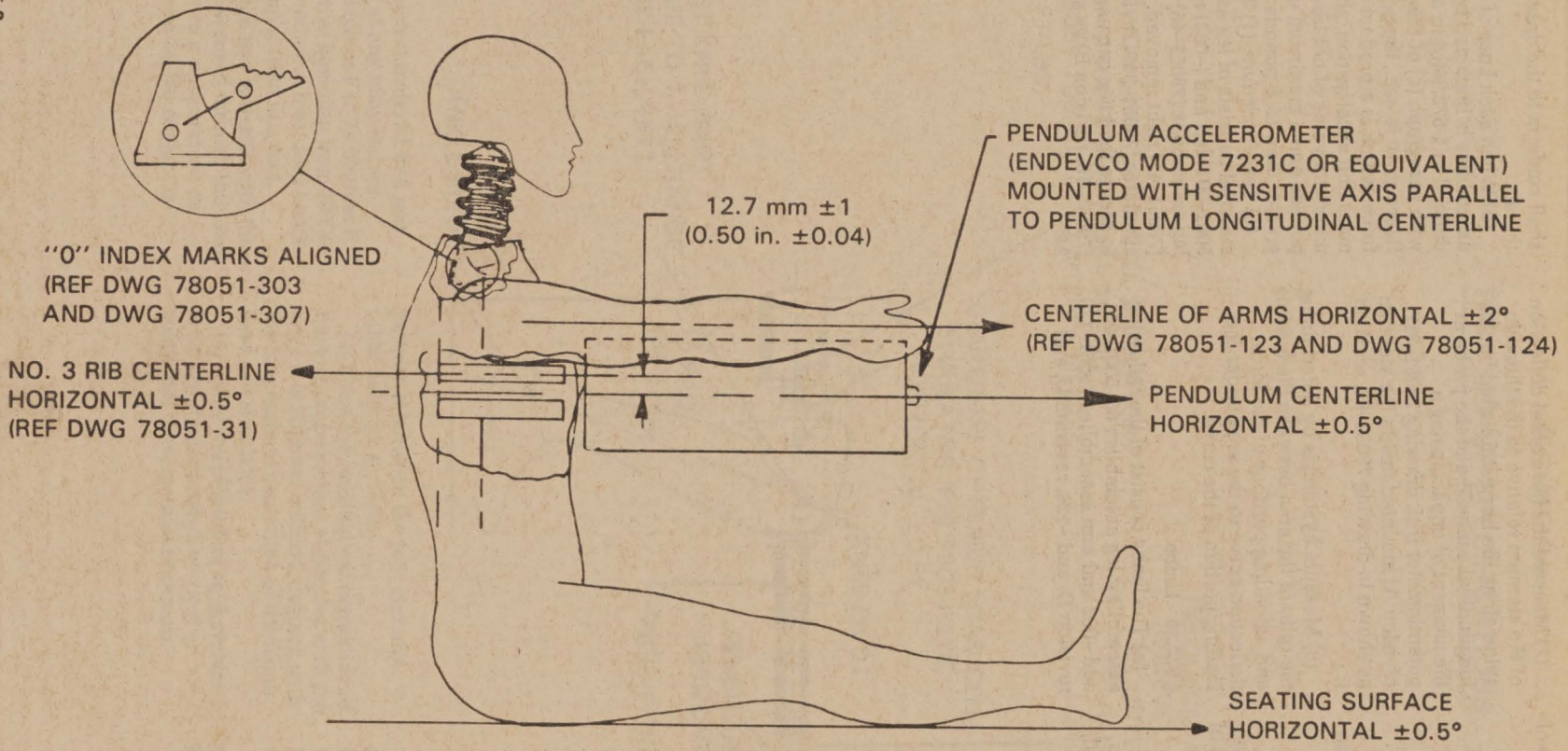
(2) Seat the dummy without back and arm supports on a surface as shown in Figure 23.

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BILLING CODE 4910-55-C

FIGURE 23

TEST SET-UP SPECIFICATIONS



NOTE: A) NO EXTERNAL SUPPORT IS REQUIRED ON THE DUMMY TO MEET SETUP SPECIFICATIONS

B) THE MIDSAGITTAL PLANE OF THE DUMMY IS VERTICAL (±1°) AND WITHIN 2° OF THE CENTERLINE OF THE PENDULUM

C) THE MIDSAGITTAL PLANE OF THE DUMMY IS CENTERED ON THE CENTERLINE OF THE PENDULUM WITHIN 3 mm (0.12 in.)

(3) Place the longitudinal centerline of the test probe so that it is .5 ± .04 in. below the horizontal centerline of the No. 3 Rib (reference drawing number 79051–64, revision A–M) as shown in Figure 23.

(4) Align the test probe specified in § 572.36(a) so that at impact its longitudinal centerline coincides within .5 degree of a horizontal line in the dummy's midsagittal plane.

(5) Impact the thorax with the test probe so that the longitudinal centerline of the test probe falls within 2 degrees of a horizontal line in the dummy midsagittal plane at the moment of impact.

(6) Guide the probe during impact so that it moves with no significant lateral, vertical, or rotational movement.

(7) Measure the horizontal deflection of the sternum relative to the thoracic spine along the line established by the longitudinal centerline of the probe at the moment of impact, using a potentiometer (ref. drawing 78051–317, revision A) mounted inside the sternum as shown in drawing 78051–89, revision I.

(8) Measure hysteresis by determining the ratio of the area between the loading and unloading portions of the force deflection curve to the area under the loading portion of the curve.

§ 572.35 Limbs.

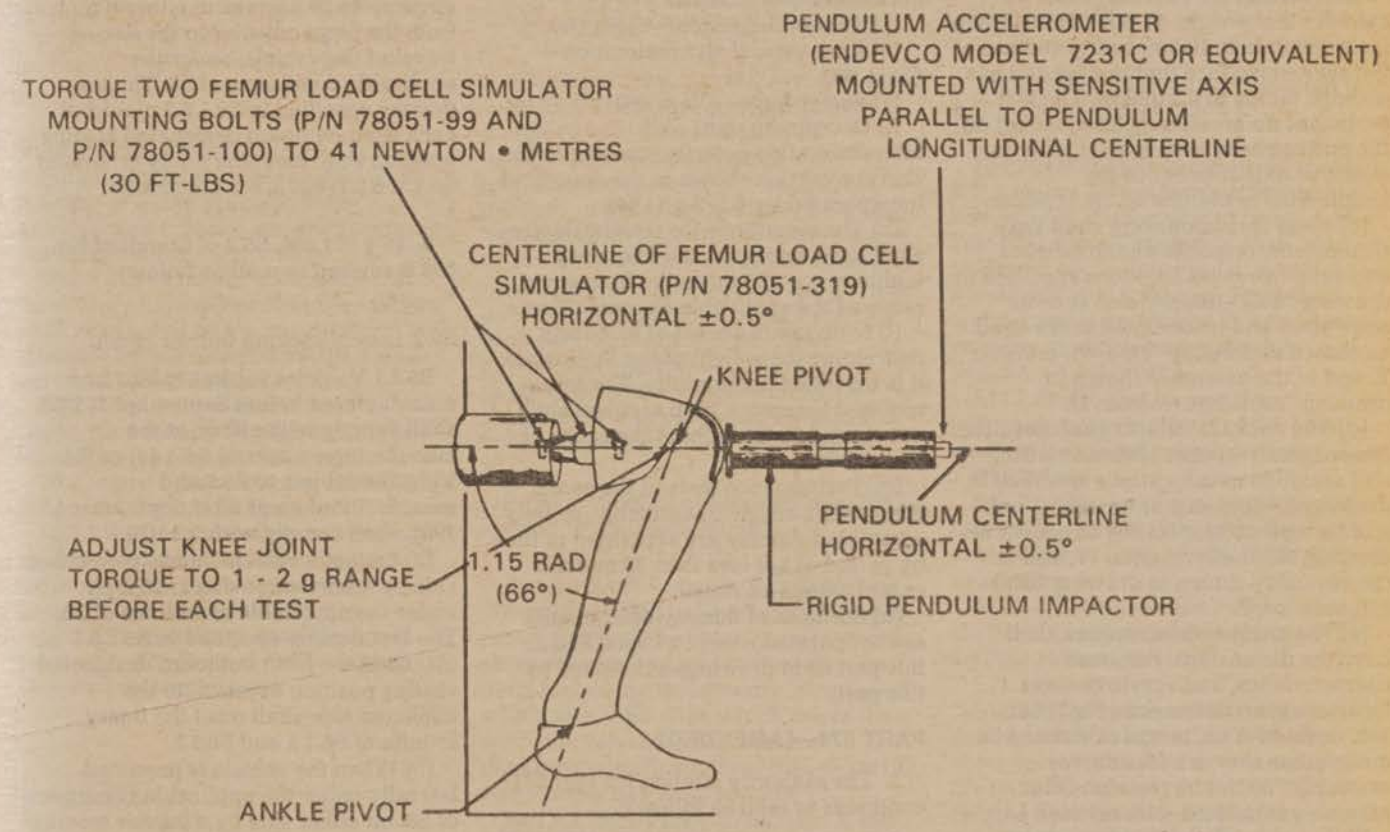
(a) The limbs consist of the following assemblies: leg assemblies 86–5001–001 and –002 and arm assemblies 78051–123, revision D, and –124, revision D, and shall conform to the drawings subtended therein.

(b) When each knee of the leg assemblies is impacted by the pendulum defined in § 572.36(b) in accordance with paragraph (c) of this section at 6.9 ft/sec ±.10 ft/sec., the peak knee impact force, which is a product of pendulum mass and acceleration, shall have a minimum value of not less than 996 pounds and a maximum value of not greater than 1566 pounds.

(c) *Test Procedure.* (1) The test material consists of leg assemblies (86–5001–001) left and (–002) right with upper leg assemblies (78051–46) left and (78051–47) right removed. The load cell simulator (78051–319, revision A) is used to secure the knee cap assemblies (79051–16, revision B) as shown in Figure 24.

FIGURE 24

TEST SET-UP SPECIFICATIONS



(2) Soak the test material in a test environment at any temperature between 66 degrees F to 78 degrees F and at a relative humidity from 10% to 70% for a period of at least four hours prior to its application in a test.

(3) Mount the test material with the leg assembly secured through the load cell simulator to a rigid surface as shown in Figure 24. No contact is permitted between the foot and any other exterior surfaces.

(4) Place the longitudinal centerline of the test probe so that at contact with the knee it is colinear within 2 degrees with the longitudinal centerline of the femur load cell simulator.

(5) Guide the pendulum so that there is no significant lateral, vertical or rotational movement at time zero.

(6) Impact the knee with the test probe so that the longitudinal centerline of the test probe at the instant of impact falls within .5 degrees of a horizontal line parallel to the femur load cell simulator at time zero.

(7) Time zero is defined as the time of contact between the test probe and the knee.

§ 572.36 Test conditions and instrumentation.

(a) The test probe used for thoracic impact tests is a 6 inch diameter cylinder that weighs 51.5 pounds including instrumentation. Its impacting end has a flat right angle face that is rigid and has an edge radius of 0.5 inches. The test probe has an accelerometer mounted on the end opposite from impact with its sensitive axis colinear to the longitudinal centerline of the cylinder.

(b) The test probe used for the knee impact tests is a 3 inch diameter cylinder that weighs 11 pounds including instrumentation. Its impacting end has a flat right angle face that is rigid and has an edge radius of 0.2 inches. The test probe has an accelerometer mounted on the end opposite from impact with its sensitive axis colinear to the longitudinal centerline of the cylinder.

(c) Head accelerometers shall have dimensions, response characteristics and sensitive mass locations specified in drawing 78051–136, revision A or its equivalent and be mounted in the head as shown in drawing 78051–61, revision T, and in the assembly shown in drawing 78051–218, revision D.

(d) The neck transducer shall have the dimensions, response characteristics, and sensitive axis locations specified in drawing 83–5001–008 or its equivalent and be mounted for testing as shown in drawing 79051–63, revision W, and in the assembly shown in drawing 78051–218, revision P.

(e) The chest accelerometers shall have the dimensions, response characteristics, and sensitive mass locations specified in drawing 78051–136, revision A or its equivalent and be mounted as shown with adaptor assembly 78051–116, revision D for assembly into 78051–218, revision L.

(f) The chest deflection transducer shall have the dimensions and response characteristics specified in drawing 78051–342, revision A or equivalent and be mounted in the chest deflection transducer assembly 87051–317, revision A for assembly into 78051–218, revision L.

(g) The thorax and knee impactor accelerometers shall have the dimensions and characteristics of Endevco Model 7231c or equivalent. Each accelerometer shall be mounted with its sensitive axis colinear with the pendulum's longitudinal centerline.

(h) The femur load cell shall have the dimensions, response characteristics, and sensitive axis locations specified in drawing 78051–265 or its equivalent and be mounted in assemblies 78051–46 and –47 for assembly into 78051–218, revision L.

(i) The outputs of acceleration and force-sensing devices installed in the dummy and in the test apparatus specified by this part are recorded in individual data channels that conform to the requirements of SAE Recommended Practice J211, JUN 1980, "Instrumentation for Impact Tests," with channel classes as follows:

(1) Head acceleration—Class 1000

(2) Neck force—Class 60

(3) Neck pendulum acceleration—Class 60

(4) Thorax and thorax pendulum acceleration—Class 180

(5) Thorax deflection—Class 180

(6) Knee pendulum acceleration—Class 600

(7) Femur force—Class 600

(j) Coordinate signs for instrumentation polarity conform to the sign convention shown in the document incorporated by § 572.31(a)(5).

(k) The mountings for sensing devices shall have no resonance frequency within range of 3 times the frequency range of the applicable channel class.

(l) Limb joints are set at lg, barely restraining the weight of the limb when it is extended horizontally. The force required to move a limb segment shall not exceed 2g throughout the range of limb motion.

(m) Performance tests of the same component, segment, assembly, or fully assembled dummy are separated in time by period of not less than 30 minutes unless otherwise noted.

(n) Surfaces of dummy components are not painted except as specified in this part or in drawings subtended by this part.

PART 571—[AMENDED]

2. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

3. Paragraph S5 of Standard No. 208 (49 CFR 571.208) is amended by revising S5.1 to read as follows:

* * * * *

S5. *Occupant crash protection requirements.*

S5.1 Vehicles subject to S5.1 and manufactured before September 1, 1991, shall comply with either, at the manufacturer's option. 5.1 (a) or (b). Vehicles subject to S5.1 and manufactured on or after September 1, 1991, shall comply with 5.1(b).

(a) Impact a vehicle traveling longitudinally forward at any speed, up to and including 30 mph, into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle under the applicable conditions of S8. The test dummy specified in S8.1.8.1 placed at each front outboard designated seating position shall meet the injury criteria of S6.1.1, 6.1.2., 6.1.3, and 6.1.4.

(b) Impact a vehicle traveling longitudinally forward at any speed, up to and including 30 mph, into a fixed collision barrier that is perpendicular to line of travel of the vehicle, or at any angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle, under the applicable conditions of S8. The test dummy specified in S8.1.8.2 placed at each front outboard designated seating position shall meet the injury criteria of S6.2.1, 6.2.2., 6.2.3, 6.2.4, and 6.2.5.

* * * * *

3. In § 571.208, S5.2 of Standard No. 208 is revised to read as follows:

* * * * *

S5.2 *Lateral moving barrier crash.*

S5.2.1 Vehicles subject to S5.2 and manufactured before September 1, 1991, shall comply with either, at the manufacturer's option, 5.2.1 (a) or (b). Vehicles subject to S5.2 and manufactured on or after September 1, 1991, shall comply with 5.2.1(b).

(a) Impact a vehicle laterally on either side by a barrier moving at 20 mph under the applicable conditions of S8. The test dummy specified in S8.1.8.1 placed at the front outboard designated seating position adjacent to the impacted side shall meet the injury criteria of S6.1.2 and S6.1.3.

(b) When the vehicle is impacted laterally under the applicable conditions of S8, on either side by a barrier moving at 20 mph, with a test device specified in S8.1.8.2, which is seated at the front outboard designated seating position adjacent to the impacted side, it shall meet the injury criteria of S6.2.2, and S6.2.3.

* * * * *

4. In § 571.208, S5.3 of Standard No. 208 is revised to read as follows:

* * * * *

S5.3 *Rollover.* Subject a vehicle to a rollover test under the applicable condition of S8 in either lateral direction at 30 mph with either, at the manufacturer's option, a test dummy specified in S8.1.8.1 or S8.1.8.2, placed in the front outboard designated seating position on the vehicle's lower side as mounted on the test platform. The test dummy shall meet the injury criteria of either S6.1.1. or S6.2.1.

5. In § 571.208 S6 of Standard No. 208 is revised to read as follows:

S6. *Injury criteria.*

S6.1 Injury criteria for the Part 572, Subpart B, 50th percentile Male Dummy.

S6.1.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

S6.1.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{t_2 - t_1}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2 - t_1)$$

shall not exceed 1,000, where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and t_1 and t_2 are any two points during the crash.

S6.1.3 The resultant acceleration at the center of gravity of the upper thorax shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S6.1.4 The compressive force transmitted axially through each upper leg shall not exceed 2250 pounds.

S6.2 *Injury Criteria for the Part 572, Subpart E, Hybrid III Dummy.*

S6.2.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

S6.2.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{t_2 - t_1}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2 - t_1)$$

shall not exceed 1,000, where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and t_1 and t_2 are any two points during the crash.

S6.2.3 The resultant acceleration calculated from the thoracic instrumentation shown in drawing 78051–218, revision L incorporated by reference in Part 572, Subpart E of this Chapter shall not exceed 60g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S6.2.4 Compression deflection of the sternum relative to spine, as determined by instrumentation shown in drawing 78051–317, revision A incorporated by reference in Part 572, Subpart E of this Chapter, shall not exceed 2 inches for loadings applied through any impact surfaces except for those systems which are gas inflated and provide distributed loading to the torso during a crash. For gas inflated systems which provide distributive loading to the torso, the thoracic deflection shall not exceed 3 inches.

S6.2.5 The force transmitted axially through each upper leg shall not exceed 2250 pounds.

* * * * *

6. In § 571.208, S8.1.8 of Standard No. 208 is revised to read as follows:

* * * * *

S8.1.8 *Anthropomorphic test dummies.*

S8.1.8.1 The anthropomorphic test dummies used for evaluation of occupant protection systems manufactured pursuant to applicable portions of paragraphs S4.1.2, 4.1.3, and S4.1.4 shall conform to the requirements of Subpart B of Part 572 of this Chapter.

S8.1.8.2 Anthropomorphic test devices used for the evaluation of occupant protection systems manufactured pursuant to applicable portions of paragraphs S4.1.2, S4.1.3, and S4.1.4 shall conform to the requirements of Subpart E of Part 572 of this Chapter.

* * * * *

7. Section S8.1.9 of Standard No. 208 is revised to read as follows:

* * * * *

S8.1.9.1 Each Part 572, Subpart B test dummy specified in S8.1.8.1 is clothed in formfitting cotton stretch garments with short sheeves and midcalf length pants. Each foot of the test dummy is equipped with a size 11EE shoe which meets the configuration size, sole, and heel thickness specifications of MIL–S 131192 and weighs 1.25 ±0.2 pounds.

S8.1.9.2 Each Part 572, Subpart E test dummy specified in S8.1.8.2 is clothed in formfitting cotton stretch garments with short sleeves and midcalf length pants specified in drawings 78051–292 and –293 incorporated by reference in Part 572, Subpart E of this Chapter, respectively or their equivalents. A size 11EE shoe specified in drawings 78051–294 (left) and 78051–295 (right) or their equivalents is placed on each foot of the test dummy

* * * * *

8. In § 571.208, S8.1.13 of Standard No. 208 is revised to read as follows:

* * * * *

S8.1.13 *Temperature of the test dummy.*

S8.1.13.1 The stabilized temperature of the test dummy specified by S8.1.8.1 is at any level between 66 degrees F and 78 degrees F.

S8.1.13.2 The stabilized temperature of the test dummy specified by S8.1.8.2 is at any level between 69 degrees F and 72 degrees F.

* * * * *

9. A new fourth sentence is added to section S8.1.3 to read as follows:

* * * * *

S8.1.3 * * * Adjustable lumbar supports are positioned so that the lumbar support is in its lowest adjustment position.

* * * * *

10. A new paragraph S11 is added to § 571.208 to read as follows:

* * * * *

S11 *Positioning procedure for the Part 572 Subpart E Test Dummy.* Position a test dummy, conforming to Subpart E of Part 572 of this Chapter, in each front outboard seating position of a vehicle as specified in S11.1 through S11.6. Each test dummy is restrained in accordance with the applicable requirements of S4.1.2.1, 4.1.2.2 or S4.6.

S11.1 *Head.* The transverse instrumentation platform of the head shall be horizontal within ½ degree.

S11.2 *Arms.*

S11.2.1 The driver's upper arms shall be adjacent to the torso with the centerlines as close to a vertical plane as possible.

S11.2.2 The passenger's upper arms shall be in contact with the seat back and the sides of torso.

S11.3 *Hands.*

S11.3.1 The palms of the driver test dummy shall be in contact with the outer part of the steering wheel rim at the rim's horizontal centerline. The thumbs shall be over the steering wheel rim and attached with adhesive tape to provide a breakaway force of between 2 to 5 pounds.

S11.3.2 The palms of the passenger test dummy shall be in contact with outside of thigh. The little finger shall be in contact with the seat cushion.

S11.4 *Torso*

S11.4.1 In vehicles equipped with bench seats, the upper torso of the driver and passenger test dummies shall rest against the seat back. The midsagittal plane of the driver dummy shall be vertical and parallel to the vehicle's longitudinal centerline, and pass through the center of the steering wheel rim. The midsagittal plane of the passenger dummy shall be vertical and parallel to the vehicle's longitudinal centerline and the same distance from

the vehicle's longitudinal centerline as the midsagittal plane of the driver dummy.

S11.4.2 In vehicles equipped with bucket seats, the upper torso of the driver and passenger test dummies shall rest against the seat back. The midsagittal plane of the driver and the passenger dummy shall be vertical and shall coincide with the longitudinal centerline of the bucket seat.

S11.4.3 *Lower Torso.*

S11.4.3.1 *H-point.* The H-point of the driver and passenger test dummies shall coincide within ½ inch in the vertical dimension and ½ inch in the horizontal dimension of a point ¼ inch below the position of the H-point determined by using the equipment and procedures specified in SAE J826 (Apr 80) except that the length of the lower leg and thigh segments of the H-point machine shall be adjusted to 16.3 and 15.8 inches, respectively, instead of the 50th percentile values specified in Table 1 of SAE J826.

S11.4.3.2 *Pelvic angle.* As determined using the pelvic angle gage (GM drawing 78051–532 incorporated by reference in Part 572, Subpart E of this chapter) which is inserted into the H-point gaging hole of the dummy, the angle measured from the horizontal on the 3 inch flat surface of the gage shall be 22½ degrees plus or minus 2½ degrees.

S11.5 *Legs.* The upper legs of the driver and passenger test dummies shall rest against the seat cushion to the extent permitted by placement of the feet. The initial distance between the outboard knee clevis flange surfaces shall be 10.6 inches. To the extent practicable, the left leg of the driver dummy and both legs of the passenger dummy shall be in vertical longitudinal planes. Final adjustment to accommodate placement of feet in accordance with S11.6 for various passenger compartment configurations is permitted.

S11.6 *Feet.*

S11.6.1 The right foot of the driver test dummy shall rest on the undepressed accelerator with the rearmost point of the heel on the floor surface in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, it shall be positioned perpendicular to the tibia and placed as far forward as possible in the direction of the centerline of the pedal with the rearmost point of the heel resting on the floor surface. The heel of the left foot shall be placed as far forward as possible and shall rest on the floor surface. The left foot shall be positioned as flat as possible on the floor surface. The longitudinal centerline of the left foot shall be placed as parallel as possible to the longitudinal centerline of the vehicle.

S11.6.2 The heels of both feet of the passenger test dummy shall be placed as far forward as possible and shall rest on the floor surface. Both feet shall be positioned as flat as possible on the floor surface. The longitudinal centerline of the feet shall be placed as parallel as possible to the longitudinal centerline of the vehicle.

S11.7 *Test dummy positioning for latchplate access.* The reach envelopes specified in S7.4.4 are obtained by positioning a test dummy in the driver's seat or passenger's seat in its forwardmost adjustment position. Attach the lines for the inboard and outboard arms to the test dummy as described in Figure 3 of this standard. Extend each line backward and outboard to generate the compliance arcs of the outboard reach envelope of the test dummy's arms.

S11.8 *Test dummy positioning for belt contact force.* To determine compliance with S7.4.3 of this standard, position the test dummy in the vehicle in accordance with the requirements specified in S11.1 through S11.6 and under the conditions of S8.1.2. and S8.1.3. Pull the belt webbing three inches from the test dummy's chest and release until the webbing is within 1 inch of the test dummy's chest and measure the belt contact force.

S11.9 *Manual belt adjustment for dynamic testing.* With the test dummy at its designated seating position as specified by the appropriate requirements of S8.1.2, S8.1.3 and S11.1 through S11.6, place the Type 2 manual belt around the test dummy and fasten the latch. Remove all slack from the lap belt. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this operation four times. Apply a 2 to 4 pound tension load to the lap belt. If the belt system is equipped with a tension-relieving device introduce the maximum amount of slack into the upper torso belt that is recommended by the manufacturer for normal use in the owner's manual for the vehicle. If the belt system is not equipped with a tension-relieving device, allow the excess webbing in the shoulder belt to be retracted by the retractive force of the retractor.

Issued on July 21, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86–16637 Filed 7–22–86; 4:49 pm]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks For Selecting Open Season Dates in Alaska, Puerto Rico and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final frameworks (i.e., the outside limits for dates and times when shooting may begin and end, and the number of birds that may be taken and possessed) from which wildlife conservation agency officials in Alaska, Puerto Rico, and the Virgin Islands may select season dates for hunting certain migratory birds during the 1986–87 season. Selected seasons dates will then be transmitted to the U.S. Fish and Wildlife Service (hereinafter the Service) for publication in the **Federal Register** as amendments to §§ 20.101 and 20.102 of 50 CFR 20.

DATES: Effective on July 25, 1986. Season selections due from Alaska, Puerto Rico, and the Virgin Islands by July 31, 1986.

ADDRESS: Season selections from Alaska, Puerto Rico, and the Virgin Islands are to be mailed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. Public documents may be inspected in the Service's Office of Migratory Bird Management, Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. (202 254–3207).

SUPPLEMENTARY INFORMATION: On March 21, 1986, the Service published for public comment in the **Federal Register** (51 FR 9854) a proposal to amend 50 CFR 20, with a comment period ending June 19, 1986. That document dealt with the establishment of seasons, limits, and shooting hours for migratory game birds under §§ 20.101 through 20.107, 20.109 and 20.110 of Subpart K of 50 CFR 20, including frameworks for Alaska, Puerto Rico, and the Virgin Islands. A supplemental proposed rulemaking appeared in the **Federal Register** on June 6, 1986 (51 FR 20677) and another on July 3, 1986 (51 FR 24415). The July 3, 1986,

document contained no information relevant to Alaska, Puerto Rico, and the Virgin Islands. This final rulemaking is the fourth in a series of proposed and final rulemaking documents for migratory bird hunting regulations and deals specifically with final frameworks for the 1986–87 season from which wildlife conservation agency officials in Alaska, Puerto Rico, and the Virgin Islands may select season dates for hunting certain migratory game birds. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Public Hearing

A public hearing was held in Washington, DC, on June 19, 1986, as announced in the **Federal Register** dated March 21, 1986 (51 FR 9854). The public was invited to participate in the hearing and/or submit written statements.

Presentations at Public Hearing

Dr. James C. Bartonek, Pacific Flyway Representative, discussed the status of certain Alaska-nesting geese that have undergone recent declines warranting special management considerations.

Cackling Canada geese, for which there have been no open seasons during either 1984 or 1985, had a fall index of 32,100 geese—24 percent above that of 1984. While there is evidence of continuing illegal harvests by both sport and subsistence hunters, estimates suggest that these harvests are becoming smaller.

The fall survey index for the Pacific Flyway population of white-fronted geese was down 7 percent from 1984. Should the 1986 fall survey find fewer than 91,000 birds a closure on hunting likely would be sought.

Pacific brant showed a decrease in those birds wintering in Mexico while those wintering in Washington, Oregon, and California showed an increase. The overall index was about 129,000 brant, down 11 percent from January of 1985.

Emperor geese have continued their downward trend, with the 1986 spring index being only 42,000 birds. A ban on all hunting of emperor geese is being effected.

Preliminary reports from the Yukon-Kuskokwim Delta indicate that predation on all four of the previously mentioned geese has been severe. Arctic foxes are the principal predators, and experimental efforts are underway to evaluate the effectiveness of controlling foxes in certain high-density nesting areas.

The January 1986 index of dusky Canada geese was 63 percent above that of 1985; however, there is concern about the reliability of the index. The harvest strategy in 1985 was directed at improving methods of redirecting harvests away from the dusky Canada goose toward more plentiful races of Canada geese. Surveys early in the 1986 nesting season found 54 percent of dusky nests to have been destroyed by predators—primarily brown bears and coyotes.

Comments Received at Public Hearing

Ms. Jennifer Lewis, representing the Humane Society of the United States (HSUS) and the World Society for the Protection of Animals (WSPA), expressed concern that more evaluations are needed on Puerto Rican waterfowl and columbid species, particularly studies on breeding chronology and productivity; that resident waterfowl and the Zenaida dove breed during the hunting season in Puerto Rico and that hunting interferes with normal breeding and rearing of young; that hunting and habitat destruction may be the major cause for the decline of resident waterfowl species in Puerto Rico; and that split hunting seasons should not be allowed.

Response. The Service continues to work with the Puerto Rico Department of Natural Resources to develop improved guidelines to manage the harvest of migrant game species while protecting certain resident species. A Memorandum of Agreement has been cooperatively developed and signed by the Service and Puerto Rico which specifically details the need for more information on breeding chronology, productivity, and harvest characteristics. Results of these studies will identify the degree to which protected and breeding waterfowl are affected by hunting, including an evaluation of the split season.

Dr. Albert M. Manville II, representing Defenders of Wildlife, recommended that the proposed frameworks for Alaska reflect the reduced statewide bag limit on pintails that was adopted by the Alaska Game Board in January 1986.

Response. In 1985, the State of Alaska established by emergency order restrictive limits on pintails within broader Federal frameworks. This restriction was identified in the August 30, 1985, **Federal Register** (50 FR 35360). The restrictive action by Alaska last year was made in response to reduced numbers of pintails and as part of the overall effort to reduce harvest of this species. The Service prefers not to restrict Alaska's frameworks for pintail limits because information on the status of these and other ducks is not yet available. Since Alaska has consistently taken more restrictive measures through emergency actions when warranted, the Service proposes to wait until current information on ducks and geese is available and then insure necessary action is taken.

Written Comments Received

Interested persons were given until June 19, 1986, to comment on the March 21 proposed rulemaking. They were also invited to participate in the June 19 public hearing. Since responding to comments in the June 6, 1986, **Federal Register** (51 FR 20677), two additional comments were received on the proposed regulations frameworks for Alaska, Puerto Rico, and the Virgin Islands. They are summarized below and numbered in the order used in the March 21, 1986, **Federal Register**.

25. Migratory bird hunting seasons in Alaska: (a) By letter dated June 19, 1986, the Wildlife Management Institute recommended that goose hunting regulations for Alaska provide for the rapid restoration of cackling Canada goose, dusky Canada goose, emperor goose, Pacific white-fronted goose, and Pacific brant populations, and that the subsistence take of these geese and their eggs on the breeding grounds be reduced.

Response. The Service shares the concern for the population of Alaska-nesting geese expressed by the Wildlife Management Institute. The regulations frameworks for goose hunting seasons in Alaska presented in this final rule are designed to achieve the rapid restoration of the geese as recommended by the Institute.

Regarding subsistence take of Alaska-nesting geese, the Service gave notice in the May 19, 1986, **Federal Register** (51 FR 18349) of its intent to propose regulations to govern the subsistence harvest of migratory birds in Alaska. The regulations would become effective prior to the commencement of the spring 1987 migratory bird harvest. The Service noted that it was relying upon renewal of the Yukon-Kuskokwim Delta Goose Management Plan for the cooperative regulation of subsistence harvest in 1986.

(b) By letter dated June 18, 1986, Kawerak, Incorporated of Nome, Alaska proposed an experimental tundra swan season for Unit 22 of Alaska—the Seward Peninsula area. The proposed season would open September 1 and the bag and possession limit would be 2 swans.

Response. Prior to Service action on the tundra swan proposal, it first needs to be reviewed and endorsed by the

State of Alaska and then by the Pacific Flyway Council.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act." and ". . . by taking such action necessary to insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered and threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

The Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 23, 1986, the Office of Endangered Species gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destructive or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Examples of such consideration include closures of designated areas in Puerto Rico for the Plain pigeon (*Columba inornata wetmorei*) and the Puerto Rican parrot (*Amazona vittata*), and in Alaska for the Aleutian Canada goose (*Branta canadensis leucopareia*).

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 21, 1986 (at 51 FR 9859), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Memorandum of Law

In the **Federal Register** dated March 21, 1986, (at 51 FR 9860), the Service stated that it planned to publish its Memorandum of Law for the 1986–87 migratory bird hunting regulations with its first final rulemaking.

Memorandum of Law. Section 4 of Executive Order 12291 requires that certain determinations be made before any final major rule may be approved. Section 4(a) specifies that the regulation must be clearly within the authority of law and consistent with congressional intent, and that a memorandum of law be provided to support that determination. Also, the agency must state that the factual conclusions upon which the law is based have substantial support in the agency record and that full attention has been given to public comments in general, and to comments of persons directly affected by the rule in particular.

The development of the annual migratory bird hunting regulations is provided for under Section 3 of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701–711). Such regulations have been promulgated annually since 1918. They appear in 50 CFR Part 20, Subpart K. Congressional support for the development of these rules and ancillary activities involved in their development are reflected in the U.S. Fish and Wildlife Service's budget. Among these activities are biological surveys, hunter activity and harvest surveys, research investigations, law enforcement, and administrative costs associated with the development and publication of the proposed and final rules. Many other Service activities, such as the acquisition and management of habitats for migratory birds, indirectly assist in maintaining the migratory bird resource at levels which allow reasonable sport hunting harvest.

In developing its annual hunting rules for 1986–87, the Service has published three proposed rules for public comment and conducted one public hearing to facilitate public input into the rulemaking process. Five additional proposed and final rulemakings, and another public hearing, are included in the remaining schedule for establishing the annual hunting regulations for 1986–87. Numerous public comments summarized and responded to in **Federal Register** listed in the preamble of this document describe the Service's consideration of the impacts of its proposed rules on the public. Many of these comments originated from affected State conservation agencies, while others were submitted by the affected public. In general, the comments strongly supported the Service's initial or supplementary regulatory proposals. Comments which do not support proposed Service action have been adequately addressed. Additional public comments are invited and will be addressed in subsequent **Federal Register** documents. The complete administrative record, including copies of public comments, is available for inspection at the Office of Migratory Bird Management.

Consequently, the Department has determined that it has fulfilled requirements of Section 4 of Executive Order 12291 and the Migratory Bird Treaty Act in developing the 1986–87 migratory bird hunting regulations which are adequately supported by the Service's records.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed rulemaking was published March 21, 1986, the Service established what it believed was the longest period possible for public comment. In doing this, the Service recognized that at the period's close, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the governments of Alaska, Puerto Rico, and the Virgin Islands would have insufficient time to select their season dates, shooting hours, and limits; to

communicate those selections to the Service; and finally establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701–708h), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and special closures, from which officials of the Alaska Department of Fish and Game, Puerto Rico Department of Natural Resources, and the Virgin Islands Department of Conservation and Cultural Affairs may select open season dates. Upon receipt of season selections from Alaska, Puerto Rico and Virgin Islands officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR 20.101 and 20.102 to reflect seasons, limits, and shooting hours for these areas for the 1986–87 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C 553(d)(3) of the Administrative Procedure Act and these frameworks will, therefore, take effect immediately upon publication.

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1986–87 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739, as amended, 54 Stat. 1103–04).

Dated: July 18, 1986.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1986–1987

Outside Dates: Between September 1, 1986, and January 26, 1987, Alaska may select seasons on waterfowl, snipe and cranes, subject to the following limitations:

Shooting hours: One-half hour before sunrise to sunset daily.

Hunting Seasons

Ducks, geese and brant—107 consecutive days in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. *Exceptions:* The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State there is no open hunting season for Aleutian Canada geese, cackling Canada geese and emperor geese.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and Common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 4 and a possession limit of 8.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1986–1987

Shooting hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1986, and January 15, 1987, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) all lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture on 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to KM 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rico parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Areas—consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Ducks, Coots, Moorhens, Gallinules and Snipe

Outside Dates: Between November 5, 1986, and February 28, 1987, Puerto Rico may select hunting seasons as follows.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag and Possession Limits

Ducks—Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Common moorhens—Not to exceed 6 daily and 12 in possession; the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Coots—There is no open season on coots, i.e., common coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*).

Closed Areas: No open season for ducks, common moorhens, and common snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in the Virgin Islands, 1986–87

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1986, and January 15, 1987, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds:

Zenaida dove (*Zenaida aurita*)—mountain dove

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected)

Common Ground dove (*Columba passerina*)—stone dove, tobacco dove, rola, tortolita (protected)

Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

Ducks

Outside Dates: Between December 1, 1986, and January 31, 1987, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (*tree*) duck (*Dendrocygna arborea*); fulvous whistling (*tree*) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

[FR Doc. 86–16796 Filed 7–24–86; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 51, No. 143
Friday, July 25, 1986

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 HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; When You May Not Be Entitled to an Underpayment Due a Deceased Beneficiary

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Social Security Administration proposes to amend its regulations in order to prohibit payment of an underpayment due a deceased beneficiary to any person who intentionally and feloniously killed that beneficiary. The proposed change would be consistent with the regulation now in place which prevents a person from receiving any survivor's benefits or payments on the earnings records of any person if he or she feloniously killed the worker on whose earnings record such benefits would be payable.

DATE: Your comments will be considered if we receive them no later than September 23, 1986.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the person shown below.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7459.

SUPPLEMENTAL INFORMATION:

Background

Section 404.305(b) of the regulations, 20 CFR 404.305(b), states the following:

(b) *Insured's death caused by an intentional act.*
You may not become entitled to or continue to receive any survivor's benefits or payments on the earnings record of any person if you were convicted of a felony or an act in the nature of a felony of intentionally causing that person's death . . .

The regulation thus prohibits the entitlement or continued entitlement of an individual to survivor's benefits or the lump-sum death payment on the earnings record of a worker whom that individual intentionally killed.

Section 404.305(b) does not, however, prohibit the payment of an underpayment due a deceased beneficiary to a person who intentionally caused the underpaid deceased beneficiary's death.

We believe that expanding § 404.305(b) to prohibit an individual from receiving any underpayment due a beneficiary whom the individual killed, would be consistent with the well-established principle that an individual should not profit directly from intentionally causing another person's death.

Proposed Change

We propose to amend § 404.305(b) to prohibt the payment of an underpayment due a deceased beneficiary to any individual who intentionally and feloniously killed that beneficiary.

Regulatory Procedures

Executive Order 12291—The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—These proposed regulations impose no reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.803, Social Security-Retirement Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, survivors, and disability insurance.

Dated: May 16, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: July 9, 1986.

Otis R. Bowen, M.D.,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Subpart D of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart D continues to read as follows:

Authority: Secs. 202, 205, 216, 223, 225, 228, 1102 of the Social Security Act, as amended, 49 Stat. 623, 53 Stat. 1368, 64 Stat. 492, 70 Stat. 815, 94 Stat. 449, 80 Stat. 67, 49 Stat. 647; Sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 423, 425, 428, and 1302; and 5 U.S.C. Appendix.

2. In § 404.305 paragraph (b) is revised to read as follows:

§ 404.305 When you may not be entitled to benefits.

* * * * *

(b) *Person's death caused by an intentional act.* You may not become entitled to or continue to receive any survivor's benefits or payments on the earnings record of any person, or receive any underpayment due a beneficiary, if you were convicted of a felony or an act in the nature of a felony of intentionally causing that person's or beneficiary's death. If you were subject to the juvenile justice system, you may not become entitled to or continue to receive survivor's benefits or payments on the earnings record of any person, or receive any underpayment due a beneficiary, if you were found by a court of competent jurisdiction to have intentionally caused that person's or beneficiary's death by committing an act which, if committed by an adult, would

have been considered a felony or an act in the nature of a felony.

[FR Doc. 86-16786 Filed 7-24-86; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 882

[Docket No. 83N-0192]

Medical Devices; Invitation for Offers To Submit or To Develop a Performance Standard for Central Nervous System Fluid Shunt and Components; Reopening of Time for Submission of Offers

AGENCY: Food and Drug Administration.

ACTION: Notice of inquiry; reopening of time for offers.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 90 days the time within which interested persons may submit written offers in response to a notice inviting interested persons, including any Federal agency, to submit any existing standard as a proposed performance standard for the central nervous system fluid shunt and components, or to submit an offer to develop such a proposed standard. If FDA does not receive any response to this notice, or receives a response but does not accept any existing standard or offer to develop a standard, the agency will proceed to develop a performance standard or take other appropriate action to facilitate the development of a performance standard for the device.

DATE: Existing standards or offers shall be submitted on or before October 23, 1986.

ADDRESS: Existing standards or offers shall be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles E. MacNeill, Center for Devices and Radiological Health (HFZ-83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: FDA published the notice of inquiry in the **Federal Register** of February 26, 1986 (51 FR 6862), and gave 60 days for interested persons to submit to the agency written offers to submit an existing standard or to develop a proposed performance standard for the central nervous system fluid shunt and components. FDA has received a request to extend this 60-day period, and FDA has determined that it is in the public interest to grant an extension of the period of time for interested persons to submit a performance standard or an offer to develop a standard for the Central Nervous System Fluid Shunt and Components. Accordingly, FDA is reopening the period of time for submission of offers for an additional 90 days to allow the requester or any other interested person time to develop a proposed performance standard.

Interested persons may, on or before October 23, 1986, submit to the Dockets Management Branch (address above) written offers regarding the notice of inquiry. Two copies of any offer are to be submitted. Offers are to be identified with the docket number found in the heading of this document.

Dated: July 17, 1986.

James W. Swanson,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-16719 Filed 7-24-86; 8:45 am]

BILLING CODE 4160-01-M

POSTAL SERVICE

39 CFR Part 111

Revocation of Second-Class Mailing Privileges; Extension of Time for Comment

AGENCY: Postal Service.

ACTION: Proposed rule; extension of time.

SUMMARY: On June 2, 1986, the Postal Service published in the **Federal Register** (51 FR 19758) a proposal to amend the Domestic Mail Manual to clarify that failure to pay an assessed postage deficiency is grounds for revocation of second-class mailing privileges. The Postal Service requested comments on the proposed change on or before July 2, 1986.

Toward the end of the comment period the General Counsel of the National Newspaper Association requested a one month extension of the comment period to enable the Association members to study the matter more fully and analyze certain collateral issues raised by the proposal.

In view of the importance of this proposal, the Postal Service wants to make sure that all parties will have a greater opportunity to submit comments on it. Accordingly, the Postal Service is extending the comment period beyond the time requested to August 15, 1986.

DATE: Comments on the proposal must be received on or before August 15, 1986.

ADDRESSES: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, Rates and Classification Department, U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260-5360. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young, (202) 268-5321.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-16764 Filed 7-24-86; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 442

[HSQ-127-P]

Medicaid Programs; Correction and Reduction Plans for Intermediate Care Facilities for the Mentally Retarded

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would provide States additional options under which an intermediate care facility for the mentally retarded (ICF/MR) found to have substantial deficiencies that do not pose an immediate threat to the clients' health and safety may remedy those deficiencies. The regulations would provide the State Medicaid agency with options to submit written plans either to correct the necessary staff and physical plant deficiencies, and all other deficiencies, within 6 months of the approval date of the plan, or to reduce permanently the number of beds in certified units within 36 months of the approval date of the plan.

These regulations are necessary to implement section 9516 of the Consolidated Budget Reconciliation Act of 1985. The purpose of the correction plan provision is to promote correction of deficiencies without having to exclude ICFs/MR from the Medicaid program. The reduction plan provision is intended to move Medicaid clients out of deficient ICFs/MR into licensed and/or certified (as applicable) community settings while maintaining the clients' quality of life and retaining their Medicaid eligibility.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below,

and must be received by 5:00 p.m. on August 25, 1986.

ADDRESS: Mail comments in writing to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–127–P, P.O. Box 26676, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to: Fay Iudicello, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, D.C. 20503.

In commenting, please refer to file code HSQ–127–P. If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C., or

Rom 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Mary Pratt, (301) 597–5109.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1905(d) of the Social Security Act (the Act) permits Medicaid coverage for services provided by intermediate care facilities for the mentally retarded (ICFs/MR). The primary purpose of an ICF/MR is to provide health or rehabilitative services for mentally retarded individuals.

ICFs/MR participate in the Medicaid program under provider agreements with State Medicaid agencies. In order to enter into a provider agreement, an ICF/MR must first be certified by a State survey agency as complying with standards set forth in 42 CFR Part 442, Subpart G.

Facilities are surveyed periodically by State survey agencies to ascertain their continued compliance with these requirements. Section 1910(c) of the Act authorizes the Secretary to conduct validation (direct Federal) surveys to determine the correctness of Medicaid certification actions taken by the designated State survey agency. In addition, if the Secretary finds that an ICF/MR substantially fails to meet the requirements of participation in the Medicaid program, the Secretary may terminate the ICF/MR's participation in the Medicaid program.

Section 1910(c)(2) of the Act sets forth the appeals procedures available when HCFA terminates a facility's participation in the program. Under that provision, ICFs/MR have a right to a full evidentiary hearing before the effective date of termination of the provider agreement unless the Secretary makes a written determination that the facility's deficiencies pose an immediate and serious threat to the recipients.

II. Current Alternative to Termination From Medicaid

Current Medicaid regulations permit State survey agencies to provide ICFs/MR found to have deficiencies that do not pose immediate jeopardy to clients' health and safety with an alternative to terminations. Sections 442.105 through 442.111 specify the conditions under which a facility found by a State survey agency to have deficiencies that do not jeopardize clients' health and safety may continue to be certified under Medicaid for a period up to 12 months while the facility corrects the deficiencies.

III. Provisions of New Section 1919 of the Act

A. Correction and Reduction Plans: General Provisions

The Consolidated Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99–272, was enacted on April 7, 1986. Section 9516 of Pub. L. 99–272 amended title XIX of the Act by adding section 1919. Section 1919 of the Act provides States additional options under which ICFs/MR that are found by the Secretary to have substantial deficiencies that do not pose an immediate threat to clients' health and safety may remedy those deficiencies. The statute provides the State Medicaid agency with options to submit written plans to the Secretary either to make all necessary corrections, including staff and physical plan corrections, within 6 months of the approval date of the plan, or to reduce permanently the number of beds in certified units within 36 months of the approval date of the plan.

The provisions under section 1919 of the Act apply only to correction and reduction plans approved by the Secretary within 3 years after the effective date of final regulations.

The statutue also requires that the Secretary report to Congress on the implementation and results of the correction and reduction plans no later than 6 months before expiration of the Secretary's 3-year approval authority.

B. Correction Plans: Specific Requirements

The statute requires that if a State chooses to submit a plan of correction, the plan must include—

- An explanation of the extent to which the ICF/MR currently complies with the standards for ICFs/MR in 42 CFR Part 442, Subpart G, including all deficiencies identified during the validation (direct Federal) survey, and
- A timetable for completing the necessary steps to correct all staff and physical plant deficiencies within 6 months.

If, at the conclusion of the 6-month period specified in the plan of correction, the Secretary determines that the State has substantially failed to correct the deficiencies identified, the statute authorizes the Secretary to terminate the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act. The Conference Report (H.R. Rep. No. 453, 99th Cong., 1st Sess. 554 (1985)) indicates that Congress expects the Secretary to take prompt action to terminate an ICF/MR if the State fails to make the necessary corrections within the 6-month period.

C. Reduction Plans: Specific Requirements

1. Conditions of Approval: Agency Requirements

As a condition of approval of a reduction plan, a State must provide for a hearing to be held at the affected ICF/MR at least 35 days before submitting a reduction plan to the Secretary. Reasonable notice of the hearing must be given to the staff, clients and their families, and the general public. The purpose of the hearing is to facilitate discussion of a State's proposed reduction plan by those persons most directly affected.

The State must also demonstrate to the Secretary that it has successfully provided home and community services similar to the services proposed to be provided under the reduction plan for similar Medicaid-eligible individuals. The purpose of this provision is to assure that the State, from direct experience, has developed the technical and administrative capacity to implement a reduction plan without harming the affected clients. Congress expects that, at a minimum, the Secretary will review carefully the experience of the mentally retarded and developmentally disabled under the State's relevant home and community based services waivers, if any. (Conference Report (page 556).)

In addition, the State must provide assurances to the Secretary that the reduction plan will be completed by fulfilling the content requirements of the plan.

2. Contents

The statute requires a reduction plan to include the following:

• Identification of the number of clients and their service needs on a client-by-client basis for home or community services, and a timetable for providing these services, in 6-month intervals, within the 36-month period beginning on the date that the reduction plan is approved by the Secretary. Congress intends that, in selecting the clients and meeting their service needs, the States will use an interdisciplinary team process that provides an opportunity for participation by the clients' families. (Conference Report (page 556).)

• A description of the methods used to—

• Select clients for home or community services, and

• Develop alternative home and community services to effectively meet the clients' needs.

• A description of the safeguards that will be applied to protect the clients' health and welfare while receiving home or community services, including—

• Adequate standards for participation by clients, clients' families, and providers; and

• Assurances that the community residences in which the affected clients are placed meet all applicable State and Federal licensure and certification requirements. Members of Congress are particularly concerned that any community settings to which Medicaid-eligible clients are transferred comply fully with Federal certification requirements. (Conference Report (page 556).) The purpose of a reduction plan is to move Medicaid-eligible clients out of deficient ICFs/MR into complying settings.

• Provide that clients who are eligible for Medicaid while in the ICF/MR, at their (or their legal guardians') option, are placed in another setting (or another part of the affected ICF/MR) that is in full compliance with Federal Medicaid requirements and allows them to retain their Medicaid eligibility. It is the firm intent of Congress that a reduction plan not impair the Medicaid eligibility of an affected client without his or her consent. (Conference Report (page 556).) If the client would have remained eligible for Medicaid had the State opted to eliminate the deficiencies in the affected ICF/MR, then the State may not, at any time, involuntarily place the client in a setting where he or she loses entitlement to Medicaid. The client may elect to be placed in a setting where he or she does not retain entitlement to Medicaid. If the client, or the client's guardian, voluntarily chooses to move to a setting (for example, to his or her family home) that cause the client's countable income or resources to exceed the State's Medicaid eligibility standards, then the client's Medicaid eligibility would be subject to termination under the same terms and procedures that apply to all Medicaid beneficiaries.

• Specify the actions to protect the health and safety of the clients remaining in the ICF/MR while the reduction plan is in effect. Congress wishes to avoid a situation in which a Medicaid State, rather than correct the deficiencies in a facility within 6 months, attempts to use the reduction plan option to delay making needed improvements for an additional 3 years. (Conference Report (pages 556–557).) The reduction plan is intended as an alternative compliance mechanism, not a tool for avoiding compliance. Congress expects that, before approving any reduction plan, the Secretary will satisfy himself that the health and safety of the clients remaining in the facility will be assured during the entire phase-out period.

• Provide that the staff-to-client ratio at the ICF/MR will be the higher of—

• The ratio which the Secretary determines is necessary to assure the health and safety of the clients; or

• The ratio which was in effect at the time the validation (direct Federal) survey was done. Temporary staff may be used to satisfy these staffing ratio requirements, but only if the staff are qualified for the patient treatment responsibilities that they are assigned.

• Provided for the protection of the staff affected by the reduction plan, including—

• Arrangements to preserve staff rights and benefits;

• Training and retraining of staff where necessary;

• Redeploying staff to community settings under the reduction plan; and

• Making maximum efforts to secure employment (without necessarily guaranteeing the employment of any staff).

The Conference Report (page 555) indicates that the general purpose of these requirements is to assure that any reduction plan is well conceived; that it has had the benefit of client, client's family, staff, and public input; and that the quality of life for both the clients remaining in the ICF/MR and those receiving community placements is adequately protected. While Congress wishes to allow States some flexibility in the allocation of capital and staff resources between institutional and community settings, Congress intends that fiscal concerns not compromise the accessibility or quality of services to Medicaid-eligible clients. It is the primary intention of Congress that the Secretary, in administering the statute, take extreme care that approved reduction plans do not lead to the "dumping" of affected clients into substandard settings.

3. HCFA Requirements

The statute requires that the Secretary must provide the public at least 30 days after the State submits a reduction plan to comment on the proposed plan. If the Secretary approves more than 15 reduction plans in any fiscal year, any reduction plans approved in addition to the first 15 approved plans must be for an ICF/MR (or distinct part thereof) for which the costs of correcting the substantial deficiencies are $2 million or greater (as demonstrated by the State to the satisfaction of the Secretary). There is no limit on the number of qualified plans that the Secretary may approve where the costs of correction are equal to or greater than $2 million.

If at the conclusion of the initial 6-month period or any 6-month interval thereafter of the reduction plan, the Secretary determines that the State has substantially failed to meet the requirements of the reduction plan, the Secretary must—

• Terminate the ICF/MR from participatng in the Medicaid program in accordance with section 1910(c) of the Act, or

• Disallow FFP equal to 5 percent of the cost of care for all eligible clients for each month for which the State failed to meet the requirements despite good faith efforts it might have made.

The Conference Report (page 557) indicates that Congress expects the Secretary to vigorously enforce these requirements for the protection of the client population affected by a reduction plan.

IV. Provisions of the New Regulations

In order to implement new section 1919 of the Act, we would amend the Medicaid regulations in 42 CFR Part 442. A complete discussion of the changes we propose to make to Part 442 is provided below:

A. Basis and Purpose (§ 442.1)

We would add to § 442.1 the statutory authority for permitting State Medicaid agencies to submit to us correction and

reduction plans for deficient ICFs/MR. Although ths statute refers generally to the State, we believe it is necessary to specify the agency that would be accountable for compliance with the statute and these proposed regulations.

B. Terms (§ 442.2)

We would add to the definition of "immediate jeopardy" in § 442.2, the term "immediate threat". We believe Congress did not intend any substantive difference between the two terms. We believe that we should apply the same definition to both terms, so that we may avoid needless confusion in attempting to discern the qualitative differences between the two terms.

C. Correction and Reduction Plans: General Provisions (§ 442.114)

We would add a new § 442.114 that would provide States additional options under which ICFs/MR that we find have substantial deficiencies that do not pose an immediate threat to clients' health and safety may remedy those deficiencies. Generally, such findings would result from validation surveys under section 1910(c) of the Act, but these findings could also result from direct Federal investigation of a complaint or other circumstances. We would provide the State Medicaid agency with options to submit to us, within specified timeframes, written plans to either correct all necessary staff and physical plant deficiencies, and all other deficiencies, within 6 months of the approval date of the plan in accordance with new § 442.115, or reduce permanently the number of beds in certified units within 36 months of the approval date of the plan in accordance with new § 442.116.

Although the statute refers to States as having the option to elect correction and reduction plans offered by section 1919 of the Act, nothing in the statute prohibits ICFs/MR from reguesting Medicaid agencies to make application on their behalf. A Medicaid agency may permit an ICF/MR to do so, but the agency retains the right to concur with the ICF/MR's preference or not, and to convey the election to us in accordance with § 442.114.

While section 1919 of the Act does not specify requirements to be followed if a Medicaid agency failed to submit either a correction or reduction plan, we believe that the statute does not implicitly repeal other remedies available to us. Should the Medicaid agency not submit either of these plans, we may cancel approval of the deficient ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act. Similarly, the Medicaid agency may prefer to terminate the facility's provider agreement on its own.

The provisions of new §§ 442.114 through 442.116 would apply only to correction and reduction plans that we approve within 3 years after the effective date of final regulations. Medicaid agencies would be able to continue implementation of permanent reduction plans approved during this 3-year period beyond the expiration date of our authority to approve such plans, provided that the agencies continue to comply with the terms and conditions of the approved plans. Our responsibility to monitor and enforce compliance by the agencies with the terms of the approved plans would not lapse with the expiration of our authority to approve new plan applications.

D. Correction Plans: Specific Requirements (§ 442.115)

1. Medicaid Agency Requirements (§ 442.115(a))

We would require that if a Medicaid agency chooses to submit a plan of correction, the plan must include—

- An explanation of the extent to which the ICF/MR currently complies with the standards for ICFs/MR in 42 CFR Part 442, Subpart G, including all deficiencies identified during the direct Federal survey, and
- A timetable for completing the necessary steps to correct all staff and physical plant deficiencies, and all other deficiencies, within 6 months of the approval date of the plan. The statute provides no indication that a time period of greater than 6 months to correct deficiencies, other than staff and physical plant deficiencies, is intended. Thus, if a Medicaid agency would choose to submit a correction plan, we believe it would be reasonable to expect the deficient ICF/MR to correct all deficiencies within 6 months of the approval date of the plan.

2. HCFA Policies (§§ 442.115(b))

Upon receipt of a correction plan, we would review the correction plan to ensure that the plan is feasible and would remedy all deficiencies timely. If we would question any aspect of the plan and the Medicaid agency's ability to fulfill the requirements of the plan, we would communicate with the agency to try to resolve our concerns. We would forward in writing to the agency our approval or disapproval of the plan within 30 days of receipt of the proposed plan.

3. Termination of ICF/MR (§§ 442.115(c))

If the Medicaid agency submitted a correction plan that we found to be unacceptable, and after we unsuccessfully attempted to resolve our concerns with the agency, we would notify the agency of our disapproval. We would consider terminating the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

If, at the conclusion of the 6-month period specified in an approved plan of correction, we determined that the agency has substantially failed to correct the deficiencies identified, we would terminate the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act. We note that the Conference Report (page 554) indicates that Congress expects that the Secretary take prompt action to terminate an ICF/MR if the Medicaid agency fails to make the necessary corrections within the 6-month period.

E. Reduction Plans: Specific Requirements (§§ 442.116)

1. Conditions of Approval: State Requirements (§§ 442.116(a))

Before submitting a reduction plan, we would require a Medicaid agency to—

- Outline the reduction plan and the process for submitting the plan and receiving public comments in a public hearing held at the affected ICF/MR at least 35 days before submitting the reduction plan;
- Provide written notice of the hearing to staff, clients and their parents or guardians at least 10 days prior to the hearing date;
- Announce to advocacy and other interested groups and agencies, and the general community, through local media notices at least 10 days prior to the hearing date—
- The exact date, time and location of the hearing; and
- The locations (that is, the affected ICF/MR, the State mental retardation administration, State survey agency, State Developmental Disabilities Council, local protection and advocacy agencies and any other agencies that serve potentially interested parties (for example, State and local associations for retarded citizens)) where the proposed plan is displayed.
- Demonstrate that it has successfully provided home and community services similar to the services proposed to be provided under the reduction plan for similar individuals eligible for Medicaid; and

• Provide us with assurances that the reduction plan would be completed by fulfilling the content requirements of the reduction plan.

We have interpreted the statutory language of "reasonable notice" of the hearing as meaning written notice of the hearing to staff, clients and their parents of guardians; and local media notices (for example, local newspaper announcements) to advocacy and other interested groups and agencies, and the general community.

If, after the public hearing, an agency decides a reduction plan would not be appropriate, the agency could follow the requirements for submitting a correction plan provided the plan is submitted within 30 days of receipt of the list of deficiencies. While we recognize that the time period permitted to change from a reduction plan to a correction plan is inadequate for most practical situations, we wish to notify the public that it would be possible, if not practical, to submit a correction plan rather than a reduction plan. The statute does not allow us to extend the application time for a correction plan submitted under these circumstances. The agency could also decide not to choose either an correction or reduction plan.

2. Submittal Date of Plan (§§ 442.116(b))

On the day that the Medicaid agency submits a reduction plan, the agency would be required to announce through local media notices—

• That the plan has been submitted;

• That the plan is on display at the affected ICF/MR, the State mental retardation administration, State survey agency, State Development Disabilities Council, the local protection and advocacy agency and other agencies that serve potentially interested parties (for example, State and local associations for retarded citizens); and

• The address of the appropriate HCFA office for forwarding comments on the reduction plan and the closing date for receipt of those comments.

We would require the agency to meet these public notice provisions because ICF/MR clients typically come from wide geographical areas, making broad notification necessary to ensure that all representatives of the clients are informed of the impending changes. In addition, special interest groups and protection and advocacy agencies are not routinely informed of circumstances at an ICF/MR, yet have an important role in determining, as well as implementing, residential services and policies within the State.

3. Contents (§§ 442.116(c))

We would require a Medicaid agency to submit a reduction plan, within 65 days of recept of the list of deficiencies, that meets the following content requirements.

• Use of an interdisciplinary team approach to identify the number of clients and their service needs on a client-by-client basis for home or community services, and establish a timetable for providing these services, in 6-month intervals, within the 36-month period beginning on the date that we approve the reduction plan.

• Describe the methods use to—

• Select clients for home or community services, and

• Develop alternative home and community services to effectively meet the clients; needs.

• Describe the safeguards that will be applied to protect the clients' health and welfare while receiving home or community services, including—

• Adequate standards for participation by clients, clients' families and providers; and

• Assurances that the community residences in which the affected clients are placed meet all applicable State and Federal licensure and certification requirements.

• Provide that clients who are eligible for Medicaid while in the ICF/MR, at their (or their legal guardians;) option, are placed in another setting (or another part of the affected ICF/MR) that is in full compliance with Federal Medicaid requirements and allows them to retain their eligibility. If a client would have remained eligible for Medicaid had the Medicaid agency opted to eliminate the deficiencies in the affect ICF/MR, then the agency may not, at any time, involuntarily place the client in a setting where he or she loses entitlement to Medicaid. The client would be able to elect to be placed in a setting where he or she does not retain entitlement to Medicaid. If the client, or the client's guardian, voluntarily would choose to move to a setting (for example, back home with his or her family) that causes the client's countable income or resources to exceed the Medicaid agency's eligibility standards, then the client's Medicaid eligibility would be subject to termination under the same terms and procedures that apply to all Medicaid beneficiaries.

• Specify the actions to protect the health and safety of the clients remaining in the ICF/MR while the reduction plan is in effect. An agency would be prohibited from using the reduction plan option to delay making needed facility improvements for an additional 3 years.

• Provide that the staff-to-client ratio at the ICF/MR will be the higher of—

• The ratio described in the standards for ICFs and ICFs/MR (§ 442.445); or

• The ratio which was in effect at the time the direct Federal survey was conducted.

• Provide for the protection of the staff affected by the reduction plan, including—

• Arrangements to preserve staff rights and benefits;

• Training and retraining of staff where necessary;

• Redeploying staff to community settings under the reduction plan; and

• Making maximum efforts to secure employment (without necessarily guaranteeing the employment of any staff).

We would review carefully the experience of the mentally retarded and developmentally disabled under the State's overall community services program, including the Medicaid agency's relevant home and community based services waivers, if any. The alternative home and community based services need not be funded under a Medicaid home and community based services waiver program. However, should a Medicaid agency wish to utilize the waiver program to fund these services, all provisions of the statute and regulations applicable to that program must be met and we must approve the proposal prior to granting Medicaid waiver funding.

4. HCFA Requirements (§ 442.116(d))

We would consider reduction plans submitted on a first come, first served basis. Medicaid agencies would submit reduction plans within 65 days of receipt of the list of deficiencies that would be identified through a direct Federal survey. We would provide the public at least 30 days after the medicaid agency submits a reduction plan to comment on the proposed plan. We would review the proposed plan to assure that the plan is well conceived; that it has had the benefit of client and family, staff and public input; and that the quality of life for both the clients remaining in the ICF/MR and those receiving community placements is adequately protected. If we would question any aspect of the plan and the agency's ability to fulfill the requirements of the plan, we would communicate with the agency to try to resolve our concerns. After we have carefully considered all public comments received by the close of the comment period, we would respond in writing to the agency within 60 days of

receipt of the plan. We would also take extreme care to assure that approved reduction plans do not lead to the "dumping" of affected clients into substandard settings.

While the statute allows a Medicaid agency a maximum of 36 months to reduce the number of beds in certified units, we believe that there could be situations in which it would be appropriate to limit the amount of time to implement a reduction plan. For example, a facility with 200 beds seeking to eliminate 50 beds would probably not need a full 36 months to implement its reduction plan. Under our authority to approve a plan, we believe we may limit the time provisions proposed in a plan, as a condition of approval, to avoid situations in which Medicaid agencies attempt to use the maximum allowable time period to delay making the necessary improvements in a timely manner. We would negotiate time frames on a case-by-case basis.

If we would approve more than 15 reduction plans in any fiscal year, any reduction plans approved in addition to the first 15 approved plans could be only for an ICF/MR (or distinct part thereof) for which the costs of correcting the substantial deficiencies are $2 million or greater (as would be demonstrated by the agency to our satisfaction). After we have approved 15 reduction plans in any fiscal year, we would indicate in our transmittal to all subsequent Medicaid agencies found to have ICFs/MR with substantial deficiencies that they must demonstrate that the costs of correcting the substantial deficiencies would equal $2 million or more. Medicaid agencies could demonstrate costs of $2 million or more by providing evidence of contractor estimates of renovations, cost allocation reports for increasing staff, and any other evidence that supports the cost of correcting the cited deficiencies. There would be no limit on the number of qualified plans that we could approve where the costs of correction are equal to or greater than $2 million.

5. Termination of an ICF/MR (§ 442.116(e))

If the Medicaid agency submits a reduction plan that we found to be unacceptable, and after we have unsuccessfully attempted to resolve our concerns with the agency, we would notify the agency of our disapproval. We would consider terminating the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

If, at the conclusion of the initial 6-month period or any 6-month interval thereafter on an approved reduction plan, we determined that the Medicaid agency substantially failed to meet the requirements of the reduction plan, we would—

- Terminate the ICF/MR from participating in the Medicaid program in accordance with section 1910(c) of the Act, or
- Disallow FFP equal to 5 percent of the cost of care for all eligible clients for each month for which the agency failed to meet the requirements despite good faith efforts it might have made.

D. Technical Amendment

To allow for placement in 42 CFR Part 442 of the regulation provisions proposed by these regulations, we would redesignate §§ 442.110 through 442.115 as §§ 442.109 through 442.113, respectively.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule". A major rule is one that would result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of Untied States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The economic impact of this proposed regulation would not exceed $100 million or meet the other thresholds specified in the Executive Order. Therefore, we have not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a subtantial number of small entities. For purposes of the RFA, we consider all ICFs/MR to be small entities. Since these proposed regulations potentially could have a significant impact on a substantial number of ICFs/MR, we have prepared the following initial regulatory flexibility analysis.

There are 3,163 Medicaid participating ICFs/MR nationwide. We cannot determine exactly how many ICFs/MR might be affected by the provisions of these regulations.

Generally, we would find an ICF/MR to have substantial deficiencies as result of validation survey. For FY 1987, we plan to perfrom 1,060 validation surveys of ICFs/MR, including surveys of 100 percent of all ICEs/MR with 300 beds or over (125 facilities). A direct Federal survey might also be performed as the result of a complaint or other circumstances, but such surveys are conducted in response to immediate problems, rather than as part of a planned process.

The proposed requirements for correction and reduction plans would apply to all ICFs/MR, large and small, State or other government operated, private, nonprofit, or for-profit. However, it is clear that the reduction plan option may not always be appropriate for smaller facilities. States would be more likely to elect the reduction plan for large ICFs/MR with substantial deficiencies.

Many large facilities are State-owned. Whether large or small, a State-owned ICF/MR that came under these requirements could have difficulties, within the constraints of a State's budget and appropriations process, in complying with the 6-month time limit of the correction plan option.

Because we are unable to predict the decisions States would make when given the options provided by this regulation, we are unable to quantify the potential effect it will have. Section 9516(c) of Pub. L. 99–272 requires that the Secretary report to Congress on the implementation and results of the correction and reduction plans approved by the Secretary. We expect to assess the effects on terminations, deficiencies, and clients through the monitoring activities necessary to the completion of that report.

VI. Paperwork Reduction Act of 1980 (Pub. L. 96–511)

Sections 442.114(a), 442.115(a), and 442.116(a) and (d) of this proposed rule contain information collection requirements that are subject to review by the Executive Office of Management and Budget under the Paperwork Reduction Act of 1980. A notice will appear in the **Federal Register** when approval is obtained.

Organizations and individuals desiring to submit comments on the information collection requirements should follow the directions in the Address section of the preamble.

VII. Response to Comments

Because of the large number of pieces of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period and, if we proceed with a final rule, we will respond to those comments in the preamble to that final rule.

List of Subjects in 42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Chapter IV would be amended as set forth below:

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

Part 442 is amended as follows:

1. The authority citation for Part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. The table of contents is amended by revising the title of Subpart C, redesignating §§ 442.110 through 442.113 as §§ 442.109 through 442.112, respectively, and §442.115 as § 442.113; revising the titles of newly redesignated §§442.111 through 442.113; and adding new §§ 442.114 through 442.116, to read as follows:

Subpart C—Certification of SNFs, ICFs, and ICFs/MR

* * * * *

Sec.

442.109 Certification period: General provisions.
442.110 Certification period: Facilities with deficiencies.
442.111 Extended period for correcting deficiencies: ICFs other than ICFs/MR; environment, sanitation and Life Safety Code deficiencies.
442.112 Extended period for correcting deficiencies: ICFs/MR; Life Safety Code and living/dining/therapy area deficiencies.
442.113 Correction plans for ICFs/MR: Life Safety Code and living/dining/therapy area deficiencies.
442.114 Correction and reduction plans for ICFs/MR: General provisions.
442.115 Correction plans for ICFs/MR: Specific requirements.
442.116 Reduction plans for ICFs/MR: Specific requirements.

* * * * *

3. Section 442.1 is amended by revising the introductory text of paragraph (a) and paragraph (a)(7), adding the word "and" at the end of paragraph (a)(8) and adding new paragraph (a)(9), to read as follows:

§ 442.1 Basis and purpose.

(a) This part states requirements for provider agreements, facility certification, and facility standards relating to the provision of services furnished by skilled nursing facilities and intermediate care facilities, including intermediate care facilities for the mentally retarded, to Medicaid recipients. The requirmeents apply to State Medicaid agencies and survey agencies and to the facilities. This part is based on the following sections of the Act:

* * * * *

(7) Section 1910, certification and approval of SNFs and of RHCs;

* * * * *

(9) Section 1919, correction and reduction plans for intermediate care facilities for the mentally retarded.

* * * * *

4. In § 442.2, the introductory phrase is republished, and the section is amended by adding the definition of "Immediate jeopardy" to read as follows:

§ 442.2 Terms.

In this part—

* * * * *

"Immediate jeopardy" or "immediate threat" for Medicaid certified facilities means a situation in which a facility's noncompliance with one or more conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) poses a serious threat to patients' or clients' health or safety such that immediate corrective action is necessary. There is no substantive difference between "immediate jeopardy" and "immediate threat".

* * * * *

§ 442.105 [Amended]

5. Section 442.105(e) is amended by removing the phrase "§ 442.112 or § 442.113" and inserting in its place the phrase "§ 442.111 or § 442.112".

6. Sections 442.110 through 442.113 are redesignated as §§ 442.109 through 442.112, respectively and § 442.115 as § 442.113; and the titles of newly redesignated §§ 442.111 through 442.113 are revised to read as follows:

§ 442.111 Extended period for correcting deficiencies: ICFs other than ICFs/MR; environment, sanitation and Life Safety Code deficiencies.

§ 442.112 Extended period for correcting deficiencies: ICFs/MR; Life Safety Code and living/dining/therapy area deficiencies.

§ 442.113 Correction plans for ICFs/MR: Life Safety Code and living/dining/therapy area deficiencies.

§ 442.110 [Amended]

7. Newly redesignated § 442.110(a) is amended by removing the phrase "§ 442.112 and § 442.113" and inserting in its place the phrase "§ 442.111 and § 442.112".

§ 442.112 [Amended]

8. Newly redesignated § 442.112 is amended by removing the references to "§ 442.115" and inserting in their places the reference "§ 442.113".

§ 442.113 [Amended]

9. Newly redesignated § 442.113(a) introductory text is amended by removing the reference "§ 442.113" and inserting in its place the reference "§ 442.112".

10. New §§ 442.114 through 442.116 are added to read as follows:

§ 442.114 Correction and reduction plans for ICFs/MR: General provisions.

(a) *Options of Medicaid agency.* If HCFA finds that substantial deficiencies that do not pose an immediate threat to the clients' health and safety exist in an ICF/MR, HCFA will forward the list of deficiencies to the Medicaid agency and the agency may elect to—

(1) Submit to HCFA within 30 days of receipt of the list of deficiencies a written plan of correction in accordance with § 442.115, as permitted by § 442.105; or

(2) Submit to HCFA within 65 days of receipt of the list of deficiencies a written plan to reduce permanently the number of beds in certified units in accordance with § 442.116. The purpose of the reduction plan is to vacate any noncomplying buildings (or distinct parts thereof) and correct any staff deficiencies within 36 months of the approval of the plan.

(b) *HCFA Options.* (1) If the Medicaid agency does not comply with paragraph (a) of this section, HCFA may cancel approval of the deficient ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

(2) HCFA will respond in writing to the agency within 30 days from receipt of a proposed correction plan submitted under paragraph (a)(1) of this section.

(c) *Duration.* The provisions of this section and §§ 442.115 and 442.116 apply only to correction and reduction plans approved by HCFA within 3 years after [the effective date of the final regulation].

§ 442.115 Correction plans for ICFs/MR: Specific requirements.

(a) *Contents.* A correction plan under § 442.114(a)(1) must include—

(1) An explanation of the extent to which the ICF/MR currently complies with the standards for ICFs/MR in Subpart G including all deficiencies identified during a direct Federal survey, and

(2) A timetable for completing the necessary steps to correct staff and physical plant deficiencies, and all other deficiencies, within 6 months of the approval date of the plan.

(b) *HCFA policies.* HCFA considers a correction plan only if HCFA received it within 30 days of the receipt by the Medicaid agency of the list of deficiencies referred to in § 442.114(a). After consideration of the plan, HCFA will forward in writing its approval or disapproval within 30 days of receipt of the proposed correction plan.

(c) *Termination of ICF/MR.* (1) If the Medicaid agency submits a correction plan that we find to be unacceptable, and after HCFA unsuccessfully attempts to resolve its concerns with the agency, HCFA will notify the agency of its disapproval and may terminate the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

(2) If, at the conclusion of the 6-month period specified in the plan of correction described in paragraph (a) of this section, HCFA determines that the agency has substantially failed to correct the deficiencies identified, HCFA may terminate the ICF/MR from participating in the Medicaid program in accordance with section 1910(c) of the Act.

§ 442.116 Reduction plans for ICFs/MR: Specific requirements.

(a) *Conditions of approval: Agency requirements.* Before submitting a reduction plan under § 442.114(a)(2) to HCFA, the Medicaid agency must—

(1) Conduct a public hearing at the affected ICF/MR at least 35 days before submitting the reduction plan to HCFA that outlines the—

(i) Contents of the reduction plan,

(ii) Process for submitting the plan to HCFA, and

(iii) Process for submitting public comments to HCFA within 30 days of receipt of the reduction plan by HCFA.

(2) Provide written notice of the hearing to staff, clients and their parents or guardians at least 10 days prior to the hearing date.

(3) Announce to advocacy and other interested groups and agencies, and the general community, through local media notices at least 10 days prior to the hearing date—

(i) The exact date, time and location of the hearing; and

(ii) The locations (that is, the affected ICF/MR, the State mental retardation administration, State survey agency, State Developmental Disabilities Council, local protection and advocacy agencies and any other agencies that serve potentially interested parties (for example, State and local associations for retarded citizens)) where the proposed plan is displayed.

(4) Demonstrate that it has successfully provided home and community services similar to those services proposed to be provided under the reduction plan for similar individuals eligible for Medicaid by including—

(i) Documentation of existing programs and level of funding, and

(ii) Projections for growth and how the growth will be funded to accommodate the clients being displaced by the reduction plan.

(5) Provide assurances to HCFA that the reduction plan will be completed by fulfilling the content requirements of the reduction plan contained in paragraph (c) of this section.

(b) *Withdrawal by a Medicaid agency of a proposed reduction plan.* If, after the public hearing, a Medicaid agency decides a reduction plan would not be appropriate, the agency may choose to proceed with a plan of correction in accordance with the requirements contained in § 442.115.

(c) *Submittal date of plan.* On the day that the Medicaid agency submits a reduction plan, the agency must announce through local media notices—

(1) That the plan has been submitted to HCFA;

(2) That the plan is on display at the affected ICF/MR, the State mental retardation administration, State survey agency, State Development Disabilities Council, the local protection and advocacy agency and any other agencies that serve potentially interested parties (for example, State and local associations for retarded citizens); and

(3) The address of the appropriate HCFA office for forwarding comments on the reduction plan and the closing date for receipt of those comments.

(d) *Contents.* A reduction plan must—

(1) Identify the number of clients and their service needs on a client-by-client basis for home or community services, and a timetable for providing such services, in 6-month intervals, within the 36-month period beginning on the date that the reduction plan is approved by HCFA;

(2) Describe the methods used to—

(i) Select clients for home or community services, and

(ii) Develop alternative home and community services to effectively meet the clients' needs;

(3) Describe the safeguards that will be applied to protect the clients' health and welfare while receiving home or community services, including—

(i) Adequate standards for participation by clients, clients' families and providers; and

(ii) Assurances that the community residences in which the affected clients are placed meet all applicable State and Federal licensure and certification requirements;

(4) Provide that clients who are eligible for Medicaid while in the ICF/MR, at their (or their legal guardians') option, are placed in another setting (or another part of the affected ICF/MR) that is in full compliance with Federal Medicaid requirements and allows them to retain their Medicaid eligibility;

(5) Specify the actions to protect the health and safety of the clients remaining in the ICF/MR while the reduction plan is in effect;

(6) Provide that the staff-to-client ratio at the ICF/MR will be the higher of—

(i) The ratio described in the standards for ICFs and ICFs/MR (§ 442.445); or

(ii) The ratio which was in effect at the time the direct Federal survey was conducted; and

(7) Provide for the protection of the staff affected by the reduction plan, including—

(i) Arrangements to preserve staff rights and benefits;

(ii) Training and retraining of staff where necessary;

(iii) Redeploying staff to community settings under the reduction plan; and

(iv) Making maximum efforts to secure employment (without necessarily guaranteeing the employment of any staff).

(e) *HCFA policies.* (1) HCFA will consider approval of reduction plans on a first come, first served basis. HCFA will provide the public at least 30 days after the Medicaid agency submits a reduction plan to comment on the proposed plan. After the close of the public comment period, HCFA will forward in writing its approval or

disapproval of the reduction plan to the agency within 30 days.

(2) If HCFA approves more than 15 reduction plans in any fiscal year, any reduction plans approved in addition to the first 15 approved plans, will be for an ICF/MR (or distinct part thereof) for which the cost of correcting the substantial deficiencies are $2 million or greater (as demonstrated by the Medicaid agency to the satisfaction of HCFA).

(f) *Termination of ICF/MR.* (1) If the Medicaid agency submits a reduction plan that we find to be unacceptable, and after HCFA unsuccessfully attempts to resolve its concerns with the agency, HCFA will notify the agency of its disapproval and terminate the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

(2) If, at the conclusion of the initial 6-month period or any 6-month interval thereafter of the reduction plan, HCFA determines that the Medicaid agency has substantially failed to meet the requirements of paragraph (a) of this section, HCFA will—

(i) Terminate the ICF/MR from participating in the Medicaid program in accordance with section 1910(c) of the Act, or

(ii) Disallow FFP equal to 5 percent of the cost of care for all eligible clients for each month for which the agency failed to meet the requirements despite good faith efforts it may have made.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: June 2, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 3, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-13319 Filed 7-24-86; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 81

Purchase of Insurance and Adjustment of Claims; State Listings

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the list of states in which there exists a critical crime insurance availability problem which has not been resolved at the state level and deletes from eligibility under the Federal Crime Insurance Program the states of Arkansas, Iowa, Louisiana, Maryland, Massachusetts, North Carolina, Ohio, and Pennsylvania making its citizens ineligible to purchase Federal Crime Insurance policies against burglary and robbery losses under the Federal Crime Insurance Program after September 17, 1986, the state of Colorado after September 30, 1986, and the States of Missouri and Virginia after October 31, 1986. Because action is being taken on the state level, there will no longer be an unresolved critical crime insurance situation in these states as of the date specified above.

DATE: All comments received on or before September 23, 1986, will be considered before final action is taken on the proposed rule.

ADDRESS: Persons wishing to comment should submit same to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Robert J. DeHenzel, Chief, Urban Property Insurance Operations Division, Office of Insurance Operations, Federal Insurance Administration, 500 C Street, SW, Room 433, Washington, DC 20472, telephone number 202-646-3440.

SUPPLEMENTARY INFORMATION: This action is being taken under the authority of 12 U.S.C. 1749bbb-10a, on the basis of the Administrator's continuing review of the extent of any critical problem of crime insurance availability in the various states. This action follows extensive consultations with state insurance authorities for the states of Arkansas, Colorado, Iowa, Louisiana, Maryland, Massachusetts, Missouri, North Carolina, Ohio, Pennsylvania, and Virginia, that have specifically certified that the Federal Crime Insurance Program is no longer needed in their states because they have resolved their problems on the state level.

An environmental assessment has been prepared and it has been determined that there is no significant impact on the environment caused by implementation of the rule. No environmental impact statement has been prepared. A copy of the assessment has been placed in the rule docket and is available from the Rules Docket Clerk. It also has been determined because of the very small number of policies in affected states that this rule will not have a significant impact upon a substantial number of small entities. Furthermore, there are no information collection requirements involved which require review under section 3504(h) of the Paperwork Reduction Act of 1978.

List of Subjects in 44 CFR Part 81

Claims, Crime insurance.

PART 81—PURCHASE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Accordingly, Part 81 of Title 44, Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 81 is revised as follows:

Authority: 12 U.S.C. 1749bbb-17, Reorganization Plan No. 3 of 1978, Executive Order 12127.

§ 81.1 [Amended]

2. Section 81.1(b) is revised to read as follows:

* * * * *

(b) On the basis of the information available, the Federal Insurance Administration has determined that the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and the States set forth in this paragraph have an unresolved critical market availability situation that requires the operation of the Federal Crime Insurance Program therein as of September 18, 1986, should the program be continued by Congress past its current statutory expiration date. Accordingly, the program is in operation in the following jurisdictions after September 18, 1986:

Alabama	Missouri
California	New Jersey
Colorado	New York
Connecticut	Rhode Island
Delaware	Tennessee
Florida	Virginia
Georgia	District of Columbia
Ilinois	Puerto Rico
Kansas	Virgin Island

The program is in operation in the following jurisdictions after October 1, 1986:

Alabama	New Jersey
California	New York
Connecticut	Rhode Island
Delaware	Tennessee
Florida	Virginia
Georgia	District of Columbia
Ilinois	Puerto Rico
Kansas	Vigin Island
Missouri	

The program is in operation in the following jurisdictions after November 1, 1986:

Alabama	New Jersey
California	New York
Connecticut	Rhode Island
Delaware	Tennessee
Florida	District of Columbia
Georgia	Puerto Rico
Ilinois	Virgin Island
Kansas	

Issued at Washington, DC, July 21, 1986.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 86-16724 Filed 7-24-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-307, RM-4910]

Television Broadcasting Services; Salem, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by J.R. Broadcasting proposing to assign UHF Television Channel 50 to Salem, Indiana as that community's first television assignment.

DATES: Comments must be filed on or before September 8, 1986, and reply comments on or before September 23, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: B. Jay Baraff, Baraff, Koerner, Olender & Hochberg, P.C., Suite 203, 2033 M Street, NW., Washington, DC 20036 (Counsel to Petitioner)

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-307, adopted July 3, 1986, and released July 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-16667 Filed 7-24-86; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 51, No. 143
Friday, July 25, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1986 Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured (Types 35-26), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42-44, 53-55) and Cigar-Filler (Type 46) Tobaccos

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of proposed determination of 1986 price support levels for six kinds of tobacco, extension of comment period.

SUMMARY: A Notice of Proposed Determination requesting comments for 30 days, with respect to the levels of price support for the 1986 crops of fire-cured (type 21) tobacco, fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37) tobacco, cigar-filler and binder (types 42–44; 53–55) tobacco, and cigar-filler (type 46) was published in the Federal Register June 18, 1986 (51 FR 22095). It has been determined that this comment period should be extended in order to provide additional time for comments. Accordingly, the comment period is extended until August 18, 1986.

DATE: Comments must be received on or before August 18, 1986 to be assured of consideration.

ADDRESS: Written commens should be sent to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. All written submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741, USDA South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller, (202) 447–8839 or Kenneth Robison, (202) 477–5188. A Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Mr. Robison.

Signed at Washington, DC, on July 22, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation

[FR Doc. 86–16770 Filed 7–24–86; 8:45 am]

BILLING CODE 3410–05–M

Soil Conservation Service

San Jon Flood Prevention Measure; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for San Jon Flood Prevention Measure, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ray T. Margo, Jr., State Conservationist, Soil Conservation Service, 517 Gold Avenue SW, Rm 3301, Albuquerque, NM 87102, Telephone No. (505) 766–2173.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ray T. Margo, Jr., State Conservationist, has determined that the preparation and review of an environmental statement is not needed for this project.

The project concerns flood prevention. The planned works of improvement will include an earthen dike and the enlargement of a natural drainage-way. Approximately 34 acres of native rangeland will be disturbed, all of which will be revegetated with species of native plants.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency, to various federal, state, and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Edwin Swenson.

No administrative action on implementation of the proposal will be taken until 30 days afer the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Charles R. Adams,

Acting, State Conservationist.

July 14, 1986.

[FR Doc. 86–16739 Filed 7–24–86; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Montana 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 Montana Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 3:30 p.m. on August 8, 1986 at the Northern Hotel, First & Broadway, Billings, Montana. The purpose of the meeting is to review a draft briefing memorandum on School District #12 and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Betty Babcock or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844–2211, (TDD 303/844–3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated: at Washington, DC, July 18, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-16712 Filed 7-24-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 24-86]

Foreign-Trade Zone 66—Wilmington, NC; Application for Subzone American Hoist and Derrick Crane Manufacturing Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the North Carolina State Department of Commerce, grantee of FTZ 66, requesting special-purpose subzone status for the crane manufacturing plant of American Hoist and Derrick Company (Amhoist) in Wilmington, North Carolina, within the Wilmington Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 14, 1986.

The Amhoist plant is located on a 240-acre parcel off Vance St. in Wilmington. It was recently built to replace the company's other 13 plants and scale-down its manufacturing. The facility will produce truck, crawler, locomotive, and revolving cranes, and related parts and equipment, employing 700 persons. Parts and material to be sourced abroad include engines, hydraulic motors, bearings, sleeving rings, sprockets, roller track, wire rope, and steel plate, bar and tube. Amhoist historically has exported over 40 percent of its output.

Zone procedures would allow Amhoist to avoid duty payments on the foreign materials used in its exports. On its domestic sales, the company would be allowed to take advantage of the same duty rate available to importers of complete cranes. The duty rate for truck cranes is 3.9 percent, and for crawler cranes, 2.4 percent, whereas the rates on foreign material range from 3.2 to 11.0 percent. Zone savings will help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 SE. 5th St., Miami, FL 33131; and Colonel Paul W. Woodbury, District Engineer, U.S. Army Engineer District, Wilmington, P.O. Box 1890, Wilmington, NC 28402.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 5, 1986.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, One Virginia Ave., Wilmington, NC 28401

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania NW., Washington, DC 20230

Dated: July 15, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-16781 Filed 7-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 19-86]

Foreign-Trade Zone 29, Louisville, KY; Application for Subzone at Toyota Auto Plant in Scott County, KY; Extension of Comment Period

The period for above case, involving a special-purpose subzone for the auto manufacturing plant of Toyota Motor Manufacturing, U.S.A., Inc. in Scott County, Kentucky (51 FR 21946, 6-17-86) is extended to September 2, 1986, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be avaialble at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania Ave. N.W., Washington, DC 20230.

Dated: 18 July, 1986.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 86-16785 Filed 7-24-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-469-602]

Porcelain-on-Steel Cooking Ware From Spain; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the Department of Commerce, we are initiating an antidumping duty investigation to determine whether porcelain-on-steel cooking ware from Spain is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 14, 1986, and we will make ours on or before December 8, 1986.

EFFECTIVE DATE: July 25, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 1986, we received a petition filed in proper form on behalf of the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and General Housewares Corp. with respect to porcelain-on-steel cooking ware from Spain. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of porcelain-on-steel cooking ware from Spain are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the

allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on porcelain-on-steel cooking ware from Spain and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether porcelain-on-steel cooking ware from Spain is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by December 8, 1986.

Scope of Investigation

The product covered by this investigation is porcelain-on-steel cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are currently provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedules of the United States Annotated (TSUSA)*. Kitchen ware, currently reported under item 654.0828 of the *TSUSA* is not subject to this investigation.

United States Price and Foreign Market Value

In its sales at less than fair value allegation, the petitioners based United States price on price quotations, FOB Bilbao, form one of the possible respondents. As provided in 19 CFR 353.36(a)(7) petitioners based foreign market value on General Houseware Corp.'s costs of production adjusted for Spanish labor rates. They included ten percent for selling, general, and administrative expenses and eight percent for profit. Based on the comparison of United States price and foreign market value, petitioners allege a dumping margin of 39 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 14, 1986, whether there is a reasonable indication that imports of porcelain-on-steel cooking ware from Mexico materially injure, or threaten material injury to, a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

July 21, 1986.

[FR Doc. 86-16783 Filed 7-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-601]

Initiation of a Countervailing Duty Investigation: Porcelain-on-Steel Cooking Ware From Spain

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Spain of porcelain-of-steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Spain materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before August 14, 1986. If our investigation proceeds normally, we will make a preliminary determination on or before September 23, 1986.

EFFECTIVE DATE: July 25, 1986.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/377-0186 (Letort) or 202/377-0161 (Taverman).

SUPPLEMENTARY INFORMATION:

Petition

On June 30, 1986, we received a petition in proper form filed by the Porcelain-on-Steel Committee of the Cookware Manufacturers Association, of Walworth, Wisconsin, and the General Housewares Corporation of Terre Haute, Indiana. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Spain of porcelain-on-steel cooking ware receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a U.S. industry producing a like product. Since Spain is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Spain materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on porcelain-on-steel cooking ware from Spain, and have found that the petition meets these requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Spain of porcelain-on-steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before September 23, 1986.

Scope of the Investigation

The products covered by this investigation are porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedules of the United States Annotated* (*TSUSA*). Kitcken ware, currently provided for under item 654.0828 of the *TSUSA*, is not subject to this investigation.

Allegations of Subsidies

The petition lists a number of practices by the government of Spain which allegedly confer subsidies on manufacturers, producers, or exporters in Spain of porcelain-on-steel cooking ware. We are initiating an investigation on the following programs:

- Privileged Circuit Exporter Credits
- Warehouse Construction Loans
- Preferential Long-Term Loans and Loan Guarantees
- Preferential Loans and Benefits Conferred by the Instituto Nacional de Industria (INI)
- Regional Investment Incentives
- Expropriation of Land for New Construction
- Energy Discounts

We are not initiating an investigation on the following programs:

- *Desgravacion Fiscal a la Exportacion*

Petitioners also allege that, under the program called "Desgravacion Fiscal a la Exportacion" (DFE), exporters receive excessive rebates of indirect turnover taxes that are levied on each intermediate sale of a product up to, but not including, the final sale at the retail level. We found this program to confer an export subsidy in previous Spanish countervailing duty cases (see, *e.g., Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods from Spain*, 49 FR 47060, July 30, 1984). However, Spain has formally notified signatories to the General Agreement on Tariffs and Trade (GATT) that this program was abolished on January 1, 1986, and replaced by the value-added tax system used by the European Community (see GATT document SCM/25/Add.2 dated 26 February 1986). Because this program has been abolished, and benefits provided under it could not affect merchandise subject to any potential suspension of liquidation, we are not initiating an investigation on this program.

- Upstream Subsidy Allegation

Petitioners allege that "upstream subsidies," within the meaning of section 771A(a) of the Act, are being paid or bestowed by the government of Spain, on producers or manufacturers of porcelain-on-steel cooking ware.

First, petitioners allege that producers or manufacturers of porcelain-on-steel cooking ware in Spain receive "upstream subsidies" through the use of subsidized carbon steel and stainless steel products. Second, petitioners allege that these subsidized steel inputs bestow a competitive benefit on manufacturers or producers of porcelain-on-steel cooking ware because they are not available at comparable prices from other, unsubsidized sources. Third, petitioners allege that these inputs have a significant effect on the cost of manufacturing porcelain-on-steel cooking ware because they comprise 20 to 40 percent of the cost of manufacturing these products.

While petitioners have provided evidence that subsidies to steel products, if passed through to manufacturers of porcelain-on-steel cooking ware, may have a significant effect on the cost of manufacturing porcelain-on-steel cooking ware, they have failed to provide any evidence that these subsidies are, in fact, passed on, *i.e.*, that they confer a competitive benefit upon porcelain-on-steel cooking ware from Spain (see *Final Affirmative Countervailing Duty Determination; Cast-Iron Pipe Fittings from Brazil*, 50 FR 8755, March 5, 1985).

In order for the Department to accept an allegation of competitive benefit by reason of subsidized inputs, petitioners must provide information suggesting that (1) manufacturers of porcelain-on-steel cooking ware in Spain are related to Spanish producers of carbon steel or stainless steel, (2) transactions between the parties are conducted on other than an arms-length basis, (3) the relevant inputs are not available at comparable prices from other sources, or (4) Spanish producers of carbon steel and stainless steel undercut prices charged by other suppliers. A simple assertion, such as that made by petitioners, that any of the situations mentioned above exist, does not provide sufficient evidence to support an allegation that upstream subsidies are being received. Therefore, we have no "reasonable grounds," within the meaning of section 771A of the Act, to believe or suspect that upstream subsidies are being paid or bestowed on porcelain-on-steel cooking ware from Spain. Accordingly, we will not initiate an investigation on this allegation at this time. We will, however, reconsider this allegation on the basis of any additional information provided during the investigation.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information in our files. We will also allow the ITC access to all privileged and proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 14, 1986, whether there is reasonable indication that imports of porcelain-on-steel cooking ware from Spain materially injure, or threaten material injury to, a U.S. industry. If that determination is negative, this investigation will terminate; otherwise, it will continue according to statutory procedures.

This notice is published pursuant to section 702(C)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

July 21, 1986.

[FR Doc. 86-16784 Filed 7-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[Docket Nos. 5661-01 and 5661-02]

Export Privileges Kurt Behrens and Delta-Avia Fluggerate GMBH, Respondent; Order

On February 1, 1985, the Hearing Commissioner (the presiding official under regulations prior to July 18, 1985) granted a Temporary Denial Order (TDO) pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (1982)). The TDO was issued following an investigation by the Office of Export Enforcement, indicating reason to believe that appellants misrepresented the destination of two U.S.-origin helicopters which were ultimately shipped to North Korea, absent a properly validated export license.

In repose to the TDO, appellants filed Request for Modification, Hearing, and Appeal dated July 26, 1985 pursuant to 15 CFR 388.19(b)(2), requesting alternative froms of relief, including a hearing. On September 5, 1985, the ALJ agreed that additional action would await appointment of U.S. counsel for appellants. On November 15, 1985, such counsel filed an Appeal, Modification and Request for Closed Oral Argument before the Administrative Law Judge. The ALJ denied the requests for modifications and oral argument treating the submission as an appeal to the Assistant Secretary pursuant to 15 CFR 388.22.

While appellants used the word "appeal" in their November 15, 1985 filing, it appears that it was used in the alternative which has given rise to confusion as to what relief was being sought. In the alternative, it may be

deemed an "appeal" for a hearing which would be consistent with the July 26, 1985 filing. This is supported by the fact that appellants' "appeal" was not addressed to the Assistant Secretary as requred by 15 CFR 388.22(b) and is not consistent with the genral appellate process which would follow an initial hearing and findings by the ALJ.

In light of the fact that appellants have not been granted a hearing as provided in 15 CFR 388.19(b)(2), this case is remanded to the ALJ, and it is hereby ordered that a hearing on the merits be granted, taking due note of the ALJ's November 18, 1985 Order dictating that the case be considered on a "Fast-Track" basis should it be remanded.

Dated: July 18, 1986.

Paul Freedenbery,

Assistant Secretary for Trade Administration.

FR Doc. 86-16779 Filed 7-24-86; 8:45 am]

BILLING CODE 3510-FP-M

Applications for Duty-Free Entry of Scientific Instruments; National Bureau of Standards et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:.00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86-068R. Applicant: National Bureau of Standards, Chemistry Building, Gaithersburg, MD 20899. Instrument: Scanning Electron Microscope, Model JSM-840 with Accessories. Manufacturer: JEOL, Japan. Intended Use: The instrument is intended to be used for the following research programs:

(1) Analysis of asbestos in indoor air,

(2) Determination of the limits of visibility of chrysotile asbestos in the scanning electron microscope (SEM),

(3) Study of high spatial resolution analysis in the SEM and

(4) Development of compositional mapping techniques for a wide range of materials.

Original of this resubmitted application was received by Commissioner of Customs: December 13, 1985.

Docket Number: 86-252. Applicant: Medical College of Wisconsin, 8701 Watertown Plank Road, Milwaukee, WI 53226. Instrument: Electron Microscope, Model H-600-3 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: The instrument is intended to be used primarily for high resolution ultrastructural studies which will be carried out by a number of different investigators in the basic sciences. The materials being investigated are predominantly biological in nature. In addition, the insrument will be used for training in electron microscopy theory and application. Application Reveived by Commissioner of Customs: July 7, 1986.

Docket Number: 86-259. Applicant: University of Wisconsin-Madison, Integrated Microscopy Facility for Biomedical Research, 1525 Linden Drive, Madison, WI 53706. Instrument: Scanning Electron Microscope, Model S-900. Manufacturer: Hitachi Ltd., Japan. Intended Use: The instrument is intended to be used to study a wide range of biological problems including the relationships between internal structures and cell surfaces. Active research includes the role of cytoskeletal protein attachment to membrances for cell-to-cell interactions. The objective of these studies is to relate the surface structures as observed with the instrument to those obtained by previous methodology. In addition, the instrument will be used for educational purposes in the course Zoology 575 (Modern Biological Microscopy). Application Received by Commissioner of Customs: July 3, 1986.

Docket Number: 86-260. Applicant: U.S. Department of Commerce, NOAA/ERL/ARL/ATDD, 456 So. Illinois Avenue, P.O. Box "E", Oak Ridge, TN 37831. Instrument: Sonic Anemometer, Model PAC-100 with Accessories. Manufacturer: Dobbie Instruments, Australia. Intended Use: The instrument will be used to investigate atmosphere-surface interactions in general, and dry deposition of pollutant aerosols and gases in particular. Much of this research will be conducted within forest and agricultural plant canopies, requiring both a small sampling volume and a fast response time. Application Received by Commissioner of Customs: July 7, 1986.

Docket Number: 86-261. Applicant: Duke University Medical Center, Division of Neurology, P.O. Box 2900, Durham, NC 27710. Instrument: Cryo-Microtome, Model LKB 2250-041. Manufacturer: LKB Produkter AB, Sweden. Intended Use: The instrument will be used to section whole human brain hemispheres. After sectioning, tissues will be dissected by "micropunch" methodology to yield high resolution neurochemical maps. Several neuropeptides and classical neurochemical transmitters and their associated receptors will be measured in the brain tissue punches. Brains from patients with Alzheimer's disease will be compared to normal controls and other neurological diseases associated with dementia. The objective of this study is to find discrete, specific regional alterations in several neurotransmitters or their receptors that will aid the understanding of the pathological consequences of these diseases and ultimately lead to rational therapies. Application Received by Commissioner of Customs: July 7, 1986.

Docket Number: 86-262. Applicant: University of Alabama at Birmingham, Department of Cell Biology and Anatomy, Basic Health Science Building, Box 88, University Station, Birmingham, AL 35294. Instrument: Electron Microscope, Model H-7000 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: The primary purpose of the instrument will be to study cytoskeletal structures and human proteins so as to better characterize the nature of these substances and their roles in the development of certain disease states. The experiments to be conducted include studies of: mitosis in normal and neoplastic cells; cytoskeletal structure in persons with cystic fibrosis; microtubule associated proteins in adult and developing brain; the role of tau in Alzheimer's disease; and protein anomalies associated with the clinical manifestations of scleroderma. The experiments will involve the examination of isolated proteins and cytoskeletal structures using the instrument to view ultra-thin sections of human tissue. In addition, the instrument will be used to teach students at the doctoral level techniques in electron microscopy. Application Received by Commissioner of Customs: July 7, 1986.

Docket Number: 86-264. Applicant: Syracuse University, Department of Chemistry, 102 Bowne Hall, Syracuse, NY 13244-1200. Instrument: FTIR Spectrophotometer, Model DA3.15 with Accessories. Manufacturer: Bomem, Inc., Canada. Intended Use: The instrument is intended to be used to develop a new approach to the measurement of vibrational circular dichroism which will involve operation of the instrument in a polarization modulation mode

rather than the usual intensity modulation mode. Application Received by Commissioner of Customs: July 8, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Dated: July 17, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-16782 Filed 7-24-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals, Proposed Permit Modification; California Department of Fish and Game (P191C)

Notice is hereby given that the California Department of Fish and Game, 1416 Ninth Street, Sacramento, California 95814, has requested a modification to Permit No. 532, issued on November 26, 1985 (50 FR 49745) under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to conduct additional studies to determine rates of absorption and clearance (renal system) of lithium choride by monitoring blood levels of lithium periodically after administration of lithium chloride on up to twenty (20) captive California sea lions (*Zalophus californianus*)

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administreator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administration for Fisheries.

All statements and opinions contained in this notice are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification are available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Washington, DC; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry St., Terminal Island, CA 90731.

Dated: July 21, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-16792 Filed 7-24-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Graduate Medical Education Advisory Committee; Open Meeting

AGENCY: Department of Defense Graduate Medical Education Advisory Committee, DOD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of Pub. L. 92-463, notice is hereby given that an open meeting of the Department of Defense Graduate Medical Education Advisory Committee has been scheduled as follows:

DATE: August 15, 1986, 8:00 a.m. to 5:00 p.m.

ADDRESS: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Michael Herndon, Executive Secretary, DoD Graduate Medical Education Advisory Committee, Office of the Assistant Secretary of Defense (Health Affairs), Room 1B657, the Pentagon, Washington, DC, 20301 (202) 694-0748.

SUPPLEMENTARY INFORMATION: This will be the third meeting of the Committee. Presentations of current and projected Service programs will be made. A DoD analysis of current GME resource utilization will be presented.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

21 July, 1986.

[FR Doc. 86-16728 Filed 7-24-86; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

DOD Advisory Group on Electron Devices; Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday & Thursday, 27 and 28 August 1986.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

July 22, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-16729 Filed 7-24-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

July 18, 1986.

The USAF Scientific Advisory Board Electronics Panel will meet at the ANSER Conference Facility, Washington, DC, on September 11, 1986, from 8:00 am to 5:00 pm.

The purpose of the meeting is for Electronic Panel to review, discuss and evaluate the PROJECT FORECAST II topics assigned to them for action. The

meeting will include classified discussions on techonolgy issues.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–16737 Filed 7–24–86; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

July 16, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Airbase Performance will meet at the Center for Naval Analyses 4401 Ford Ave, Alexandria VA on August 18, 1986, from 12:30 P.M. to 5:00 P.M. and on August 19–20, 1986, from 9:00 A.M. to 5:00 P.M.

The purpose of the meeting is to receive briefings on and to discuss previous studies on airbase development, performance, and survivability, threats to airbases, basing posture, and logistics resupply to deployed forces.

The meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) –697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–16738 Filed 7–24–86; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Acquisition Guide and the Bonneville Power Assistance Instructions

AGENCY: Bonneville Power Adminsitration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the Bonneville Acquisition Guide (BAG) which establishes the procedures BPA uses in the solicitation, award, and administration of procurement contracts, and the Bonneville Power Assistance Instructions (BPAI) which establishes the procedures BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements) are now available from BPA or $20 and $10 each, respectively.

ADDRESS: Copies of the BAG or BPAI may be obtained by sending a check for the proper amount to the General Accounting Section—DTKC, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: N.L. Linscott, Contracts Manager at (503) 230–4513.

SUPPLEMENTARY INFORMATION: The Bonneville Power Administration was established in 1937 as a Federal Power Marketing agency in the Pacific Northwest. BPA is a nonappropriated fund entity which finances its operations from power revenues. Its procurement operations are conducted under 16 U.S.C. 832 et seq. as well as 16 U.S.C. 474(d)(20). The BAG utilizes the special authorities referred to in the preceding sentence as a basis for establishing BPA procurement policy; however, it follows the format of the Federal Acquisition Regulations to assist offerors in locating pertinent policies. BPA's financial assistance operations are conducted under 16 U.S.C. 832 et seq. as well as 16 U.S.C. 839 et seq. The BPAI utilizes the special authorities referred to in the preceding sentence as a basis for establishing TPA's financial assistance policy. The BPAI also contains BPA's implementation of the principles provided in the following OMB circulars:

A–21 Cost principles applicable to grants, contracts, and other agreements with institutions of higher education.

A–87 Cost principles applicable to grants, contracts, and other agreements with State and local governments.

A–102 Uniform administrative requirements for grants in aid to State and local governments.

A–110 Grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

A–122 Cost principles applicable to grants, contracts, and other agreements with nonprofit organizations.

A–128 Audits of State and local governments.

All BPA solicitations include notice of applicability and availability of the BPA and the BPAI as appropriate for the information of offerors on particular procurements of financial assistance transactions.

Issued in Portland, Oregon, on July 14, 1986.

Peter T. Johnson,

Administrator.

[FR Doc. 86–16748 Filed 7–24–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Consent Order With Exxon Corporation

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Exxon Corporation (Exxon). The agreement proposes to resolve matters relating to Exxon's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. In addition to proposing a settlement of the company's possible liability for violations arising out of Exxon's sales of petroleum products, this Consent Order incorporates an intended resolution of Exxon's deficiency in the Injection Well Litigation Escrow Account (Escrow Account) maintained by the court in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (Stripper Well). If this Consent Order is approved and the settlement of Exxon's Stripper Well liability is accepted by the U.S. District Court for the District of Kansas, Exxon will pay a total of $143 million plus interest.

Within five business days of the entry of the Agreed Judgment attached to the Consent Order as Exhibit A, Exxon will deposit approximately $106.1 million, plus interest from June 15, 1986, into the Escrow Account to be ultimately

disposed of pursuant to the U.S. District Court's determination. Within thirty days of the effective date of the Consent Order, Exxon will also pay approximately $36.9 million, plus interest from the date the Consent Order was executed by DOE, to the DOE. As to these monies, ERA will then petition the Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 C.F.R. Part 205, Subpart V, where any person who claims to have suffered injury from Exxon's alleged overcharges would have the opportunity to submit a claim.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. Following this comment period, ERA will conduct a public hearing to provide interested persons an additional opportunity to present comments. ERA will consider the submissions received from the public in determining whether to reject the settlement, accept the settlement and issue a final Order, or renegotiate the agreement and, if successful, issue the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written and oral comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT:
Emily Sommers, Office of Special Counsel, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6727.

SUPPLEMENTARY INFORMATION:

I. Resolution of Regulatory Issues
A. Crude Oil Overcharge Disputes
B. Cost, Recovery and May 15, 1973 Price Disputes
1. Cost Issues
2. Recovery and May 15, 1973 Price Issues
C. Determination of Maximum Overcharge Liability
II. Determination of Reasonable Settlement Amount
III. Terms and Conditions of the Consent Order
IV. Resolution of Litigation Matters
V. Other Related Enforcement Matters

I. Resolution of Regulatory Issues

Exxon is a major petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by this proposed Order (January 1, 1973 through January 27, 1981), Exxon engaged in, among other things, the production, importation, refining, and sale of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane and other refined petroleum products; and the extraction, fractionation and sale of natural gas liquids and natural gas liquid products.

ERA conducted an intensified audit of Exxon's compliance for the period beginning in 1973 to the date when federal price and allocation controls were ended by the President (January 28, 1981, Executive Order 12287). During this audit, ERA identified areas in the pricing and sales of crude oil and refined petroleum products in which it believes that Exxon had failed to comply with the requirements of the federal price and allocation regulations. The two major regulatory areas of dispute between ERA and Exxon concern alleged errors in the calculation of maximum lawful prices for crude oil produced by Exxon and alleged overstated increased costs and/or understated recoveries of such costs which would affect the calculated maximum legal prices for refined products.

In the negotiation process which led to this proposed settlement, ERA analyzed the results of the audit, the nature of the alleged regulatory violations, and the "banks" of unrecouped cost increases that Exxon was entitled to recover in previous months but did not.[1] The alleged crude oil overcharges were separately considered by ERA in its assessment of the total settlement value.

For the refined product issues covered by this proposed settlement, ERA calculated the maximum refund amount to be approximately $12.7 million, plus an additional $22.7 million for interest which could be assessed on that amount, for a total of $35.4 million. In addition, ERA determined that Exxon may be liable for a maximum of $5.5 million in crude oil overcharges, plus an additional $6.9 million for interest which could be assessed on that amount, for a total of approximately $12.4 million. Exxon's total potential refund liability, therefore, is believed by ERA to be $47.8 million.[2]

The settlement calls for Exxon to pay approximately $36.9 million (plus interest from the date of execution of the Consent Order by DOE) to discharge in full its obligations under the price and allocation regulations, except for those matters excluded from the agreement. Under the terms of the proposed Consent Order, the ERA would petition the OHA to implement a Special Refund Proceeding for disposition of these funds pursuant to 10 CFR Part 205, Subpart V. ERA has preliminarily agreed to the settlement amount after considering the factual aspects related to the various issues, and after assessing the litigation risks associated with establishing the alleged overcharges.

A. Crude Oil Overcharge Disputes

The crude oil overcharge disputes which are resolved by the Consent Order include alleged improper property determinations, improper application of the stripper well exemption, improper computation of base production control levels and other computational errors. These issues were addressed in a Proposed Remedial Order (PRO) issued to Exxon on July 2, 1981, in which ERA alleged violations totalling $5,691,039 without interest.[3]

B. Cost, Recovery and May 15, 1973 Price Disputes

During the negotiations, ERA examined all the alleged regulatory violations and the amount of costs it determined Exxon should be allowed in the calculation of Exxon's maximum allowable prices and total possible overcharge liability. In its audit and in the enforcement documents filed by the FRA, overstatements of increased product and non-product costs, understatements of costs recovered and incorrect May 15, 1973 prices were alleged against Exxon. The company presented information relevant to its calculations of increased costs and selling prices, both to its detriment and benefit, which ERA examined. Furthermore, intervening judicial and administrative decisions have affected ERA's original allegations. After analyzing this information for settlement purposes, ERA determined that the cost, recovery and May 15, 1973 price calculation errors alleged against Exxon totalled approximately $585 million.

1. Cost Issues

a. *Product Cost Disputes.* ERA has estimated that violations totalling approximately $365 million in overstated increased product costs relating to Natural Gas Liquids (NGLs) were

[1] For a thorough discussion of how cost and recovery matters affect banks, see the **Federal Register** notice proposing the Atlantic Richfield Company Consent Order, 50 FR 8366 (March 1, 1985).

[2] These issues are separate from the matters involved in the Stripper Well Litigation which are discussed in section V.

[3] OHA Case No. BRO-1461. After discussions between ERA and Exxon, the PRO was withdrawn without prejudice on November 9, 1981. Subsequently, ERA determined that the alleged overcharges should be reduced by $112,205; thus, Exxon's maximum liability for these crude oil pricing issues is $5,529,465, plus interest, for a total of approximately $12.4 million.

committed by Exxon. These alleged cost overstatements concern the firm's claimed increased costs of shrinkage associated with Exxon's NGL extraction operations.[4]

b. *Non-product Cost Disputes.* ERA estimates Exxon's overstated increased non-product costs totalled $53.6 million. The areas of dispute include improper inclusion of certain costs related to pollution control projects as non-product costs and erroneous, excessive and duplicate inclusion of certain non-product cost increases related to pollution control projects.[5]

2. Recovery and May 15, 1973 Price Issues

a. *Recovery Disputes.* ERA has alleged that Exxon failed to pass through equal increased cost increments at its company-operated service stations[6] and failed to compute sufficient cost recoveries for benzene and toluene sales.[7] The allegations for these issues contained in enforcement documents totaled approximately $54.5 million.[8]

b. *May 15, 1973 Price Disputes.* In addition, in two enforcement documents, ERA challenged Exxon's pricing practices relating to the company's determination of its May 15, 1973 prices. In one document, ERA sought to have Exxon refund to its customers the company's cost savings resulting from the cancellation of its credit card arrangements that existed on May 15, 1973, or the costs to its customers of obtaining new credit card arrangements.[9] In the second enforcement document, ERA argued that Exxon's reduction in octane ratings for regular and premium gasoline required a corresponding reduction in the company's May 15, 1973 price. ERA sought to have Exxon refund to its customers the amount which reflected the decrease in value in its gasoline as a result of Exxon's reduction in the octane levels.[10]

C. Determination of Maximum Overcharge Liability

ERA calculated the maximum amount of overcharges for which Exxon might be liable as a result of the cost issues discussed above. ERA's calculations of available costs were compared to the costs actually recovered by Exxon in its sales of its products. This comparison yielded the information necessary to determine the maximum refined product overcharge liability.

Under the regulations, a refiner was permitted to "bank" any increased costs in a given month that it was permitted to recover in its product prices but did not. Costs could be "banked" and used, subject to certain limitations, in later months in pricing products. At the conclusion of the period of regulatory controls, Exxon had accumulated a claimed "bank" in excess of $2.7 billion in unrecovered increased costs.

However, based upon a month-by-month analysis in which ERA effected the $585 million in adjustments discussed above to Exxon's claimed costs and recoveries during the 88-month period of price controls, ERA determined that success on all of the associated cost, recovery and May 15, 1973 price disputes would result in overcharges of $12.7 million, notwithstanding Exxon's ending banks exceeding $2 billion.

In addition to the $12.7 million of possible overcharge liability for refined product sales, ERA determined that Exxon's maximum overcharge liability for the crude oil pricing issues resolved by the Consent Order is $5.5 million. Thus, Exxon's maximum overcharge liability, excluding interest, for the matters resolved by this Consent Order totals approximately $18.2 million. The maximum recoverable interest on that amount of overcharges would be $29.2 million, so Exxon's maximum liability for all of these issues would be $47.8 million including interest.

II. Determination of Reasonable Settlement Amount

In determining a reasonable settlement amount for the allegations of regulatory violations concerning crude oil and refined products discussed above, ERA reviewed its maximum overcharge and interest determination of $47.8 million. This amount, which is based on audit samples, estimates, projections and extrapolations, represents the estimated maximum recovery, including interest, that could result if all regulatory issues resolved by this settlement were adjudicated in ERA's favor and a maximum allowable price calculation were done on the basis of those issues. The inherent risks in litigation make recovery of the entire $47.8 million problematic. The necessity for the government to prevail on all of the issues in order to achieve the

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[4] On March 3, 1978, ERA issued an NOPV alleging that Exxon overstated its NGL product costs by approximately $145.4 million. On December 15, 1978, DOE filed a complaint in the District Court for the District of Columbia, alleging that Exxon overstated its NGL costs by $314.7 million. *United States of America* v. *Exxon Corp.*, C.A. No. 78-2078 (D.D.C.). The allegations contained in the NOPV were subsumed in the complaint. On May 24, 1985, the DOE moved to dismiss the complaint without prejudice. This motion was granted on July 26, 1985, but the issues contained in that lawsuit have not heretofore been resolved.

[5] In 1979, ERA issued two Notices of Probable Violation (NOPV) to Exxon concerning these issues. The first NOPV, issued on May 14, 1979, alleged that Exxon improperly included in the pollution control category, costs for certain projects which could not be justified as pollution projects. The NOPV did not contain a dollar amount for those violations. The second NOPV, issued May 18, 1979, alleged a $12.5 million violation for Exxon's excessive and/or duplicate inclusion of non-product costs in the pollution control cost category. Although neither document has been issued as a PRO, as a result of ERA's analysis of Exxon Reply to the NOPV and information provided at the NOPV conferences, ERA made a $53.6 million adjustment in its calculations to correct for Exxon's overstated non-product costs.

[6] Exxon is challenging the retail price equalization rule in *Exxon Corp.* v. *DOE*, C.A. No. 79-CV-11 (N.D.N.Y.). That case would be dismissed under this proposed settlement.

[7] Under the terms of a Consent Order entered into between DOE and Exxon on August 10, 1984, to resolve Exxon's improper treatment of foreign export sales of benzene and toluene, Exxon agreed to a $10.8 million adjustment in its recoveries. This adjustment was used in ERA's settlement assessment. ERA also made an additional $4 million adjustment to Exxon's recoveries in accordance with the terms of a Remedial Order issued to Exxon and upheld on appeal to FERC (RO82-56-000) concerning Exxon's improper treatment of domestic benzene and toluene sales.

[8] Although the recovery issues formally alleged in the enforcement actions total $54.5 million, ERA's calculations performed in connection with this proposed settlement included $91.8 million in recovery adjustments. The additional $37.3 million in adjustments were attributable to projected recovery understatements related to unequal cost pass through at Company-operated stations in the post-audit period.

[9] The April 26, 1977, Remedial Order (RO) issued to Exxon by the Federal Energy Administration's Region 6 was upheld on appeal by OHA, 2 DOE ¶ 80,150 (Oct. 2, 1978), and is now pending appeal in a U.S. district court on the ability and remedy issues, *Exxon Corp.* v. *DOE*, C.A. No. 3-78-1302-G (N.D. Texas). The RO does not allege a specific amount to be refunded. ERA has factored this case into its calculations as $10 million in recovery adjustments.

[10] On January 4, 1985, OHA issued the PRO, BRO-1453, as a Remedial Order and ordered Exxon to refund $57,303,052.71 plus interest to its customers. 12 DOE ¶ 83,026 (Jan. 4, 1985). Exxon appealed the RO to FERC, RO85-6-000. In April 1986, FERC issued an Order Vacating Remedial Order and Remanding for Further Proceedings ("Order") which upheld certain aspects of the RO, including the requirement that Exxon's reductions in octane be accompanied by a corresponding reduction in its May 15, 1973 prices. The Order, however, rejected OHA's holding concerning liability for the improper May 15, 1973 prices. 36 FERC ¶ 61,033 (April 4, 1986). The FERC Order went on to state that the Secretary, in his discretion, could recalculate Exxon's costs and recoveries, factoring in the company's octane reductions to determine if this resulted in Exxon charging prices in excess of those permitted by the regulations. Consistent with FERC's Order, ERA has included this issue in its calculations as $64.5 million in recovery adjustments. On May 9, 1986, the Secretary filed a Motion for Reconsideration before FERC, asking it to reconsider the liability portion of its holding.

maximum overcharge recovery was an important consideration in ERA's preliminary determination that Exxon's agreement to pay $36.9 million for alleged regulatory violations is in the public interest.[11]

In evaluating the total settlement amount for Exxon's regulatory violations, in addition to the analysis of litigation risks, ERA took into account such factors as the number and complexity of the legal and factual issues, the time and expense required for the government to fully litigate every issue in order to obtain any recovery. Based on all of these considerations, ERA concludes that the resolution of these matters for $36.9 million is an appropriate settlement and in the public interest.

III. Terms and Conditions of the Consent Order

Within thirty days of the effective date of the Consent Order, Exxon will pay the principal amount of approximately $36.9 million, plus interest, to DOE. If the settlement is not made final by October 20, 1986, Exxon may withdraw from the proposed agreement. If the Consent Order is made final, ERA will petition OHA to implement a Special Refund Proceeding under the provisions of Subpart V of the regulations. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Exxon provide necessary information to OHA.

Unless specifically excluded, Exxon and DOE mutually release each other from claims and actions arising under the subject matter covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Exxon, or of Exxon or the DOE to take action against any other party.

Several matters are excluded from the settlement. The proposed Consent Order does not resolve:

(a) the issues or claims pending or arising out of the subject matter now before the courts in *Exxon* v. *DOE and 341 Tract Unit of the Citronelle Field,* C.A. No. 81–25, (D. Del.), and before OHA in *In Re Three Forty One (341) Tract Unit of the Citronelle Field,* OHA Case Nos. BEN–0078;

(b) Exxon's rights in all regards concerning claims under 10 CFR Part 205, Subpart V, or claims arising from violations or settlements of alleged violations of the federal petroleum price and allocation regulations by third parties;

(c)(i) Any obligation or right to buy or sell entitlements which may be imposed on or made available to Exxon should the entitlements notice of January 1981 be published or any obligation or right to buy or sell entitlements which may be imposed on or made available to Exxon pursuant to the operation of 10 CFR 211.69, including any adjustments made to the entitlements notice for January 1981 or to any notice issued pursuant to 10 CFR 211.69 as the result of the granting of exception relief by the Office of Hearings and Appeals;[12]

(ii) Any entitlements obligations or reporting requirements which may be imposed pursuant to future modifications of the requirements of the entitlements program (10 CFR 211.67 *et seq.*) by the DOE at the direction of or incidental to a final judgment of a court of competent jurisdiction;[13]

(d) The issues or claims pending or arising out of the subject matter now before the court in *Diamond Shamrock Refining and Marketing Co.* v. *Standard Oil Co.* v. *United States Department of Energy,* C.A. No. C2–84–1432 (S.D. Ohio).[14]

(e) The issues or claims pending or arising out of the subject matter now before the court in *Exxon Corp.* v. *DOE,* C.A. No. 79–1320 (D. Kan.), consolidated in *In Re: The Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378 (D. Kan.), except insofar as those issues or claims are foreclosed by the Agreed Judgment or otherwise involve the amount of Exxon's liability in that case.

Finally, this agreement only resolves certain civil liabilities and makes no attempt to resolve any criminal liability that might be established by the government against Exxon.

IV. Resolution of Litigation Matters

The proposed settlement resolves a number of enforcement matters that are being litgated by Exxon and DOE. This involves administrative and judicial litigation and includes the following cases:

Administration Litigation

Proposed Remedial Order:
OHA Case No: HRO–0013
Remedial Orders:
OHA Case No: BRO–1453;
FERC Case No: RO85–6–000

Judicial Litigation

Exxon Corp. v. *DOE,* C.A. No. 3–78–1302–G (N.D. Texas).

Exxon Corp. v. *DOE,* C.A. No. 79–CV–11 (N.D. N.Y.).

V. Other Related Enforcement Matters

Finally, the Consent Order references the intended resolution of the claim of the United States against Exxon in the multi-district litigation presently before the United States District Court for the District of Kansas. *In Re: The Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378. Unlike the litigation brought against DOE which will be resolved as a direct result of the Consent Order's disposition of ERA's pre-enforcement claims and administrative enforcement actions against Exxon, the above claim was brought by DOE against Exxon directly in the federal court, by-passing the administrative process. This dispute between Exxon and DOE regarding the alleged deficiencies in Exxon's payments into the escrow fund in that case will be resolved by submission of an Agreed Judgment and Order to the Court for approval. Exxon's agreement to enter into such an Agreed Judgment is predicated on the resolution of the regulatory issues to be resolved by the finalization of this proposed Consent Order. Accordingly, the Agreed Judgment and Order will not be submitted to the court until final action on this proposed Consent Order occurs.

If the Consent Order is approved and the District Court accepts the Agreed Judgment, within five days of entry of such judgment, Exxon will deposit into the Court's Escrow Account approximately $106.1 million, plus interest calculated from June 15, 1986 through date of actual payment.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

[11] Although ERA and Exxon did not come to any specific agreement as to the portions of the $36.9 million attributable to the crude oil and refined product overcharge issues, in ERA's view, approximately 25% attributable to the crude oil issues and 75% to the refined product issues.

[12] On May 30, 1986, the Temporary Emergency Court of Appeals issued a decision reversing the lower court, holding that DOE could properly decide not to issue further entitlements lists and that DOE's decision not to publish a list for January 1981 or a "clean-up" list of final adjustments in the entitlements program was reasonable. *Texaco, Inc., et al.* v. *Department of Energy, et al. and Ashland Oil, Inc.,* TECA Nos. 3–44 through 3–49 (May 30, 1986).

[13] *Id.*

[14] Under the terms of an Amended Order of Dismissal With Prejudice dated June 18, 1986, on June 23, 1986, Exxon received payment of $665,028 in settlement of its claim against the fund deposited with the Court by Standard Oil Company.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Exxon Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585, and to appear at a public hearing, beginning at 10:00 a.m. on August 26, 1986, at the Department of Energy Auditorium, Room GE–086, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. All comments received by the thirtieth day following publication of this Notice in the **Federal Register**, and all statements made at the hearing, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received and the comments at the hearings, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, on July 18, 1986.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

UNITED STATES OF AMERICA DEPARTMENT OF ENERGY, OFFICE OF SPECIAL COUNSEL

Consent Order With Exxon Corporation

I. Introduction

101. This Consent Order is entered into between Exxon Corporation ("Exxon") and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between DOE, as hereinafter defined, and Exxon, as hereinafter defined, relating to Exxon's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by Section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners, including Exxon, with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based on such audits.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by the DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel (OSC), the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Exxon" shall include: (1) Exxon Corporation and all of its subsidiaries and affiliates, including Exxon Company, U.S.A., and their predecessors and successors in interest, but only for the acts of such companies while they were subsidiaries or affiliates of Exxon, (2) all of Exxon's petroleum-related activities as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise and, except for purposes of Article IV, *infra*, (3) Exxon's directors, officers, and employees.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Exxon was a "refiner," "producer," and "reseller" as those terms are defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE. Exxon engaged in, among other things, the production, importation, sale, and refining of crude oil, the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products, and the extraction, fractionation, and sale of natural gas liquids and natural gas liquid products.

302. In 1973, the DOE began an audit to determine Exxon's compliance with the federal petroleum price and allocation regulations. In 1977, pursuant to the mandate of the Secretary of Energy, OSC continued the audit on an intensified basis. The audit encompassed an examination of Exxon's policies and procedures pertaining to, and Exxon's compliance with, the federal petroleum price and allocation regulations.

303. As part of its audit, the DOE examined Exxon's books and records relating to Exxon's compliance with the federal petroleum and price and allocation regulations and the reporting requirements imposed by those regulations. At the DOE's request, Exxon prepared and submitted to the auditors a substantial number of specific responses to audit inquiries not necessarily limited to, or readily available from, individual books or records. In addition, Exxon submitted recalculated cost allocations pursuant to the Consent Order between Exxon and the DOE dated August 10, 1984 (Case No. REXM00301).

304. During the course of the DOE's audit, the enforcement proceedings instituted by the DOE and the

negotiations that led to this Consent Order, the DOE raised certain issues with respect to Exxon's application of the federal petroleum price and allocation regulations. The DOE has taken various administrative enforcement actions against Exxon, including the issuance of letters, Notices of Probable Violation, a Notice of Proposed Disallowance, Proposed Remedial Orders, and Remedial Orders. Exxon maintains, however, that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. The DOE and Exxon disagree in several respects concerning the proper application of the federal petroleum price and allocation regulations to Exxon's activities with respect to the matters covered by this Consent Order, and each believes that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the audit and subsequent negotiation process. However, in order to avoid the expense of protracted and complex litigation and the disruption of its orderly business functions, Exxon has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and the Agreed Judgment attached hereto as Exhibit A, and in lieu of all other remedies which have been or might be sought by the DOE against Exxon for such matters under 10 CFR 205.199I or otherwise, Exxon shall pay a total of one hundred forty-three million dollars ($143,000,000), plus interest, in the manner specified in paragraphs 402 and 403.

402. Within five (5) business days of the entry of the Agreed Judgment attached hereto as Exhibit A, Exxon shall pay one hundred six million, sixty-nine thousand, six hundred forty-four dollars ($106,069,644), plus interest, in the manner provided by that Judgment.

403. Within thirty (30) days of the effective date of this Consent Order, Exxon shall pay thirty-six million, nine hundred thirty thousand, three hundred fifty-six dollars ($36,930,356), plus interest to be computed in accordance with paragraph 404, to DOE for distribution pursuant to the special refund procedures prescribed by 10 CFR Part 205, Subpart V.

404. Interest shall be earned from the date of execution of this Consent Order by DOE at an initial interest rate equal to the annual coupon equivalent for the average price bid at the most recent auction of 13-week U.S. Treasury Bills preceding said date of execution. Thereafter, the interest rate shall be periodically adjusted to the level of the annual coupon equivalent for the average price bid at the auction of 13-week Treasury Bills next following the first day of each calendar quarter, beginning with the calendar quarter next following said date of execution. The adjusted interest rate will apply on the first day after said auction and will continue to apply until and including the day of the next such auction following the first day of the next calendar quarter or until payment, whichever is earlier. Interest shall be deemed earned each day as of 2:00 p.m. Eastern Time at 1/365th of the rate then in force and shall be compounded quarterly as of the date of each adjustment of the rate.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Exxon regarding Exxon's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Remedial Order, action in court or otherwise, including compliance with the Consent Order between Exxon and the DOE dated August 10, 1984 (Case No. REXM00301), are resolved and extinguished as to Exxon by this Consent Order, except that this Consent Order does not cover or affect:

(a) The issues or claims pending or arising out of the subject matter now before the courts in *Exxon, et al. v. DOE and 341 Tract Unit of the Citronelle Field,* C.A. No. 81–25, *et al.* (D. Del.), and before OHA in *In Re Three Forty One (341) Tract Unit of the Citronelle Field,* OHA Case Nos. BEN–0078, *et al.;*

(b) Exxon's rights in all regards concerning claims under 10 CFR Part 205, Subpart V, or claims arising from violations or settlements of alleged violations of the federal petroleum price and allocation regulations by third parties;

(c)(i) Any obligation or right to buy or sell entitlements which may be imposed on or made available to Exxon should the entitlements notice of January 1981 be published or any obligation or right to buy or sell entitlements which may be imposed on or made available to Exxon pursuant to the operation of 10 CFR 211.69, including any adjustments made to the entitlements notice for January 1981 or to any notice issued pursuant to 10 CFR 211.69 as the result of the granting of exception relief by the Office of Hearings and Appeals;

(ii) Any entitlements obligations or reporting requirements which may be imposed pursuant to future modifications of the requirements of the entitlements program (10 CFR 211.67 *et seq.*) by the DOE at the direction of or incidental to a final judgment of a court of competent jurisdiction;

(iii) Notwithstanding subparagraphs (i) and (ii) above, in view of (1) satisfaction by Exxon of the judgment entered against it in *United States* v. *Exxon Corp.,* 561 F. Supp. 816 (D.D.C. 1983), *aff'd,* 773 F.2d 1240 (TECA 1985), *cert. denied,* 106 S. Ct. 892 (Jan. 27, 1986), and (2) Exxon's payments into the Injection Well Litigation Escrow Account maintained under the jurisdiction of the Court in *In Re: The Department of Energy Stripper Well Exemption Litigation,* MDL 378 (D. Kan.), both previously and pursuant to paragraph 402 of this Consent Order, the DOE will take no further action against Exxon with regard to these two matters;

(d) The issues or claims pending or arising out of the subject matter now before the court in *Diamond Shamrock Refining and Marketing Co.* v. *Standard Oil Co., et al.* v. *United States Department of Energy, et al.,* C.A. C2–84–1432 (S.D. Ohio).

(e) The issues or claims pending or arising out of the subject matter now before the court in *Exxon Corp.* v. *DOE,* C.A. No. 79–1320 (D. Kan.), consolidated in *In Re: The Department of Energy Stripper Well Exemption Litigation,* MDL 378 (D. Kan.), except insofar as those issues or claims are foreclosed by the Agreed Judgment attached hereto as Exhibit A or otherwise involve the amount of Exxon's liability in that case.

502. (a) Except as otherwise provided herein, compliance by Exxon with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Exxon, except as to those matters excluded by paragraph 501, the DOE hereby releases Exxon completely and for all purposes from all administrative

and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or might otherwise be able to assert against Exxon before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Exxon or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Exxon or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Exxon has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Exxon in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) Except for the matters excluded by paragraph 501, this Consent Order settles and finally resolves all aspects of Exxon's liability to the DOE under the federal petroleum price and allocation regulations, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property. In addition, if Exxon was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, the DOE shall not initiate or prosecute any enforcement action against any person for noncompliance with the federal petroleum price and allocation regulations during such period relative to such property, except to the extent such person received its interest from such property in kind. However, the DOE reserves the right to initiate and prosecute enforcement actions against any person other than Exxon for noncompliance with the federal petroleum price and allocation regulations, including suits against operators for overcharges for crude oil when Exxon is a working interest or royalty interest owner in such crude oil production. Exxon and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to Exxon's activities as a working interrest or royalty interest owner on properties on which it is not the operator. Furthermore, Exxon and the DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other person for violations on properties of which (but only for the times during which) Exxon is or was a working interest or royalty interest owner (and not the operator) or affect any rights or obligations between Exxon and the operator or any other working interest or royalty interest owner.

(c) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to the DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel, or defense against any criminal or civil action brought by an agency of the United States other than the DOE under (i) section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Exxon in any private action, including an action for contribution by or against Exxon.

(d) With respect to matters not excluded from this Consent Order, Exxon releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Exxon has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations. This release, however, does not preclude Exxon from asserting any factual or legal position or argument as a defense against any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States.

503. Within fifteen (15) days after the effective date of this Consent Order, Exxon will execute and deliver to the DOE an Agreed Judgment in *Exxon Corp* v. *DOE*, No. 79–1320 (D. Kan.), consolidated in *In Re: The Department of Energy Stripper Well Exemption Litigation*, MDL 378 (D. Kan.), in the form attached hereto as Exhibit A. Within fifteen (15) days thereafter, the DOE will execute said Agreed Judgment and file it with the court.

504. Within fifteen (15) days after the effective date of this Consent Order, Exxon will execute and deliver to the DOE a stipulation for dismissal with prejudice in *Exxon Corp. v. DOE*, C.A. 3–78–1302–G (N.D. Texas), in the form attached hereto as Exhibit B. Within fifteen (15) days thereafter, the DOE will execute the stipulation and file it with the court.

505. Within fifteen (15) days after the effective date of this Consent Order, Exxon will execute and deliver to the DOE a stipulation for dismissal in *Exxon Corp. v. DOE*, C.A. 79–CV–11 (N.D. N.Y.), in the form attached hereto as Exhibit C. Within fifteen (15) days thereafter, the DOE will execute the stipulation and file it with the court.

506. Commencing within thirty (30) days after the effective date of this Consent Order, Exxon and the DOE will file or cause to be filed appropriate pleadings and will take all other steps necessary to withdraw all claims and dismiss with prejudice all proceedings against Exxon covered by this Consent Order then pending or subsequently filed before the DOE's Office of Hearings and Appeals ("OHA") or the Federal Energy Regulatory Commission ("FERC") and to dismiss with prejudice any court proceeding then pending or subsequently filed involving an appeal from or seeking review of a decision by the OHA or the FERC in any such proceeding.

507. Execution of this Consent Order constitutes neither an admission by Exxon nor a finding by the DOE of any violation by Exxon of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. None of the payments or expenditures made by Exxon pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines or forfeitures.

508. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Exxon, but only if Exxon has concealed facts relating to such violations. The DOE and Exxon also reserve the right to seek appropriate

judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

VI. Recordkeeping, Reporting and Confidentiality

601. Exxon shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 403, Exxon shall also maintain sales volume data and customers' names and addresses regarding its sales of crude oil and refined petroleum products for the transactions covered by this Consent Order until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 403, *supra*. If requested, Exxon shall make such information available to DOE. Except as otherwise provided in this paragraph, upon completion of payment to DOE of the amount set forth in paragraph 403 of this Consent Order, Exxon is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal requests for information regarding other firms subject to the DOE's information gathering and reporting authority, Exxon will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Exxon's compliance with the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

603. The DOE will treat the sensitive commercial and financial information provided by Exxon pursuant to negotiations which were conducted with respect to this Consent Order or obtained by the DOE in its audit of Exxon and related to matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Exxon with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Exxon's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Exxon may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Exxon and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Exxon (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Exxon agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. Exxon hereby waives its right to administrative or judicial review of this Order, but Exxon reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments and to appear at a public hearing conducted by ERA. The DOE will consider all written comments and the statements made at the hearing to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Exxon, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Exxon, Exxon may, at any time thereafter until the effective date, withdraw its agreement to this Consent Order by written notice to the DOE in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Exxon, hereby agree to and accept on behalf of Exxon the foregoing Consent Order.

Joe T. McMillan,

Vice President, Exxon Corporation.

Dated: June 17, 1986.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of the DOE the foregoing Consent Order.

Milton C. Lorenz,

Special Counsel, Department of Energy.

Dated: June 16, 1986.

Exhibit A.—In re: The Department of Energy Stripper Well Exemption Litigation M.D.L. 378

In the United States District Court for the District of Kansas

[C.A. No. 79–1320]

Exxon Corporation, Plaintiff, v. Department of Energy, et al., Defendants

Agreed Judgment

On this day came on to be heard *Exxon Corporation* v. *Department of Energy, et al.*, C.A. No. 79–1320, which cause is presently a part of the above entitled multi-district litigation; and the Court, after being advised that Exxon Corporation ("Exxon") and the Department of Energy ("DOE") have agreed to resolve the dispute between such parties by entry of this agreed judgment, is of the opinion that the following judgment should be entered. It is therefore

1. ORDERED that Exxon deposit in the "Injection Well Litigation Escrow Account" maintained by this Court the sum of one hundred six million, sixty-nine thousand, six hundred forty-four dollars ($106,069,644), plus interest from June 15, 1986, to be computed as follows:

interest shall be earned from June 15, 1986, at an inital interest rate equal to the annual coupon equivalent for the average price bid at the most recent auction of 13-week U.S. Treasury Bills preceding that date; thereafter, the interest rate shall be periodically adjusted to the level of the annual coupon equivalent for the average price bid at the auction of 13-week Treasury Bills next following the first day of each calendar quarter, beginning with the calendar quarter commencing July 1, 1986; the adjusted interest rate will apply on the first day after said auction and will continue to apply until and including the day of the next such auction following the first day of the next calendar quarter or until payment, whichever is earlier; interest shall be deemed earned each day as of 2:00 p.m. Eastern Time at 1/365th of the rate then in force and shall be compounded quarterly as of the date of each adjustment of the rate.

2. Subject to paragraphs 3 and 4 below, it is further ORDERED that, upon payment of the amount set forth in paragraph 1 above, Exxon, in all of its various capacities, including, but not limited to its capacities as operator, working interest owner, royalty interest owner, overriding royalty owner, and production payment owner, is hereby released and discharged from any and all civil and administrative claims and disputes against Exxon, whether asserted or not asserted by the DOE or anyone authorized to act on its behalf, arising, either directly or indirectly, from the inclusion of injection wells in the well count to determine "average daily production" for the properties described in Exhibits 1 and 3 attached hereto and incorporated herein;

3. It is further ORDERED that the payment set forth in paragraph 1 above shall not include any amount with respect to or satisfy any claim of DOE against the working interest or royalty interest owners in the Dover Unit and the Red Creek Unit, identified in Exhibit 2 hereto, who have taken in kind the crude oil produced from such properties and who have deposited monies in the jurisdiction of this Court in this multi-district litigation or in the jurisdiction of the United States District Court for the Southern District of Ohio in connection with *Diamond Shamrock Refining and Marketing Company* v. *Standard Oil Company*, C.A. No. C2–84–1432;

4. It is further ORDERED that, notwithstanding the terms of this Judgment, the DOE may initiate and prosecute civil and administrative enforcement actions against any party other than Exxon for non-compliance with the federal petroleum price and allocation regulations, including suits for overcharges for crude oil against operators of properties of which Exxon was a working or royalty interest owner of such crude oil production, but in no event shall the DOE be permitted to recover amounts from such operators for alleged overcharges paid by Exxon in connection with the properties described in Exhibit 3 attached hereto, nor shall this Judgment prejudice the rights of Exxon or any third party in any private action, including an action for contribution by or against Exxon;

5. It is further ORDERED that none of the amounts paid by Exxon pursuant to this Judgment shall be deemed for any purpose to be a penalty, fine, or forfeiture or settlement of any potential liability for any penalty, fine or forfeiture; and the DOE agrees, and the Court therefore ORDERS, that the DOE shall neither seek nor request the Department of Justice to initiate or prosecute any action against Exxon for civil penalties for the claims and disputes described in paragraph 2;

6. It is further ORDERED that the DOE may seek appropriate judicial remedies for any misrepresentation of a material fact made by Exxon during the course of audit, discovery in this litigation or the negotiations that preceded the resolution of this dispute;

7. This Agreed Judgment does not resolve the issue of how the monies paid by Exxon hereunder or any other monies deposited in the Injection Well Litigation Escrow Account shall be distributed, and both the DOE and Exxon reserve the right to present their respective arguments on that issue.

Signed this —— day of ——, 1986.

Frank G. Theis

Approved and Agreed as to Form and Substance:

Carl Corrallo,
Theodore A. Miles,
Marcia K. Sowles,
Erich T. Schwartz, Office of the Solicitor, Judicial Litigation, Economic Regulatory Admin., Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; Counsel for Department of Energy, Defendant and Counter-Plaintiff

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Edward de la Garza, Exxon Corporation

David J. Beck, Fulbright & Jaworski, 1301 McKinney, Houston, TX 77010, (713) 651–5151; Counsel for Exxon Corporation, Plaintiff and Counter-Defendant

Exhibit 1

1. Mrs. E.H. Welder
2. E.W. Cowden
3. W.E. Pound
4. J.B. Henry
5. Charlotte Waterflood
6. F.B. Thompson
7. Q.R. Quilliam
8. A.N. Steinle
9. Jessie M. Spinks B
10. Westbrook Coil Corp
11. State Univ Queens Consl #2
12. Floyd A
13. Stae Univ Queens Colsl
14. Annie S. Boone
15. C.A. Schultz
16. Charlotte Waterflood Unit 3
17. Northeast Elmore Deese Unit
18. Keokuk Earlsboro Unit
19. Bauer Smith
20. Harold Beck
21. J.C. Beck
22. Kay Birdie
23. Clow C 65
24. Leroy Cummins
25. Dial Durbin
26. S.B. Drees
28. Mary Dunaway
29. Darrell Durbin
30. George Durbin
31. Luella Durbin
32. Pearl Durbin
33. Lizzie Fichteman
34. Waneta Forcums
35. A. Fortner
36. Maude Foster
37. Ann Hopper
38. Cynthia Hopper
39. Emery Hopper
40. Fred Ireland
41. William Ireland
42. Birdie Kimbrell
43. Lemuel Lilly
44. T.N. Logsdon
45. T.N. Logsdon / 80–A
46. Nelson Logue
47. J.G. Main
48. Edith Marshall
49. Albert McClain
50. Charity McClain
51. Elsie McClain
52. Martin McClain
53. Oscar McClain
54. Pearl McClain
55. Robert McCloy
56. Emma McCormick
57. Robert McKay
58. McKenzie South C–464
59. Iva Miller
60. Mabel Mills
61. J.R. Morrison
62. S.R. Myers
63. Ramsey-Hopper
64. Ramsey-Leavy
65. Raymond C 64
66. Orvill Simmons
67. John Sloan
68. Guy Smith
69. Southwest Roland Unit
70. Harley Stead
71. Kenneth Stubblefield
72. Martha Tierry
73. Henry Tucker
74. Arthur Watson
75. Weaber-Horn
76. Jax M. Cowden
77. Roy Weber
78. H.S. Williams
79. M. Williams
80. Emily Wood
81. J.T. Wright
82. Harold Zetsche
83. Golden Trend
84. Brunson-Sprayberry Oil Unit
85. Fort Stockton Unit
86. North Hanson Unit
87. Rasberry/6100 Caddo Unit
88. Floyd H
89. R.M. Means
90. J.S. Means
91. King Ranch Strattpm
92. Bateman Trust Estate
93. J. Detrick
94. A.K. McBride
95. W.R. Johnson
96. E.M. Chylek
97. W.W. Clements
98. J.E. Parker
99. M.M. Davis B
100. Dover Unit
101. Duvall County Ranch
102. Red Creek Unit
103. Means—Queen No. 1

104. Wienert/Strawn Unit
105. Walter Bartimus
106. John Dial
107. E.C. Douthit
108. Raul Dunaway
109. Carl Hall
110. Laura McClain
111. F. Ray
112. W.R. Settles
113. Terminal Caddo Unit
114. Lydia Weaber

Exhibit 2.—Escrow Accounts Payments by Others

Dover Unit:	
Amoco	$361,487
Gulf	52,704
Sun	632,867
Marathon	385,626
Red Creek Unit:	
Union	209,272

Exhibit 3

Property	Deposits to escrow account
South Van Lewisville Unit	$8,093.43
Ismay Flodine Park Unit	257,591.66
Northwest Dover Unit	373,270.19
Walnut Grove Unit	74,602.33
West Lovington Unit	834,637.63

Exhibit B

In the United States District Court for the Northern District of Texas, Dallas Division

[Civil Action No. 3–78–1302–G]

Exxon Corporation, Plaintiff, v. Department of Energy and Wayne E. Gifford, Deputy Regional Administrator, Region VI, Defendants, and United States of America, Counterclaimant

Stipulation of Dismissal

Plaintiff, Exxon Corporation ("Exxon"), and the defendants, the Department of Energy ("DOE") and Wayne E. Gifford, Deputy Regional Administrator, Region VI, and the Counterclaimant, the United States of America, hereby stipulate as follows:

1. Exxon and DOE have entered into a Consent Order, a true copy of which is attached hereto as Attachment 1.

2. The Consent Order has now become final and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, plaintiff, defendants and counterclaimant hereby stipulate that the instant action be dismissed with prejudice, each party to bear its own costs.

EXXON CORPORATION
By:

Attorney for Plaintiff

United States Department of Energy, Wayne E. Gifford, and the United States of America
By:

Attorney for Defendants and Counterclaimant

This —— day of ————, 1986, the foregoing Stipulation is approved, and

It is so ordered.

United States District Judge

Exhibit C

In the United States District Court for the Northern District of New York

[Civil Action No. 79–CV–11]

Exxon Corporation, Plaintiff, v. Department of Energy, Defendant

Stipulation of Dismissal

Plaintiff, Exxon Corporation ("Exxon") and the defendant, the Department of Energy ("DOE") hereby stipulate as follows:

1. Exxon and DOE have entered into a Consent Order, a true copy of which is attached hereto as Attachment 1.

2. The Consent Order has now become final and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, Exxon and DOE hereby stipulate that the instant action be dismissed with prejudice, each party to bear its own costs.

EXXON CORPORATION
By:

Attorney for Plaintiff

United States Department of Energy
By:

Attorney for Defendant

This —— day of ————, 1986, the foregoing Stipulation is approved, and

It is so ordered.

United States District Judge

[FR Doc. 86–16715 Filed 7–24–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–31–NG]

Czar Resources Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order to Czar Resources Inc. (Czar) granting blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 86–31–NG authorizes Czar to import up to 100 Bcf annually over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, July 17, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–16751 Filed 7–24–86; 8:45 am]

BILLING CODE 16751–01–M

[OFP Case No. 62021–9325–20–24]

Dexter Corp.; Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification by the Dexter Corporation.

SUMMARY: On July 8, 1986, The Dexter Corporation (Dexter), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at its facility in Windsor Locks, Connecticut, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in Sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting

materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before September 8, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585.

Docket No. ERA-C&E-86-49 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-076, Washington, D.C. 20585 Telephone (202) 252-9506

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-6947

SUPPLEMENTARY INFORMATION: Dexter proposes to construct and operate a 52 MW cogeneration facility in Windsor Locks, Connecticut, which will (1) generate electrical power for sale to Connecticut Light and Power Company and (2) produce steam to be used by Dexter's adjoining paper mill. The system will consist of a combustion turbine, a waste heat recovery boiler, a single-auto-extraction/condensing steam turbine, and ancillary equipment. The facility will burn natural gas and will be capable of utilizing #2 oil as a back-up fuel.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold to Connecticut Light & Power Company. Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Dexter has certified to ERA that:

1. The oil and gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b);

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible; and

3. Prior to operation, all applicable environmental certifications will be secured.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a cogeneration FUA permanent exemption, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. Dexter has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by Dexter pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on Dexter's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that Dexter is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on July 18, 1986.

Robert L. Davies,

Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 86-16750 Filed 7-24-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-31; OFP Case No. 65040-9370-20-24]

Oceanside Refrigeration, Inc.; Order granting exemption

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting to Oceanside Refrigeration, Inc. exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Oceanside Refrigeration, Inc. (ORI or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a 40.9 MW (net, approximate) combined cycle cogeneration facility designed to produce electricity and process steam at its facility located in San Diego County, California. The final exemption order and detailed information on the proceeding are provided in the SUPPLEMENTARY INFORMATION section, below.

DATES: The order shall take effect on September 23, 1986. The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m., to 4:00 p.m, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, S.W., Room GA-076, Washington, D.C. 20585, Telephone (202) 252-9506.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On January 13, 1986, ORI petitioned ERA under Section 212(c) of FUA and 10 CFR

503.37 for a permanent cogeneration exemption to permit the use of natural gas in a 40.9 MW (net, approximate) combined cycle cogeneration facility consisting of a gas turbine, a heat recovery steam generator, a steam turbine generator, an absorption refrigeration package, and ancillary equipment. It is expected that more than 50 percent of the net annual electric power produced by ORI will be sold to San Diego Gas and Electric Company, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will also produce steam to meet the requirements of the adjoining cold storage and ice making complex.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including ORI's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in acordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of Section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on February 24, 1986 (51 FR 6455), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on April 10, 1986. One comment was received that clarified the applicant's interpretation of the Air Pollution Control District Rule 20.4. The correction does not affect the allowable emissions levels. The comment further pointed out that the use of fluidized bed combustion has been used in a number of cogeneration projects that have steam as the useful heat product. Pursuant to 10 CFR 503.10(a), ERA may deny permanent exemptions if it "finds on a site-specific or generic basis that use of a method of fluidized bed combustion of an alternate fuel is economically and technically feasible." ERA has not made a generic or a site-specific finding regardng the use of fluidized bed combustion and, therefore will not deny the requested permanent exemption. No hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that ORI has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to Section 212(c) of the FUA, ERA hereby grants a permanent cogeneration exemption to ORI to permit the use of natural gas as the primary energy source fot its cogeneration facility located in San Diego County, California.

Pursuant to seciton 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publicaiton of this order in the **Federal Register**.

Issued in Washington, DC, on July 18, 1986

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-16749 Filed 7-24-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Affected by Accounting Adjustment Involving Sources for Disbursements Made Pursuant to the "Warner Amendment"

SUMMARY: The Office of Hearings and Appeals announces that it has identified the subaccounts within the Deposit Fund Escrow Account maintained by the Department of Energy which have been utilized as sources for a $200 million distribution of funds made to state governments in February 1983 pursuant to the congressional directive of the "Warner Amendment."

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2094 (Mann), (202) 252-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In December 1982, the Congress passed and the President signed the Further Continuing Appropriations Act, 1983, Pub. L. No. 97-377. Section 155 of That law, commonly referred to as the "Warner Amendment," authorized the Secretary of Energy to disburse, as soon as practicable, up to $200 million to state governments derived from funds received by virtue of alleged petroleum pricing and allocation violations and in trust accounts administered by the Department of Energy (DOE) on December 17, 1982. On January 31, 1983, the DOE's Economic Regulatory Administration (ERA) gave notice, on behalf of the Secretary of Energy, of the disbursement of $200 million to state governments pursuant to the authority conferred in the Warner Amendment. 48 FR 5293 (1983).

The $200 million disbursement was made from a Deposit Fund Escrow Account maintained in the United States Treasury by the DOE. That account is used to deposit the monies received as a result of alleged or actual petroleum price violations and the interest earned from investment of monies in the account. The DOE segregates the funds in that account into subaccounts to identify each case under which moneys had been received and to document the differences in terms and amounts of payment. *Id.* Until now, DOE has accounted for the $200 million disbursement as an extraordingary item and has not charged it against particular subaccounts. Consequently, the precise sources of the funds were not identified.

It is now possible to identify, as an accounting matter, the subaccounts to which to attribute the $200 million disbursement. The Warner Amendment specified that the disbursement shall come from oil overcharge escrow accounts established on or before December 17, 1982, but excluded funds in the following categories: (1) funds required to pay claimants in DOE refund proceedings, (2) funds likely to be required to satisfy claimants identified in judicial proceedings, and (3) funds received pursuant to Consent Orders or Remedial Orders which contained remedial provisions that were inconsistent with the statutory disbursement. Accordingly, attribution to individual subaccounts could not be made until it was clear that the funds in a particular subaccount would not be required to pay claimants in DOE

administrative refund proceedings or in judicial proceedings pertaining to that subaccount.

We have now identified the subaccounts that should be charged for the $200 million. Since December 1982, the Office of Hearings and Appeals has made substantial progress in refunding moneys from the Deposit Fund Escrow Account. As of June 30 1986, the OHA had approved 16,455 applications for refund and awarded $218,226,412.16 to successful claimants. Of the refund proceedings instituted for funds in the escrow account on December 17, 1982, many have been concluded, and in the remainder only a few applications remain to be considered. Substantial funds remain in the 279 subaccounts for which refund proceedings have been completed. Additional funds are available, sufficient to aggregate the full $200 million, from 12 subaccounts where refund proceedings are nearly completed. In those cases, we have established generous reserves for all remaining applications; the size of the reserve assumes the approval of full refunds for all pending applications. While DOE could delay attribution of the Warner Amendment disbursement until the full $200 million is available from subaccounts in which refund proceedings are completed, this would continue to complicate the Department's accounting for oil overcharge funds and further delay final implementation of the Congressional mandate in the Warner Amendment. Accordingly, we have decided to proceed ahead now and to charge the Warner Amendment disbursement to these identifiable sources.

The 291 specific subaccounts which have been charged are listed in the appendix to this Notice. Half of the $200 million disbursement has been charged to subaccount containing funds attributable to alleged crude oil violations. In the crude oil refund proceedings from which the Warner Amendment funds have been charged, no direct purchaser of the crude oil has submitted a claim. Accordingly, the entire amount of the funds in all but one of these subaccounts was attributed to the Warner Amendment disbursement.

The other half of the disbursement has been charged to subaccounts containing funds attributable to alleged violations of DOE regulations in sales of natural gas liquids and refined petroleum products. The entire amount of the funds in 90 of those accounts has been attributed to the Warner Amendment disbursement. Only a portion of the funds in 11 of these accounts has been attributed to the Warner Amendment disbursement.

As a result of identifying the subaccounts within the Deposit Fund Escrow Account maintained by the Department of Energy which have been utilized as sources for the Warner Amendment disbursement, all of the funds in 279 subaccounts within the DOE Deposit Fund Escrow Account were attributed to the Warner Amendment disbursement, and those accounts now have balances of zero. In the 12 subaccounts that continue to have a positive balance after this accounting adjustment, the amount charged to the subaccount is noted in the appendix.

It should be noted that this adjustment is an accounting technique necessitated by the manner in which the Warner Amendment, as passed by Congress, required the funds to be identified. The disposition of the related individual Subpart V refund proceedings will be the subject of future notice.

Dated: July 21, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix: Notice of Cases Affected by Accounting Adjustment Involving Sources for Disbursements Made Pursuant to the "Warner Amendment"

CRUDE OIL SUBACCOUNTS

Name of subaccount	Consent order No.	
Adams Resource and Energy	610C00431Y	
Adco Producing Co. Inc	422C00261Z	
Alkek, Albert B	602X00222Y	
Alpar Resources Inc	600C20046Z	
Alta Loma Oil Co	675C00292Y	
An-Son Corp	660C00531Y	
Arizona Fuel Corp	N00S98067Z	
Atlantic Oil Co	960C00046Z	
Atlantic Oil Corp	810C00252Z	
Axis Petroleum Co	940C00181Z	
B&M Operating	600C20078Z	
Barnhart Company	640C00402Z	
Baxter, Murphy H	6E0C00031Z	
Berg, Laney & Brown	740C01250Z	
Bettis, Boyle & Stovall	600C20047Z	
Beverly Hills Oil Co	940C00142Z	
Big Lane Co	422C00187Z	
Big Six Drilling Co	6E0C00037Z	
Big-Tex Crude Oil Co	6A0X00303Z	
Blackwood & Nichols Co	660C00668Z	
Bock & Bacon	6E0C00061Z	
Bolin Oil Co	600C20048Z	
Brown Oil Operator	6E0C00036Z	
C&K Petroleum Inc	619C00439Z	
CN Operation	733C02015Z	
Cajun Energy	650X00322Z	
Calvin Petroleum Corp	810C00378Y	
Caukins Oil	840C00056Z	
Centura, Inc	610C00477Z	
Century Oil Management Inc	960C00067Z	
Claire-Benz-Stoddard	6A0C00259Z	
Clark & Clark	660C00622Y	
Cobra Oil & Gas Corp	600C20051Z	
Comanche Oil Co	740C01374Z	
Connally Oil Co	6A0C00133Y	
Coors Energy	5C0X00252A	
Coral Petroleum	602X00004Y	
Cox, Jim	660C00412Z	
Cross Oil & Refining Co	N00S90114Z	
Culpepper Oil	660C00444Z	
Cummings, Douglas R	670C00225Y	

CRUDE OIL SUBACCOUNTS—Continued

Name of subaccount	Consent order No.	
Da Vinci Co. Inc	6C0X00250Z	
Decalta International	930C00073Z	
Delta Drilling	6A0C00120Y	
Depco Inc	810C00377Z	
Dolley, Chester F	960C00048Z	
Duggan Machine	6A0C00295Z	
Dunlap, E. Corporation	660C00439Z	
Earth Resources	N00S90097Z	
Eddy Refining Co	N00S98093Z	
Edwards Producing Co. Inc	422C00248Z	
El Paso Natural Gas Co	660C00648Z	
Encorp Inc	6A0X00291Z	
Energy Acquisition	740C01404Z	
Energy Development of California	940C00131Z	
Energy Services, Inc	720C00577Z	
Equipment, Inc	640C00327Z	
Exchange Oil & Gas	640C00429Z	
Ferguson Oil & Gas Co	660C00592Z	
Fletcher Oil	N00S90203Z	
Florida Gas Exploration Co	413C00021Z	
Franks, John	6A0C00294Z	
Freeport Minerals Co	640C00024Z	
Geer Tank Trucks, Inc	6A0X00287Z	
General Exploration Co	610C00441Z	
Ginther, N.C	6E0C00039Y	
Golden Eagle Oil Co	N00M90034Z	
Granier Oil Co	960C00034Y	
Gruenerwald & Assoc	840C00083Y	
Guam Oil & Refining Corp	N00S90096A	
Guenther	602X00028Y	
Hankamer, Curtis	610C00474Z	
Hanover Mgmt. Co	6A0C00230Z	
Haring	610C00406Y	
Harris, James W	422C00201Z	
Hawn Brothers	610C00350Z	
Hendrix, John H. Corp	670C00262Y	
Hixon Dev. Co	610C00398Y	
HNG Oil Company	610C00329Z	
Hollingsworth, C.D	422C00196Z	
Homestake Proc. Co	660C00639Y	
Howell Drilling Inc	610C00283Z	
Hunt, D.H	N00C00779Z	
Hunt, W.H	6A0C00244Z	
Independent Oil Producers	940X00159Z	
Internorth, Inc	730V02000Z	
Johnson A. and Co. Inc	N00S98007Z	
Johnson, Lyle & Lee	660C00315Z	
Josey, Lenoir M	6E0C00063Z	
Kansas-Nebraska Natural Gas	730V01244Z	
Karchmer Pipe & Supply	572C00179Z	
Kemco & Kenneth Walker	N00X00233Z	
Kimbark Oil & Gas	810C00384Z	
Kirkpatrick Oil & Gas Co	670C00224Y	
Kite Operating Co	660C00492Y	
Lacy, R. Inc	6A0X00263Z	
Lacy, R. Inc	6A0C00229Z	
Lesback Oil	710C01303Z	
Liberty Oil & Gas Co	640C00294Y	
Lindsey, W.W. & Elliott, W. E	433C00466Z	
Loeb, Herman L	572C00260A	
Lundell's Inc	610C00339Y	
Lyons Petroleum Inc	641C00426Z	
Machin, Art	600C20090Z	
Mackellar Inc	660C00246Z	
Mallard Resources	N00S90125Z	
Marbob Energy Corp	670C00242Y	
Marion Corp	N00S90043Z	
Marshall Pipe and Supply Co	600C20099Z	
MCBO Oil Company	940C00141Z	
McCormick Oil	6E0C00026Z	
McCulloch Oil	940C00118Y	
Meason Optg. Co	422C00249Z	
Mertz, Bruce	572C00260B	
Mesa Petroleum Co	675C00245Z	
Michaelson Producing Co	670C00214Y	
Michaux, Frank W	6E0C00026Y	
Milinda Oil Co	840C00105Y	
Mitchell, William	572C00260D	
Moore & Miller	660C00377Z	
Mosbacher Production Co	610C00457Z	

CRUDE OIL SUBACCOUNTS—Continued

Name of subaccount	Consent order No.	
Mosbacher Production Co	610C00436Z	
Natomas North America	6D0C00047Y	
Nevada Refining Co	N00S98002Z	
Newmont Oil Co	610C00430Y	
Nielson Enterprises Inc	810C00339Z	
North Central Oil	6E0C00064Z	
Northeast Nat. Gas	530C00103Z	
O'Donnell Oil Co	940C00176Y	
Oil California Exploration	910C00107Z	
Oilco	6C0X00293Z	
Osage Oil & Transportation	6C0X00215Z	
Park, Robert E	831C00051Z	
Parten	610C00304Y	
Partlow & Cochonour	572C00224Y	
Pawnee Petroleum Corp	660C00306Z	
Payne Inc	660C00292Z	
Payne-Johnston & Byars	600C20069Z	
Petroleum Consulting Service	6C0X00298Z	
Petroleum Corp. of Texas	6A0C00105Z	
Petrominerals Corporation	6C0X00306Z	
PGP Gas Products	670V00086Y	
Phillips Oil Operating Co	660C00319Z	
Phillips, B.F	6A0C00232Z	
Phillips, Loyce (Estate of)	6D0C00081Z	
Phoenix Resources	840C00077Y	
Prudential	600C20084Z	
Quintin Little Co	660C00458Y	
Riddle Oil Co	610C00394Z	
Roark & Hooker	610C00463Z	
Robinson Energy	740C01415Z	
Rocky Petroleum	533C00273Y	
Rollert-Waddell	610C00397Y	
Rose, Hubert	572C00199Z	
Ross Production	641C00219Z	
Rupe Oil Company	740C01267Z	
Sater, Ronald E	572C00260C	
Search Drilling Co	740C01331Z	
Secor Petroleum Co	6C0X00297Z	
Seminole Refining	N00S90119Z	
Shawnee Oil & Gas	660C00400Y	
Shenandoah Oil Corp	6A0C00138Z	
Siegfried, R.H. Inc	740C01390Z	
Southland Drilling & Production	6C0C00020Z	
Stevens Oil Co	720C00587Z	
Sundance Oil Company	810C00007Z	
T.W. Oil Inc	240H00047A	
Texas Oil & Gas	6D0C00038Z	
Texas Recovery Company	6A0C00108Z	
Texland Petroleum	600C20081Z	
Tipperary Oil & Gas	670C00264Y	
Toco Corp	810C00321Z	
Todd & Saunders	600C20088Z	
Transpac Petroleum Inc	940C00189Z	
Travelers Oil Co	740C01254Z	
Twin Montana	6A0C00242Z	
Vallecitos Oil Co	910C00044Z	
Van Horn, James M	940C00239Z	
Varn Petroleum Co	610C00368Z	
Vaughn Petroleum Inc	610C00440Y	
Venture Trading Company	940X00161Z	
Virginia Dare Oil Company	940C00140Z	
Wadsworth Oil Co	6E0C00035Z	
Wales, B.A	610C00361Y	
Western Avenue Properties	940C00228Z	
Westland Oil Development Co	602X00005Y	
Williams Exploration	N00C00780Z	
Wilshire Oil Co. of Texas	660C00499Z	
Windfohr Oil	6D0C00083Z	
Standard Oil Co. of Indian	RAMA00010Y	$12,173,026.73

PRODUCT SUBACCOUNTS

Name of subaccount	Consent order No.	
Arcone Oil Co. Inc	240H00471Y	
Associated Programs Inc	470V01389Z	
Big Bend Truck Co	412K00056Z	

PRODUCT SUBACCOUNTS—Continued

Name of subaccount	Consent order No.	
Blaylock Oil	412H00163Z	
Bucks Butane & Propane	920T00131Z	
Budget Airport Associates	930K00323Z	
Busler Enterprises	550H00326Z	
Chapman, H.A	740V01407Z	
Chapman, H.A	740V01397Z	
Collins Oil Co	570H00003Z	
Columbia Oil	533H00308Z	
Consolidated Gas Supply Co	342V00353Z	
Consolidated Leasing Corp	930K00325Z	
Continental Oil Co	RC0A00000Y	
Continential Resources	413V00001Z	
Coors Energy Co	710V03004Z	
Cosby Oil Co	940H00124Z	
Cross Oil Co. Inc	720H00439Z	
Crystal Oil	610H00012Z	
Devon Corp	740V01313Z	
Dewitt, J.E., Inc	930H00295Z	
Dillion Co	720H00556Z	
Empire Oil	930H00319Z	
Endicott, Eugene V	020H00060Z	
Ensearch Exploriation	6D0V00039Z	
Enterprise Oil & Gas Co	540H00121Z	
FKG Oil	720H00595Z	
Foster Oil Co	540H00222Z	
Gate Petroleum	412H00180Z	
Grand Rent a Car Corp	930K00324Z	
Grimes Gasoline	710V03005Z	
Gulf Energy & Development	710V03013Z	
Heller, Glenn Martin	999K90003Z	
Hendels Inc	110H00517Z	
Hertz Corp	N00K00251Z	
Hines Oil Co	720H00571Z	
Horner & Smith	6E0V00014Z	
Houston Natural Gas	6E0V00053Z	
Huber Corp	733V02028Z	
Hunt Petroleum Corp	710V03007Z	
Independent Oil/Tire	530H00436Z	
J.A.L. Oil	240H00500Z	
James Petroleum	911H00153Z	
Kansas-Nebraska Natural Gas	730V01216Z	
Liquid Prod. Rec	6E0V00017Y	
Mesa Petroleum Co	740V01248Z	
Mississippi River Transmis	720V00590Z	
Montana Power Co	820V00210Z	
Naphsol Refining Company	543H00012Z	
Northeastern Oil Co	810H00374Z	
Olin Corp	N00V00616Y	
Ozona Gas Processing Plant	6D0V00021Y	
Ozona Gas Processing Plant	6D0V00054Y	
Panhandle Eastern Pipe	710V02007Y	
Peoples Energy Corp	733V02006Z	
Petro-Lewis Corp	840V00202Z	
Pioneer	675V00279Z	
Planet Engineers Inc	710V03016Z	
Rech Distributing Rech Lor	810H00313Z	
Reinhard Dist. Co	010H00304Z	
Richards Oil Co	510H00105Z	
Roberts Oil	400H00215Z	
Rookwood Oil Term	533H00008Z	
Ropet, Inc	340H00262Z	
Schroeder Oil Company	733H02025Z	
Seminole Refining	411S00023Z	
Speedway Petroleum Co., Inc	110H00289Z	
Texas Oil & Gas	6D0V00029Y	
Texas Oil & Gas Corp	6D0V00067Z	
Texas Pacific Oil Co	740V01403Z	
Thompson Oil	N00H00189Z	
Tippins Oil Co	710H02502Z	
Travelers Rental Inc	110K00536Z	
Triton Oil & Gas	6D0V00030Y	
Truckstops Corp of America	430K00031Z	
Turco's Shell St	999K90032Z	
United Oil Co	240H00359Z	
United Petroleum	420H00277Z	
Upham Oil & Gas	6D0V00031Y	
US Compressed Gas Co	320T00257Z	
Vangas Inc	910T00124Z	
VSG Corporation	422S00085Z	

PRODUCT SUBACCOUNTS—Continued

Name of subaccount	Consent order No.	
Waller Petroleum Co. Inc	310H00470Z	
Warren Holding Co	110H00485Z	
Warren Oil Co	111H00327Z	
Warrior Asphalt Co	420S00193Z	
Webco Southern Oil Inc	410H00139Z	
White Petroleum	550H00317Z	
Wisconsin Industrial Fuel	520H00217Z	
Young Refining Corp	410S00065Z	
Earth Resources	431S00341Z	$12,026,872.86
Mapco Inc	740V01246Z	$11,979,101.15
Aminoil U.S.A., Inc	740V01259Y	$8,460,348.56
Tenneco Oil	RTNA00001Y	$6,856,800.24
Petro-Lewis Corp	840V00200Z	$4,400,454.02
Texas Gas & Exploration	6E0V00015Z	$2,565,027.17
Plateau Inc	733V02013Z	$2,090,604.56
Arkansas Louisiana Gas Co	641S00255Z	$2,055,916.02
Husky Oil Company	820S00007Z	$1,919,286.85
Little America Refining	830S00012Z	$1,465,790.53
Witco Chemical Corp	240S00054Z	$28,934.39

[FR Doc. 86-16752 Filed 7-24-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-3055-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.)* requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitaton and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Research Questionnaire on Health Habits and Drinking Water (EPA ICR #1283). (This is a new collection.)

Abstract: This is a cardiovascular disease risk factors study of Wisconsin residents in communities supplied with water of varying hardness and chlorination. The results of the study will be useful in the development of regulations specifying disinfection as required treatment for public water systems and, possibly, for regulations for disinfectants and disinfectant by-

products under Phase IV of the revised Drinking Water Regulations.

Respondents: Wisconsin residents.

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0088, Industrial User Self-Monitoring Report, was approved 6/19/86 (OMB #2040-0024; expires 6/30/88).

EPA ICR #1014, Certification for Exemption from Monitoring and Notification of Process Changes in Effluent Regulations, was approved 6/26/86 (OMB #2040-0033; expires 6/30/89).

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460.

and

Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, DC 20503.

Dated: July 21, 1986.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 86-16697 Filed 7-24-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3055-1]

Environmental Impact Statements; Availability of

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed July 14, 1986 Through July 18, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860283, Final, FHW, HI, Makai Boulevard/Nimitz Highway Improvement, Middle Street to Pier 18, Honolulu County, Due: August 25, 1986, Contact: H. Kusumoto (808) 546-5150.

EIS No. 860284, Final, COE, NY, PA, NJ, Port Jervis Ice Related Flood Control Plan, Upper Delaware River Basin, Due: August 25, 1986, Contact: Roy Denmark, Jr. (215) 597-4833.

EIS No. 860285, DSuppl, COE, GU, Agana River Flood Control Improvements, New Information, Territory of Guam, Due: September 8, 1986, Contact: James Maragos (808) 438-2263.

EIS No. 860286, Draft, COE, LA, West Bank of Mississippi River Hurricane Surge Protection, New Orleans Vicinity, Jefferson Paris, Due: September 12, 1986, Contact: David Reece (504) 862-2522.

EIS No. 860287, Draft, FHW, VA, VA-265/Danville Expressway Construction, US 58 to US 29, Pittsylvania County, Due: September 8, 1986, Contact: James Tumlin (804) 771-2371.

EIS No. 860288, Draft, AFS, SEV, Southern Region, Southern Pine Beetle Suppression Program on Federal and Non-Federal Lands including Wilderness Areas, Due: September 18, 1986, Contact: Kirby Brock (404) 347-4338.

EIS No. 860289, Final, FHW, LA, Eden Isles Interchange Construction, I-10 Access Point, between Gause Boulevard and Lake Pontchartrain, St. Tammany Parish, Due: August 25, 1986, Contact: Kenneth Perret (504) 389-0466.

EIS No. 860290, Final, FHW, UT, West Valley High Construction, 9000 South to 2100 South Streets, Salt Lake County, Due: August 25, 1986, Contact: William Gedris (801) 524-5141.

EIS No. 860291, Final, BLM, ID, Lemhi Resource Area, Resource Management Plan, Lemhi County, Due: August 25, 1986, Contact: Jerry Wilfong (208) 756-2201.

EIS No. 860292, DSuppl, EPA, FL, Jacksonville Harbor Ocean Dredged Material Disposal Site, Fernandina Harbor Designation, Due: September 8, 1986, Contact: Sally Turner (404) 347-4467.

EIS No. 860293, Final, AFS, MI, Huron-Manistee National Forests, Land and Resource Management Plan, Due: August 25, 1968, Contact: Wayne Mann (616) 775-2421.

EIS No. 860294, Final, FHW, NJ, NJ-522 Realignment, US 1 to US 130, Middlesex County, Due: August 25, 1986, Contact: Paul Lariviere (609) 989-2169.

Amended notices

EIS No. 860198, DSuppl, AFS, CA, Pacific Southwest Region National Forests, Management of Vegetation for Reforestation, Additional Information, Due: September 11, 1986, Published FR 6-6-86—Review period extended.

EIS No. 860235, Draft, USN, CA, Navy Geothermal Development Program, Power Plant Construction and Operation, Coso Known Geothermal Resource Area, Inyo County, Due: August 11, 1986, Published FR 7-3-86—Incorrect agency.

Dated: July 22, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-16797 Filed 7-24-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3055-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 7, 1986 through July 11, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-BLM-J70008-UT, Rating LO, Warm Springs Resource Area, Resource Mgmt. Plan, UT. **SUMMARY:** EPA identified no potential environmental impacts which would require changes in the preferred alternative.

ERP No. D-DOE-L00001-WA, Rating LO, Hanford Site, Process Facility Modifications, Construction and Operation, Plutonium and Uranium Extraction (PUREX) Plant, WA. **SUMMARY:** EPA considers the environmental consequences of the proposed action to be minor when compared with current operations. EPA has no objections to the project as proposed.

ERP No. DS-FHW-B40047-RI, Rating EO2, RI-138 Improvement, Between Jamestown Bridge Replacement to Newport Bridge Toll Plaza, Safety and Traffic Improvement Alternatives, RI. **SUMMARY:** After a long history of coordination, EPA still has outstanding concerns regarding impacts to wetland and surface/groundwater resources. EPA requested that additional analysis on avoidance of wetlands and wetlands mitigation be developed.

ERP No. D-FHW-D40218-MD, Rating EC2, MD-100 Construction, I-95 in Howard County to MD-3/I-97 in Anne Arundel and MD-176 Improvements, US 1 to MD-295/Gladys Noon Spellman Parkway, Right-of-Way Acquisition, 404 Permit, MD. **SUMMARY:** EPA expressed concern about potential impacts to ground water, wetland and sensitive areas. EPA requested that there be

additional analysis of these issues and if appropriate, mitigation measures be developed.

ERP No. D–FHW–K40154–CA, Rating EO2, CA–85 Transportation Corridor Construction, Between US 101 in San Jose and I–280 Near Stevens Creek Blvd. in Cupertino, 404 Permit, CA. **SUMMARY:** EPA expressed objections because most of the project alternatives could have significant adverse impacts on San Francisco Bay Area air quality, which currently does not attain air quality standards. EPA also expressed the need for more discussion of project impacts on surface and groundwater, including riparian areas. EPA requested that FHWA prepare a supplemental EIS before a final EIS is issued.

Final EISs

ERP No. F–AFS–E65035–NC, Croatan and Uwharrie Nat'l Forests, Land and Resource Mgmt. Plan, NC. **SUMMARY:** EPA finds the preferred plan alternative to be environmentally acceptable with the significant modification made since the draft EIS. EPA is particularly pleased to see the elimination of timber harvesting, peat mining and surface water management activities from the pocosins.

ERP No. F–AFS–J65135–MT, Helena Nat'l Forest, Land and Resource Mgmt. Plan, Wilderness Designation, MT. **SUMMARY:** EPA made no formal comments. EPA reviewed the final EIS and finds the plan acceptable as proposed.

ERP No. F–FHW–F40280–IN, Lynch Rd. Extension, Oak Hill Rd. to Telephone Rd./IN–62 Intersection, Right-of-Way Acquisition, IN. **SUMMARY:** EPA has no objection to the project, but did request to be included in the final design noise abatement studies.

Dated: July 22, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86–16798 Filed 7–24–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Information Collection

Title: Public Emergency Preparedness

Abstract: Civil Defense population protection planning needs current information on public knowledge and perceptions concerning those aspects of civil defense that depend on public response to protect lives and property and to recover from attack, natural or manmade hazards. Information is used in program design, training, and public information materials.

Type of Respondents: Individuals or Households

Number of Respondents: 1,600

Burden Hours: 1,600

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: July 18, 1986.

Wesley C. Moore,

Acting Director, Office of Administrative Support.

[FR Doc. 86–16721 Filed 7–24–86; 8:45 am]

BILLING CODE 6718–01–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Information Collection.

Title: Industrial Emergency Preparedness.

Abstract: Civil defense programs concerning protection of the U.S. industrial base need information about business and industry knowledge, perceptions and activities concerning those aspects of emergency preparedness that depend on business and industry actions to be effective. Information is used to develop program materials and information for business and industry use.

Type of Respondents: Businesses or other for-profit.

Number of Respondents: 1,000

Burden Hours: 300

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: July 18, 1986.

Wesley C. Moore,

Acting Director, Office of Administrative Support.

[FR Doc. 86–16722 Filed 7–24–86; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL HOME LOAN BANK BOARD

Sun Savings and Loan Assoc., San Diego, CA; Appointment of Receiver

Notice is hereby given that the Superior Court for the County of San Diego has confirmed the appointment by the Savings and Loan Commissioner for the State of California ("Commissioner") of a receiver for Sun Savings and Loan Association, San Diego, California ("Sun") and that pursuant to the authority contained in section 406(c)(1)(A) of the National Housing Act, as amended (12 U.S.C. 1729(c)(1)(A) (1982), the Federal Savings and Loan Insurance Corporation accepted the tender of the Commissioner of the appointment as receiver for Sun, for the purpose of liquidation, effective July 18, 1986.

Dated: July 21, 1986.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86–16706 Filed 7–24–86; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Notice of 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 DC 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, DC 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.: 224–003813–011.

Title: State of Hawaii Terminal Agreement.

Parties:

Department of Transportation of the State of Hawaii

Matson Terminals, Inc.

Synopsis: The proposed amendment would (1) modify the lease to permit the parties to substitute revised exhibits; (2) amend section 3.3(1)(i) to describe the Special Facility and Extension as constructed; and (3) revise the areas and ground rental of Parcel I and Easement B6.

Agreement No.: 213–010972.

Title: Three Lines' Far-East Atlantic Coast Space Charter and Sailing Agreement.

Parties:

Mitsui O.S.K. Lines, Ltd.

Nippon Yusen Kaisha

Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed agreement would permit the parties to coordinate sailings, charter space on each others vessels for the carriage of cargo in the Far East-U.S. Atlantic Coast, Caribbean Islands (including Puerto Rico) and East Canada trades, including services via transshipment and container feeder vessels and/or barges. It would also provide a 120 day transition period to permit the parties to coordinate termination of operations under existing Agreement No. 213–009975.

Agreement No.: 224–010974.

Title: Port of Oakland Terminal Agreement.

Parties:

City of Oakland (Port)

Kawasaki Kisen Kaisha, Ltd. (Assignee).

Synopsis: The proposed amendment would establish a nonexclusive preferential assignment whereby the Port would allow the Assignee the preferential right to use the Port's Berths 2 and 3, and a container crane to be used as a containership terminal. The Assignee agrees to pay the Port for each calendar month of use of the premises, the sum of $110,000.00 for wharfage, dockage, wharf demurrage and wharf storage plus an additional monthly payment of $6,276.92 for maintenance, insurance and maintenance dredging. The term of the agreement shall commence upon its effective date and shall continue to and including the 30th day of June, 1992. The parties have requested a shortened review period.

Dated: July 22, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86–16773 Filed 7–24–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0532]

Fees for Federal Reserve Bank Check Collection; Request for Comment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments.

SUMMARY: The Board is requesting public comment on proposals to:

1. implement the tiered pricing structure for check collection services, currently being piloted at the head offices of the Federal Reserve Banks of Minneapolis and Kansas City, as a permanent component of the fee structures at these two Reserve Banks; and
2. establish criteria for determining the conditions under which a tiered fee structure would be extended to other offices of Federal Reserve Banks.

DATE: Comments must be received by September 19, 1986.

ADDRESS: Comments, which should refer to Docket No. R–0532, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary, or delivered to Room B–2223 between 8:45 A.M. and 5:15 P.M. Comments may be inspected in room B–1122 between 8:45 A.M. and 5:15 P.M., except as provided in § 261.6(a) of the Board's Rules Regarding the Availability of Information, 12 CFR 261.6(a).

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202/452–2231), or Gayle Thompson, Senior Analyst (202/452–2934), Division of Federal Reserve Bank Operations, or Earnestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Federal Reserve Banks price their check collection services on a per item basis, with the per item fees generally based on the average cost of collecting items to be presented within a single collection zone.[1] The actual costs of collecting items, however, may vary depending on whether the place where an item is to be presented (the "endpoint") receives a relatively large or small number of items. Costs generally are higher for items destined for low-volume endpoints because transportation and other fixed processing costs, which do not vary with volume, are spread across fewer items.

If prices for the check collection service were to reflect costs more accurately, collecting institutions could choose better the most effective method of clearing checks. More informed choices should result in a more efficient allocation of resources in the payments mechanism. Accordingly, the Board requested comment on a proposal to test tiered pricing through pilot programs at the head offices in the Minneapolis and Kansas City Federal Reserve Districts. 40 FR 44, 679 (Nov. 8, 1984).

The response to the request for public comment was largely negative, with 43 of 57 commenters (75 per cent) opposed to the proposal. These commenters expressed concern about the impact on billing complexity and the cost to the depositor of verifying Federal Reserve charges and accurately passing back those charges to the depositor's customers. Another concern was that tiered pricing might provide Reserve Banks with advantages over private sector correspondents. Commenters also questioned whether this proposal was a first step toward substantially greater use of tiered prices at many or all Federal Reserve offices. The 11 supporting commenters took the view that pricing at cost more accurately would allow collecting institutions to use the most efficient clearing method available.

In response to these comments, the Board modified the tiered pricing proposal. Most importantly, the pilot programs were made optional. Depositors at the Minneapolis and Kansas City head offices could choose the new tiered price schedule or continue to pay a single fixed fee for all items to be presented in a particular collection zone. For example, in Minneapolies, depositors of RCPC items may chose to pay 2.1 cents for items payable at low-cost endpoints and 3.0 cents for items payable at high-cost

[1] A "collection zone" is a geographic subdivision of a Federal Reserve territory. Each collection zone has a specified availability schedule under which credit will be given for a check deposited for collection with the Federal Reserve office serving that territory. Collection zones are referred to as either city, RCPC (for "Regional Check Processing Center"), or country.

endpoints, or an average fee of 2.7 cents for all items payable within that collection zone. In the Kansas City country collection zone, depositors choosing the tiered option would pay 2.3 cents and 3.3 cents for all items payable at low- and high-cost endpoints, respectively, or an average fee of 2.9 cents. These Federal Reserve offices also developed detailed billing statements to facilitate reconciliation of charges for the depositing institution. The Minneapolis and Kansas City head offices implemented a two-tiered pricing pilot on these terms on April 25, 1985.

Results of the Pilot

During the pilot, one hundred forty depositors of RCPC items in Minneapolis and fifty-five depositors of country items in Kansas City chose to use the optional tiered prices. These institutions represent 34 per cent of the RCPC depositors in Minneapolis and 24 per cent of the country depositors in Kansas City. In both offices, about 40 per cent of the total eligible volume is being deposited under the tiered pricing option. The depository instiutions choosing tiered prices represent a cross-section of the industry including large correspondents, community banks, and thrift institutions. Several banks that sent comment letters opposing the initial proposal, nonetheless chose the tiered priced option.

One concern of the commenters was the impact that tiered pricing would have on billing complexity and the depositor's ability to verify charges and accurately passback the appropriate charges to its own customers. Neither Federal Reserve office has received complaints of reconcilement problems from users of the service. Further, responses to a survey of 45 institutions selecting the tiered price option at the Minneapolis office indicated that 73 per cent found no additional reconcilement problems, 20 per cent found reconcilement somewhat more difficult and 7 per cent found it much more difficult. Ninety-six per cent of the respondents favored continued use of a tiered pricing option by Reserve Banks.

Athough many private sector service providers use tiered pricing when charging for check collection services, commenters were also concerned that implementation of tiered pricing would disrupt existing clearing patterns by giving the Federal Reserve a competitive advantage over private sector processors. Allowing Reserve Banks to use a fee structure already in common use by the industry should not create any advantage for the Federal Reserve. Further, it does not appear that tiered pricing has led to increases in Federal Reserve check volume. Since the introduction of tiered pricing on an optional basis, the Minneapolis head office's RCPC volume growth has been 4.3 percent, compared to the System average of 4.9 percent for RCPC volume and 5 percent for total volume. The number of institutions depositing checks in the Minneapolis RCPC collection zone was stable, remaining at approximately 300. Kansas City's country volume increased in 1985 by approximately 8.0 percent compared to a Systemwide increase of 4.7 percent; however, a significant improvement in the regular country deadline appears to be the principal reason.[2]

Finally, commenters were concerned that the implementation of tiered prices at the pilot Federal Reserve offices was only the first step leading to substantial use of multi-tiered pricing at many or all Federal Reserve offices. To address this concern, the Board is proposing to establish criteria for determining any additional implementation of tiered pricing. In developing these criteria, the Federal Reserve paid close attention to the concerns raised during the previous public comment period.

Proposed Criteria

Under the Board's proposal, the following specific criteria would apply to any Reserve Bank proposal to introduce tiered prices:

1. Adoption of tiered pricing by any additional Federal Reserve office will require approval by the Board.
2. Tiered pricing will be offered as an option to the depositor; an alternative fixed per item fee also will be offered for each deposit category.
3. Tiered prices may be used only where clear cost differences exist between groups of items within a collection zone.
4. Tiered prices may be used only where the introduction of tiered prices has the potential to provide net savings for a substantial amount of depositing institutions.

The Board specifically requests comment on these criteria, and whether additional or different criteria should be adopted.

By order of the Board of Governors of the Federal Reserve System, July 21, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-16716 Filed 7-24-86; 8:45 am]

BILLING CODE 6210-01-M

[2] In May, 1985, two weeks after the implementation of tiered pricing, the country deadline was moved from 10:30 p.m. to 12:01 a.m., a one and one-half hour improvement. It is impossible to separate the impact on volume of this deadline change from the impact of the new price option.

Miami Citizens Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifially 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 15, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Miami Citizens Bancorp,* Piqua, Ohio; to merge with Comp One Corporation, Piqua, Ohio, and thereby indirectly acquire Heritage National Bank and Trust Company, Piqua, Ohio.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *East Texas National, Inc.,* Palestine, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of East Texas Bancorporation, Inc., Palestine, Texas, and thereby indirectly acquire The East Texas National Bank of Palestine, Palestine, Texas.

2. *First Florida Banks, Inc.,* and 7L Corporation, both of Tampa, Florida; to acquire 100 percent of the voting shares of First Florida Bank of Pasco County, N.A., Bayonet Point, Florida, a *de novo* bank.

3. *Howland Bancshares, Inc.,* San Antonio, Texas; to acquire 44.23 percent of the voting shares of The Bank of Corpus Christi, Corpus Christi, Texas.

4. *Northwest Crossing Bancshares, Inc.,* Houston, Texas; to become a bank

holding company by acquiring 100 percent of the voting shares of Northwest Crossing National Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, July 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-16720 Field 7-24-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 18, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages)

National Institutes of Health

Subject: NHLBI Twin Study Third Examination—Reinstatement—(0925-0121)
Respondents: Individuals or households; Businesses or other for-profit

Centers for Disease Control

Subject: Annual Morbidity Reporting Services—Extension—(0920-0007)
Respondents: State or local governments
OMB Desk Officer: Bruce Artim

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of packages)
Subject: Maintenance of Information Requirements for a Computerized Child Support Enforcement System—Revision—(0960-0344)
Respondents: State or local governments
Subject: Third Party Query Input Card—Extension—(0960-0340)
Respondents: State or local governments
OMB Desk Officer: Judy A. McIntosh

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of packages)
Subject: Hospice Cost Report and Data Form—Reinstatement—(0938-0392)—HCFA-1985-85
Respondents: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Attn: (name of OMB Desk Officer).

Dated: July 22, 1986.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management, Analysis and Systems.

[FR Doc. 86-16726 Filed 7-24-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 86F-0233]

Takeda Chemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed on behalf of Takeda Chemical Industries, Ltd., proposing that the food additive regulations be amended to provide for the safe use of a polyurethane-polyester resin-epoxy adhesive in the production of high-temperature laminates intended to contact food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3937) has been filed on behalf of Takeda Chemical Industries, Ltd., c/o 1730 Rhode Island Ave. NW., Washington, DC 20036, proposing that § 177.1390 *High-temperature laminates* (21 CFR 177.1390) be amended to provide for the safe use of a polyurethane-polyester resin-epoxy adhesive formulated from: (1) Polyester-urethanediol resin, prepared by the reaction of polybasic acids and polyhydric alcohols listed in 21 CFR 175.300(b)(3)(vii) and 3-isocyanatomethyl-3,5,5-trimethylcyclohexyl isocyanate, with optional trimethoxysilane coupling agents containing amino, epoxy, ether, and/or mercapto groups; (2) polyester resin formed by the reaction of polybasic acids and polyhydric alcohols listed in 21 CFR 175.300(b)(3)(vii), additionally, azelaic acid and 1,6-hexanediol may also be used as reactants; (3) epoxy resin listed in 21 CFR 175.300(b)(3)(viii)(*a*); and (4) urethane cross-linking agent, formulated from 3-isocyanatomethyl-3,5,5-trimethylcyclohexyl isocyanate adduct of trimethylol propane and/or 1,3-bis(isocyanatomethyl)benzene adduct of trimethylol propane.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: July 18, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-16717 Filed 7-24-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86E-0096]

Determination of Regulatory Review Period for Purposes of Patent Extension; Mexitil

Correction

In FR Doc. 86-9978, beginning on page 16593 in the issue of Monday, May 5, 1986, make the following correction: On page 16593, in the third column, in the fourth from last line of the first complete paragraph, "mexiltine" should read "mexiletine".

BILLING CODE 1505-01-M

[Docket No. 86E-0111]

Determination of Regulatory Review Period for Purposes of Patent Extension; Wellbutrin

Correction

In FR Doc. 86-9981, beginning on page 16594 in the issue of Monday, May 5, 1986, make the following correction: On page 16594, in the third column, in the last complete paragraph, in the fifth from last line, the words "burden, the

petition must contain" should be deleted.

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-06-4212-11; CA 18749]

Realty Action: Classification of Public Lands for Recreation and Public Purposes; Mono County, CA

SUMMARY: The following described land has been examined and found suitable for lease or conveyance for recreation and public purposes. The land is hereby classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869, et seq.), and the regulations thereunder (43 CFR 2740 and 2912):

Mount Diablo Meridian, California

T. 8 N., R. 23 E.,
Sec. 21 SW¼NW¼NE¼ portion of
Containing 5 acres.

The Toiyabe Indian Health Project has filed an application to acquire patent to the above described land under the said Act of June 14, 1926, for use as a community health center. The land will be leased during the development stage. Upon substantial completion of the approved plan of development, the land will be conveyed.

The effective date of this classification is sixty (60) days from the date of publication of this notice in the **Federal Register.** The classification is consistent with the regulations set forth in 43 CFR 2410 and 2430. The tract is situated near several communities and convenient access is provided by existing roads. The site is physically suitable for public use purposes.

The terms and conditions applicable to conveyance or lease of the land under said Act of June 14, 1926, are as follows:

1. The patent, when issued, will be subject to all valid and existing rights.

2. The United States will reserve all mineral deposits in the land so patented, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable laws.

Publication of this notice in the **Federal Register,** shall segregate the subject public land from appropriation under any other public land law, including locations under the mining laws. The segregative effect will end upon issuance of a patent, or 18 months from the date of publication if the application is withdrawn.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Bureau of Land Management, 800 Truxtun Ave., Room 311, Bakersfield, CA 93301. Comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 16, 1986.

Rory Raschen,

Associate District Manager.

[FR Doc. 86-16736 Filed 7-24-86; 8:45 am]

BILLING CODE 4310-40-M

Classification of Public Lands; Humboldt County Gun Range; Nevada

The Bureau of Land Management hereby vacates the Recreation and Public Purposes Act classification, N-43045, Humboldt County Gun Range on the following public lands:

Mount Diablo Base and Meridian

T. 36 N., R. 38 E., Section 18,
W½W½NE¼,
W½NW¼SE¼.
60 acres

Publication of this notice will open the above lands to appropriation under the public land laws, including location under the mining laws.

Dated: July 15, 1986.

Robert J. Neary,

Acting District Manager, Winnemucca.

[FR Doc. 86-16735 Filed 7-24-86; 8:45 am]

BILLING CODE 4310-HC-M

[CO-010-06-4133-17]

Colorado Availability of Draft Environmental Impact Statement (DEIS); Wolf Ridge Corporation Mine Plan

AGENCY: Bureau of Land Management (BLM). Interior.

ACTION: Notice of availability of DEIS.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, BLM has prepared a DEIS on Wolf Ridge Corporation's (WRC) Mine Plan for a nahcolite solution mine in the Piceance Basin, Rio Blanco County, Colorado.

DATE: Comments must be received by September 23, 1986. The public comment period is for 60 days beginning July 25, 1986.

ADDRESS: Comments should be addressed to William Frank, Project Coordinator, BLM, White River Resource Area, PO Box 928, Meeker, Colorado 81641.

SUPPLEMENTARY INFORMATION: BLM has prepared a DEIS on WRC's proposal for a commercial nahcolite solution mine in northwest Colorado. Their proposed action involves phased-approach development with initial production of nahcolite at a rate of 50,000 tons/year increasing in the second or third year to a maximum production of 125,000 tons/year. The proposed 30-year project includes a well field for in-situ solution mining of nahcolite; a handling and processing plant, including evaporation pounds; and associated transportation, access and support facilities.

The DEIS analyzes the environmental and socioeconomic impacts of the proposed action and three project alternatives.

Also included in the DEIS is an appendix (Appendix F) which briefly describes the U.S. Environmental Protection Agency's (EPA) Underground Injection Control (UIC) Program and the decisions confronting EPA regarding WRC's proposed mining operation. This appendix is included as prepared and presented by EPA at their request and for their convenience. Your review and comments on the issues contained within this appendix are invited by EPA. Please direct these comments to: Mark Herman, UIC Permit Coordinator, EPA—Region VIII, Drinking Water Branch, One Denver Place—999 Eighteenth Street, Suite 1300, Denver, Colorado 80202-2413.

Single copies of the Draft EIS may be obtained from the above BLM address, or from:

Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Bureau of Land Management, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

Public meetings to receive oral and/or written comments on the proposed project will be held as follows:

Place	Date	Time	Location
Meeker, CO.	Aug. 26, 1986.	7:00 p.m.	BLM, White River Resource Area Office, 2 miles west of Meeker, CO.
Grand Junction, CO.	Aug. 27, 1986.	7:00 p.m.	Rodeway Inn, 2790 Crossroads Blvd. at Horizon Drive.

Each witness will be limited to a maximum of ten (10) minutes of oral presentation. Oral comments should be

accompanied with a written synopsis of the comments.

Dated: July 2, 1986.

Bob Moore,

Associate State Director.

[FR Doc. 86-16358 Filed 7-21-86; 8:45am]

BILLING CODE 4310-JB-M

[ID-010-06-4351-08]

Bruneau-Kuna Management Framework Plan; Idaho

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice to amend the Bruneau-Kuna Management Framework Plan.

SUMMARY: The Boise District, Idaho, proposes to amend the Bruneau-Kuna Management Framework Plan (MFP). The amendment would address:

(1) The designation of occupied and potential California bighorn sheep habitat as an Area of Critical Environmental Concern (ACEC) along the West Fork Bruneau River.

(2) The identification of Duncan Creek, a tributary to Big Jacks Creek 25 miles south of Grand View, Idaho, as potential bighorn sheep habitat,

(3) The designation of the Duncan Creek drainage as an ACEC, and

(4) The delineation of occupied and potential bighorn sheep habitat areas of the West Fork Bruneau River, Big Jacks Creek, Little Jacks Creek and Shoofly Creek drainages based upon the most recent information available. Bighorns now actually inhabit some areas presently identified as "potential" habitat.

The geographical areas to be considered comprise approximately 128,000 acres of primarily BLM-administered land in the Bruneau Resource Area in Owyhee County, Idaho. The main issues identified in this amendment to date are (1) whether new areas considered for identification as potential California bighorn sheep habitat are suitable for bighorn sheep, and (2) what limitations or restrictions are appropriate.

An interdisciplinary team including range, wildlife and wilderness specialists will prepare the amendment and the environmental analysis.

Affected publics will be invited to participate in the process.

Any public meeting which may be scheduled will be announced in the low media.

For further information contact: Dennis Hoyem, Bruneau Area Manager, Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho, (208) 334-1582.

J. David Brunner,

District Manager.

June 30, 1986.

[FR Doc. 86-16137 Filed 7-24-86; 8:45 am]

BILLING CODE 4310-GG-M

[WY-010-06-4321-02]

Worland District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Worland District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 91-463, 94-579, and 95-514, and 43 CFR Part 1780, that a meeting of the Worland District Advisory Council will be held on August 20, 1986.

The topic of the meeting is the Washakie Resource Management Plan (RMP). The entire meeting will be devoted to a tour of a portion of the Washakie Resource Area. The purpose of the tour is to visit areas of the West Slope of the Bighorn Mountains where there are representative examples of conflicts discussed in the Washakie RMP.

The tour will leave from the office of the District Ranger, U.S. Forest Service, Paint Rock Ranger District, 1220 North 8th, Greybull, Wyoming, at 7:30 a.m., on Wednesday, August 20, 1986. The tour will return to Greybull at about 5:30 p.m. In case of inclement weather, the tour will be rescheduled for Wednesday, August 27, 1986. All other arrangements will remain unchanged.

The meeting is open to the public. Persons attending the meeting must provide their own transportation and lunch. Much of the travel will be on unimproved roads, requiring a four-wheel drive or high clearance two-wheel drive vehicle.

DATE: Wednesday, August 20, 1986, 7:30 a.m. (Alternate date: Wednesday, August 27, 1986, 7:30 a.m.).

Location: Meet at the Office of the District Ranger, U.S. Forest Service, Paint Rock Ranger District, 1220 North 8th, Greybull, Wyoming.

FOR FURTHER INFORMATION CONTACT: David Stout, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, Telephone: (307) 347-9871.

Chester E. Conrad,

District Manager.

[FR Doc. 86-16790 Filed 7-24-86; 8:45 am]

BILLING CODE 4310-22-M

[M-64872; MT-020-06-4212-13]

Montana; Realty Action

AGENCY: Bureau of Land Management, Miles City District, Big Dry Resource Area Office, Interior.

ACTION: Notice of Realty Action—Exchange of Public Lands in Custer and Prairie Counties, Montana.

SUMMARY: The surface estate of the following described public lands has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian

T. 8 N., R. 51 E.,
Sec. 2, Lot 1, NE¼SE¼.
T. 8 N. , R. 52 E.,
Sec. 2, Lots 3-8;
Sec. 4, Lots 1-8, SW¼;
Sec. 6, Lots 1-6, E½SW¼, SE¼.
T. 9 N., R. 52 E.,
Sec. 8, NE¼, S½;
Sec. 26, All;
Sec. 28, S½;
Sec. 34, W½.
T. 8 N., R. 53 E.,
Sec. 6, Lots 1-2, S½E¼.

Aggregating 3,236.56 acres.

In exchange for these lands, the United States Government will acquire the surface estate only in the following described lands from Mrs. Nora Bradshaw, Miles City, Montana.

Principal Meridian

T. 9 N., R. 52 E.,
Sec. 7, Lots 1-4, E½, E½W½;
Sec. 17, E½, NE¼NW¼, S½NW¼, SW¼;
Sec. 19, Lots 1-4, E½, E½W½;
Sec. 29, All;
Sec. 30, NE¼, E½SE¼;
Sec. 31, Lots 1-4, E½, E½W½.

Aggregating 3,380.92 acres.

In addition to the above described offered lands, Mrs. Nora Bradshaw will grant an easement through the E½E½, Section 14, T. 8 N., R. 51 E. Easement width is 30 feet from centerline (60 feet total) and 1,320 feet in length, totaling 1.82 acres. The easement will provide legal access to a 280 acre parcel of public land along the Powder River.

DATES: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange including the environmental assessment and land report, is available for review at the Big Dry Resource Area Office, Miles City Plaza, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public land described above from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The exchange will be made subject to:

1. A reservation for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1980 (43 U.S.C. 945).

2. A reservation to the United States of all mineral values together with the right to explore, prospect for, mine and remove same under all applicable laws and regulations.

3. All valid existing rights and reservations of record.

4. The exchange must meet the requirements of 43 CFR 4110.4-2(b). The selected lands, with the exception of T. 9 N., R. 52 E., Section 8, were all classified under the C & MU Act (PL 88-607). The classification prohibited only agricultural entry and sales. Therefore, this Act will not affect the proposed land exchange.

The purpose of this exchange is the establishment of a large area of public land. Consolidation will allow BLM to develop more comprehensive management plans for range management, wildlife habitat management and watershed protection. This exchange is consistent with the Bureau's planning for the lands involved and has been discussed with State and local officials. The public interest will be served by completion of this exchange.

Mat Millenbach,

District Manager.

July 16, 1986.

[FR Doc. 86-16788 Filed 7-24-86; 8:45 am]

BILLING CODE 4310-DN-M

[M-66538; MT-020-06-4212-13]

Montana Realty Action; Correction

AGENCY: Bureau of Land Management, Miles City District, Billings Resource Area Office, Interior.

ACTION: Notice of Realty Action Correction—Exchange of Public Lands in Musselshell County, Montana.

SUMMARY: In the document published Wednesday, July 9, 1986, Volume 51, No. 131 the DATE portion should have read as follows:

DATES: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior .

FOR FURTHER INFORMATION CONTACT: Billings Resource Area Office at (406) 657-6262.

Dated: July 16, 1986

Mat Millenbach,

District Manager.

[FR Doc. 86-16787 Filed 7-24-86; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-06-4212-18; N-43690, N-43715]

Nevada; Realty Action; Sale of Public Land

This Notice of Realty Action amends the Notice of June 10, 1986 (published 6/20/86, FR, Vol. 51, No. 119, pg. 22573, pertaining to the sale of public lands under Pub. L. 96-586) to eliminate two parcels as being suitable for sale. These two parcels are involved in a lawsuit filed against the Department of Interior by the National Wildlife Federation and cannot be offered for sale. The parcels are described as follows:

Parcel No.	Serial No.	Legal Description	Acres
		T. 21 S., R. 60 E., M.D.B.M. Section 17	
86-06	N-43690	W½NE¼NE¼NE¼	5.0
		T. 21 S., R. 62 E., M.D.B.M. Section 19	
86-05	N-43615	N½NW¼NE¼SW¼	5.0
		Total acres	10.0

In all other respects the June 10, 1986 Notice remains in full force and effect.

Dated: July 15, 1986.

Ben Collins,

District Manager.

[FR Doc. 86-16789 Filed 7-24-86; 8:45 am]

BILLING CODE 4310-HC-M

[Group 960]

Filing of Plat of Survey; California

July 17, 1986.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Tulare County

T. 17 S., R. 29 E.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines, the survey of the subdivision of section 38, and the survey of Tract 49, Township 17 South, Range 29 East, Mount Diablo Meridian, California.

Tract 49 represents the position and form of the 160.00 acre parcel, Homestead Entry Patent, Certificate No. 2893, dated March 31, 1894 to William Trauger, described as the NE¼, section 9, Township 17 South, Range 29 East, Mount Diablo Meridian, California, under Group No. 960 was accepted May 14, 1986.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Lawrence A. Weitzel,

Acting Chief, Records & Information Section.

[FR Doc. 86-16733 Filed 7-24-86; 8:45 am]

BILLING CODE 4310-40-M

[Group 882]

Filing of Plat of Survey; California

July 17, 1986.

1. These plats of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 3 S., R. 6 E.
T. 3 S., R. 7 E.

2. These plats representing the dependent resurvey of the portion of the subdivisional lines, and the survey of the subdivision of sections 10 and 14, the survey of a portion of the southerly right-of-way boundary of the Colorado River Aqueduct, and the survey of the Metropolitan Water District of Southern California (MSDSC) right-of-way boundaries for power transmission lines, Township 3 South, Range 6 East; also the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of sections 20 and 28, and the survey of a portion of certain

Metropolitan Water District of Southern California (MWDSC), rights-of-way boundaries, Township 3 South, Range 7 East, San Bernardino Meridian, California, (plat in two (2) sheets), under Group No. 882 California, were accepted July 9 and July 11, 1986.

3. These plats will immediately become the basic record of describing the land for all authorized purposes. These plats have been placed in the open files and is available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquires relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Lawrence A. Weitzel,

Acting Chief, Records & Information Section.

[FR Doc. 86–16734 Filed 7–24–86; 8:45 am]

BILLING CODE 4310–40–M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Proposed Contractual Actions Pending Through September 1986

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the **Federal Register** December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of irrigation water in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year of less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the six Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during July, August, or September of 1986. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein:

(FR) Federal Reigster
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CVP) Central Valley Project
(P–SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act

Pacific Northwest Region: Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, ID 83724, telephone (208) 344–1961.

1. Boise Cascade Corporation, Columbia Basin Project, Washington: Industrial water service contract; 250 acre-feet; FR notice published April 7, 1980, Vol. 45, page 23531.

2. Five ID's, Boise Project, Idaho-Oregon: Irrigation repayment contract; 22,800 acre-feet of stored water in Arrowrock Reservoir, formerly reserved for the Hillcrest Unit under a 1921 contract is being terminated; FR notice published July 14, 1986.

3. Brewster Flat ID, Chief Joseph Dam Project, Washington: Amendatory repayment contract; land reclassification of approximately 360 acres to irrigable; Repayment obligation to increase by $189,000.

4. Individual irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

5. Rogue River Basin water users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $20 minimum per annum, not to exceed 1,000 acre-feet of water per contractor for terms up to 40 years.

6. Willamette Basin water users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $20 minimum per annum, not to exceed 1,000 acre-feet of water annually per contractor for terms up to 40 years.

7. Fifty-three Palisades Reservoir Spaceholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

8. Cascade Reservoir water users, Boise Project, Idaho: Repayment contracts for irrigation and M&I water; 59,721 acre-feet of stored water in Cascade Reservoir.

9. Boise Water Corporation, Boise Project, Idaho: M&I water service contract; 1,000 acre-feet annually from stored water in Anderson Ranch Reservoir for a term of up to 40 years.

10. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

11. City of Cle Elum, Yakima Project, Washington; Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

12. South Columbia Basin ID, Columbia Basin Project, Washington: Supplemetal repayment contract for Irrigation Block 24; 1,892 irrigable acres. Proposed contract is subject to RRA.

13. City of Boise, Boise Project, Idaho: M&I water service contract; 340 acre-feet annually of storage in Anderson

Ranch Reservior for a term of up to 40 years.

14. Douglas County, Galesville Project, Oregon: SRPA cost escalation loan repayment contract; $1,000,000 proposed obligation.

15. Sidney Irrigation Cooperative, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 1,300 acre-feet for a term of 40 years.

16. Three irrigation districts, Flathead Indian Irrigation Project: repayment of costs associated with rehabilitation of irrigation facilities.

Mid-Pacific Region: Bureau of Reclamation (Federal Office Building), 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978–5030.

1. 2047 Drain Water Users Association, CVP, California: Water right settlement contract; FR notice published July 25, 1979, Vol. 44, Page 43535.

2. Tuolumne Regional Water District, CVP, California: Water service contract; 3,200 acre-feet from New Melones Reservoir.

3. Calaveras County Water District, CVP, California: Water service contract; 400 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts to wheel nonproject water through project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

5. Friant-Kern Canal Contractors, Friant-Kern Unit, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern Canal whose contracts expire 1995. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

6. South San Joaquin ID and Oakdale ID, CVP, California: Operating agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

7. San Luis Water District, CVP, California: Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

8. Mid-Valley Water Authority, CVP, California: Temporary water supplies up to 100,000 acre-feet.

9. City of Avenal, CVP, California: Amendment of existing water service contract to provide for furnishing project power to city canalside relift facilities and change the point of diversion.

10. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

11. United Water Conservation District, SRPA, California: Loan repayment contract, $18,730,000 proposed obligation.

12. State of Hawaii, Molokai Project, SRPA: Contract amendment to provide for use of facilities for M&I purposes.

13. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the current draft of the Coordinated Operations Agreement.

14. Pixley ID, SRPA, California: Loan repayment contract, $12,300,000 proposed obligation.

15. Kaiser Development Company, CVP, California: Sacramento River water right contract; suspension of agricultural contract and execution of M&I contract.

16. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

17. Hills Valley ID, CVP, California: Amendatory water service contract, to provide an additional 400 acre-feet and reallocate 800 acre-feet of water from the Ducor ID for a total increase of 1,200 acre-feet.

18. Tri-Valley Water District, CVP, California: Amendatory water service contract, to provide an additional 16 acre-feet.

19. County of Tulare, CVP, California: Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

20. U.S Fish and Wildlife, CVP, California: Temporary water service contract; 15,000 acre-feet for Kern National Wildlife Refuge.

21. Truckee-Carson ID and Sierra Pacific Power Company, Newlands Project, Nevada: Warren Act contract to wheel 9,500 acre-feet of nonproject water through project facilities.

22. Panoche Water District, CVP, California: Amendatory water service contract providing for change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

23. Solano ID, Solano Project, California: Amendatory loan repayment contract providing for reconveyance and M&I water supply delivery.

24. City of Lindsay, CVP, California: Amendatory contract to provide for biannual payments rather than monthly payments for water service.

25. Shasta Dam Area Public Utilities District, CVP, California: Renewal of M&I water supply contract; less than 6,000 acre-feet.

26. Grasslands Water District, CVP, California: Interim interruptible water service contract; 100,000 acre-feet of Project water in lieu of agricultural drainage water for waterfowl habitat.

Upper Colorado Region: Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, UT 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Operation agreement to restore Arthur V. Watkins Dam to original elevation.

3. Animas-La Plata Conservancy District, Animas-La Plata Project, Colorado: Repayment contract; 9,200 acre-feet per year for M&I use; 72,200 acre-feet per year for irrigation. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

4. La Plata Conservancy Disrict, Animas-La Plata Project, New Mexico: Repayment contract; 16,000 acre-feet per year for irrigation. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

5. City of Farmington, Animas-La Plata Project, New Mexico: M&I repayment contract; 19,700 acre-feet per year. Contact terms dependent upon final non-Federal up-front cost sharing agreement.

6. City of Aztec, Animas-La Plata Project, New Mexico: M&I repayment contract; 5,800 acre-feet per year. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

7. City of Bloomfield, Animas-La Plata Project, New Mexico: M&I repayment contract; 5,300 acre-feet per year. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

8. South Cache Water Users, Hyrum Project, Utah: Amendatory emergency

contract for an additional $90,000 to repair flood related damage to the Hyrum-Mendon Canal.

9. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 3,300 acre-feet per year for irrigation use. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

10. Grand Valley Project, Colorado: Contract to continue operation and maintenance of Grand Valley powerplant.

11. State of Wyoming, Seedskadee Project, Wyoming: One contract for repayment of reimburse cost associated with the modification of Fontenelle Dam pursuant to the Reclamation Safety of Dam Amendments of 1984 (Pub. L. 98–404); one amendatory repayment contract to increase existing repayment contract ceiling.

12. Miscellaneous water users, Upper Colorado Region, Blue Mesa Reservoir, Colorado River Storage Project, Colorado: M&I uses, 20 acre-feet and less for 20–40 years.

13. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

14. Overland Ditch and Reservoir Company, Colorado: Amendatory repayment contract to repay an additional $1,500,000 costs for reconstuction of its dam, pursuant to the SRPA of 1956, Pub. L. 84–984, as amended.

15. Upper Yampa Water Conservancy District, Colorado: Repayment contract to repay a loan of $4,478,000 for the construction of Stagecoach Dam and Reservoir pursuant to the SRPA of 1956, Pub. L. 84–984, as amended.

16. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 25,800 acre-feet per year for irrigation use in Colorado; 800 acre-feet per year for irrigation use in New Mexico.

17. Navajo Indian Tribe, New Mexico: Repayment contract for 7,600 acre-feet per year for M&I use.

18. Ute Mountain Ute Indian Tribe, Dolores Project, Colorado: Repayment contract for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

19. Weber River Water Users, Weber River Project, Utah: Emergency contract to replace needle valves.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, NV 89005, Telephone (702) 293–8536.

1. Amendment to Contract No. I76r–696 between the Bureau of Reclamation and the Department of the Army to increase the maximum amount of water delivered to the Yuma Providing Grounds from 55 acre-feet to 975 acre-feet, pursuant to the recommendation of the Arizona Department of Water Resources.

2. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River in Arizona, Boulder Canyon Project: Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community, CAP, Arizona: Water service contract; contract for delivery of up to 173,100 acre-feet per year.

6. Sunset Mobile Home Park, Boulder Canyon Project, Arizona: M&I water service contract for delivery of 30 acre-feet of water per year pursuant to recommendation of Arizona Department of Water Resources.

7. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

8. Eastern Municipal Water District, Hemet, California: Repayment contract for $8.3 million SRPA escalation plan.

9. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts for repyament of Federal expenditures for construction of distribution systems.

10. Water delivery contracts with the State of Arizona, the Bureau of Land Management, and several private entities which are in the process of being organized for a yet undetermined amount of Colorado River water for M&I use. The purpose of these contracts is to afford legal status to various noncontractual water users within the State of Arizona.

11. Contract with the State of Arizona for a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

12. Contract with 16 individual holders of miscellaneous present perfected rights to Colorado River water totalling 66 acre-feet, pursuant to the January 9, 1979, Supplemental Decree of the United States Supreme Court (439 U.S. 419) in *Arizona* v. *California.*

13. County of San Bernardino, San Bernardino, California: Repayment contract for $13.4 million SRPA loan.

Southwest Region: Bureau of Reclamation, Commerce Building, Suite 201, 714 South Tyler, Amarillo, TX 79101, telephone (806) 378–5430.

1. Fort Cobb Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract to convert 4,700 acre-feet of irrigation water to M&I use.

2. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

3. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

4. Hidalgo County Irrigation District No. 1, Lower Rio Grande Valley, Texas; Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

5. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform with the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. Tom Green Water Improvement District, San Angelo Project, Texas: Amendatory contract to defer payment of construction charges associated with the 1985 crop year due to the nonavailability of irrigation water for use by the District's water users.

7. Rio Grande Water Conservation District, Alamosa, Colorado: Contract for the district to be the vender of the Closed Basin Division, San Luis Valley Project, surplus water if available.

8. Carlsbad ID, Carlsbad Project, New Mexico; Repayment contract for the costs incurred by the United States for replacing the needle valves at Fort Sumner Dam.

Missouri Basin Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, Telephone (406) 657–6413.

1. Individual irrigators, M&I, and miscellaneous water users, Missouri Basin Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, and Nebraska: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for simliar service for up to 1,000 acre-feet of water annually.

2. Nokota Company, Lake Sakakawea, P–SMBP, North Dakota: Industrial water service contract; up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

4. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

5. Oahe Unit, P–SMBP, South Dakota: Cancellation of master contract and participating and security contracts in accordance with Pub. L. 97–273 with South Dakota Board of Water and Natural Resources and Spink County and West Brown Irrigation Districts.

6. Owl Creek ID, Owl Creek Unit, P–SMBP, Wyoming: Amendatory water service contract to reflect water supply benefits being received from Anchor Reservoir.

7. Almena ID No. 5, Almena Unit, P–SMBP, Kansas: Deferment of repayment obligation for 1986.

8. Purgatoire River Water Conservancy District, Trinidad Project, Colorado: Amendatory repayment contract for extension of the development period and revision of the repayment determination methodology.

9. Corn Creek ID and Earl Michael, Glendo Unit, P–SMBP, Wyoming, and Nebraska: Irrigation contracts.

10. Webster ID No. 4, Webster Unit, P–SMBP, Kansas: Irrigation water service and repayment contract amendment to adjust payment due to reduced water supply, $970,816 outstanding.

11. Green Mountain Reservoir, Colorado-Big Thompson Project: Proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River drainage of western Colorado.

12. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round of proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

13. Lower South Platte Water Conservancy District, Central Colorado Water Conservancy District, and the Colorado Water Resources and Power Development Authority, Narrows Unit, P–SMBP, Colorado: Water service contracts for repayment of costs and cost sharing agreement.

14. Kirwin ID No. 1, Kirwin Unit, P–SMBP, Kansas: Deferment of repayment obligation for 1986.

15. Kirwin ID No. 1, Kirwin Unit, P–SMBP, Kansas: Irrigation water service and repayment contract and Emergency Drought Act loan contract amendment to adjust payments due to reduced water supply, $866,231 outstanding.

16. Cedar Bluff ID No. 6, Cedar Bluff Unit, P–SMBP, Kansas: Deferment of repayment obligation for 1985 and 1986.

17. Webster ID No. 4, Webster Unit, P–SMBP, Kansas: Deferment of repayment obligation for 1986.

18. Fryingpan-Arkansas Project, Colorado: East Slope Storage system consisting of Pueblo, Twin Lakes, and Turquoise Reservoir; Contract negotiations for temporary and long-term storage and exchange contracts.

19. Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Cost sharing of modification of Horsetooth Reservoir Dams.

20. Farwell Irrigation District, Nebraska: D&MC contract for the correction of drainage and seep area on the project.

21. Almena Irrigation District No. 5, Almena Unit, P–SMBP, Kansas: Irrigation water service and repayment contract amendment to adjust payment due to reduced water supply, $576,090 outstanding.

22. Cedar Bluff Irrigation District No. 6, Cedar Bluff Unit, P–SMBP, Kansas: Irrigation water service and repayment contract amendment to adjust payments due to reduced water supply, $621,078 outstanding.

23. Twin Loups Irrigation District, Pick-Sloan Missouri Basin Program: Amend repayment contract to include increased project construction cost and adjust payments to full current payment capacity.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contract as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) the significance of the impacts(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Dated: July 21, 1986.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc. 86–16730 Filed 7–24–86; 8:45 am]

BILLING CODE 4310–09–M

Minerals Management Service

Procedures for Determining Natural Gas Value for Royalty Purposes

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Modification to Notice to Lessees-5.

SUMMARY: The Minerals Management Service (MMS) is modifying Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases (NTL–5) which prescribes the procedures to be used to determine the value of natural gas production for royalty purposes.

EFFECTIVE DATE: August 1, 1986.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, telephone: (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this Notice are John Price and Scott Ellis.

I. Background

On January 3, 1986, MMS published for comment in the Federal Register a "Notice of Proposed Modification to Notice to Lessees-5" (NTL–5) (51 FR 260). The MMS proposed to modify NTL–5 "to provide more flexibility in valuing for royalty purposes natural gas

produced from onshore Federal and Indian leases." The proposed changes to NTL–5 were to permit MMS to value most natural gas by using the full range of its authority under the royalty valuation regulations in 30 CFR rather than under the more restrictive provisions of NTL–5. Comments were to be postmarked no later than February 3, 1986; however, MMS granted an extension of time for filing comments to March 3, 1986 (51 FR 4542).

MMS's principal proposed modifications affected two substantive provisions of NTL–5: the "Redetermination of Royalty Values" and "Effective Dates" parts of Sections I and II. Section I.B. was proposed to be modified to allow MMS to redetermine a base value determined pursuant to NTL–5 by using any method permitted by the regulations governing gas valuation (e.g., 30 CFR 206.103 and 25 CFR 211.13). Discretion would be used in redetermining the value as circumstances warranted. However, most of the existing provisions of NTL–5 would remain in effect. The purpose of this proposed modification was to allow MMS the flexibility to ensure that the value for royalty purposes reflected current market conditions. MMS stated it was considering as an alternative making the modification to Section I.B. effective as of March 1, 1984, and comments were specifically requested as to whether the modification should be retroactive and to what date.

MMS proposed that the adjustments to base values authorized by the modification to NTL–5 would not be automatic. Under the principal proposed modification of NTL–5, lessees would continue to be governed by the provisions of NTL–5 until MMS approved an adjusted base value to reflect current market conditions. Modifications to "Effective Dates" in Section I.C. were proposed in a manner so as to make any modified base values effective on the date market conditions warranted a redetermination.

MMS also requested comments on whether, as an alternative, NTL–5 should be rescinded in part, or in its entirety. If NTL–5 were rescinded, valuation would be based solely upon the regulations in 25 CFR and 30 CFR. Like the modification proposal, rescinding NTL–5 would give MMS flexibility in dealing with changing market conditions.

II. Summary of Provisions Adopted

MMS is amending NTL–5 prospectively so that valuation of most gas production from onshore Federal and Indian lands will be determined in accordance with the valuation regulations in 30 CFR Part 206. The existing provisions of NTL–5 will be retained for sales from wells which were producing prior to June 1, 1977, and which are subject to an arm's-length entered into prior to that date. These provisions are in sections I.A.1. and II.A.1. of NTL–5. The provisions of NTL–5 in sections I.A.2. and II.A.2., which apply to all other gas sales, are amended to provide that such production will be valued in accordance with the gas valuation regulations in 30 CFR Part 206. Also, section VI of NTL–5, which applies to gas disposed of without sale, (such as vented or flared gas) is amended to provide for valuation pursuant to 30 CFR Part 206. The provisions of NTL–5 which pertain to such matters as quality adjustment, measurement standards and point of royalty computation also are retained. Gross proceeds will continue to be the basis for determining a minimum royalty value. Also, to the extent any specific provisions of a lease prescribed gas valuation standards and are inconsistent with regulations in 30 CFR, the lease provisions would govern.

MMS is amending NTL–5 to refer only to the regulations in 30 CFR, and not the regulations in 25 CFR, when Indian lands are involved. This is consistent with MMS's practice and the Indian leases which specifically incorporate the regulations in 30 CFR. Also, the regulations in 25 CFR and 30 CFR are not inconsistent. The regulatory provisions of 25 CFR also are included in most Indian oil and gas leases, hence the provisions will be considered by MMS in any value determination. Moreover, the Bureau of Indian Affairs has proposed to remove gas valuation regulations from 25 CFR and rely exclusively upon regulations in 30 CFR (48 FR 31978, July 12, 1983). Final rules are expected to be issued soon.

The practical effect of the change to NTL–5 is to rescind prospectively the basic valuation provisions of that Notice for all gas production on onshore Federal and Indian lands with the limited exception of production from wells with arm's-length contracts prior to June 1, 1977. Thus, the vast majority of production will be valued in accordance with the provisions of 30 CFR 206.103, which gives MMS flexibility in responding to market changes, rather than the provisions of NTL–5 which are applied inflexibly regardless of market changes. As explained in the preamble to the Notice of Proposed Modification to NTL–5, NTL–5 was adopted because of the increasing value of natural gas. Market conditions no longer are predictable; therefore, more flexibility in valuation is necessary.

NTL–5 was issued, by its terms, "pursuant to the authority prescribed in the Oil and Gas Operating Regulations, 30 CFR 221 [now, in part, 30 CFR 206.103] (42 FR 22610, May 4, 1977). Any valuation method required by NTL–5 consequently is authorized by 30 CFR 206.103. Hence, with the change to NTL–5 adopted today, MMS may use the same valuation criteria which were in NTL–5, but also may consider other reasonable valuation criteria as permitted by 30 CFR 206.103 or other applicable sections in 30 CFR Part 206, Subpart C. The change to NTL–5 does not limit MMS's authority, it broadens MMS's discretion to consider alternative valuation criteria. MMS is not adopting any specific valuation method, such as arm's-length contract prices, to replace the removed provisions. The particular valuation method to be applied will depend upon the circumstances, although arm's-length contract prices, in many instances, will be the value. To further assist all parties, either interested in or affected by this amendment to NTL–5, MMS will conduct an informational outreach program which will include letters to payors advising them of the changes to NTL–5 and the transition to valuation under the regulations at 30 CFR 206. States, tribes, and industry will also be notified as part of the informational program.

MMS is retaining the provisions of NTL–5 which apply to sales from wells which were producing prior to June 1, 1977, and which are subject to an arm's-length contract entered into prior to that date. Under NTL–5 section I.A.1. and II.A.1., the base value for such sales is generally the higher of the contract price or a minimum of 18 per mcf. The redetermination provisions of sections I.B. and II.B. will remain in effect and could result in a higher base value.

MMS is retaining the above two provisions of NTL–5 for several reasons. When NTL–5 was originally adopted in 1977, it was the Department's intent to recognize contract price as value for the particular class of sales. MMS believes that it would be inequitable to rescind these provisions and possibly subject such sales to significantly increased royalty values. Moreover, many of the sales under these contracts remain under price controls pursuant to the Natural Gas Policy Act of 1978 (NGPA). These regulated prices are often fixed by the terms of the contracts. Therefore, the contract price in most instances will be the royalty value for this class of

sales even in the absence of the NTL–5 provisions.

MMS is making the change to NTL–5 effective prospectively. MMS specifically requested comment on whether changes to NTL–5 should be retroactive and most comments addressed this issue, some recommending retroactive change and others only prospective change. Responses to specific comments are discussed below, but MMS concluded that there are several reasons not to make changes to NTL–5 retroactive. First, MMS has been enforcing NTL–5 through its audit activities and some payors voluntarily have been paying royalties in accordance with its provisions. However, other payors have not paid royalty in accordance with the requirements of NTL–5. If MMS were to rescind or modify NTL–5 retroactively, inconsistent royalty enforcement could occur. Because the change is prospective, MMS will enforce the provisions of NTL–5 as originally adopted until the effective date of this Notice of Modification. Second, MMS's royalty value regulations affect millions of dollars of royalties each month. Lessees and other payors must be able to rely on the application of existing regulations without concern about a retroactive change months later which could have significant economic consequences. Because lessees and other payors must comply strictly with MMS's royalty valuation rules, it is concomitant upon MMS to ensure that its rules credible and can be relied upon until changed prospectively.

NTL–5 as amended by this Notice refers to all of 30 CFR Part 206, not just 206.103. Thus, wet gas will be valued in accordance with the provisions of 206.105 and 206.106 and other provisions in Part 206, as applicable.

The product value regulations in 30 CFR are currently being revised and MMS will propose specific valuation criteria to be applied in different circumstances. When adopted, those rules will replace NTL–5 as amended by this Notice. See 51 FR 4507 (February 5, 1986).

III. Response to Comments Received on the Notice of Proposed Modification

The notice of proposed modification to NTL–5 was published in the Federal Register on January 3, 1986 (51 FR 260). It provided for a public comment period which ended on February 3, 1986. The comment period was subsequently extended to March 3, 1986 (51 FR 4542). Eighty-five comments were received and were considered in preparing this final modification.

Of the 85 individual comments on the proposal to modify NTL–5, six either requested additional time to comment on the proposal or requested a copy of MMS's response to specific comments and did not address the isue of NTL–5 modification. The remainder of the comments were divided into the three major-issue groups.

(a) *Should Sections I.B. and II.B. "Redetermination of Royalty Values," be modified to give MMS added flexibility in the determination of royalty value?*

(1) A total of 28 responses were received regarding the advisability of modifying these sections of NTL–5. Fifteen commenters felt strongly that NTL–5 should be modified. However, the modification language proposed by MMS did not necessarily reflect their position. The commenters suggested that NTL–5 be modified "to not exceed fair-market value," or "to reflect market conditions," or "to accept proceeds received under arm's-length contracts." These three phrases were used interchangeably by the commenters and reflect their view that MMS should not retain a discretionary authority to establish value. The commenters thought MMS should provide a degree of certainty in establishing royalty value so lessees could enter into long-term contracts certain of thier royalty obligation.

MMS agrees with the respondents that flexibility in regard to royalty valuation imposes some uncertainty of royalty obligations for the lessee. Although a predetermined method of royalty valuation is preferred by both lessees and MMS, MMS has determined that reference the to existing rules in 30 CFR 206.103 is preferable until new, comprehensive product valuation rules are adopted. Proceeds under a contract are one of the valuation criteria which MMS may consider under 30 CFR 206.103.

(2) One of the 15 commenters suggested that the best way to achieve the NTL–5 modification and to alleviate lessee concerns was to issue the new gas valuation regulations as soon as possible. The regulations this commenter preferred would reflect the acceptance of gross proceeds accruing under arm's-length contracts as determinative of value.

MMS recognizes that the issuance of new gas valuation regulations would alleviate the disparity of valuation under NTL–5. However, until such rules are adopted, this final modification to the NTL–5 valuation method provides for valuation under current regulations that are more responsive to market conditions.

(3) Eight commenters preferred that NTL–5 be rescinded and that, if not rescinded, MMS should amend NTL–5 to accept gross proceeds under arm's-length contracts or fair-market value as indicative of value for royalty purposes. These commenters suggested that Sections I.B. and II.B. be clarified or modified to reflect the intent that value determined by MMS will not exceed fair-market value. One of the three commenters suggested that if amending Sections I.B. and II.B. should prove contrary to the laws and regulations, then MMS should rely solely on 25 CFR and 30 CFR to determine value.

The adopted final modification effectively rescinds most of NTL–5's specific valuation requirement and bases value in sections I.B. and II.B. in accordance with existing regulations in 30 CFR.

(4) A total of 15 comments were received concerning the workload requirements of MMS's proposed NTL–5 modification. Nine commenters believe that any modification to NTL–5 would be too burdensome for the lessee and for MMS. One of the nine commenters stated that the data collection requirements would be prohibitive for a modified NTL–5 to work properly. Another of the nine commenters explained that a value in some instances, such as for deregulated gas, was impossible to determine because there are no published price, volume information is not readily accessible, and companies are prohibited from exchanging price data. It was stated that all of these deficiencies add up to late payments by lessees and the assessment of late charges on royalties due to MMS. One commenter suggested that the Royalty Valuation and Standards Division (RVSD) of MMS should act to reduce workload with or without a modification to NTL–5. It was suggested that any new change to NTL–5 would cause an extreme hardship on RVSD that would ultimately result in MMS's acceptance of whatever royalty is reported.

Replacing the mechanical requirements of the existing NTL–5 with the more flexible valuation criteria in 30 CFR 206.103 will result in an increased workload for MMS. The effect of initiating the changes to NTL–5 on a prospective basis only alleviates a great deal of this concern. MMS continues to seek a method of gas valuation that is less manpower intensive and will address this issue in the forthcoming changes to the product value regulations.

(5) Six commenters believe that, in addition to the overly burdensome requirements of a change to NTL–5, the current Federal Energy Regulatory Commission (FER) regulatory proposals would cause even more confusion and burden to the valuation process. FERC continues to deregulate certain gas and continues to modify Orders 436 and 436–A to accommodate current gas price trends. FERC also is preparing to propose new rates for NGPA Sections 104 and 106 gas. All six of these commenters agree that using an NGPA ceiling price to determine gas royalty value does not establish fair-market value of the gas. The commenters added that the original intent of NTL–5 was that gas prices were "controlled" by the Federal Power Commission (FPC) at established area rates. It was stated that the old controlled rates under FPC are not synonymous with the ceiling rates established by FERC under the NGPA.

Three of the respondents commented on the apparent contradiction between MMS gas valuation policies and FERC pricing policies. One commenter thought that because producers of natural gas from Federal and Indian leases must make sales into a regulated market, MMS should coordinate its valuation proposals and directives with the FERC/DOE. Another commenter pointed out that FERC ceiling prices under the NGPA should not be substituted for FPC rates when NTL–5 calls for royalties to be paid on values which he cannot obtain.

The FERC/DOE pricing policies and MMS's valuation policies are not controlled by the same statutes and have different goals and legislative mandates to satisfy. At a time of rapidly rising gas prices, when FERC-establishing ceiling prices were being received by lessees, it was reasonable for MMS to tie its valuation methodology to these prices. MMS is not and has never been required to follow FERC policies when determining royalty values. MMS must maintain its mandated responsibilities to the public and to the Indian tribes and allottees.

(6) There were a total of 16 comments related to the payment of royalty on values considered in excess of fair-market value. The commenters agreed, in general, that such a demand was confiscatory and in violation of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. 181, *et seq.*), the lease terms, and the Fifth Amendment to the U.S. Constitution. One commenter stressed that royalties demanded under NTL–5 may be invalid because of the decisions in *Gulf Oil Company* v. *Andrus*, 460 F. Supp. 15 (C.D. Calif. 1978), and *Marathon Oil Company* v. *Andrus*, 452 F. Supp. 548 (D. Wyo. 1978). One commenter stressed that the Mineral Leasing Act only requires royalty to be based on a reasonable market value and that any royalty demand in excess of what the commenter considered reasonable market value ignored arm's-length contract value and, therefore, was confiscatory. Also, it was stated that the Federal Government has violated the due process rights of the lessee. Two commenters stated that demanding royalties on values in excess of a reasonable fair-market value was a flagrant abuse of the Director's discretion to determine value for royalty purposes. As such, the demand is an arbitrary and capricious standard which results in the arbitrary confiscation of monies belonging to the lessee. One commenter stated that a demand for excessive royalties is unlawful and unsatisfactory because it is a departure from prior agency practice. One commenter also believes that, in addition to the foregoing, a demand based on modified NTL–5 standards would be unlawful because the demand is based on *ex post facto* (U.S. Const., Art. 1, 9, Cl. 3) rules.

The legality of NTL–5 and the establishment of royalty value is well documented. The Secretary of the Interior has considerable discretion to establish royalty value. Value determinations under 30 CFR will reflect changing market forces in the exercise of the Secretary's authority. The prospective nature of the final notice will avoid legal concerns associated with retroactive changes in rules.

(7) At least 14 commenters point out that MMS has advised industry since 1983 that new gas valuation regulations and guidelines would establish "gross proceeds" received under a negotiated arm's-length contract as the proper valuation standard for calculating royalties. Believing that the new valuation procedures would soon be published and that MMS had already adopted those procedures, industry began calculating and paying royalties accordingly. Part of this belief resulted from meetings held by MMS in 1983 and from a letter dated August 4, 1983, from the Associate Director for Royalty Management to Phillips Petroleum Company, indicating that gross proceeds received under an arm's-length contract was the proper basis for computing royalties. One commenter pointed to an apparent MMS commitment to the gross proceeds valuation concept from the publication of a notice in the January 18, 1984, **Federal Register** which stated that MMS will accept arm's-length prices as the value basis for royalty purposes. Commenters argue that NTL–5 is inconsistent with the implied valuation policy of MMS to base royalties on gross proceeds received under arm's-length contracts. They point out that because MMS has given conflicting valuation instructions and statements over the past few years, largely because no formal guidelines were issued, a considerable amount of confusion exists in the industry regarding valuation procedures. In general, these commenters argue that revenue received under an arm's-length contract is the only fair and equitable method of computing royalties.

Three commenters pointed out that the original valuation provisions of NTL–5, as well as the proposed revision, are inconsistent with valuation instructions given in MMS's *Payor Handbook*, particularly with respect to the so-called "three method calculation." Noting this, the commenters concluded that valuation practices were not uniform within MMS and that this created confusion for the payors. One of the commenters also noted that basing royalties on the maximum NGPA price was never provided for in the *Payor Handbook*.

The adoption of this final Notice will help to alleviate the concerns expressed in regard to confusing and conflicting valuation guidance. MMS hopes to completely alleviate these problems with the publication of new valuation regulation, which, in turn, will be used to create new instructions for the *Payor Handbook*. If any lessees have paid royalties at values less than required by NTL–5, MMS will take action to obtain the additional royalties due plus applicable interest, penalties, and (or) assessments.

(8) Nine commenters responded to the equal treatment of Federal onshore, offshore, and Indian tribal and allotted leases for royalty valuation purposes. All nine commenters stated that, for valuation purposes, all leases should be treated equally by basing royalties on proceeds received by the lessees when they represent fair-market value. One commenter advised that this type of equal treatment follows the recommendations of the Linowes Commission in its Report on Fiscal Accountability of the Nation's Energy Resources (1982). Two commenters believe that royalty valuation should distinguish between Federal and Indian leases because many Indian leases contain special language in the royalty provisions. Also, the recent decision in *Jicarilla Apache Tribe* v. *Supron*, — F.2d— (10th Cir. 1986), is an indication

of the need for differing valuation on Federal and Indian onshore leases. One commenter stated that the Federal lease requires fair royalty based upon a reasonable value but that MMS must maximize royalties on Indian lands rather than merely accept proceeds based on spot sales, Special Marketing Programs (SMP), or trade negotiations. Several parts of NTL–1 and NTL–5 were addressed by one commenter as needing change. The commenter stated that standards should be developed under NTL–1 to address both non-arm's-length contract situations and nonregulated gas situations. For NTL–5, MMS should further define arm's-length transactions, clarify part II.B.2., and address intrastate sales to a greater degree.

MMS's new valuation regulations will address the issue of a single standard or dual standard for royalty valuation for Federal and Indian lands. This issue will receive considerable attention by the Royalty Management Advisory Committee, comprised of industry, State, and Indian representatives, in its review of royalty valuation regulations. In the meantime, MMS will make value determinations under NTL–5 as amended in this Notice with due regard to its responsibilities to the Indians.

(9) Three commenters recommended that any proposed change to NTL–5 and/or any subsequent revisions in valuation policy should be considered by the Royalty Management Advisory Committee (RMAC). A fourth commenter suggested that any present action with respect to modification of present valuation policy is premature owing to the function of the RMAC (termed in the letter as the "National Advisory Committee") to review and guide Federal royalty valuation. A fifth comment echoed this objection in view of DOI's present effort to revise the valuation regulations.

MMS agrees that RMAC review would be helpful, but the time constraints imposed by the immediacy of the NTL–5 valuation problem require that changes to NTL–5 must progess as rapidly as possible.

(b) *As an alternative to the modification of Sections I.B., I.C., II.B., and II.C., should MMS rescind NTL–5 in its entirety or in part?*

(1) A total of 41 commenters suggested that NTL–5 be rescinded either entirely or in part. These were 22 comments that indicated the MMS's NTL–5 proposal is unnecessary. The opinion of 10 commenters is that the proposal is unnecessary because there is adequate authority to merely overrule NTL–5 and use proceeds received from arm's-length negotiated gas contracts as acceptable for royalty valuation purposes. Two of the 10 commenters believe that 25 CFR and 30 CFR currently contain sufficient authority to use prices in arm's-length negotiated gas contracts as acceptable value for royalty purposes. One of the 10 commenters suggested that 25 CFR and 30 CFR need revision to cap royalty valuation at the price received under arm's-length negotiated gas contracts. One commenter of the 10 advised that MMS did not have to adhere to NTL–5. Another commenter of the ten proposed that value should be the price determined by both arm's-length and non-arm's-length contracts. One of the 10 commenters suggested that if MMS was not satisfied with the price received under arm's-length contracts, it should take its gas in-kind.

Eight respondents thought that any revision or rescission of NTL–5 was unnecessary if NTL–5 is to be superseded by the issuance of new product valuation regulations. These respondents assumed that the gas valuation regulations would call for the acceptance of proceeds under arm's-length contracts. Four of the eight respondents believed that, as a stopgap measure, MMS should accept proceeds received under arm's-length gas contracts until the proposed gas valuation regulations are issued. One of these four commenters believes that generic regulations will not suffice and MMS should not wait on the new proposed gas valuation regulations. Another of the four commenters proposed, in addition to the acceptance of proceeds received by the lessee as valuation for royalty purposes, that in situations where gas is used without sale MMS must value the gas. No indication was given as to what valuation guidelines MMS should use. One of the four commenters believes that MMS, through its history of valuation action, has created a "rule of property" by accepting proceeds from arm's-length gas contracts for royalty purposes.

NTL–5 was originally promulgated after notice and opportunity for comment. MMS is required to comply with its terms until it is changed through another rulemaking. Because MMS has determined not to make the change retroactive, NTL–5 as originally adopted will be enforced until the change adopted in this Notice becomes effective. The change to NTL–5 is necessary because the new product value regulations, which will completely replace NTL–5, will not be promulgated in final form until 1987.

The reissue of valuation regulations at 30 CFR 200 (August 1983) did not supersede valuation requirements under NTL–5. The regulations were placed at part 200 as a matter of instituting Secretarial Order 3087 which directed that the authority for product valuation matters be placed under MMS. The various product valuation regulations were simply recodified in this part of the Code of Federal Regulations.

(2) Nine commenters suggested that NTL–5 be rescinded but offered no further guidance to MMS as to how, or under what authority, gas valuation would take place. One of the nine commenters who suggested that NTL–5 be rescinded said that a modification of NTL–5 would adversely affect valuation under the NTL. Further, the commenter believes that MMS will abdicate its authority and responsibility to obtain fair-market value if NTL–5 is changed in any way. Eight commenters preferred that NTL–5 be rescinded, but in lieu of that action, that NTL–5 should be modified in various ways.

Six commenters suggested that NTL–5 be rescinded and the new gas valuation regulations be issued as promptly as possible. Most of these commenters assumed the new gas valuation regulations would adopt arm's-length negotiated gas contract prices as the standard for valuation.

Six other commenters preferred that NTL–5 be rescinded, and in lieu thereof, that MMS adopt the arm's-length negotiated gas contract price as the acceptable standard for royalty valuation. One commenter thought that no royalties should be due on take-or-pay monies received by the lessee.

As explained in the Summary of Provisions Adopted section of this notice, MMS is in effect rescinding NTL–5 for most onshore gas production and returning to the basic valuation provision in 30 CFR 206.103. Any valuation required by NTL–5 as originally adopted likewise is authorized by 30 CFR 206.103. Hence, the change adopted by this Notice does not diminsh MMS's authority. The principal change is that prospectively MMS will be able to consider more than one option do determine value based on market conditions. Thus, onshore valuation will be accomplished similarly to offshore gas valuation pursuant to 30 CFR 206.150.

(3) One respondent thinks that MMS's NTL–5 proposal is unnecessary because the Secretary has (and always had) the board discretion to take into account various parameters in determining gas valuation on a case-by-case basis. In this regard, any one particular law or regulation (e.g., NTL–5) may be of secondary importance to the value issue at hand.

NTL–5 was adopted after notice in the Federal Register and opportunity for comment. It is binding upon the agency. MMS does not have the discretion to ignore its provisions in any particular situation unless it can be determined that NTL–5 does not apply.

(4) Fifteen commenters responded to the outdated philosophy of NTL–5 and its application to a gas market that no longer exists. The gas market for which NTL–5 was developed was controlled by FPC by requiring interstate gas suppliers to adhere to an area rate maximum pricing philosophy. The unequal treatment of interstate sales versus intrastate sales created a serious product value diffferential. Congress balanced the intrastate and interstate markets and the problem created by the rapidly changing gas market by passing the Natural Gas Policy Act (NGPA) of 1978. Two commenters feel that, by this action, Congress effectively made NTL–5 inoperative because it was tied to the old FPC pricing philosophy that was superseded by the NGPA. Six commenters stated that because of the rapidly changing gas market:

- FERC prices are not relevant to fair-market value;
- MMS should recognize reduced market-out prices and the prices in Special Marketing Programs (SMPs) which are reflections of the 1980's gas market;
- FERC continues to deregulate and restructure NGPA pricing categories and create new regulations in response to the 1980's gas market;
- MMS should accept the price realized by producers or take its share in-kind and experience the market realities; and
- The current gas market is a producer's dilemma.

MMS agrees that NTL–5 as originally adopted is not sufficiently flexible to be an effective calculation method in today's gas market. That is why MMS proposed to amend or rescind it. This modification provides the flexibility necessary to alleviate concerns regarding valuation under NTL–5, but the market is the only fix for demand of a product at a price sufficient to justify its extraction and use.

(5) Because NTL–5 was issued when gas pricing was under FPC regulation (and during a time when gas prices were escalating), ten commenters pointed out that NTL–5 was inconsistent with the provisions of the NGPA and, therefore, was obsolete with passage of the NGPA. Three problem areas were primarily addressed:

(i) NTL–5 does not recognize the economic reality of establishing gas values under NGPA. NTL–5 was adopted under FPC (pre-NGPA) regulatory control of interstate gas; FPC rates were generally established to provide adequate returns (profits) for the sale of interstate gas and to diminish the discrepancies between interstate and intrastate markets. Under FERC (post NGPA), the concept was to permit gas prices to escalate to encourage more exploration and development. The NGPA also brought intrastate gas under regulatory control. Thus, the FPC pricing and FERC pricing are to cross purposes and one cannot be substituted for the other as proposed in NTL–5.

(ii) Establishing royalty values on the basis of maximum lawful prices is at odds with some of the basic objectives of NGPA. One commenter stated his feelings as follows:

> The concept of maximum lawful pricing set forth by NGPA gives validity to the ceiling prices only to the extent that they are exceeded by the prices allowed under the contract; NGPA Section 1–1(b)(9) mandates that no maximum price will supersede or nullify as lesser price established by the contract. Further evidence of this respect for contract sanctity is demonstrated by FERC Order 23–A, which interprets the operation of indefinite price escalator or 'area rate' clauses under NGPA. Based on FERC's study of Congressional intent, the Order clarified that these contractual provisions authorize collection of the applicable NGPA ceiling rates only to the extent the parties intended that they do so.

Because ceiling prices are not market prices, the commenters argued that it is basically unfair to base royalties on maximum lawful prices when the producers cannot obtain these prices under contract.

(iii) NTL–5 is even more at odds with economic reality when valuing unregulated/deregulated gas, because the value of this gas in a field is based on the majority "base floor price" of gas produced from the field. Again, the commenters think that basing royalties on such prices is not fair to those producers who can only receive prices, under contract, that are less than the computer "base" price.

MMS agrees that a more flexible valuation rule is desirable because of changes to the gas market. Thus, in this notice, MMS is significantly amending NTL–5 to provide more flexibility in valuation.

(6) Four commenters expressed concern that the valuation provisions of NTL–5 are unfair to small producers who cannot negotiate sales contracts under the same conditions that a large company can, expecially because that NTL–5 is expecially onerous on them because the royalty values will not necessarily reflect market value (i.e., actual sale proceeds) and because they have no leverage to negotiate higher prices or adjustments to reflect changing market conditions. One commenter even indicated that his company was threatened with shut-ins or permanent disconnects if it did not agree to reduce prices, and that the reduced prices were accepted only as a last resort to maintain production.

There is nothing in the gas market to suggest the unequal treatment of large versus small producers. It is a fact that many large producers will not venture into remote and/or small production fields for fiscal reasons. Many independent and/or small producers choose to operate in these areas that have competitive disadvantages inherent with the small/remote characteristics. The Federal Government does not force these situations on lessees, but rather they are conditions that, for the most part, are known up front. The adopted final modification will take into account the expressed relevant concers of small and large producers alike.

(c) *If Sections I.B. and II.B are modified or rescinded, should Section I.C. and II.C. amended to make changes in Section I.B. an II.B effective retroactivity?*

(1) There were 59 comments on whether any change to NTL–5 should be retroactive. Nineteen commenters stated that NTL–5 should be rescinded and that a policy of accepting arm's-length contract proceeds as the value for royalty purposes be adopted. Ten of the 19 respondents thought that NTL–5 should be rescinded to some date in 1982, the year identified by a majority of commenters as the time when the gas market and gas sales contracts shifted from price increases to price decreases ("marketing-out"). A specific date remains questionable. However, it appears that the first market-out contract clause to be invoked occurred on or about May 1, 1982. Five of the 19 commenters though that 1978 was the proper date for retoactive rescission of NTL–5. The commenters were in agreement that the NTL should have terminated with the effective date of the Natural Gas Policy Act (NGPA) on December 1, 1978. One of the 19 commenters though that NTL–5 should be rescinded entirely or back to May 1, 1977, because NTL–5 never addressed the valuation of gas properly and should not have overshadowed the regulation at Titles 25 and 30 of the Code of Federal Regulations (CFR). Four respondents of the 19 did not specify a date to which NTL–5 should be retroactively rescinded but suggested

that NTL–5 in any particular case be retroactive to:

- The date the producer negotiated lower prices in any arm's-length situation;
- Any open audit periods;
- Achieve a fair result; or
- To cover extreme hardship cases but not later than March 1, 1984.

Eighteen commenters thought that NTL–5 should be modified retroactive to various dates. Seven of the 18 commenters felt that modifications to NTL–5 should be retroactive to some date in 1983. Most of these commenters believe the date established should coincide with the lessee's lowered gas prices under negotiated arm's-length contracts. Six of the 18 respondents suggested that NTL–5 should be modified retroactive to the individual dates that gas contracts were either marketed-out or renegotiated to a lower price. Three of the 18 respondents though that NTL–5 modifications should be retroactive to some date in 1982. Three other respondents of the 18 commenters though the earliest possible date for retroactive changes to NTL–5 is the proper date. One respondent each, of the 18 commenters, chose effective dates of 1977, 1978, and 1984 as the preferred date that changes to NTL–5 should become retroactive. Again, the 1977 date coincides with the issuance of NTL–5 (May 1, 1977), the 1978 date coincides with the effective date of the NGPA (December 1, 1978), and the 1984 date is the date suggested by MMS (March 1, 1984) in the Federal Register notice of January 3, 1986.

Fourteen respondents do not want any modification of NTL–5 to become retroactive. Nine of the 14 commenters do not want the modifications to NTL–5 to be retroactive because they receive allocated revenues based on oil and gas production. The commenters believe that any retroactive change would seriously diminish their present and future revenue budgeting.

Two of the 14 commenters argued that any change to NTL–5 cannot be retractive because it would be illegal to do so. The commenters referred to *Continental Oil Company* v. *U.S.*, 184 F. 2d 802 (9th Cir. 1950), as supporting their position. Two other commenters of the 14 merely stressed that retroactivity was absurd or could not be done because it would affect the credibility of all NTL's and value determinations made by MMS. One of the 14 commenters advised that any changes to NTL–5 must be prospective only. The commenters warned that any retroactive effective date of NTL–5 modifications may be unconstitutional and a breach of MMS's Indian trust responsibility.

MMS has decided not to make the change to NTL–5 retroactive. NTL–5 as originally adopted will be effective and enforced until the effective date of the change in this Notice. MMS's reasons for not making the change retroactive are discussed above in the Summary of Provisions Adopted section of this notice. In additional to those reasons, it is evident from the comments that there was not a single, widespread occurrence which is definable and would clearly establish a date for retroactive change. Changes in the gas market were gradual and MMS took action to modify the rule when it became evident that more flexibility in valuation was necessary for the long term. Although certain inequities may result from enforcement of NTL–5, this is a necessary consequence of any valuation rule which applies to over 20,000 producing oil and gas leases, most with multiple selling arrangements.

IV. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The net effect of this rule will result in some reduction in royalty revenues but is not expected to be significant. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1960

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act of 1969

It is hereby determind that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)] is required.

Administrative Procedure Act

MMS has concluded from the comments received that the application of NTL–5 is causing certain inequities. Therefore, MMS has determined that pursuant to 5 U.S.C. 553(d), there is good cause to make this rule effective as soon as possible. This modification to NTL–5 will be effective the first day of the month following the date of publication of this Notice in the Federal Register so as not to create problems by splitting a production month.

Under the authority of the Secretary of the Interior contained in 30 U.S.C. 1751, the mineral leasing laws (as defined in 30 U.S.C. 1702) including 30 U.S.C. 189, 301–306 and 351–359, and 25 U.S.C. 396 and 396d, NTL–5 is modified as follows:

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

Dated: June 25, 1986.

Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases (NTL–5) is amended as follows:

* * * * *

I. Interstate Sales Subject to the Price Jurisdiction of the Federal Power Commission (FPC)—Replaced by the Federal Energy Regulatory Commission (FERC)

A. Establishment of Royalty Values

* * * * *

2. For sales from wells commenced on or after June 1, 1977, and which are subject to an arm's-length contract executed prior to, on, or after that date; for sales made pursuant to an arm's-length contract renegotiated on or after June 1, 1977; and for all sales not involving an arm's-length contract, the value for royalty purposes shall be established pursuant to 30 CFR Part 206.

* * * * *

II. Intrastate and Other Sales or Dispositions Not Subject to Price Jurisdiction of the FPC—Replaced by the Federal Energy Regulatory Commission (FERC)

A. Establishment of Royalty Values

* * * * *

2. For sales from wells commenced on or after June 1, 1977, and which are subject to an arm's-length contract entered into prior to, on or after that date; for sales made pursuant to an arm's-length contract renegotiated on or after that date; and for all sales or other dispositions not involving an arm's-length contract, the value for royalty purposes shall be established pursuant to 30 CFR Part 206.

* * * * *

VI. Production Disposed of Without Sale

The value for royalty purposes of gas disposed of without sale and for which royalty or other compensation is due

will be calculated pursuant to 30 CFR Part 206.

[FR Doc. 86-16705 Filed 7-24-86; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

Illinois and Michigan Canal National Hertage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat, 1247, that a meeting of the Illinois and Michigan National Heritage Corridor Commission will be held July 29, 1986, beginning at 10 a.m. at Starved Rock State Park, Ottawa, Illinois.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michign Canal National Heritage Corridor Act of 1984, 98 Stat. 1456, 16 U.S.C. 461 to implement and support the conceptual plan.

Matters to be discussed at the meeting will include committee reports, development of thematic structure for interpretation of the corridor, and discussion of the FY 86 and FY 87 budget.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402-221-3481 (FTS 864-3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: July 18, 1986.

Charles H. Odegaard,

Regional Director, Midwest Region.

[FR Doc. 86-16795 Filed 7-24-86; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principle office: Domtar Inc., 395 de Maisonneuve Blvd. West Montreal, Quebec, Canada H3A 1L6—*Jurisdiction:* Canada (Federal)

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation:

(i) Domtar Fiber Products, Inc., c/o The Corporation Trust Company, 1209 Orange St., Wilmington, Delaware 19801 U.S.A.—Delaware

(ii) Domtar Industries Inc., c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware U.S.A.—Delaware

B. 1. Parent corporation and address of principle office: Hyponex Corporation, P.O. Box 510, Fort Wayne, IN 46801.

2. Wholly-owned Subsidiary or Division and state of incorporation:

a. Hyponex Corporation, R.R. #3 Garden Plains Road, Morrison, IL 61270—State Inc., Delaware

b. Hyponex Corporation, 332 Graham Road, Imlay City, MI 48444—State Inc., Delaware

c. Hyponex Corporation, Third & Mill Streets, P.O. Box 288, Grand Rapids, OH 43522—State Inc., Delaware

d. Hyponex Corporation, 2695 Cicero Road, Nobelsville, IN 46060—State Inc., Delaware

e. Hyponex Corporation, 9990 Colby Lake Road, P.O. Box 575, Perry, MI 48872—State Inc., Delaware

f. Hyponex Corporation, County Farm Road, P.O. Box 397, Adel, GA 31620—State Inc., Delaware

g. Hyponex Corporation, Baltimore Pike, P.O. Box 70, Oxford, PA 19363—State Inc., Delaware

h. Hyponex Corporation, 9899 Wausaukee Road, P.O. Box 217, Germantown, WI 53022—State Inc., Delaware

i. Hyponex Corporation, Locust Ridge Road, P.O. Box AD, Pocono Lake, PA 18347—State Inc., Delaware

3. Hyponex Corporation—Florida—State Inc., Florida.

a. Hyponex Corporation, R.R. #2, Box 138, Winter Garden, FL 32787State Inc., Florida

b. Hyponex Corporation, State Road 27, P.O. Box 61, Lamont, FL 32336—State Inc., Florida

4. Hyponex Corporation—Texas—State Inc., Texas.

a. Hyponex Corporation, P.O. Box 231, Hereford, TX 79045—State Inc., Texas.

b. Hyponex Corporation, Highway 171 North, P.O. Box 247, Cresson, TX 76035—State Inc., Texas.

c. Hyponex Corporation, Route One, P.O. Box 245, Huntsville, TX 77340—State Inc., Texas.

5. Hyponex Corporation—California—State Inc., California.

a. Hyponex Corporation, 495 Harkins Slough Road, P.O. Box 70, Watsonville, CA 95076—State Inc., California

b. Hyponex Corporation, 15978 El Prado, Chino, CA 91710—State Inc., California.

6. F.F. Smith & Company, Inc.—State Inc., California.

a. F.F. Smith & Co., Inc., 3120 Coke Street, P.O. Box 190, West Sacramento, CA 95691—State Inc., California

7. The Hyponex Company, Inc.—State Inc., Georgia.

a. Swiss Farms, Roxbury Road, P.O. Box F, Philmont, NY 12565—State Inc., Georgia

b. The Hyponex Company, Inc., 3489 Sawmill Road, Copley, OH 44321—State Inc., Georgia.

8. Hyper-Humaus Company——State Inc., New Jersey.

a. Hyper-Humas Company, Road One, Route 94, P.O. Box 131, Lafayette, NJ 07848—State Inc., New Jersey.

9. Bunyon Enterprises, Inc.——State Inc., Georgia.

a. Bunyon Enterprises, Inc., P.O. Box 4190, Jackson, GA 30233—State Inc., Georgia.

10. Bunyon Trucking Company—State Inc., Georgia.

a. Bunyon Trucking Company, P.O. Box 4190, Jackson, GA 30233—State Inc., Georgia.

11. Hyponex Corporation—Colorado—State Inc., Georgia.

a. Hyponex Corporation, 3 Assembly Court, P.O. Box 586, Fountain, CO 80817—State Inc., Georgia.

12. Hyponex Corporation—Missouri—State Inc., Missouri.

a. Hyponex Corporation, Route 2, P.O. Box 70A, Oran, MO 63771—State Inc., Missouri.

C. 1. Parent corporation and address of principal office: K mart Corporation, 3100 West Big Beaver Road, Troy, Michigan 48084.

2. Wholly-owned subsidiaries which will participate in the operations and their states of incorporation:

Bargain Harold's (U.S.A.), Inc.—Michigan
Bishop Buffets, Inc.—Iowa
Builders Square, Inc.—Delaware
Furr's Cafeterias, Inc.—Texas
Huck Fixture Company—Illinois
K mart Apparel Corp.—New York
Pay Less Drug Stores Northwest, Inc.—Maryland
Walden Book Co., Inc.—New York.

D. 1. Parent corporation and address of principal office: Kohler Co., 444

Highland Drive, Kohler, Wisconsin 53044.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: Sterling Faucet Company, Delaware.

E. 1. The Parent Corporation is The Stanley Works, a Connecticut Corporation with a principal office at 1000 Stanley Drive, New Britain, CT 06053.

2. The wholly-owned subsidiaries of The Stanley Works which will participate in the Intercorporate Hauling Operations are:

(1) Stanley-Proto Industrial Tools, Inc., a Connecticut Corporation with principal offices at 14117 Industrial Park Blvd., N.E., Newton County Industrial Park, Covington, GA 30209.

(2) Stanley-Vidmar, Inc., a Connecticut Corporation with principal offices at 11 Grammes Road, Allentown, PA 18103.

(3) Stanley-Bostich, a Delaware Corporation with principal offices at Briggs Drive, East Greenwich, RI 02818.

(4) Stanley-Taylor Rental Corporation, a Delaware Corporation with principal offices at 1000 Stanley Drive, New Britain, CT 06053.

Noreta R. McGee,

Secretary.

[FR Doc. 86-16756 Filed 7-24-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30857]

Soo Line Railroad Co.; Granting of Trackage Rights by Burlington Northern Railroad Co.

Burlington Northern Railroad Company (BN), has agreed to grant overhead trackage rights to Soo Line Railroad Company (Soo), between BN milepost 11.6 at Minneapolis, and BM milepost 0.6 at St. Paul, MN, a distance of approximately 10.85 miles. The trackage rights became effective July 3, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: July 8, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-16758 Filed 7-24-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30851]

Spokane International Railroad Co. and Burlington, Northern Railroad Co.; Joint Project for Relocation of a Line of Railroad

On June 27, 1986, Spokane-International Railroad Company (SI) filed a revised notice of exemption under 49 CFR 1180.2(d)(5) for a joint project with Burlington Northern Railroad Company (BN) to relocate a line of railroad.[1]

SI and BN operate lines in the City of Sandpoint, ID. The City asked SI to relocate its operation away from the center of Sandpoint. To honor the City's request, SI proposes to: (1) Acquire trackage rights over BN's line between engineering station 2488+62.3 and engineering station 37+31.0; and (2) abandon a portion of its line between milepost 71.476 and milepost 75.687. SI will continue to serve two shippers on the line to-be-abandoned by redesignating a portion of that line as industrial trackage and using existing industrial track and a switching arrangement with BN. Overhead traffic will move over BN trackage.[2]

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers. Accordingly, it falls within the class of transactions identified at 49 CFR 1180.2(d)(5). The Commission categorically exempted these transactions under 49 U.S.C. 10505 in *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982). The Commission determined that line relocations embrace trackage rights transactions such as the one proposed here. See *D.T. & I.R.—Trackage Rights*, 363 I.C.C. 878 (1981) (*D.T. & I.*).

In *D.T. & I.*, the Commission denied a motion to include under the relocation exemption provisions a request for partial abandonment such as the one proposed here. However, the Commission denied the motion because of insufficient evidence concerning the abandonment's effect on shippers. *D.T. & I., supra*, 363 I.C.C. at 880. Here, however, the record shows that the shippers will continue to be served.

Moreover, in Finance Docket No. 30639, *Louisiana & Ark. Ry. Co.—Trackage Rights Exemption—Illinois C.G. R.R. Co. and New Orleans Term Co.* (not printed), served April 17, 1985, the Director of the Office of Proceedings exempted the abandonment of approximately 6 miles of track under the provisions of § 1180.2(d)(5) as an incident to the line relocation proposal. Similarly, the facts of this case show that the proposed abandoment is incidental to SI's line relocation and should be exempted under § 1180.2(d)(5).

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). Any employees affected by the proposed abandonment will be protected by the conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Decided: July 18, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-16755 Filed 7-24-86; 8:45 am]

BILLIND CODE 7035-01-M

[Finance Docket No. 30856]

The River Terminal Railway Co. and The Cuyahoga Valley Railway Co.; Acquisition and Operation Exemption

The River Terminal Railway Company (RTR) and The Cuyahoga Valley Railway Company (CVR) filed a notice of exemption for CVR to transfer to RTR an undivided one-half interest in a 2.2-mile segment of rail line between station 25+49.7 and station 140+5 in Cuyahoga County, OH. RTR and CVR are wholly-owned subsidiaries of LTV Steel Company.

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[1] The notice here revised an earlier one filed by SI on June 13, 1986.

[2] In order to gain physical access to BN's track, SI will construct: (1) a 1,630-foot connecting track between its line at milepost 71.476 and BN's line at engineering station 2488+62.3; and (2) a 2,000-foot connecting track between SI's line at milepost 75.687 and BN's line at engineering station 37+31.0. Construction of these connecting tracks does not fall under an existing class exemption. That part of the transaction requires approval under 49 U.S.C. 10901 or exemption under 49 U.S.C. 10505. A separate decision will follow concerning the construction phase of the transaction.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 C.F.R. 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employees affected by the merger shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979).

Decided: July 7, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee

Secretary.

[Finance Docket No. 30862]

Itawamba County Development Council; Acquisition and Operation Exemption

The Itawamba County Development Council has filed a notice of exemption to acquire and operate The Mississippian Railway, Inc., a 25-mile line between Amory (milepost 0.0) and Fulton, MS (milepost 25.0). Any comments must be filed with the Commission and served on: Mr. Windle Davis, Executive Director, Itawamba County Development Council, P.O. Box 577, Fulton, MS, 38843, (601) 862–4571.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: July 9, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86–16757 Filed 7–24–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant To Clean Water Act; DeRidder, LA et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 14, 1986, a proposed Consent Decree in *United States* v. *City of DeRidder, Louisiana, and the State of Louisiana*, was lodged with the United States District Court for the Western District of Louisiana. This agreement resolves a judicial enforcement action brought by the United States against the city of DeRidder which alleged violations of the Clean Water Act, DeRidder's National Pollutant Discharge Elimination System (NPDES) permit and an Environmental Protection Agency Administrative Order issued against DeRidder at the DeRidder Municipal Wastewater Treatment Plant.

The Consent Decree provides for development of a pretreatment program to control the industrial discharge into DeRidder's wastewater treatment plant, compliance with final effluent limitations, start-up of DeRidder's newly constructed wastewater treatment facility and an injunction against the DeRidder plant accepting industrial discharge which could cause or significantly contribute to any violation of DeRidder's NPDES permit. The agreement provides for stipulated penalties for failure to comply with the provisions of the Decree and the payment of a civil penalty for past violations of the Clean Water Act of $20,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to: *United States* v. *City of DeRidder, Louisiana and the State of Louisiana*, D.J. Ref. 90–5–1–1–2347.

The proposed Consent Decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney: U.S. Attorney, Western District of Louisiana, 305 Federal Building, 705 Jefferson Street, Lafayette, Louisiana 70501

EPA: Office of Regional Counsel, Region VI, 1201 Elm Street, Dallas, Texas 75270

A copy of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the Decree, please enclose a check payable to the Treasurer of the United States in the amount of $1.90.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–16794 Filed 7–24–86; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 86–5]

Aziz M. Gourji, M.D., Great Neck, NY; Hearing

Notice is hereby given that on December 5, 1985, the Drug Enforcement Administration, Department of Justice, issued to Aziz M. Gourji, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AG0754665, and deny any pending application for renewal of such registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter is being rescheduled to begin at 10:00 a.m. on Wednesday, August 20, 1986, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: July 21, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86–16767 Filed 7–24–86; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 86–39]

Leonardo V. Lopez, M.D., Detroit, MI; Hearing

Notice is hereby given that on March 14, 1986, the Drug Enforcement Administration, Department of Justice, issued to Leonardo V. Lopez, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application, executed on January 2, 1985 (sic) for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, August 19, 1986,

in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: July 21, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-16766 Filed 7-24-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirements. The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report to keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items of this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, telephone (202) 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics

Permanent Mass Layoff and Plant Closing Program: Study of Layoff Actions

BLS #304

Once

State or local governments; Farms; Businesses or other for-profit; Federal agencies or employers; Non-profit institutions.

330 responses; 923 hours; 1 form.

The Study of Layoff Actions is a one-time retrospective survey of layoff activities in establishments having layoffs of at least 50 workers from July to December 1985 in seven States. The findings will address issues of concern to the Secretary's Task Force on Economic Adjustment and Worker Dislocation.

Revision

Employment and Training Administration

Service Delivery Area Job Training Plan or Modification or Plan Revocation Appeals

1205-0208; ETA RC 57

On Occasion

State or local governments

25 respondents; 50 hours;

The information collected will be used to determine whether the SDA Job Training Plan or modification or the plan Revocation disapprovals are in conformance with the Job Training Partnership Act (JTPA).

Extension

Bureau of Labor Statistics

Manual for Developing Local Area Unemployment Statistics 1220-0017, BLS 3040, LAUS-1, LAUS-2, LAUS-3, LAUS-4, LAUS-5

Monthly and Annually

State Governments

68,692 responses; 137,545 hours; 6 forms

Local Area Unemployment Statistics are used as indicators of local economic conditions, as a mechanism to qualify areas for various economic assistance, and as an allocator for existing job training and economic assistance program funding.

Bureau of Labor Statistics

Manual for Developing Local Area Unemployment Statistics 1220-0017, BLS 3040, LAUS-1, LAUS-2, LAUS-3, LAUS-4, LAUS-5

Monthly and Annually

State Governments

68,692 responses; 137,545 hours; 6 forms

Local Area Unemployment Statistics are used as indicators of local economic conditions, as a mechanism to qualify areas for various economic assistance, and as an allocator for existing job training and economic assistance program funding.

Employment Standards Administration

Medical Travel Refund Request

1215-0054; CM-957

On occasion

Individuals or households

48,000 responses; 12,000 hrs.; 1 form

This form is used by eligible miners to document a request for reimbursement of travel expenses related to Black Lung medical testing and treatment.

Employment and Training Administration

Domestic Agricultural In-Season Wage Report ETA 232 & 232A 1205-0017; ETA 232 & 232A

Annually

Individuals or households; State or local governments; Farms

6,200 respondents; 3,825 burden hours; 2 forms

State employment agencies need prevailing wage rates in order to process employers' applications for intrastate and interstate workers. The rates cover agricultural and logging jobs. Migrant and local seasonal farmworkers are hired for these jobs.

Reinstatement

Occupational Safety and Health Administration

Notice of Alleged Safety and Health Hazards, OSHA 7 1218-0064; OSHA 7

On occasion

Individuals or households

16,500 responses; 4686 hours; 1 form

Used by employees to report unhealthful and/or unsafe conditions in the workplace. Employee reports are

authorized by section 8(f) of the Occupational Safety and Health Act. The information is used by OSHA to evaluate the alleged hazardous working conditions and to schedule an inspection or respond in another manner, as appropriate.

Signed at Washington, DC this 22nd day of July 1986.

Harry E. Echols, Jr.,

Acting Departmental Clearance Officer.

[FR Doc. 86-16804 Filed 7-24-86; 8:45 am]

BILLING CODE 7600-01-M

Employment and Training Administration

[TA-W-16,362]

Adjustment Assistance, B.F. Goodrich Co., Akron, OH; Revised Determinations on Reconsideration

On June 13, 1986, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers producing farm service tires and rubber bands at the Akron, Ohio plant of the B.F. Goodrich Company. This determination was published in the **Federal Register** on July 1, 1986 (51 FR 23850).

The United Rubber Workers' application for reconsideration requests that the workers who produced farm service tires and rubber bands at Akron be certified eligible for trade adjustment assistance.

The reconsideration findings showed that the Akron plant was used as an over-run facility for farm service tires produced at the Miami, Oklahoma plant whose workers were already certified for trade adjustment assistance under worker petition TA-W-16,386. Production of farm service tires at Akron ceased in September 1985 at which time all workers producing farm service tires were laid off. The Department's certification of B.F. Goodrich workers producing tiress including farm service tires at the Miami, Oklahoma plant runs from January 1, 1985 to January 3, 1988.

The Department also found on reconsideration that workers who produced rubber bands and tank liners at Akron were separated from employment because of a domestic transfer of production. Company production of rubber banks and tank liners increased after the transfer. A domestic transfer of production would not serve as a basis for a worker certification.

Conclusion

After careful review of the facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with farm service tires produced at the Akron, Ohio plant of B.F. Goodrich Company contributed importantly to the decline in sales and production of farm service tires and to the total or partial separation of former workers at the Akron, Ohio plant of B.F. Goodrich Company. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Plant #1 of B.F. Goodrich Company, Akron, Ohio engaged in employment related to the production of conveyor belts who became totally or partially separated from employment on or after December 1, 1984 and all workers engaged in employment related to the production of farm service tires who became totally or partially separated from employment on or after July 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

I further determine that all workers of the Akron, Ohio plant of B.F. Goodrich Company engaged in the production of sheet rubber, rubber bands, and tank liners are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974. Signed at Washington, DC, this 15th day of July 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-16753 Filed 7-24-86; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Chaparral Machine & Manufacturing, Inc. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 19, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 19, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC., this 21st day of July 1986.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner; Union/workers of former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Chaparral Machine & Manufacturing, Inc. (workers)	Odessa, TX	7/14/86	7/9/86	TA-W-17,678	Machine shop, oil field parts.
Coleman Clothes (ACTWU)	Hialeah, FL	6/17/86	6/10/86	TA-W-17,679	Mens coats.
Empire RobesMfg Co. (workers)	Long Island City, NY	5/28/86	5/15/86	TA-W-17,680	Robes.
G.T.E. Products Corp. (workers)	Titusville, PA	7/7/86	7/2/86	TA-W-17,681	Electronic components.
Happs Manufacturing (workers)	Macon, GA	7/14/86	7/9/86	TA-W-17,682	Slacks.
Harvard Industries (URW)	Bucyrus, OH	7/14/86	7/11/86	TA-W-17,683	Hose, auto, garden, industrial.
Ledex (workers)	Vandala, OH	7/3/86	6/27/86	TA-W-17,684	Machine shop work, plating (assembly).
Owning Illinois Inc (glass WKRS)	Parkerburg, WV	7/15/86	7/9/86	TA-W-17,685	Glass bottles, test tubes.

APPENDIX—Continued

Petitioner; Union/workers of former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Rovan Dress (ILGWU)	Jersey City, NJ	7/14/86	7/8/86	TA-W-17,686	Dresses.
Twin Disc. (workers)	Parkford, IL	7/15/86	7/7/86	TA-W-17,687	Clutches, torque converters, transmissions.
Weatherly Foundry. (workers)	Weatherly, PA	7/15/86	7/7/86	TA-W-17,688	Casting.
Barry of Laredo (workers)	Laredo, TX	6/30/86	6/23/86	TA-W-17,689	Houseslippers.
Boss Manufacturing (company)	Kewanee, IL	6/30/86	6/25/86	TA-W-17,690	Work gloves.
Caskey Drilling Co. Inc. (workers)	Jonesboro, LA	6/12/86	6/9/86	TA-W-17,691	Oil and gas drilling.
Dowell Schlumberger, Inc. (workers)	Mt. Carmel, IL	6/24/86	6/26/86	TA-W-17,692	Oil industry services.
Damson Oil Co. (workers)	Houston, TX	6/24/86	6/18/86	TA-W-17,693	Gasoline, diesel, asphalt.
Harnischfeger Corp. (UAW)	Cedar Rapids, IA	6/24/86	6/20/86	TA-W-17,694	Hydraulic and lattice cranes.
Industrial Machine Shop, Inc (wkrs)	Williston, ND	6/20/86	6/17/86	TA-W-17,695	Tools, calves, rotary substitutes, rig pins & parts for oil drilling rigs.
International Paper Co. (IWA)	Gardiner, OR	6/30/86	6/25/86	TA-W-17,696	Lumber.
New Misco Supply Co. Inc. (workers)	Irving, TX	5/27/86	5/12/86	TA-W-17,697	Oilfield supplies.
Peerless Footwear (workers)	Telford, PA	6/24/86	6/16/86	TA-W-17,698	Casual footwear and sneakers.
Texas Geolog. Inc. (company)	Tyler, TX	7/8/86	6/24/86	TA-W-17,699	Mudlogging.
U.S. Steel Mining Co. Maple Creek Complex (UMWA)	New Eagle, PA	6/27/86	6/19/86	TA-W-17,700	Coal mining.
Compressor Systems, (workers)	Midland, TX	7/9/86	7/3/86	TA-W-17,701	Gas compressor fabrication.
Engelhard Corp. (UAW)	Newark, NJ	7/10/86	7/13/86	TA-W-17,702	Specialty chemicals.
Standard Brake, Shoe and Foundry (workers)	Marshall, TX	7/8/86	7/1/86	TA-W-17,703	Oil well weighs.
Greendell MFG, Corp. (workers)	New York, NY	6/12/86	6/9/86	TA-W-17,704	Ladies wear.
Plymouth Rubber Co. (workers)	Canton, MA	6/24/86	6/20/86	TA-W-17,705	Rubber products.
War Roustabout, Service (company)	Thermopolis, WY	7/9/86	6/25/86	TA-W-17,706	General oil field service.
Halliburton Service (workers)	Monahans, TX	6/26/86	6/20/86	TA-W-17,707	Oil well services.
Halliburton Service (workers)	Woodward, OK	6/16/86	5/6/86	TA-W-17,708	Oil well services.
Sportiva, LTD (workers)	New York, NY	7/9/86	6/23/86	TA-W-17,709	Sportswear.
Century Electric (workers)	McMinnville, Tenn.	6/30/86	6/23/86	TA-W-17,710	Fractional horsepower electric motors.
Mountrail Development (union)	Stanley, N.D.	6/27/86	6/23/86	TA-W-17,711	Air heaters.
Tennessee Fan (workers)	Fayetteville, TN	6/25/86	6/17/86	TA-W-17,712	Ceiling and desk fans.
Mountain City Mfg. (workers)	Vandling, PA	7/7/86	7/3/86	TA-W-17,713	Cutting, sewing, shipping of bathroom accessories.
Halliburton Services (workers)	Gillette, WY	6/9/86	4/22/86	TA-W-17,714	Oil well services.
General Electric Mobile Comm. Busi-Div. (workers)	Lynchburg, VA	6/30/86	3/25/86	TA-W-17,715	Production of micro circuit parts, assembly of circuit boards & support assemblies.
CIBA-GeiGY (workers)	Toms River, NJ	6/19/86	6/16/86	TA-W-17,716	Organic chemicals, dyes plastics.
Mallard Sportswear (ACTWY)	Scanton, PA	6/30/86	6/26/86	TA-W-17,717	Mens and women's jacket.
Good Luck Glove (workers)	Hugo, OK	7/14/86	6/11/86	TA-W-17,718	Leather palm work gloves.
TXO Production (workers)	Midland, TX	7/10/86	6/30/86	TA-W-17,719	Exploration and production of domestic oil and gas.
Fenton Shoe Corp. (company)	Cambridge, MA	7/7/86	7/1/86	TA-W-17,720	Women's footwear.
Esterline Angus Instrument Corp.	Speedway, IN	7/10/86	7/2/86	TA-W-17,721	Electronic data instruments.
Gensco Inc. (workers)	Channel View, TX	7/8/86	6/10/86	TA-W-17,722	Oil field pipe finishing, threading, forging, heat.
The Lee Company (UGWA)	Madison, AL	7/7/86	6/27/86	TA-W-17,723	Bluejeans.

[FR Doc. 86-16805 Filed 7-24-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,173]

Adjustment Assistance, M and M Sportswear Warren, RI; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 10, 1986 in response to a worker petition received on January 31, 1986 which was filed by workers on behalf of workers at M & M Sportswear, Warren, Rhode Island.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 9th day of July 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-16754 Filed 7-24-86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever, is

earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

	Decisions	Pages
Volume II:		
Iowa	IA86-12	60e-60f

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

	Decisions	Pages
Volume I:		
District of Columbia	DC86-1 (Jan. 3, 1986)	80-89
Connecticut	CT86-1 (Jan. 3, 1986)	64, 67-68
Maryland	MD86-4 (Jan. 3, 1986)	397
Massachusetts	MA86-1 (Jan. 3, 1986)	347, 355
Massachusetts	MA86-3 (Jan. 3, 1986)	375-376
New York	NY86-9 (Jan. 3, 1986)	723
New York	NY86-10 (Jan. 3, 1986)	725
New York	NY86-11 (Jan. 3, 1986)	736
New York	NY86-14 (Jan. 3, 1986)	760
New York	NY86-15 (Jan. 3, 1986)	763
New York	NY86-17 (Jan. 3, 1986)	777
Volume II:		
Iowa	IA86-1 (Jan. 3, 1986)	24-27
Iowa	IA86-2 (Jan. 3, 1986)	29-31
Iowa	IA86-3 (Jan. 3, 1986)	35-36
Iowa	IA86-4 (Jan. 3, 1986)	39-40
Iowa	IA86-5 (Jan. 3, 1986)	43-50
Illinois	IL86-1 (Jan. 3, 1986)	62-65, 67, 70
Illinois	IL86-2 (Jan. 3, 1986)	88-91
Illinois	IL86-3 (Jan. 3, 1986)	105-106
Illinois	IL86-4 (Jan. 3, 1986)	111
Illinois	IL86-5 (Jan. 3, 1986)	116
Illinois	IL86-6 (Jan. 3, 1986)	121
Illinois	IL86-7 (Jan. 3, 1986)	125, 127
Illinois	IL86-8 (Jan. 3, 1986)	131, 133
Illinois	IL86-12 (Jan. 3, 1986)	152-153
Illinois	IL86-13 (Jan. 3, 1986)	162-163
Illinois	IL86-14 (Jan. 3, 1986)	172-174
Illinois	IL86-15 (Jan. 3, 1986)	182-183
Illinois	IL86-16 (Jan. 3, 1986)	192-194
Illinois	IL86-17 (Jan. 3, 1986)	202
Kansas	KS86-6 (Jan. 3, 1986)	328
Minnesota	MN86-8 (Jan. 3, 1986)	525, 527-529
Ohio	OH86-1 (Jan. 3, 1986)	662-666
Ohio	OH86-3 (Jan. 3, 1986)	697
Ohio	OH86-26 (Jan. 3, 1986)	752-755
Oklahoma	OK86-13 (Jan. 3, 1986)	822
Oklahoma	OK86-14 (Jan. 3, 1986)	831, 833
Listing by Decision.		xlix-1
Volume III:		
Alaska	AK86-1 (Jan. 3, 1986)	2-3
California	CA86-4 (Jan. 3, 1986)	66-68, 72-73

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 18th day of July 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-14898 Filed 7-24-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-86-51-C]

Barnes and Tucker Co.; Petition for Modification of Application of Mandatory Safety Standard

Barnes & Tucker Company, 1912 Chestnut Avenue, Barnesboro, Pennsylvania 15714 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Lancashire 24-B Mine (I.D. No. 36-00837) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that weekly examinations for hazardous conditions be made in the return of each split of air where it enters the main return and in at least one entry of each intake and return air course in its entirety.

2. Petitioner states that the Main-A return airways were developed between 1965 and 1970 and have deteriorated over the years resulting in bad top and bottom heave making these entries hazardous to travel and examine. Rehabilitation of the affected areas would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to establish monitoring stations where air entering and exiting the area will be evaluated and controlled. The stations will be designated with signs and will be examined on a weekly basis.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 25, 1986. Copies of the petition

are available for inspection at that address.

Dated: July 17, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-16741 Filed 7-24-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-68-C]

BethEnergy Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines, Inc., 900 Oliver Building, Pittsburgh, Pennsylvania 15222-5369 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its No. 51 Somerset Portal (I.D. No. 36-00959) and its No. 60 Livingston Portal (I.D. No. 36-00958) both located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds.

2. As an alternate method, petitioner proposes to clean out and plug oil and gas wells using the following technique and procedures:

a. Boreholes would be cleaned to the original depth or far enough to allow 200 feet of expanding cement below the base of the lowest mineable coalbed. Borehole casing would be removed where possible or if casing remains it would be treated with expanding cement slurry.

b. If the cleaned-out borehole produces gas, a mechanical bridge or a substantial brush plug would be set in the borehole. Plugs would also be used to isolate any hydrocarbon-producing stratum within 200 feet of the base.

c. The wellbore would be completely filled and circulated with a gel to inhibit gas flow, support borehole walls, and densify the expanding cement.

3. To plug oil or gas wells to the surface, a cement plug would be set in the wellbore with at least 200 feet of expanding cement below the base of the lowest minerable coalbed, filling the borehole to the surface. A permanent magnetic monument would mark the borehole.

4. To plug oil or gas wells using the vent pipe method, a 4½-inch or larger vent pipe would be run into the wellbore 100 feet below the lowest mineable coalbed. A cement plug would be set in the wellbore for a minimum of 200 feet below the coalbed base and 100 feet above the top of the coalbed. Fluid would be evacuated and the top of the vent pipe would be covered.

5. When plugging oil or gas wells for subsequent use as degasification boreholes, a cement plug would be set in the wellbore 200 feet below the lowest mineable coalbed with the top extending above the top of the coalbed, the distance dependent on the average roof strata breaking height. Degasification casing would be used for methane drainage and would be fitted with an equipped wellhead.

6. To plug oil or gas wells that have been intersected by mining, the gas flow would be shut off by filling the production string with water gel. The production string would be filled with at least 200 feet of expanding cement below the lowest mineable coalbed. It would be cut off and removed from the hole and a mechanical bridge or suitable brush would be set in the hole on top of the cut off production string. A permanent magnetic monument would mark the borehole.

7. In addition, petitioner proposes to mine through the plugged oil or gas well. Prior to mining through, the petitioner would confer with the MSHA District Manager for approval of the specific mining procedures. When the mining is done, appropriate officials would be allowed to observe the process and all mining would be under the direct supervision of a certified official. In addition:

a. Drivage sites would be installed; firefighting equipment, roof support supplies, and ventilation materials, would be available;

b. The quantity of the air would be not less than 9000 ft^3/min to ventilate the face;

c. Equipment would be checked for permissibility and serviced prior to mining through the well. The working place would be free from accumulations of debris and rock-dusted to within 20 feet of the face;

d. Methane monitors would be calibrated prior to the shift and tests would be made during mining approximately every 10 minutes; and

e. When the wellbore is intersected, all equipment would be de-energized and safety checks would be made before mining would continue in by the well a sufficient distance to permit adequate ventilation around the area of the wellbore.

8. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 25, 1986. Copies of the petition are available for inspection at that address.

Dated: July 17, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-16742 Filed 7-24-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-94-C]

Big Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Big Diamond Coal Company, 1744 Grand Avenue, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Big Diamond Slope (I.D. No. 36-07554) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute; and that the minimum quantity of air reaching each working face be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine, which also has no history of an ignition, explosion, mine fire or harmful quantities of carbon dioxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely

uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 25, 1986. Copies of the petition are available for inspection at that address.

Dated: July 17, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-16743 Filed 7-24-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-90-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Loveridge No. 22 Mine (I.D. No. 46-01433) located in Marion County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that the pump is located along an older haulage that is congested with major falls and severe water problems. This haulage is ventilated with intake air and there are no effective return airways in the vicinity.

3. As an alternate method, petitioner proposes that:

a. The pumps will be housed in a fire-proof building;

b. An automatic fire suppression device activated by heat sensors will be installed in the pump station; and

c. No oil or combustible material will be stored in the pump station.

4. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petitioner may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 25, 1986. Copies of the petition are available for inspection at that address.

Dated: July 17, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-16744 Filed 7-24-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-84-C]

Empire Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Empire Coal Company, P.O. Box 729, Gnadenhutten, Ohio 44629 has filed a petition to modify the application of 30 CFR 77.213 (draw-off tunnel escapeways) to its Gnadenhutten Strip (I.D. No. 33-02055) located in Tuscarawas County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that an escapeway be installed in the draw-off tunnel.

2. As an alternate method, petitioner proposes that the draw-off tunnel would be inspected for fire or smoke prior to entry. Methane gas levels would be checked. The tunnel maintenance crew would consist of two people with one remaining on the surface at all times. Both persons would be equipped with portable radios. A self-contained, self-rescue device (SCSR) would be provided and maintained at the base of the tunnel.

3. Petitioner states that with the immediate availability of heavy earth-moving equipment and fire-fighting apparatus, a trapped miner could be rescued quickly.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 25, 1986. Copies of the petition are available for inspection at that address.

Dated: July 17, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-16745 Filed 7-24-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-101-C]

Gateway Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Gateway Coal Company, 1200 First Security Plaza, Lexington, Kentucky 40507 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Gateway Mine (I.D. No. 36-00906) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that travelling this area to make examinations would be exposing employees to hazardous roof conditions.

3. As an alternate method, petitioner proposes to establish an air measuring station where a certified person would make weekly examinations of the

ventilation and methane. The results would be recorded on the date board at the air measuring station.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 25, 1986. Copies of the petition are available for inspection at that address.

Dated: July 17, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-16746 Filed 7-24-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-81-C]

Roblee Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Roblee Coal Company, P.O. Box 2198, Buckhannon, West Virginia 26201 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Jesse's Run No. 1 Mine (I.D. No. 46-07061), and its Stewart's Run No. 2 Mine (I.D. No 46-07089) both located in Upshur County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 25, 1986. Copies of the petition are available for inspection at that address.

Dated: July 17, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-16747 Filed 7-24-86; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Application No. D-6356 et al.]

Proposed Exemptions; Public Service Electric & Gas Co. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent ot the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Public Service Electric and Gas Company Payroll-Based Employee Stock Ownership Plan (the PAYSOP); the Public Service Electric and Gas Company Tax Reduction Act Employee Stock Ownership Plan (the TRASOP); and the Public Service Electric and Gas Company Thrift and Tax Deferred Savings Plan (the Thrift Plan;

collectively, the Plans). Located in Newark, New Jersey. [Application Nos. D–6356, D–6357 and D–6358]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 407(a) of the Act shall not apply to (1) the past receipt by the Plans of certain stock rights (the Rights) pursuant to a stock rights offering by the Public Service Electric and Gas Company (PSE&G), the sponsor of the Plans, to shareholders of record of PSE&G Common Stock on October 16, 1985; and (2) the temporary holding of the Rights by the Plans during the subscription period.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective from October 16, 1985 until October 24, 1985.

Summary of Facts and Representations

1. The PAYSOP and the TRASOP are individual account stock bonus plans, each with approximately 13,400 participants. The Thrift Plan is an individual account profit-sharing plan with approximately 4,800 participants. The trustee of the PAYSOP and the TRASOP is The First Jersey National Bank (First Jersey) and the trustee of the Thrift Plan is The Chase Manhattan Bank, N.A. (Chase Manhattan; collectively, the Trustees).

2. PSE&G is a New Jersey Corporation with its principal office of 80 Park Plaza, Newark, New Jersey and operates as a public utility engaged in the business of supplying gas and electricity. On July 16, 1985, a resolution of the Board of Directors of PSE&G authorized the officers of PSE&G to effectuate an offering of PSE&G common stock (the Stock) in the form of a stock rights offering (the Offering) to shareholders of record of the Stock on October 16, 1985. A petition requesting authority to issue not more than 7,000,000 shares of the Stock through the Offering was filed with the Board of Public Utilities of the State of New Jersey on July 23, 1985. Under the terms of the Offering, each shareholder of record on October 16, 1985 received one stock right (the Right or Rights) for each share of the Stock which the shareholder owned on such record date. The applicant states that the actual security representing the Rights received by each shareholder was a warrant card (the Warrant or Warrants), on which was indicated the number of Rights that particular shareholder received. The shareholder could then use the Warrant to purchase the Stock. Each shareholder was entitled to purchase one share of the Stock for every twenty Rights or fraction thereof that the shareholder received, as indicated by the Warrant. As an alternative to the exercise of the Rights, each shareholder could sell his or her Rights, transferring the Warrant evidencing ownership in connection with the sale. The applicant states that the closing price of the Stock on the New York Stock Exchange on October 15, 1985 was $28.00 per share. The subscription price for the Rights was established on October 15, 1985 at $25.75 per share. The subscription period for the Rights expired on November 6, 1985.

3. The applicant represents that the Plans owned 3,322,958 shares of the Stock as of October 16, 1985. The PAYSOP, the TRASOP, and the Thrift Plan each owned 172,073, 2,911,518, and 239,367 shares, respectively, of the Stock on October 16, 1985. Therefore, First Jersey received 172,073 Rights as Trustee of the PAYSOP, which would have allowed it to purchase 8,604 (172,073/20) shares of the Stock at a price of $25.75 per share on behalf of the PAYSOP. In addition, First Jersey received 2,911,518 Rights as Trustee of the TRASOP, which would have allowed it to purchase 145,576 (2,911,518/20) shares of the Stock at $25.75 per share on behalf of the TRASOP. Chase Manhattan received 239,367 Rights as Trustee of the Thrift Plan, which would have allowed it to purchase 11,969 (239,367/20) shares of the Stock at $25.75 per share on behalf of the Thrift Plan. The Trustees did not exercise the Rights because the Plans did not have enough cash at the time the transactions occurred to purchase all the shares of the Stock that they were entitled to obtain through the exercise of the Rights. The applicant states that on October 21, 1985, First Jersey sold the 2,911,518 Rights it received on behalf of the TRASOP for $181,969.88 and the 172,073 Rights it received on behalf of the PAYSOP for $10,754.56 and, after deducting its expenses of $1,506.08 and $150.37 relating to the receipt and disposition of the Rights for the TRASOP and the PAYSOP, respectively, used the net proceeds of $180,463.80 and $10,604.19 to purchase additional shares of the Stock for the TRASOP and the PAYSOP. On October 24, 1985, Chase Manhattan sold the 239,367 Rights it received on behalf of the Thrift Plan for $26,180.76 and, after deducting its expenses of $116.81 for the receipt and disposition of the Rights, used the net proceeds of $26,063.95 to purchase additional shares of the Stock. All transactions concerning the Rights, and the Warrants evidencing those Rights, took place on the open market.

4. The applicant represents that the decisions regarding whether to hold or sell the Rights and when to sell the Rights were made solely by the Trustees. The Trustees considered prohibiting the Plans from receiving the Rights, but this would have resulted in a loss to the Plans of an amount equal to the market value of the Rights. The Turstees rejected amending the Plans to allow for the immediate distribution of the Rights to the participants because of the risk this alternative posed to the continued qualification of the Plans, particularly the Thrift Plan. Therefore, the Trustees state that the best interests of the Plans were served by allowing the Plans to receive, hold, and sell the Rights on the open market within a reasonable time after receipt.

5. The Trustees represent that they acted as independent fiduciaries on behalf of the Plans in determining whether the receipt and sale of the Rights was in the Plans' best interests and in approving and monitoring the transactions to safeguard those interests. Two of the fourteen members of the Board of Directors of PSE&G, Dr. Kenneth C. Rogers (Dr. Rogers) and Mr. William E. Scott (Mr. Scott), are also members of the Board of Directors of First Jersey. However, neither Dr. Rogers nor Mr. Scott is a member of the Employee Benefits Committee of PSE&G, the named fiduciary of the PAYSOP and the TRASOP. Although Mr. Scott retired as Senior Executive Vice President of PSE&G on May 1, 1985, he is still a Director of PSE&G and is the chairman of the Finance Committee of the Board of Directors, which approved the final terms of the Offering. Dr. Rogers, who is neither an officer nor an employee of either PSE&G or First Jersey, is a member of the Trust Investment Committee of the Board of Directors of First Jersey, which met on October 8, 1985 to discuss the disposition of the Rights to be issued to the PAYSOP and the TRASOP. The applicant represents that Dr. Rogers did not participate in the discussion or in the voting with respect to the disposition of the Rights. Both Dr. Rogers and Mr. Scott represent that they did not, at any time, use any authority, control or responsibility as fiduciaries of the PAYSOP and the TRASOP to influence in any way First Jersey's decision regarding the receipt and disposition of the Rights.

The applicant states that none of the fourteen directors of PSE&G are members of the Board of Directors of Chase Manhattan. The funds of PSE&G

on deposit at First Jersey and Chase Manhattan on December 31, 1984, as percentages of each bank's total deposits, were approproximately .2 percent and .013 percent, respectively. There are no outstanding commercial loans between PSE&G and First Jersey or Chase Manhattan.

6. In summary, the applicant represents that the transactions satisfied the statutory criteria of section 408(a) of the Act because: (1) The acquisition and holding of the Rights, and the Warrants evidencing those Rights, by the Plans resulted from an independent act of PSE&G as a corporate entity; (2) The Plans were able to obtain the fair market value for the Rights by receiving the Rights as shareholders of the Stock and subsequently selling the Rights on the open market within a reasonable time after receipt at the highest obtainable price without the necessity of a forced sale; and (3) The Trustees, as independent fiduciaries for the Plans, determined that the receipt and temporary holding of the Rights during the subscription period was prudent and in the best interest of the Plans.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Bluff Medical Center, P.C. Profit Sharing Plan (the Plan), Located in Clinton, Iowa. [Application No. D–6360]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed purchase (the Purchase) of certain parcel of real property (the Property) by the Plan from the Bluff Boulevard Leasing Co. (the Seller), a party in interest with respect to the Plan, for the lower of either $975,000 or the fair market value of the Property on the date of the sale, (2) the extension of credit by the Seller to the Plan in connection with the Purchase, and (3) the proposed lease (the Lease) of the Property by the Plan to the Bluff Medical Center, P.C. (the Employer), a party in interest with respect to the Plan, provided that the terms and conditions of all three of the transactions are at least as favorable to the Plan as those obtainable from an unrelated party.

Summary of Facts and Representations

1. The Plan, which became effective as of July 1, 1975, is a qualified defined contribution plan with approximately 81 participants. As of September 30, 1985, the assets of the Plan were valued at $3,437,240.91. Currently, there are no assets of the Plan which are invested in real estate. The Employer is the fiduciary responsible for the administration of the Plan, however, the United Missouri Bank of Kansas City, N.A., located in Kansas City, Missouri (the Bank) serves as the independent trustee of the Plan. Since January 1, 1986, the Bank has had sole discretion with respect to all investments made by the Plan. Other than as trustee of the Plan, the Bank is represented to have no relationship of any kind with the Employer which sponsors the Plan, or with any of its officers, directors, or shareholders. Also, the Bank has no relationship with the Seller.

2. The Employer is an Iowa corporation which was incorporated on January 2, 1975, as a successor to a partnership, for the purpose of providing the public with various surgical and medical services. Currently, the staff of the Employer includes one dentist and 17 physicians with 15 of these physicians each owning 6.67 percent of the voting stock issued by the Employer and each serving as a member of the board of directors of the Employer. Also, there are 64 full and part-time nursing, technical, and administrative personnel employed by the Employer. The medical practice of the Employer extends geographically approximately 35 miles in all directions from Clinton, Iowa and its practice also includes being a major supplier of medical services to local industry. Since December 31, 1983, the Employer has had its annual revenues increase from approximately $4,476,000 to $4,721,000 at December 31, 1985. Since 1975 through 1984, the Employer has contributed from its profits to the Plan an amount equal to 15 percent of the earnings of each Plan participant. Furthermore, no later than August 31, 1986, it is represented that a contribution of $329,944.70 will be made for the Plan year ending December 31, 1985.

3. The Seller, which has 12 shareholders (all of whom are also shareholders, directors, and employees of the Employer), is an Iowa corporation engaged solely in the business of owning and leasing the Property to the Employer. However, if the requested exemption is granted, the Seller intends to dissolve the Iowa corporation and reorganize as a partnership. The Property consists of a 7.37 acre parcel of land with virtually all the level land occupied by two buildings and a parking lot. One of the buildings, a medical facility used by the Employer for its medical practice, is a 29,656 square foot, two-story steel and concrete structure, furnishing each department of medicine of the Employer's practice with a self-contained unit, including its own waiting room. The second building is a metalclad storage building, containing approximately 2,880 square feet, and is used by the Employer for the storage of supplies, records, and equipment. The location of Property is on a four-lane thoroughfare at 240 North Bluff Boulevard in Clinton, Iowa. Currently, the Employer leases the Property from the Seller for an annual rental of $99,000 and subleases space to the Bluff Pharmacy, an unrelated party, for an annual rental of $36,000. In addition, the Employer incurs expenses for insurance coverage, real estate taxes, repairs and maintenance of the Property. The Seller, as landlord, is responsible only for expenses that may be incurred from major renovations or repairs.

The Property is encumbered by a note and mortgage, dated September 16, 1969, on which the Seller is the obligor. This note and mortgage is held by the First National Bank of Clinton, Iowa (First National) and, as of January 31, 1986, had a principal balance owing of $104,290.01. First National has represented that it will agree to the terms of the proposed purchase by the Plan from the Seller of the Property as well as the proposed reorganization of the Seller into a partnership. Furthermore, First National agreed that it will not call for full payment of the note and mortgage upon completion of the proposed purchase and leasing of the Property. The Seller will remain the obligor on the note and mortgage held by First National and the Plan will acquire the Property subject to the note and mortgage.

4. The applicants (the Employer, the Bank, and the Seller) are requesting an exemption from the prohibited transaction provisions of the Act to permit the Plan (1) to purchase the Property from the Seller for the lower of either $975,000 or the fair market value of the Property on the date of the sale, (2) to obtain credit from the Seller in the amount and under terms necessary for the Purchase to be effectuated, and (3) to lease the Property to the Employer under a triple net lease for ten years with the lessee having an option to renew the Lease for two successive terms of three years each. The terms of

the Purchase involve no down payment by the Plan with the Seller paying all expenses relating to the Purchase. The entire consideration for the Purchase is to be paid monthly from the rental income received from the Employer. A ten year promissory note, secured by a deed of trust on the Property, will be issued by the Plan to the Seller in the amount of the purchase price, paying nine percent per annum on the unpaid balance. The Plan will acquire the Property subject to the existing mortgage indebtedness owing First National by the Seller and the Plan will not assume liability for the Seller's existing mortgage indebtedness. Furthermore, the Plan and the Employer will enter into the Lease for a period of ten years. The Employer's two options to renew the Lease will be subject to approval by the Bank, as independent fiduciary of the Plan. In event that the Employer were to default on its payments of rentals, the Bank will have three alternative courses of action. First, the Bank can seek to obtain a new tenant and collect damages from the Employer. Second, the Bank can cancel the Lease, void the Plan's obligations to make further payments to the Seller on the promissory note for the Purchase, and reconvey the Property to the Seller. Third, the Bank can sell the Plan's interest in the Property and pay off the Plan's obligations under the promissory note to the Seller for the Purchase. Also, it is represented that if the Seller were to default on its obligations under the note and mortgage held by First National, the Bank may elect to make the payments due by the Seller and deduct these payments (together with interest, attorney's fees, or penalties) resulting from such default from the payments owing on the promissory note to the Seller for the Purchase. Under the terms of the Purchase, none of the assets of the Plan (other than cash flow from rentals of the Property) will be affected by the Purchase.

Fourteen shareholders of the Employer and another professional staff member will execute a written agreement to guarantee jointly and severally the rental payments and all other covenants of the Employer under the Lease. The rentals will commence at $12,125 per month and increase each year, reaching $18,750 per month in the last year of the lease. Also, the rentals for the successive terms under the renewal options will increase from $18,750 per month to $23,908 per month. These rentals will provide the Plan with sufficient income to make payments to the Seller on the promissory note owing for the Purchase, and to make payments for unrelated business taxable income. At all times a positive cash flow will be produced by the rental payments. At any time during the Lease, the Bank may have the Property appraised by a qualified independent appraiser. If a new appraisal determines that the scheduled rentals of the Lease are lower than the current fair market rental value the Bank will adjust the rentals in accordance with the higher fair market rental value. Isadore La Mantia, M.A.I., and Vice President of Lloyd-Thomas/Casts & Burchard Co., Niles, Illinois, determined that the fair market value of the Property, as of January 15, 1985, was $975,000, and, also, that the fair market rental value of the Property, as of April 22, 1985, was $138,600 per year under a triple net lease. The Bank has indicated its approval of the Purchase of the Property and its responsibility during the duration of the Lease to continually monitor and enforce the rights of the Plan under the terms and conditions of the Lease.

5. The Bank, which is the independent trustee of the Plan, represents that the Purchase, extension of credit and the subsequent Lease to the Employer are prudent and in the best interests of the Plan and its participants and beneficiaries because (a) the Employer is the largest of its kind in the area with an extended practice, which will enable the Employer to satisfy its obligations under the Lease; (b) the Purchase involves no down payment or use of current assets for the Purchase by the Plan, the rentals under the Lease will cover the installment payments of the Purchase, and the percentage of total assets of the Plan involved in the Purchase will never exceed 25 percent; (c) the purchase price and the rentals as established by the independent appraisal reflect the fair market value and fair market rental value of the Property; and (d) there are ample safeguards provided in the proposed transactions, which include the multiple uses for the Property, the Bank's ability to terminate the Lease and void all future obligations related to the Purchase as well as the alternative authority to sell, assign, or transfer the Plan's interest in the Property, the lack of obligation by the Plan with regard to the Seller's mortgage obligations, and the "triple net" features of the Lease.

6. In summary, the applicants represent that the proposed transactions meet the statutory criteria of section 408(a) of the Act because (a) the Bank, an independent party, has reviewed the proposed Purchase, extension of credit, and Lease and has determined that the proposed transactions with respect to the Plan are prudent and in the best interests of the Plan and its participants and beneficiaries; (b) the consideration for the Purchase will be the fair market value and the rentals for the Lease will be at or better than the fair market rental values; (c) the Bank approves of the Purchase and will monitor the Lease; (d) the Bank may have the Property appraised at any time and adjust the rentals upward in accordance with such appraisal; and (e) in event of default under the Lease, the Bank may terminate the Lease and void the Purchase, or alternatively, the Bank may elect to sell the Plan's interest in the Property or seek a new lessee.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Mortgage & Real Estate Class of John Hancock Separate Account No. 1 (the Fund) Located in Boston, Massachusetts (Application No. D-6469).

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective April 30, 1986, to the sale of certain mortgage and real estate investments (the Investments) by the Fund to the General Account and Guaranteed Benefit Separate Account of John Hancock Mutual Life Insurance Company, parties in interest with respect to the plans participating in the Fund, provided that the term of the sale were not less favorable to the Fund than those terms obtainable in an arm's-length transaction with an unrelated party at the time of execution of the transaction.

EFFECTIVE DATE: If granted, this exemption will be effective April 30, 1986.

Summary of Facts and Representations

1. The Fund was established on June 13, 1966 by a vote of the Committee of Finance of John Hancock Mutual Life Insurance Company (the Company). The Fund is a pooled separate account maintained in accordance with the insurance laws of the State of Massachusetts. There are eight defined

benefit pension plans participating in the Fund at this time. As of April 30, 1986, the assets of the Fund were valued at approximately $69,130,140. The Fund is composed primarily of mortgage investments, both commercial and residential. Some of the commercial loans relate to agricultural properties which have been foreclosed upon or are seriously delinquent.[1]

2. The group annuity contracts issued with respect to the Fund prior to the passage of the Act provided the contractholder with the right to request the withdrawal of part or all of its interest in the Fund upon 90 days written notice to the Company. At the time these contracts were transferring a sufficient number of mortgage interests or other investments from the Fund to the Company's General Account, in exchange for cash. The passage of the Act, however, rendered the procedure originally contemplated for guaranteeing Fund liquidity illegal absent administrative relief.

3. Two of the plans participating in the Fund, the City of Detroit Police and Firemen Retirement System and the City of Detroit Retirement System (the Detroit Plans) with total assets in the Fund of $28,991,210 as of December 31, 1985, have requested the withdrawal of their assets. The Fund was able to distribute approximately $9,000,000 to the Detroit Plans' trustees prior to the end of 1985, but that distribution exhausted the Fund's cash reserves and other liquid assets. Under the group annuity contracts issued to the Detroit Plans' trustees, the distribution of its remaining interests in the Fund was due by February 28, 1986. The trustees understood that a delay beyond the February 28th date was unavoidable, but they indicated a strong desire to receive a final distribution no later than April 30, 1986.

4. It was the Company's understanding and belief that none of the other plans participating in the Fund would have any desire to purchase the interest of the Detroit Plans. In addition, the secondary market for seasoned commercial mortgages is not well-established; the transaction cost to the Fund to find another purchaser would be high, involving such items as updated title coverage, underwriting, physical inspections and possible guarantees from the Fund or the Company. Even if another buyer could have been found for the Investments, it was unlikely that the sale could have been completed within a reasonable period of time, in order to allow the Fund to satisfy its contractual obligations.

5. In order to honor its obligations, the Fund, on April 30, 1986, sold the Investments to the Company's General Account and the Company's Guaranteed Benefit Separate Account (GBSA) for a total cash price of $29,769,586.[2] The Fund did not pay any sales commissions or other related costs with respect to the sale.

6. The Company retained the services of Colliers Leggat McCall Consultants, Inc. (Leggat) to act as the Independent Fiduciary for the Fund with respect to the sale of the Investments. Leggat specializes in providing real estate appraisal, sales and property management advice to major corporations, financial institutions, and has regularly assumed major responsibilities with respect to the management and investment of real estate assets. Leggat is not affiliated with the Company, and at no time has more than 1% of its annual billings been received from the Company. Each plan participating in the Fund was informed in writing of the appointment of Leggat and of its role in the proposed transaction.

7. Leggat reviewed the sale transaction prior to its consummation and submitted a written report summarizing its investigation, both with respect to the specific investments to be sold by the Fund and to the price to be paid by the Company's General Account and GBSA. After a thorough analysis of the valuation procedures and the findings of independent appraisers, Leggat concluded that the valuations were consistent with the current market and that the proposed sale was equitable to all plans participating in the Fund.

The valuation process for commercial and residential loans involved in analysis by Leggat of each asset, taking into account loan amount, remaining loan term, likely holding period, property type, and the interest rate. Due to the differences in the interest rates of the various assets and current market rates, the pricing analysis compared loan yields with the most recent average yield of Federal Home Loan Mortgage Corporation securities or Federal Farm Credit Systems bonds, priced with comparable holding periods. The pricing procedure took into account the specific yields of each asset and thus negated any possible bias with respect to the selection of assets to be transferred based on yield.

Independent real estate appraisers were engaged to value the foreclosed or seriously delinquent argicultural loan investments. Each appraiser was an independent, qualified appraiser knowledgeable in the region where the agricultural property was located. A written appraisal report was submitted for each property and supplemental appraisal data was provided to Leggat by the appraisers where requested. The appraisals primarily relied upon recent agricultural land and farm sales in estimating the market value of the properties being appraised. The appraisal methodology, comparable analysis, and supplemental data was reviewed by Leggat and Leggat believed that the appraised values reasonably reflected market values for each of the properties.

With respect to the joint venture interest, an appraisal performed for Leggat established that the joint venture's current market value was $715,000. In valuing the Fund's joint venture interest, a straight proration was used and no deduction was taken even though the Fund held only a minority interest in the joint venture.

8. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act because:

a. The sale of the Investments from the Fund, including the consideration paid, has been reviewed and approved by Leggat acting on behalf of the plans participating in the Fund;

b. The sale provided the Fund with the necessary liquidity to satisfy its contractual obligations to Detroit Plans; and

c. There was no sales commission or similar consideration paid by the Fund.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Los Angeles County Painting Industry Pension Trust Fund (the Pension Plan) and Los Angeles County Painting Industry Apprenticeship Trust Fund (the Apprenticeship Plan; together, the Plans) Located in Los Angeles, California [Application Nos. D-6537 and D-6546]

Proposed Exemption

The Department is considering granting an exemption under the

[1] The Fund consists of a mix of assets acquired between 1966 and 1985 including 67 commercial mortgage loans, 90 residential mortgage loans, 16 agricultural mortgage loans, 4 foreclosed upon agricultural properties and an equity real estate investment in a joint venture with Holiday Inns of America in a hotel located in Washington, DC.

[2] The Department has issued an advisory opinion to the Company that the assets of GBSA-type accounts are not plan assets (see Advisory Opinion 83-051A, dated September 21, 1983). The Investments transferred included 25 commercial loans, 36 residential loans, 4 agricultural loans, 4 agricultural properties which had been foreclosed upon and the joint venture interest.

authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Pension Plan of certain improved real property (the Property) to the Apprenticeship Plan, which is a party in interest with respect to the Pension Plan; provided that the transaction is on terms at least as favorable to each Plan as could be obtained in an arm's-length transaction between unrelated parties.

Summary of Facts and Representations

1. The Plans are multi-employer plans created under a collective bargaining agreement in the painting and decorating industry in Los Angeles County, California, negotiated between the Painting District Council No. 36 (the Union), representing workers in that sector, and the Southern California Painting and Decorating Association and Southern California Drywall Contractors' Association (the Employers), representing employers in that sector. The Apprenticeship Plan is a welfare plan with 300 participants and total net assets of $904,325 as of June 30, 1985, providing training in painting and decorating industry skills. The Pension Plan is a defined benefit plan with 5,498 participants and total net assets of $59,949,270 as of December 31, 1985. Investment decisions for each Plan are made by ten trustees (the Trustees), five of whom are representatives of the Union and five of whom are representatives of the Employers. Some of the Trustees serve as trustees of both Plans. The Apprenticeship Plan is a party in interest with respect to the Pension Plan, as two employees of the Apprenticeship Plan are participants in the Pension Plan and the Apprenticeship Plan makes contributions to the Pension Plan on behalf of those two employees.

2. The training functions of the Apprenticeship Plan are conducted in an apprenticeship training school which operates in the Property, a warehouse located on a 1.05 acre industrial site at 2077 Yates Avenue in Commerce, California, in the Los Angeles metropolitan area. The Apprenticeship Plan occupies the Property as lessee under a lease (the Lease) originally entered into on August 15, 1981, at which time the Property was owned by unrelated parties. The Apprenticeship Plan was and remains the sole occupant and tenant of the Property. In August of 1983, the Pension Plan purchased the Property from the unrelated owners for a cash purchase price of $740,000. The Pension Plan purchased the Property subject to the Lease and the Apprenticeship Plan has continued to lease the Property from the Pension Plan under the terms of the Lease which is to expire August 14, 1986.

3. The Trustees recognize that the Lease of the Property by the Pension Plan to the Apprenticeship Plan is a prohibited transaction as defined under the Act and the Code. In order to terminate this prohibited transaction between the Plans, the Trustees seek to terminate the Lease in a sale of the Property by the Pension Plan to the Apprenticeship Plan. The Trustees are requesting an exemption to permit this sale transaction. On behalf of each Plan the Trustees have appointed a separate independent fiduciary to determine whether the proposed transaction is in the best interests and protective of each Plan and to oversee the consummation of the sale transaction to ensure that it proceeds as described herein.*

4. To represent the interests of the Apprenticeship Plan as buyer in the proposed transaction, the Trustees have appointed Buss-Shelger Associates (BSA), a real estate consulting firm located in Los Angeles, California. BSA represents that it has substantial fiduciary experience under the Act and that it is independent of and unrelated to the Trustees and the Plans. BSA is wholly owned and operated by Ronald L. Buss, MAI, Care, and Kurt S. Shelger, MAI, CRE, who are also unrelated to the Trustees and the Plans and who have extensive real estate consultative experience. BSA represents that after a review and analysis of the proposed transaction it has determined that it will be in the best interests and protective of the participants and beneficiaries of the Apprenticeship Plan. BSA points out that in size and location the Property is ideally suited to the Apprenticeship Plan's needs for a training facility. Since 1981, the Apprenticeship Plan has expended approximately $152,000 for special purpose capital improvements to the Property to accommodate its training program needs and BSA notes that purchase of the Property will preserve that capital outlay for the Apprenticeship Plan. BSA also notes that the Property includes parking space which is a required feature of the Apprenticeship Plan's needs not readily available in comparably sized facilities in the same vicinity as the Property. BSA represents that the Apprenticeship Plan's purchase of the Property will be advantageous to terminate the consistent outflow of cash from the Apprenticeship Plan in the form of monthly rental payments and to secure an investment which retains potential resale value. BSA further notes that the proposed purchase of the Property will terminate an ongoing prohibited transaction between the Plans, the Lease. BSA has determined that the Apprenticeship Plan's alternative course of action for terminating the ongoing prohibited transaction, moving to a facility of comparable size in the same area as the Property, would not be in the best interests of the Apprenticeship Plan because the Apprenticeship Plan would abandon its investment in the improvements in the Property and lose the aforementioned benefits of owning the Property. BSA has examined the Apprenticeship Plan's investment portfolio and financial statement and represents that the proposed transaction is appropriate for the Apprenticeship Plan in the context of its diversification and liquidity needs. Pursuant to the terms of its appointment by the Trustees, BSA has undertaken a determination of the Property's current fair market value in order to arrive at an appropriate purchase price to be paid by the Apprenticeship Plan for the Property. Based on an investigation which included an inspection of the Property, examination of prior appraisals, evaluation of relevant market conditions, and analysis of pertinent physical and economic factors affecting value, BSA has determined that the fair market value and appropriate purchase price of the Property is $750,000. It is proposed that the Apprenticeship Plan will pay the Pension Plan cash for the Property in the amount of $750,000. BSA will represent the Apprenticeship Plan at the sale transaction's consummation.

5. To represent the interests of the Pension Plan as seller in the proposed transaction, the Trustees have appointed Landauer Associates, Inc. (Landauer), a real estate consulting firm in Los Angeles, California. Landauer

* In the exemption proposed herein, the Department proposes exemptive relief only for the proposed purchase of the Property by the Apprenticeship Plan from the Pension Plan and is not proposing exemptive relief for any other prohibited transactions associated with the Property or the Plans.

represents that it is independent of and unrelated to the Trustees and the Plan, that it has extensive real estate consultative experience and that it has substantial fiduciary experience under the Act. After a review and analysis of the proposed transaction, Landauer represents that it will be in the best interests and protective of the participants and beneficiaries of the Pension Plan. Landauer notes that the proposed transaction will not only terminate an ongoing prohibited transaction but will also provide the Pension Plan with immediate use of a substantial amount of cash. Landauer has determined that the cash proceeds of the sale can be reinvested immediately at favorable rates of return. Landauer represents that the timing of the proposed sale is advantageous to the Pension Plan in the context of current market conditions and that it is especially advantageous in light of Landauer's determination that rentals under the Lease, which was in effect when the Pension Plan purchased the Property, probably fail to provide fair market rentals and that achievement of market rental rates would require removal of the Apprenticeship Plan as tenant and completion of major physical changes to the Property. After an inspection of the Property, a study of comparable properties in the surrounding area, analysis of the Property's income-generating potential, consideration of relevant market conditions and examination of prior appraisals of the Property, Landauer has determined that $750,000 is the fair market value price of the Property. Landauer will represent the Pension Plan in oversight of the sale transaction's consummation. The Pension Plan will deliver title to the Property free and clear in conveying the Property to the Apprenticeship Plan.

6. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The interests of each of the Plans are represented in the proposed transaction by an independent fiduciary who has determined that the proposed transaction is in the best interests and protective of the participants and beneficiaries of each respective Plan and who will oversee the transaction's consummation on behalf of each respective Plan; (2) The proposed sale will be a cash transaction; and (3) The proposed purchase price of the Property has been determined by the Plans' independent fiduciaries to be the fair market value of the Property.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Employee Retirement Plan of Cummins Corporation and Affiliated Companies (the Plan) Located in Fort Worth, TX [Application No. D–6693]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan of certain improved real property (the Oklahoma Property), for the total cash consideration of $139,500, to Cummins Corporation (the Employer), provided the price paid for the Oklahoma Property is not less than its fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 131 participants and total assets of $3,309,768 as of December 31, 1985. The trustee of the Plan is Texas Commerce Bank/Fort Worth, N.A. located in Fort Worth, Texas. Investment decisions for the Plan are made by an administrative committee (the Administrative Committee) consisting of Messrs. Clay Cummins, R.L. Campbell, Dalton Hoffman, J.F. Johnson, Randy Maxey and Russell Wilhite.

2. The Employer, which is principally located in Fort Worth, Texas, is engaged in the wholesale distribution of electrical supplies and equipment. All members of the Administrative Committee are employees of the Employer. Messrs. Cummins and Johnson are shareholders of the Employer. Messrs. Cummins, Hoffman, Johnson and Maxey are officers and directors of the Employer.

3. On June 30, 1984, the Plan purchased certain improved real property located at 102 West Colorado, Chickasha, Oklahoma, from Cummins Supply Company of Chickasha, Inc., a subsidiary of the Employer. The Oklahoma Property consists of a tract of land having a total area of 24,750 square feet and a brick and concrete building of approximately 14,000 square feet. The Plan paid $135,750 for the Oklahoma Property. Since the time of its acquisition by the Plan, the Oklahoma Property has never been encumbered by a mortgage. Also, the Plan has incurred no costs in its ownership of the Oklahoma Property.[1]

4. On July 1, 1984, the Plan commenced leasing the Real Property to the Employer under the terms of a written lease (the Lease). The Lease provides for a three year term at a monthly rental of $1,667. The Lease requires the Employer to pay all property taxes, casualty insurance, utilities and building maintenance costs. According to the applicant, all rental amounts due under the Lease have been timely paid by the Employer.[2]

5. The applicant represents that the leasing of the Oklahoma Property became a prohibited transaction under section 406 of the Act upon the sale of the Texas Property on December 31, 1985 because such leasing, at that time, was no longer entitled to the relief provided by section 408(e) of the Act (See Footnote 1 below). Accordingly, an administrative exemption is requested to allow the Plan to sell the Oklahoma Property to the Employer for the cash consideration of $139,500. This amount reflects the fair market value of the Oklahoma Property as determined on July 30, 1985 and March 1, 1986 by Mr. Andrew D. Link, R.M. Candidate, S.R.A. Candidate, CA–R, an independent appraiser affiliated with Link Appraisal Company of Chickasha, Oklahoma.[3]

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[1] At the time the Plan purchased the Oklahoma Property, it owned another parcel of land located in Fort Worth, Texas (the Texas Property), which it leased to the Employer. On December 31, 1985, the Plan sold the Texas Property to an unrelated party. The applicant represents that the leasing of the Texas Property by the Plan to the Employer until July 1, 1984 was conducted in accordance with the transitional rules of section 414(c)(2) of the Act. The applicant also represents that the Plan's acquisition of the Oklahoma Property was statutorily exempt under section 408(e) of the Act. However, the Department expresses no opinion on the applicability of section 414(c)(2) of the Act to the leasing of the Texas Property or section 408(e) of the Act with respect to the Plan's purchase of the Oklahoma Property. Further, the Department expresses no opinion on whether the acquisition and holding by the Plan of the Oklahoma Property violated any provision of Part 4 of Title I of the Act.

[2] The applicant represents that the leasing of both the Oklahoma and Texas Properties by the Plan to the Employer from July 1, 1984 until December 31, 1985 was statutorily exempt under section 408(e) of the Act. However, the Department again expresses no opinion on whether the conditions of this provision of the Act has been met.

[3] In an addendum to the original appraisal dated June 9, 1986, Mr. Link estimated the fair market rental value of the Oklahoma Property as ranging between $1,300 $1,500 per month.

The Plan will not be required to pay any real estate fees or commissions in connection with the proposed sale.

6. In addition to paying the sales price for the Oklahoma Property, the Employer represents that it will pay the Internal Revenue Service (the Service) all applicable excise taxes that are due by reason of the continued leasing of the Oklahoma Property by the Plan to the Employer since January 1, 1986, within 60 days of the publication in the **Federal Register** of the grant of the notice of proposed exemption.

7. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sale will permit the Plan to divest itself of the Oklahoma Property and to invest the sales proceeds in more liquid investments; (c) the sales price for the Oklahoma Property will reflect its fair market value existing as of the date of sale as determined by an independent appraiser; (d) the Plan will not be required to pay any real estate fees or commissions in connection with the proposed sale; and (e) the Employer will pay the Service all applicable excise taxes that are due by reason of its continued leasing of the Oklahoma Property from the Plan within 60 days of the publication in the **Federal Register** of the grant of the notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of July, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–16807 Filed 6–24–86; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Opening of the White House Communications Agency Audio and Video Files of the Nixon Administration

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of files.

SUMMARY: Opening of the White House Communications Agency Audio and Video Files of the Nixon Administration. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (88 Stat. 1695; 44 U.S.C. 2111 note) and § 1275.42(b) of the Public Access Regulations implementing the Act (36 CFR Part 1275), this agency has identified, inventoried, and prepared for public access an integral file segment of materials among the Nixon Presidential materials in the custody of the National Archives and Records Administration.

DATES: The National Archives intends to make the integral file segment described in this notice available to the public on September 2, 1986.

Any person who believes it necessary to file a claim or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege or defense before September 2, 1986.

ADDRESSES: The file segment will be made available to the public at the National Archives' Alexandria facility, located at 845 South Pickett Street, Alexandria, Virginia.

Petitions concerning access must be sent to the Archivist of the United States, National Archives and Records Administration (N), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: James J. Hastings, Deputy Director, Nixon Presidential Materials Project Staff, 703–756–6498.

SUPPLEMENTARY INFORMATION: The integral file segment that has been prepared for public access consists of audio and video tape recordings produced by the White House Communications Agency (WHCA) during the Nixon administration. The WHCA materials record events from December 1968 to August 9, 1974, and consist of two major file groups: Audio File and Video File.

The WHCA Audio File comprises 4,464 audiotapes that record the public utterances of President Nixon as well as selected speeches and remarks by Vice Presidents Spiro T. Agnew and Gerald R. Ford, members of the Nixon and Agnew families, Cabinet and Sub-Cabinet officers, and members of the White House staff. Also included are the 1971 China Advance Trip telecommunications, selected White House press briefings, and the broadcasts of the Watergate hearings of the Senate Select Committee on Presidential Campaign Activities (Ervin Committee). The WHCA audiotapes are not subject to copyright restrictions.

The WHCA Video File consists of 4,082 broadcast-quality videotapes, comprising 3,900 hours of playing time. These productions are "off-the-air" recordings of televised programs. The file group includes comprehensive coverage of President Nixon's appearances on national television, appearances by members of the Nixon administration, segments of national network news programs relating to the Nixon administration, special news reports, scheduled public affairs broadcasts, extensive coverage of the Ervin Committee hearings and the House Judiciary Committee impeachment hearings. Reproduction of

these video recordings is limited by the provisions of the Copyright Act of 1976 (17 U.S.C. 101 *et seq.*).

Public access to some of the items in this integral file segment will be restricted as outlined in 36 CFR § 1275.50 or 1275.52 (Public Access Regulations).

Dated: July 22, 1986.

Frank G. Burke,

Acting archivist of the United States.

[FR Doc. 86-16777 Filed 7-24-86; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Carlos Tellez, (202) 395-7340.

Title: Antarctic Conservation Act Application and Permit Form.

Affected Public: Individuals.

Number of Responses: 20 responses: total 10 burden hours.

Abstract: The National Science Foundation, pursuant to the Antarctic Conservation Act of 1978 (Pub. L. 95-541) regulates via a permit system certain activities in Antarctica. The subject form is used by NSF to collect information needed in permit administration.

Dated: July 21, 1986.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 86-16707 Filed 7-24-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export and Import Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export and import licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

NRC EXPORT APPLICATIONS

Name of applicant; date of application; date received; application No.	Material type	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc.; 6/23/86; 6/23/86; XSNM02285.	Enriched uranium	220.550	245.773	Fuel for THTR-300	W. Germany

Dated this 17th day of July 1986, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

[FR Doc. 86-16768 Filed 7-24-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-66 issued to Duquesne Light Company (the licensee) for operation of the Beaver Valley Power Station, Unit 1 located in Shippingport, Pennsylvania.

The proposed amendment would revise the Technical Specifications to (1) remove the fuel rod weight limitation and, (2) allow use of stainless steel or zircaloy rods in place of fuel elements in fuel assemblies that are susceptible to problems such as "baffle jetting." These revisions to the technical specifications would be made in response to the licensee's application for amendment dated July 11, 1986.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Change 1

The variation in fuel rod weight that can occur even without a technical specification limit is small due to the existence of other fuel design constraints, all of which provide some limit on the variation in rod weight. The current safety analyses are not based directly on fuel rod weight, but rather on design parameters such as power and fuel dimensions. These parameters are either not affected at all by fuel rod weight, or are only slightly affected. A review of design parameters which may be affected indicates that a change in fuel weight does not cause other design parameters to exceed the values assumed in the various safety analyses, or to cause acceptance criteria to be exceeded. The effects are not significant with respect to measured nuclear parameters (power, power distribution, nuclear coefficients), i.e., they remain within the technical specification limits. Therefore, a statement limiting the initial core maximum enrichment to 3.2 weight percent may be deleted.

Change 2

One fuel assembly will be reconstituted with seven stainless steel or zircaloy rods in place of seven fuel rods; these seven "dummy" rods will be located on the outermost periphery of the reactor core and would have little or no effect on core performance. The reconstituted fuel assemblies will meet essentially the same design requirements, satisfy the same design

criteria as the original fuel assembly, and the use of such assemblies will not result in a change to existing safety criteria and design limits.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of these, Example (iii), involving no significant hazards considerations is ". . . a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable." Both proposed changes match the quoted example.

Therefore, based on these considerations and the example given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in extending the current refueling shutdown of Beaver Valley, Unit 1. Therefore, the Commission has insufficient time to issue its usual 30-day notice of proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register** and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to Lester S. Rubenstein, Project Director, PWR Project Directorate No. 2, by collect call to (301) 492–7872, or submitted in writing to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, Washington, DC. All comments received by August 8, 1986, will be considered in reaching a final determination. A copy of the application and any comments received may be examined at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland, this 18th day of July 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director PWR Project Directorate #2 Division of PWR Licensing—A Office of Nuclear Reactor Regulation.

[FR Doc. 86–16769 Filed 7–24–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352-OL; 50-353-OL]

Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2); Notice of Hearing

July 21, 1986.

Before Administrative Judges: Helen F. Hoyt, Chairperson, Dr. Richard F. Cole, Dr. Jerry Harbour.

Evidentiary hearings for resolution of remanded issue regarding the availability of School Bus Drivers for the Owen J. Roberts and Spring-Ford School Districts will be held on August 18, 1986, from 11:30 a.m.—5:00 p.m. and again on August 22, 1986 from 9:00 a.m.—5:00 p.m., if necessary. The location for the hearing is the Old Customs Courtroom, Room 300, U.S. Customs House, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106.

For the Atomic Safety and Licensing Board.

Helen F. Hoyt,

Chairperson, Administrative Judge.

[FR Doc. 86–16806 Filed 7–24–86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences: Amendment of Notice of Review of Petitions, Public Hearings, List of Articles to be sent to the U.S. International Trade Commission (USITC) for Review

On July 18, the Trade Policy Staff Committee provided notice (51 FR 26088) of the petitions accepted for review in the 1986 annual review of the Generalized System of Preferences (GSP). The purpose of this notice is to amend Annex I of the notice of July 18 by adding to the list of petitions accepted for review the list of products which follows.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

ANNEX I—PETITIONS ACCEPTED FOR REVIEW

[The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration]

Case No.	TSUS or TSUSA [1] item No.	Article	Petitioner
A. *Petitions to add products to the list of eligible articles for the Generalized System of Preferences.*			
		None	
B. *Petition to remove products from the list of eligible articles for the Generalized System of Preferences.*			
86–47	402.12	Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure, not provided for in subpart A or C of part 1 of schedule 4 of the Tariff. Schedules of the United States: Phthalic anhydride.	United States Steel Corp, Pittsburgh, PA.
C. *Petitions to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences.* [2]			
86–48	421.06 (Taiwan)	Sodium compounds: Hydrosulfite	Virginia Chemnicals, Portsmouth, VA.
86–49	725.46 pt. (Korea, Taiwan)	Electronic musical instruments: Guitars	Peavey Electronics, Meridian, MS.

ANNEX I—PETITIONS ACCEPTED FOR REVIEW—Continued

[The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration]

Case No.	TSUS or TSUSA [1] item No.	Article	Petitioner
86-50	727.23 (Thailand)	Furniture, and parts thereof, not specially provided for: [Of unspun fibrous vegetable materials] Of wood: [Bent-wood furniture, and parts thereof] Other: Chairs: Folding: Director's chairs.	American Funiture Manufacturers Assoc., Washington, DC
86-51	727.29 (Singapore, Yugoslavia)	Other: [Of teak] Other	Do.
86-52	727.35 (Singapore, Taiwan, Yugoslavia)	Furniture other than chairs	Do.
86-53	727.40 (Taiwan, Yugoslavia	Parts of furniture	Do.
86-54	727.70 (Taiwan)	[Of Textile materials, except cotton; or rubber on plastics; of copper) Other	Do.
86-55	735.0995 pt. (Korea, Taiwan)	Beach balls, play balls, toy balls, and other balls for games or sports, not provided for in the foregoing provisions of subpart D of part 5 of schedule 7 of the Tariff Schedules of the United States: Inflatable balls: [Basketballs; volleyballs] Other: Of polyvinyl chloride] Inflatable play balls.	National Latex Products Co., Ashland OH
86-56	737.9536 pt. (Korea, Taiwan)	Toys, and parts of toys, not specially provided for: [Toys having a spring mechanism] Other: [Kites] Other: [Toys having a friction or weight operated motor; toys having an electric motor] Other (except parts): Wholly or almost wholly of rubber or plastics: Inflatable: Toy balions.	National Latex Products Co., Ashland, OH.
86-57	772.06 pt. (Taiwan)	Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients; and household articles not specially provided for; all the foregoing of rubber or plastics: [Salt, pepper, mustard, and ketchup dispensers, and similar dispensers] Plates, cups, saucers, soup bowls, cereal bowls, sugar bowls, creamers, gravy boats, serving dishes, and platters, of melamine.	American Melamine Institutional Tableware Assoc., Washington, DC.
86-58	772.09 pt. (Taiwan)	Trays, of melamine	Do.
D. *Petition for waiver of competitive need limit for a product on the list of eligible articles.*			
		None	

[1] Tariff Schedules of the United States Annotated (19 U.S.C. 1202).
[2] The country or countries named are those beneficiary developing countries specified by the petitioner. While the Trade Policy Staff Committee's (TPSC) review will focus on those countries, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner.

[FR Doc. 86-16778 Filed 7-24-86; 8:45 am]
BILLING CODE 319-001-M

POSTAL RATE COMMISSION

[Docket No. A86-20; Order No. 702]

Arenas Valley, New Mexico 88022 (Elfido Arguello, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued July 21, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A86-20.

Name of Affected Post Office: Arenas Valley, New Mexico 88022.

Name of Petitioner: Elfido Arguello.

Type of Determination: Closing.

Date of Filing of Appeal Papers: July 14, 1986.

Categories of Issues Apparently Raised:

1. Effect on the community (39 U.S.C. 404(b)(2)(A)).
2. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, coversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before July 21, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix

Arenas Valley, New Mexico 88022

July 14, 1986—Filing of Petition
July 21, 1986—Notice and Order of Filing of Appeal
August 8, 1986—Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b))
August 18, 1986—Petitioner's Participant Statement or Initial Brief (*see* 39 CFR 3001.115(a) and (b))
September 8, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)]
September 23, 1986—Petitioners' Reply Brief should petitioners choose to file one (*see* 39 CFR 3001.115(d))
September 30, 1986—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116)
November 11, 1986—Expiration of 120-day decisional schedule (*see* 39 CFR 404(b)(5))

[FR Doc. 86-16711 Filed 7-24-86; 8:45 am]
BILLING CODE 7715-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending—July 18, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44165-R-1-R-15

Parties: Members of International Air Transport Association
Date Filed: July 16, 1986
Subject: Cargo Rates—TC 2/3 and TC 123
Proposed Effective Date: October 1, 1986

Docket No. 44166-R-1-R-8

Parties: Members of International Air Transport Association
Date Filed: July 16, 1986
Subject: Cargo Rates—TC 3

Proposed Effective Date: October 1, 1986

Docket No. 44167–R–1–R–7

Parties: Members of International Air Transport Association
Date Filed: July 16, 1986
Subject: So. Pacific Cargo Rates
Proposed Effective Date: October 1, 1986

Docket No. 44168

Parties: Members of International Air Transport Association
Date Filed: July 16, 1986
Subject: Cargo Rates from France—Mid/South Atlantic
Proposed Effective Date: August 1, 1986

Docket No. 44169

Parties: Members of International Air Transport Association
Date Filed: July 16, 1986
Subject: Fares Canada-Israel
Proposed Effective Date: August 1, 1986

Docket No. 44176–R–1–R–7

Parties: Members of International Air Transport Association
Date Filed: July 17, 1986
Subject: Cargo Rates—Mid Atlantic
Proposed Effective Date: October 1, 1986

Docket No. 44177–R–1–R–4

Parties: Members of International Air Transport Association
Date Filed: July 17, 1986
Subject: Adjustment Factors
Proposed Effective Date: August 1, 1986

Docket No. 44162

Parties: People Express, Inc. and United Air Lines, Inc.
Date Filed: July 14, 1986
Subject: People Express, Inc., c/o Robert E. Cohn, Esq. Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036. United Air Lines, Inc., c/o Charles A. Miller, Esq. Covington & Burling, 1201 Pennsylvania Ave., N.W., P.O. Box 7566, Washington, DC 20044. Joint Application of People Express, Inc. and United Air Lines, Inc. pursuant to section 416 of the Act applies for an exemption from section 408 of the Act to the extent that section 408 may be applicable to the acquisition by United of certain assets of People and its subsidiaries. Answers due July 21, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86–16801 Filed 7–24–86; 8:45 am]

BILLING CODE 4910–62–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended

July 18, 1986.

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44164

Date Filed: July 15, 1986
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 12, 1986
Description: Chicago Airlines, Inc, c/o Thomas J. McGrew, Esq. Arnold & Porter, 1200 New Hampshire Ave., NW. Washington, DC 20036. Application of Chicago Airlines, Inc, pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations requests the issuance of a certificate of public convenience and necessity authorizing it to engage in scheduled air transportation of persons, property and mail as follows:

Between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Docket No. 44174

Date Filed: July 17, 1986
Due Date for Answers, Conforming Application, or Motions to Modify Scope: August 14, 1986
Description: American Airlines, Inc., c/o Alfred V.J. Prather, Esq, Prather Seeger Doolittle & Farmer, 1600 M Street, NW., 7th Floor, Washington, DC 20036. Application of American Airlines, Inc, pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to provide service between Raleigh/Durham, North Carolina and London, England.

Docket No. 44181

Dated Filed: July 18, 1986
Due Date for Answers, Conforming Application, or Motions to Modify Scope: August 15, 1986.
Description: American Airlines, Inc., c/o Alfred V. J. Prather, Esq. Prather Seeger Doolittle & Farmer, 1600 M Street, NW. 7th Floor, Washington, DC 20036. Application of American Airlines, Inc. pursuant to section 101 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to provide service between San Juan, Puerto Rico, and Caracas, Venezuela.

Docket No. 44182

Dated Filed: July 18, 1986
Due Date for Answers, Conforming Application, or Motions to Modify Scope: August 15, 1986.
Description: American Airlines, Inc., c/o Alfred V. J. Prather, Esq. Prather Seeger Doolittle & Farmer, 1600 M Street, NW. 7th Floor, Washington, DC 20036. Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to provide service between San Juan, Puerto Rico, and the co-terminal points Toronto and Montreal, Canada.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86–16802 Filed 7–24–86; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB For Review.

Date: July 22, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545–0239
Form Number: F 5754
Type of Review: Extension
Title: Statement by Person(s) Receiving Gambling Winnings

Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86–16803 Filed 7–24–86; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

Elimination of Bulk Tax Forms to Tax Practitioners

AGENCY: International Revenue Service, Treasury.

ACTION: Announcement concerning practitioner program.

SUMMARY: This document provides notice of discontinuance of bulk quantities of tax forms to tax practitioners.

DATE: This program change will take effect October 1, 1986.

ADDRESS: Copies of reproducible forms and copies of the practitioner mailing list are available by contacting: Internal Revenue Service, Repro Proof Coordinator (or TPMF Coordinator), Publishing Service Branch, PM:S:FM:P, Room 1528, 1111 Constitution Ave. NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Inventory Manager of Publishing Services Branch, International Revenue Service, 1111 Constitution Ave. NW., Room 1528, Washington, DC 20224.

SUPPLEMENTARY INFORMATION: Beginning October 1, 1986, IRS will no longer provide bulk quantities of tax forms to tax practitioners. However, practitioner firms will be able to obtain up to, but no more than, 15 free information copies of most tax forms they order. If more than 15 copies are required by any practitioner firm, those copies will have to be photocopied or purchased from a commercial printer.

Practitioner firms will be able to obtain up to two free copies of any instruction or taxpayer information publication (500 and 900 series publications). IRS will continue to provide one copy of items such as Package X, Informational Copies of Federal Tax Form, Publication 17, Your Federal Income Tax, and Publication 334, Tax Guide For Small Business, to individual practitioners. Additionally, reproducible proof copies (repros) of tax forms and instructions will be available at a cost of $1 per page. Practitioners may purchase repros for production by commercial printers. Revenue Procedures concerning the printing of substitute forms are also available.

To meet optical scanning requirements, certain penalties are assessed for filing on improper 1099 series forms. Therefore, the following forms will be available from IRS in unlimited quantities:

W-2	1099-A	1000-MISC.
W-2P	1099-B	1099-OID.
W-3	1099-DIV	1099-PATR.
1096	1099-G	1099-R.
1098	1099-INT	5498.

The IRS will not be publishing a list of printing sources. However, a copy of the practitioner mailing list is available to requestors in the formats listed, along with the approximate costs of producing the entire list. (Portions of the list are also available.)

Magnetic tape	$192
Mailing labels	1,335
Computer printout	1,516
Laser letters [1]	18,000

[1] Laser letters are computer-generated messages individually addressed to each practitioner on the mailing list. The message is supplied by the requestor and is produced in letter format using a laser printer.

IRS will continue to mail Publication 1045, Information and Order Blanks for Preparers of Federal Income Tax Returns, to all practitioners on our mailing list. However, it will be mailed earlier than in prior years. The additional time will allow IRS to input the orders into an automated system. Publication 1045 will contain order forms (although they will be drastically revised) and Form 3975, Tax Practitioner Annual Mailing List Application/Update. All practitioners on the mailing list will continue to receive District Director's news letters.

Regulations require that government mailing lists be updated at least once a year. Therefore, during the summer, the practitioner mailing list will be purged of all entities who have not requested to remain on the mailing list within the past 12 months.

Hugh W. Kent, Jr.,

Chief, Publishing Services Branch, Facilities Management Division.

[FR Doc. 86–16765 Filed 7–24–86; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 143
Friday, July 25, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Postal Service	7

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:08 p.m. on Friday, July 18, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A) adopt a resolution making funds available: (1) For the payment of insured deposits made in Permian Bank, Odessa, Texas, which was closed by the Banking Commissioner for the State of Texas on Friday, July 18, 1986, and (2) for an advance payment to uninsured depositors of the closed bank equal to 30 percent of their uninsured claims; and

(B)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Farmers' Bank, Trimble, Tennessee, which was closed by the Commissioner of Financial Institutions for the State of Tennessee on Friday, July 18, 1986; (2) accept the bid for the transaction submitted by First Tennessee Bank National Association Memphis, Memphis, Tennessee; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The meeting was recessed at 5:20 p.m., and at 5:41 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors (1) accepted the bid submitted by First Wyoming Bank-Sheridan, Sheridan, Wyoming, a newly-chartered State nonmember bank, for the purchase of certain assets of and the assumption of the liability to pay deposits made in The First National Bank of Sheridan, Sheridan, Wyoming, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, July 17, 1986; (2) approved the applications of First Wyoming Bank-Sheridan, Sheridan, Wyoming, for Federal deposit insurance, for consent to purchase certain assets of and assume the liability to pay deposits made in The First National Bank of Sheridan, Sheridan, Wyoming, and for consent to merge, under its charter and title, with First Wyoming Bank, N.A.-Sheridan, Sheridan, Wyoming; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: July 22, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-16864 Filed 7-23-86: 2:57 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, July 22, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Home Credit Thrift and Loan, an operating noninsured industrial bank located at 1455 East 21st South Street, Salt Lake City, Utah, for Federal deposit insurance.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: July 23, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc 86-16865 Filed 7-23-86; 2:57 pm]

BILLING CODE 6714-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION

July 22, 1986.

The following notice of meeting is published pursuant to Section 31(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: July 29, 1986, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTER TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission it does not include a listing of all paper relevant to the items on the agenda; However, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 840th Meeting—July 29, 1986, Regular Meeting (10:00 a.m.)

CAP-1.

Project No. 3295-008, East Columbia Basin Irrigation District, Quincy-Columbia Basin Irrigation District and South Columbia Basin Irrigation District

CAP-2.

Project No. 9883-002, Weyerhaeuser Company

CAP–3.
Project No. 7611–006, Iron Mountain Mines, Inc.
Project No. 8499–022, City of Redding, California
CAP–4.
Project No. 6367–033, Western Hydro Electric, Inc.
CAP–5.
Project No. 7282–018, Roaring Creek Ranch
CAP–6.
Project No. 3494–012, Allegheny Number 6 Hydro Partners
CAP–7.
Project No. 4632–001, Clifton Power Corporation
CAP–8.
Project No. 9613–002, Ashuelot Hydro Partners, Ltd.
CAP–9.
Project No. 9693–003, Birch Power Company
CAP–10.
Project No. 7523–003, John L. Symons
CAP–11.
Project No. 7669–003, John L. Symons
CAP–12.
Project No. 7611–005, Iron Mountain Mines, Inc.
CAP–13.
Project No. 3473–004, Jack M. Fuls
Project No. 3470–001, Tumalo Irrigation District
CAP–14.
Project No. 2866–005, Metropolitan Sanitary District of Greater Chicago
CAP–15.
Project Nos. 77–007 and 008, Pacific Gas and Electric Company
CAP–16.
Docket No. ER86–402–000, Catalyst Old River Hydroelectric Limited Partnership
CAP–17.
Docket Nos. ER86–526–000, ER85–785–001 and ER86–387–001, Wisconsin Electric Power Company
CAP–18.
Docket No. ER81–179–026 (Phase 1), Arizona Public Service Company
CAP–19.
Docket No. ER86–353–001, Baltimore Gas and Electric Company
CAP–20.
Omitted
CAP–21.
Omitted
CAP–22.
Omitted
CAP–23.
Docket Nos. ER86–273–001 and 002, Kansas City Power and Light Company
CAP–24.
Docket Nos. ER86–170–001 and 002, New England Power Company
CAP–25.
Docket No. ER86–287–001, Cambridge Electric Light Company
CAP–26.
Docket No. QF86–512–000, Nelson Industrial Steam Company
CAP–27.
Docket No. IR–000–980, California Department of Water Resources
CAP–28.
Docket No. EL86–37–000, Consumer and Advocate Division of the West Virginia Public Service Commission and Maryland People's Counsel, Complainants v. Allegheny Generating Company, Respondent
Docket No. EL86–38–000, David M. Barasch, Consumer Advocate of Pennsylvania, Complainant v. Allegheny Generating Company, Respondent
CAP–29.
Docket No. ES86–31–000, Niagara Mohawk Power Corporation

Consent Miscellaneous Agenda

CAM–1.
Docket No. FA85–48–001, Bangor Hydro-Electric Company
CAM–2.
Docket No. FA85–71–000, Central Illinois Public Service Company
CAM–3.
Docket No. RM86–3–003 Through 065, Ceiling prices; Old gas pricing structure
CAM–4.
Docket No. GP86–27–000, Texas Railroad Commission, NGPA Section 103 determination, Mr Oil Company, University Section 30 #2 well, TRC Docket No. F–08–062389, FERC No. JD–18383
CAM–5.
Docket No. GP86–29–000, State of Kentucky, Section 107 NGPA determinations, Delata Gas Corporation, Robertson Coal Co. #6 well, FERC JD No. 81–35332, Robertson Coal Co. #7 Well FERc JD No. 81–35333, Petrooeum Technology Corporation FTC 685–3 well, FERC JD No. 81–35348
CAM–6.
Docket No. GP86–14–000, Champlin Petroleum Company
CAM–7.
Docket No. GP86–26–000, Sunshine Mining Company
CAM–8.
Docket No. GP86–9–000, Consolidated Gas Transmission Corporation
Docket No. GP82–31–000, Mid-Louisiana Gas Company
Docket No. GP82–41–000, Columbia Gas Transmission Corporation
CAM–9.
Docket No. RM85–1–000, Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol (ANR Pipeline Company)
CAM–10.
Docket No. RO86–9–000–Fuel Oil Supply and Terminaling,
CAM–11.
Docket No. RO85–23–000, West Texas Marketing Corporation, John T. Troland, David W. Ratliff and Kenneth Rogers
CAM–12.
Docket No. RO86–6–000, Erickson Refining Corporation
CAM–13.
Docket No. RO85–20–000, Benton Pruet d/b/a P&R Trading Company

Consent Gas Agenda

CAG–1.
Omitted
CAG–2.
Docket No. RP86–87–001, Mountain Fuel Resources, Inc.
GAG–3.
Omitted
CAG–4.
Omitted
CAG–5.
Omitted
CAG–6.
Docket No. RP86–105–001, ANR Pipeline Company
CAG–7.
Docket No. RP86–108–001, Columbia Gulf Transmission Company
Docket No. RP86–112–001, Columbia Gas Transmission Corporation
CAG–8.
Docket No. RP86–135–000, Caprock Pipeline Company
CAG–9.
Docket No. RP86–136–000, National Fuel Gas Supply Corporation
CAG–10.
Docket No. RP86–137–000, Florida Gas Transmission Company
CAG–11.
Docket No. RP86–102–001, Equitable Gas Company, a division of Equitable Resources, Inc.
CAG–12.
Docket No. RP86–85–001, Texas Gas Transmission Corporation
GAG–13.
Omitted
CAG–14.
Omitted
CAG–15.
Omitted
CAG–16.
Docket No. RP86–69–002, Mid Louisiana Gas Company
CAG–17.
Docket Nos. RP86–109–001, and RP86–52–004, Kentucky West Virginia Gas Company
CAG–18.
Docket Nos. TA86–2–15–000, 001 (PGA86–2 and IPR86–2) and RP86–138–000, Mid-Louisiana Gas Company
CAG–19.
Docket Nos. TA86–2–52–000 and 001, Western Gas Interstate Company
CAG–20.
Docket No. TA86–2–55–003, Mountain Fuel Resources, Inc.
CAG–21.
Docket Nos. TA86–4–16–000, and 001 (PGA86–4 and IPR86–2), National Fuel Gas Supply Corporation
CAG–22.
Docket Nos. TA86–4–18–000 and 001, Texas Gas Transmission Corporation
CAG–23.
Docket Nos. TA86–5–17–000 and 001, Texas Eastern Transmission Corporation
CAG–24.
Docket No. RP86–133–000, National Fuel Gas Supply Corporation
CAG–25.
Docket Nos. CP85–406–001 and 002, Carnegie Natural Gas Company
CAG–26.
Docket Nos. TA86–2–28–000 and TA85–1–28–000, Panhandle Eastern Pipe Line Company
CAG–27.

Docket No. ST81-260-008, Mustang Fuel Corporation
CAG-28.
Docket Nos. RP86-75-002 and 003, Northern Natural Gas Company, Division of Enron Corporation
CAG-29.
Docket No. RP86-106-002, Arkla Energy Resources
CAG-30.
Docket No. RP86-92-002, Northwest Pipeline Corporation
CAG-31.
Docket No. RP86-111-001, Transcontinental Gas Pipe Line Corporation
CAG-32.
Docket Nos. RP86-114-001, 002, RP86-63-002 and 003, Southern Natural Gas Company
CAG-33.
Docket No. RP82-51-006, Mid Louisiana Gas Company
CAG-34.
Docket No. TA86-5-29-006, Transcontinental Gas Pipe Line Corporation
CAG-35.
Omitted
CAG-36.
Docket No. RP85-149-009, East Tennessee Natural Gas Company
CAG-37.
Docket Nos. RP84-11-000, 001, 003 and RP85-155-000, Columbia Gas Transmission Corporation
CAG-38.
Docket No. CP85-57-007, Natural Gas Pipeline Company of America
CAG-39.
Docket Nos. TA86-1-40-000 and 001, Raton Gas Transmission Company
CAG-40.
Docket No. TA86-1-60-003, Locust Ridge Gas Company
CAG-41.
Docket No. TA86-2-35-003, West Texas Gas, Inc.
CAG-42.
Docket Nos. RP86-34-000 and 002, Western Transmission
CAG-43.
Docket Nos. ST83-130-000, ST86-571-000 and ST86-572-000, Sun Gas Transmission Company, Inc.
CAG-44.
Docket No. ST81-377-001, Consumers Power Company
CAG-45.
Docket Nos. CI64-26-018, and 019, Gulf Oil Corporation
CAG-46.
Docket Nos. CI85-270-001, and 002, Panhandle Eastern Pipe Line Company v. TXO Production Corporation, Essex Exploration, Inc. and Graham Exploration, Ltd.
CAG-47.
Docket Nos. CI86-371-000, and CI86-392-000, Southern Natural Gas Company
CAG-48.
Docket Nos. CI86-254-000, and CI86-265-000, Tenneco Oil Company, et al.
CAG-49.
Docket Nos. CI86-276-000, and CI86-283-000, Phillips Petroleum Company
CAG-50.
Docket No. CI86-147-000, Enstar Corporation
CAG-51.
Docket Nos. G-14227-000 and CI77-337-001, Union Texas Petroleum Corporation
CAG-52.
Docket No. RP86-14-016, Columbia Gulf Transmission Company
Docket No. RP86-15-016, Columbia Gas Transmission Corporation
CAG-53.
Docket No. CP86-301-001, Panhandle Eastern Pipe Line Company
CAG-54.
Docket No. CP85-718-001, Northwest Central Pipeline Corporation and Zenith Natural Gas Company
CAG-55.
Docket No. CP86-278-000, Panhandle Eastern Pipe Line Company
CAG-56.
Docket No. CP86-173-000, Western Gas Interstate Company
CAG-57.
Docket No. RP86-106-001, Arkla Energy Resources

I. Licensed Project Matters

P-1.
Project No. 2890-011, Kings River Conservation District
P-2.
Project No. 8042-001, Rubi Hydro Partners
P-3.
Project No. 9631-001, Robert Z. Walker and John N. Foster
P-4.
Project No. 5376-001, Boise Cascade Corporation

II. Electric Rate Matters

ER-1.
Docket No. ER86-272-001, Pacific Gas & Electric Company
ER-2.
Docket Nos. ER85-756-000, ER85-757-000 and ER85-762-000, Pacific Power & Light Company, an assumed business name of Pacificorp
Docket No. ER85-777-000, Utah Power and Light Company
Docket No. ER85-792-000, Idaho Power Company
ER-3.
Docket No. EF86-2041-001 U.S. Department of Energy—Bonneville Power Administration
ER-4.
Docket No. ER84-579-005, AEP Generating Company
ER-5.
Docket Nos. EL86-10-000 and ER84-579-006, Kentucky Power Company
ER-6.
Docket Nos. ER84-348-007 and 008, American Electric Power Service Corporation

Miscellaneous Agenda

M-1.
Reserved
M-2.
Reserved
M-3.
Docket Nos. RM83-3-8-001 through 010, ratemaking treatment of investment tax credits for Natural Gas Pipeline Companies
M-4.
Docket No. GP85-37-000, Commonwealth of Pennsylvania, Department of Environmental Resources, section 102 Determinations, Envirogas, Inc., Alvin Eliason #1 Well, FERC JD No. 80-21432, Richard Brunner #1 Well, FERC JD No. 80-21480, James Fiske #2 Well, FERC JD No. 80-22636, J. Wasielewski #1 Well, FERC JD No. 80-42810
M-5.
Docket No. GP85-38-000, State of New Mexico, section 108 NGPA Determination, Northwest Pipeline Corporation, San Juan No. 30-5 Unit No. 7 Well, FERC Nos. JD85-17663 and JD85-21919

I. Pipeline Rate Matters

RP-1.
Docket Nos. TA86-4-33-000 and 001, El Pasco Natural Gas Company
RP-2.
Docket Nos. TA82-2-9-000 and TA83-1-9-000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
RP-3.
Docket Nos. RP82-80-000 and CP82-542-000, ANR Pipeline Company
RP-4.
(A) Docket Nos. RP81-130-024 through 026, Transwestern Pipeline Company
(B) Docket No. RP83-113-017, Pacific Gas Transmission Company
Docket No. RP81-103-023, Transwestern Pipeline Company
RP-5.
Docket Nos. RP82-16-005 and 006, United Gas Pipe Line Company
RP-6.
Docket No. RP78-20-024, Columbia Gas Transmission Corporation

II. Producer Rate Matters

CI-1.
Docket No. CI80-151-001, Mitchell Energy Corporation
CI-2.
Docket No. CI85-513-003, Tenngasco Gas Supply Company, et al. v. Southland Royalty Company, et al.
CI-3.
Docket No. CI86-307-000, Sea Robin Pipeline Company
CI-4.
Docket No. CI86-168-000, Tenngasco Corporation and Tenngasco Exchange Corporation
CI-5.
Docket No. CI86-376-000, Arkla Exploration Company
Docket No. CI86-377-000, Arkla Energy Marketing Company
CI-6.
Docket No. CI64-921-001, Champlin Petroleum Company, Geo. Oil and Gas Company of Houston and Tenneco Oil Company Operator, et al.
Docket No. CI78-849-002, Amoco Production Company
Docket No. CS77-406-001, Robert Klabzuba
Docket No. CS72-753-001, Frank A. Schultz
Docket No. CI80-92-001, Geo. Oil and Gas Company of Houston

Pipeline Certificate Matters

CP-1.
Docket No. CP86-250-000, Ozark Gas Transmission System
CP-2.
Docket No. CP86-395-000, Northern Border Pipeline Company
CP-3.
Docket Nos. CP84-429-012, 015 and 016, Texas Eastern Transmission Corporation
Docket No. CP84-441-017, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. CP84-654-015, Algonquin Gas Transmission Company
Docket No. CP85-161-002, National Fuel Gas Supply Corporation
Docket No. CP85-190-003, et al., Transcontinental Gas Pipe Line Corporation
CP-4.
Omitted
CP-5.
Docket No. CP86-389-000, Transcontinental Gas Pipe Line Corporation

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-16823 Filed 7-23-86; 10:28 am]

BILLING CODE 6717-01-M

4

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, July 30, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposals regarding paperwork reduction relating to Regulation Z (Truth in Lending).

Discussion Agenda

2. Publication for comment of a proposed amendment to Regulation Z (Truth in Lending) to exempt certain refinancing transactions from the recission provisions.
3. Publication for comment of proposed amendments to Regulation E (Electronic Fund Transfers) regarding periodic statements.
4. Any items carried forward from a previously announced meeting.

Notes.—This meeting will be recorded for the benefit of those unable to attend. Cassetts will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-16821 Filed 7-23-86; 10:26 am]

BILLING CODE 6210-01-M

5

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Wednesday, July 30, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. 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 22, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-16822 Filed 7-23-86 10:26 am]

BILLING CODE 6210-01-M

6

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE: August 6-7, 1986.

PLACE: Omni Shoreham Hotel, Executive Room, 2500 Calvert Street, NW., Washington, DC 20008.

STATUS:

August 6, 1986, 9:00 a.m. to 12:00 noon—Closed
§ 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR Part 1703
August 6, 1:30 p.m. to 4:30 p.m.—Open
August 7, 10:00 a.m. to 5:00 p.m.—Open

MATTERS TO BE DISCUSSED: Selection and Announcement of NCLIS Executive Director.

Chairman's Report
Approval of April 1986 Minutes
Executive Director's Report
—FY 1986 Programs, Progress Report
—Administrative Matters
—FY 1987 Program Plans
Guest Speaker: Henriette Avram, Library of Congress, "Networking"
Committee Reports
—Bicentennial
—Budget and Finance
—Public Affairs
—1989 National Conference
FY 1987 Draft Budget Submittal
Old Business
New Business

CONTACT: Sarah G. Bishop, Deputy Director (202) 382-0840.

SUBMITTED: Jane D. McDuffie, Staff Assistant.

Jane D. McDuffie,

Staff Assistant.

July 22, 1986.

[FR Doc. 86-16845 Filed 7-23-86; 11:22 am]

BILLING CODE 7527-01-M

7

POSTAL SERVICE

(Board of Governors)

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, August 4, 1986, in Washington, DC, and at 8:30 a.m. on Tuesday, Austust 5, 1986, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraphs, the August 4 meeting is closed to public observation. The August 5 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

At its meeting on July 7, 1986, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheculed for August 4, 1986, to consider a filing with the Postal Rate Commission to increase the size standards for third-class carrier route mail (See 51 FR 25632, July 15, 1986.)

By telephone vote on July 22, 1986, the Members voted unanimously to add to the agenda for the closed session on August 4 the following: (1) Consideration of selection of a new Postmaster General and (2) procurement of MPLSMs (multi-position letter sorting

machines). With regard to the first item, the Board determined that pursuant to section 552b(c)(6) of Title 5, United States Code, and § 7.3(f) of Title 3, Code of Federal Regulations, the discussion of this item is exempt from the open meeting requirements of the Government in the Sunshine Act because it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. With regard to the second item, the Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, discussion of the matter is exempt from the open meeting requirements of the Government in the Sunshine Act because it is likely to disclose information, the premature disclosure of which would likely significantly frustrate implementation of a proposed procurement action.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel has certified that in his opinion the additional agenda items of the meeting to be closed may properly be closed to public observation pursuant to sections 552b(c)(6) and (9)(B) of Title 5, United States Code, and § 7.3(f) and (i) of Title 39, Code of Federal Regulations.

Agenda

Monday Session

August 4, 1986—1:00 p.m. (Closed

1. Personnel Matter.
2. Consideration of filing with the Postal Rate Commission to increase the size standards for third-class carrier route mail.
3. Capital Investment: MPSLM Procurement.

Tuesday Session

August 5, 1986—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, July 7–8, 1986.
2. Remarks of the Postmaster General.
3. Review of Communications Department Programs.
4. Board Administrative Matter.
5. Quarterly Report on Service Performance.
6. Update on Technology Planning Process.
7. Tentative Agenda for September 8–9, 1986, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 86-16863 Filed 7-23-86; 8:45 am]

BILLING CODE 7710-12-M

Federal Register

Friday
July 25, 1986

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Parts 970 and 971

Deep Seabed Mining; Commercial Recovery and Exploration Regulations; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 970 and 971

[Docket No. 50712-5112]

Deep Seabed Mining; Proposed Regulations for Commercial Recovery and Revision of Regulations for Exploration

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: Pub. L. 96-283, the Deep Seabed Hard Mineral Resources Act (the Act), authorizes the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to issue to eligible United States citizen applicants, licenses for exploration for and permits for the commercial recovery of deep seabed hard mineral resources. The Act also requires that NOAA issue regulations with respect to deep seabed mining licenses and permits.

This notice of proposed rulemaking is issued to provide interested persons an opportunity to comment on the proposed regulations for commercial recovery and revisions to Subparts I, J and K of the regulations for exploration. Interested persons are invited to submit written views.

DATES:

1. Comments should be received on or before October 23, 1986.

2. Public hearings concerning these regulations will be held as follows:

a. August 26, 1986—Washington, DC

b. September 9, 1986—San Francisco, California

c. September 11, 1986—Honolulu, Hawaii—Hilo, Hawaii

ADDRESSES: The public hearings will be held at the following locations at the indicated hour:

a. *Honolulu:* East-West Center, Keoni Auditorium, Jefferson Hall, University of Hawaii, 1777 East-West Road (2:00 p.m. and 7:00 p.m.)

Hilo: University of Hawaii at Hilo, Campus Center, Room 306-307 (7:00 p.m.)

b. *San Francisco*: Federal Office Building, 450 Golden Gate Avenue, Room 15018 (2:00 p.m.)

c. *Washington, DC:* Herbert C. Hoover Building, 14th and Constitution Avenue, Room 6802 (2:00 p.m.)

Submit comments, which should identify this notice, to: James P. Lawless, Chief, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Suite 704, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Nancy O'Neal Carter, Licensing Analyst or John W. Padan, Program Manager, Deep Seabed Mining (202) 673-5117, at the above address.

SUPPLEMENTARY INFORMATION: Pub. L. 96-283, the Deep Seabed Hard Mineral Resources Act (the Act, DSHMRA), authorizes the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to issue to eligible United States citizen applicants, licenses for exploration for the permits for the commercial recovery of deep seabed hard mineral resources. The Act also requires that NOAA issue regulations with respect to deep seabed mining licenses and permits.

During 1980 and 1981 NOAA engaged in its first rulemaking to implement the Act and issued regulations on September 15, 1981 pertaining to exploration by U.S. citizens for deep seabed hard mineral resources (15 CFR Part 970).

Although commercial recovery under the Act is not authorized to begin before January 1, 1988, NOAA has decided to proceed at this time with regulations governing commercial recovery of deep seabed mineral resources in order to allow U.S. consortia to proceed with necessary planning and related activities including data collection and securing financing for commercial recovery activities. NOAA realizes that applicants soon may be faced with the decision whether to commit significant new levels of resources to further technology development. In addition, other United States citizens may be considering the possibility of entering the field of deep seabed mining. In order to make these major financial decisions, these persons will need to understand the legal regime for commercial recovery under which U.S. citizens would operate.

NOAA also recognizes that deep seabed hard minerals may be important in meeting the long-range national interests of the United States. Thus it is appropriate to assure that U.S. citizens can continue with their orderly planning for the development of these resources. Further, early promulgation of these regulations provides potential permit applicants with early notice of the information required for permit evaluation and issuance, but which must be developed during the license phase.

NOAA recognizes that developments such as changes in technology, the availability of new environmental data and results of monitoring, and the potential future national need for manganese, may necessitate future changes in the regulations adopted pursuant to this rulemaking. Consequently, the regulations are designed to encourage the development of technology necessary to recover deep seabed manganese nodules by providing a clear regime now, for corporate planning purposes, while allowing for changes in regulations, if needed, and deferring detailed decisions on permit-specific terms, conditions and restrictions (TCRs) until the time of permit issuance. This two stage process will facilitate planning, by enabling planners to know now the general levels of efforts that will be required, and their approximate costs, without precluding the opportunity for future research results and improvements in state of the art to be reflected in the TCRs. The regulations also recognize the need for flexibility in order to promote the development of deep seabed mining techniques and systems in a manner compatible with the requirements of the Act and regulations.

NOAA published an Advance Notice of Proposed Rulemaking (ANPR) on commercial recovery regulations on December 28, 1982, 47 FR 57903, soliciting early participation by interested parties in the rulemaking. After receiving comments from the public, NOAA held workshops in June 1983 for Federal officials interested in manganese retention and in July 1983 on coordination of Federal responsibilities affecting onshore activities. NOAA produced an issue paper and held a public workshop on marine environmental issues in September 1983 to gather further input and technical expertise to assist in the development of these regulations. Another discussion paper on other deep seabed mining issues, taking into account comments received in response to the ANPR, was also circulated for public comment during the same period.

The purpose of this notice is to outline NOAA's proposed regulatory measures and to solicit comments on these possible approaches from those interested in deep seabed mining regulations. After evaluating comments on these proposed regulations, NOAA will issue a final rule.

Structure of the Regulations

The proposed regulations are structured to present procedures and requirements in the approximate chronological order in which they will be encountered in the application

process. The proposed regulations begin by setting out their underlying purpose and the basic legal premises established by the Act, as well as the definitions applicable to the rules. The steps that the applicant and NOAA will follow are set forth mostly in Subparts B through D while the more substantive discussion of major issues that arise during the course of issuing and operating under a permit are found primarily in Subparts E—G. Miscellaneous, procedural and enforcement provisions are in Subparts H—J.

Several provisions of the Act place similar requirements on applicants for either exploration licenses or commercial recovery permits. After review of the similarities and differences in information submission needs, NOAA has developed regulations which allow information provided in license applications to be supplemented in applying for a commercial recovery permit.

Non-Controversial Regulatory Provisions

The following discussion identifies regulatory provisions, required by the Act, which did not trigger comments of disagreement in response to the ANPR. In many cases these provisions are similar to those in the exploration regulations and have a similar basis and purpose.

Application requirements for both licenses and commercial recovery permits require a *statement of ownership* (§ 971.206) which demonstrates that the applicant is a U.S. citizen.

Vessels used in the pursuit of deep seabed mining activities under an exploration license must be documented with respect to *conformance with vessel safety standards* for either international or U.S. Coast Guard certification; however, no permittee may use any vessel for the commercial recovery of hard mineral resources unless the vessel is documented under U.S. law. (Sec. 102(4)(c)(3)). This is a difference which should be noted by permit applicants. In accordance with the Act, the proposed regulations also require both U.S. safety inspection and U.S. documentation of at least one vessel involved in the transportation of minerals from the minesite (§ 971.205).

As authorized under the Act, NOAA is levying a $100,000 *fee* for all permit applicants. Provisions for fee payment, the refund of excess monies, and the assessment of significant costs in excess of the administrative fee (§ 971.208) are the same as those implemented in the exploration license regulations.

The provisions for an annual report and for recordkeeping, public disclosure, relinquishment and surrender of permits, amendment to regulations, and computation of time are nearly identical to those promulgated under Part 970 of this title. The requirement for 25 copies of the confidential portion of an application has been deleted.

For the sake of clarity and brevity, Subparts H—J of the proposed commercial recovery regulations are made applicable to exploration licenses and licensees, as well as to commercial recovery permits and permittees. Accordingly, NOAA proposes to delete most of Subpart I and all of Subpart J and K from 15 CFR Part 970. The resulting changes in 15 CFR Part 970 are modest in scope and substance. One additional reason for submitting information to the Administrator was added [i.e., for evaluating effectiveness of license or permit TCRs, § 971.801(b)(2)]. The other changes made in the existing 15 CFR Part 970, Subparts J and K are for consistency with recently promulgated consolidated NOAA regulations relating to civil procedures and seizure and forfeiture procedures (15 CFR Part 904, Subparts D and F).

NOAA is also proposing that the same provisions as 15 CFR Part 970 concerning *freedom of the high seas* (§ 971.403), *international obligations of the U.S.* (§ 971.404), and *breach of international peace and security* (§ 971.405) be incorporated into the commercial recovery regulations.

Applications found to be complete and to conform with NOAA permit application requirements (§§ 971.201–209) will be reviewed and evaluated for *certification* according to the timeframes and procedures specified in Subpart C. Unlike the license application phase, an application for a commercial recovery permit is not subject to a formal finding of substantial and full compliance. NOAA will review a permit application preliminarily to verify that is complete, and then will coordinate its review and processing with requirements of other Federal agencies in order to maximize efficiency and minimize costs to the applicant (§ 971.402).

Generally, applicants will be required to submit only nonproprietary information with the application. However, where required data are of a confidential nature, an applicant may request *confidential handling by NOAA of specific data* (§ 971.802). NOAA will comply with all applicable statutes and regulations regarding the handling of confidential information.

General recordkeeping and reporting requirements (§ 971.801) are similar to those issued for exploration licenses; however, due to the need to monitor mining activities more closely, the volume of data collected will be more extensive. NOAA will use the information submitted in the reports and records as a means of determining the permittee's *diligence* (§ 971.418) in pursuing those activities specified in the commercial recovery plan.

At-sea processing has not been addressed in the proposed regulations. Due to technological limitations, it is doubtful that at-sea processing of recovered nodules will be undertaken during first generation mining. Although many of the proposed regulatory measures would still apply, NOAA recognizes that additional specific regulations may prove necessary with the development of at-sea processing technology. If at-sea processing appears imminent, NOAA will develop appropriate regulatory measures, as needed, along with a supplement to NOAA's Deep Seabed Mining Programmatic Environmental Impact Statement (September 1981).

Major Issues

The following discussion identifies major issues raised in the ANPR, which have triggered comments, and sets forth NOAA's proposed position on each:

Rights of Licensees to a Permit. Under section 102(b)(3) of the Act, the holder of an exploration license otherwise eligible under the requirements of the Act and implementing regulations, is entitled to a permit for commercial recovery from an area covered by its license. Comments have suggested that the issuance of a permit to a licensee should be "automatic," questioning the need for a licensee to be subject to an independent permit application and review procedure. However, since the Act imposes requirements for permit issuance and subsequent recovery operations, several of which differ from license requirements, the proposed regulations provide that issuance of a permit to a licensee is contingent upon a satisfactory application, and certification and issuance determinations, as described in Subparts B, C and D.

The priority of right established under an exploration license protects the interest of a licensee who has expended considerable funds in exploration of an area. The Act prohibits issuance of a permit for the same area to anyone other than the holder of a valid existing license (section 102(c)(1)(C)). The license, in essence, entitles the licensee to a permit for commercial recovery only in an area encompassed by the license. (Section 971.102). However, the caveat

attached to that entitlement makes it clear that a licensee is not exempt from the requirements which are prerequisites to permit issuance as well as those provisions governing the subsequent actions of a permittee.

Establishment of Priority of Right. As priority of right is only established through the licensing process, the regulations provide that a permittee must be the holder of a valid exploration license in order to receive a commercial recovery permit (§ 971.103). This sequential nature of the licensing and permitting processes is also dictated by the developmental state of deep seabed mining technology and the information required to prepare an application for commercial recovery. However, it is conceivable that once the industry matures and gains experience from activities undertaken during site-specific exploration, circumstances may evolve which might allow later entrants to capitalize on the information gained by previous explorers and lessen the need for further exploration of previously explored areas. In such cases there may be a need for a consolidated license-permit review in which permit applicants could meet necessary exploration license requirements to establish priority of right, and permit requirements, simultaneously. Consolidation of the two procedures at the present stage in the development of commercial recovery regulations would be premature. However, the regulations include a reserved section (§ 971.214) for potential later development.

Information Requirements. Information requirements for permit applicants (Subpart B) are more extensive than those for license applicants. In this way an applicant can document that adequate techological advancement and resource knowledge have been attained in the exploration phase, thus documenting the overall capability to support commerical recovery. NOAA recognizes that some of the information necessary to satisfy the criteria to obtain a permit may have been submitted previously by exploration licensees. Therefore, the review of permit applications for completeness pursuant to §§ 971.201–109, as well as substantive review of the application, will take into account information already submitted in a license application, if incorporated by reference by the permit applicant (§ 971.200).

Financial Responsibility. In order to certify a permit application pursuant to section 103(c)(1) of the Act, the Administrator must find that the "applicant will be financially responsible to meet all obligations which may be required to engage in the commercial recovery proposed in the application." This can be demonstrated in various ways, but ultimately NOAA must be able to relate the applicant's resources to its proposed expenditures.

NOAA reviewed the alternatives for what evidence of resources it should require from the applicant, its sponsor companies, or lenders to demonstrate financial responsibility. NOAA has determined that the financial magnitude and timing of onshore and offshore commercial recovery activities make it unreasonable to require a binding commitment of funding at the time of permit application. However, at a minimum an applicant should be able to demonstrate the probability of access to the necessary funding. The proposed regulations define the minimum information which must be included in the application in order to demonstrate access to funding for purposes of satisfying the financial responsibility requirement (§ 971.201).

Each application must describe how, from what source(s), and when funding commitments will be obtained. An applicant may demonstrate access to necessary funding internally or through external sources and then submit this information to NOAA to document its financial responsibility.

NOAA will also monitor changes in financial circumstances (e.g., failure to obtain financing, changes in consortium composition and financing), and thus requires reporting of changes in circumstances as part of the general reporting requirements of the commercial recovery regulations, pursuant to section 113 of the Act (§ 971.425).

Technology Capability. In order to certify a permit application pursuant to section 103(c)(2) of the Act, the Administrator must find that the "applicant will have the technological capability to engage in . . . commercial recovery." NOAA does not believe this provision requires the license-phase testing of a full scale mining system. Analysis of the performance of experimental systems, sub-systems, or analogous machinery, including a discussion of the reliability of equipment performance as well as extrapolation to commercial mining, could be substituted for license-phase testing.

The proposed regulations provide that an applicant describe its technological capability for each step in the mining process from nodule collection to disposal of processing wastes (§ 971.202). The description must include the rationale for extrapolating from test results to commercial mining, including such aspects as start-up time frames as well as production time anticipated to be lost through equipment failure.

Another aspect of technological capability is that the applicant will have personnel and support contractors who are properly qualified to recover, transport, and process deep seabed nodules, and to dispose properly of nodule wastes. The proposed regulations require documentation in the form of a functional, description of the positions, requisite qualifications, and information regarding the availability of persons meeting these qualifications.

NOAA also will monitor changes in technological capability (i.e., changes in technology, efficiency, environmental impact), and thus requires reporting of any changes in circumstances (§ 971.425) as part of the general reporting requirements of the commercial recovery regulations.

Determination of a Logical Mining Unit. Section 103 of the Act requires that an applicant's commercial recovery plan include a resource assessment and that the area applied for be a logical mining unit (LMU). The statute requires a permit applicant to select the size and location of the recovery site and offers guidance on how the size of the site should be established (section 103(a)(2)(E)). NOAA must approve the applicant's area unless the Administrator finds that (1) the applicant's selection is not a logical mining unit; or (2) the commercial recovery activities in the proposed site would result in a significant adverse effect on the quality of the environment which cannot be avoided by the imposition of reasonable restrictions.

The recovery methods and technology proposed in the recovery plan must be compatible with the physical characteristics of the area. Many options for recovery are available to the operator and, as these may be based on new and innovative techniques, NOAA is not restricting these by the imposition of regulations based exclusively on current technology.

Neither do the proposed regulations prescribe a particular methodology for documenting LMU selection. They do, however, denote those factors that must be discussed in order to justify the area applied for (§ 971.501).

Conservation of Resources. The Act in section 110 stresses "due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources" as two goals to be considered in developing TCRs for a permit. It further notes "national need" for hard mineral resources and several other factors to be taken into account in establishing TCRs. Within this framework, NOAA intends to encourage the wise use of the deep seabed manganese nodule resource to insure that future resource development is not improperly precluded by first generation mining (§ 971.502).

In exploring the options for applying the section 110 requirements, NOAA had proposed in the December 1982 ANPR three possible conservation measures: (1) Establishing mining patterns for harvesting nodules in order to enhance the opportunity for second generation mining; (2) establishing a nodule mining efficiency standard; and (3) requiring the rentention of manganese tailings resulting from processing techniques which do not produce a marketable managanese product.

Mining Patterns—Due to the infancy of deep seabed mining technologies, it would be premature for NOAA to establish strict mining patterns for conservation purposes. Furthermore, current environmental data do not justify NOAA's establishment of mining patterns for purposes of environmental protection.

NOAA has decided, as an alternative, to require permit applicants to include as part of the commercial recovery plan a discussion of how the proposed method of collecting nodules will conserve the resource in the sense of either collecting a large percentage of nodules in each area to be mined or by providing for the future opportunity for the commercial recovery of a reasonable portion of the remainder (§ 971.502(b)).

Submission of a mining strategy plan with the application should represent no additional burden for industry beyond what it will need for management of the project.

Mining Efficiency—Establishment of a prescribed minimum efficiency standard for mining for the purpose of conserving mineral resources would be premature due to the infancy of requisite technology. Meeting the requirements of section 110 of the Act for preventing waste and for conserving resources for future recovery does not necessitate the establishment of a recovery or overall efficiency standard. Exploitation of commercial quantities of hard mineral resources over the life of the permit should be sufficient indication of mining efficiency.

Conservation of Unprocessed Manganese—As the strategic importance of manganese was part of the rationale for passage of the DSHMRA, NOAA met with representatives of Federal agencies which have responsibilities relevant to the conservation of manganese to discuss preliminary policy alternatives for handling the issue. Ample existing manganese supplies, the present stategic stockpile, the prohibition of commercial recovery until 1988, the lack of necessary information on specific waste characteristics for technologies which may evolve and the potential uses of the waste materials call into question the need for regulations requiring the separation and stockpiling of manganese at present. Therefore, NOAA will continue to review the need to secure alternate sources of manganese, and to ensure the availability of potentially useful manganese wastes, and will develop a regulatory requirement later if a need for conservation measures becomes apparent.

In the interim, the proposed regulations (§ 971.502(c)) provide that the disposal of manganese-rich wastes be in a manner which will not render these wastes unavailable for future recovery if needed. The possibility of a waiver of this requirement exists, should the financial practicability of a proposed commercial recovery plan depend upon it, but the waiver would be subject to cancellation in the event of a national need for the manganese. No requirements for further processing of the wastes to achieve manganese separation over and above EPA waste disposal standards, or other conservation measures, are imposed. However, through the issuance of these proposed regulations permittees are put on notice that manganese conservation may be regulated in the future if such action proves warranted. NOAA would require permittees to report information on the location of the disposal site and on the composition and amount of manganese tailings retained, and would monitor any change in the need to conserve manganese. NOAA will refer this information to the agencies responsible for strategic materials for future use should it be in the national interest to institute conservation measures and recover discarded manganese.

Antitrust review

Section 103(d) of the Act provides that, whenever the Administrator receives any commercial recovery permit application, he shall transmit promptly a complete copy of such application to the Attorney General of the United States and the Federal Trade Commission (FTC), and that the Attorney General and FTC shall conduct such antitrust review of the application as they deem appropriate and shall, if they deem appropriate, advise the Administrator of the likely effect of the proposed issuance or transfer on competition, and may make any recommendations they deem advisable to avoid any action upon the application by the Administrator which would create or maintain a situation inconsistent with the antitrust laws. Any advice or recommendation by the Attorney General or FTC must be submitted within 90 days after receipt by them of the application.

In response to the ANPR, the Department of Justice (DOJ) and the FTC submitted suggestions for information which would provide sufficient basis for their antitrust reviews, should they choose to undertake such reviews.

There appear to be two approaches to the collection of this information. NOAA could rely on DOJ and FTC to exercise their independent authority to request the data from applicants should the agencies choose to undertake such reviews, and NOAA regulations could simply remind the applicant of the potential need to comply with this provision of the Act. In this case, NOAA would be prepared to advise a potential applicant informally what antitrust information the applicant should be prepared to provide to DOJ and FTC. Alternatively, NOAA could require applicants to automatically respond to DOJ and FTC requests for information in these regulations under Subpart B. To assist in the consideration of this subject, reviewers should take into account that antitrust information needs generally have been identified as follows:

(1) The identity of each parent, subsidiary, or affiliate of any entity that is a party to the joint venture, partnership, or other entity applying for the permit.

(2) A copy of each agreement among or between parties to the joint venture, partnership or other entity that is applying for the permit (or on whose behalf the application is being made), provided that said agreement relates to deep seabed hard mineral resource exploration or commercial recovery.

(3) The identity of each 5% direct or indirect ownership interest of any person identified in (1) above in mineral deposits, mines, or processing plants

containing or producing cobalt, copper, manganese, or nickel.

(4) For each person identified in (1) above that is engaged in the production or sale of cobalt, copper, manganese or nickel minerals or any metals processed from such minerals, (or other minerals or metals to be extracted or produced from deep seabed manganese nodules) state:

(i) Separately for the preceding two years, and separately for each such mineral or metal, the annual tonnage and dollar value A) produced or B) sold 1) in the United States and 2) outside the United States; and

(ii) Copies of the annual reports, balance sheets and income statements for the two preceding years.

NOAA solicits comments on this issue

NOAA Actions Relating to Onshore Activities. Although the Administrator of NOAA has no explicit authority for licensing or permitting onshore aspects of deep seabed mining, he does have related responsibilities in two respects: (1) Authority to allow processing at a land site outside the U.S.; and (2) protection of the environment within the framework of the National Environmental Policy Act (NEPA), responsibility for which NOAA interprets to include an assessment of onshore impacts of deep seabed mining projects. In an effort to avoid overlap or duplication of other agency authority, NOAA is proposing to limit its onshore responsibilities to serving as lead agency for the preparation of a consolidated environmental impact statement (NOAA is required to prepare an EIS prior to the issuance or transfer of each permit) and, upon the request of the applicant, to facilitating permit reviews by other agencies through coordination of program requirements (§ 971.605). In this way, NOAA would assist Federal and other permitting agencies in satisfying impact review requirements and facilitate onshore activities, while making the DSHMRA permit process as efficient as possible.

Applicants are encouraged to consult with NOAA early concerning the scope of environmental effects involved in, and the desirable extent of NOAA facilitation of, any related onshore permitting process. It may be appropriate to initiate this consultation process substantially in advance of filing an application, since the time involved for an onshore facility process is likely to be much longer than the time for NOAA processing of the mining permit application.

NOAA must prepare and issue an EIS for each permit application, as noted above. The EIS must address foreseeable direct and indirect effects on the human environment, including those related to nodule processing which results from permitted deep seabed mining activities, as well as offshore effects. Although a Programmatic EIS was completed, NOAA anticipates that information obtained as a result of exploration activities and testing will provide additional site- and technology-specific environmental data to supplement earlier NOAA work performed in the Deep Ocean Mining Environmental Study (DOMES).

A Collaborative Federal-State EIS Document. NOAA will seek to issue an EIS jointly with states proposed as potential sites for onshore facilities associated with the commercial recovery of deep seabed hard minerals. This process is encouraged by CEQ regulations which urge Federal agencies to prepare documents jointly with state agencies where possible. Although most local governments do not themselves operate under a NEPA-like statute, their concerns, including compliance with zoning and other local land use controls, often determine whether or not a project actually takes place in a particular location. Therefore, NOAA intends to include pertinent state and local considerations in the EIS.

If the applicant determines that its commercial recovery activities would affect land and water uses of the coastal zone of a state with an approved coastal zone management program, before NOAA issues the commercial recovery permits the state must concur with the applicant's certification that the activities, if permitted, would be consistent with the state's program. As not all states have laws requiring preparation and issuance of an EIS, NOAA's regulations provide flexibility to make use of any and all information in order to satisfy EIS and/or consistency responsibilities where applicable. Although in many instances the information requirements for consistency reviews parallel those needed to obtain state permits, NOAA intends only to collect data relevant to meeting EIS responsibilities for issuing the commercial recovery permit. This should not be construed as satisfying permit requirements which must be met separately for other Federal or state agencies.

Coordination and Consultation. Where possible, NOAA will coordinate its permit processing and review requirements with other Federal agencies in order to avoid duplication of procedures. NOAA anticipates coordination of its monitoring responsibilities for compliance with the commercial recovery permit with similar responsibilities of other Federal agencies. However, the regulations do not propose one-stop permitting for issuance of Federal, state, or local permits or delay of issuance of the mining permit until all other permits have been secured. The Act specifies schedules for the processing of permit applications, and NOAA expects to proceed expeditiously within the authority allowed in the Act for issuance of the commercial recovery permit.

Section 103 (d) and (e) of the Act mandates full consultation and coordination with other Federal agencies including the review and comment by relevant agencies on all applications before certification, issuance or transfer of a commercial recovery permit. Although there had been some discussion of whether to implement this coordination provision through the coordination of the issuance of all Federal permits required, NOAA believes it to be more efficient to process and issue the DSHMRA permit and attach a TCR stating that securing the deep seabed mining permit for activities described in the recovery plan and accompanying application does not eliminate the need to secure all other necessary Federal, state, and local permits. The TCR puts the permittee on notice that statutory and regulatory requirements other than those under the DSHMRA are not considered to be satisfied through the DSHMRA permit, even though relevant Federal agencies have reviewed and commented on satisfaction of their program area requirements through the DSHMRA review process. Notification to the applicant of its need to satisfy all relevant requirements supports the Federal agency coordination responsibilities under the DSHMRA, while not exceeding what is reasonable or authorized under the statute.

Processing Outside the U.S. Under section 102(c)(5) of the Act, if the processing of manganese nodules within the U.S is not economically viable, NOAA can authorize processing outside the U.S., but only with assurances that the processed minerals, to the extent of the permittee's ownership therein, will be returned to the U.S. for domestic use if the Administrator determines that the national interest so requires. The burden is on the applicant to demonstrate that processing at a site outside the United States is necessary for the economic viability of the project. The proposed regulations require applicants which seek to process nodules at a foreign location to submit a justification demonstrating that processing at a site

outside the United States is necessary for the economic viability of the project (§ 971.209). NOAA considered requiring the applicant to justify its foreign processing request by conducting comparative economic feasibility studies of several potential U.S. sites versus the proposed foreign site. However, NOAA concludes that such a requirement would involve a substantial commitment of time and money to conduct studies which may not be relevant to a particular economic viability determination (e.g., if general labor or another single general cost were the sole determining factor) or which may otherwise exceed the amount of information reasonably necessary to make the determination.

NOAA has instead proposed that the applicant analyze each factor essential to the applicant's conclusion that U.S. processing would not be economically viable. While this requirement might result in a comparative study of a foreign site with at least one U.S. site actively considered by the applicant, there is flexibility to conduct a different type of analysis in appropriate circumstances.

NOAA anticipates allowing those states which wish to be considered as potential domestic processing sites to file notices of such interest with NOAA's Ocean Minerals and Energy Division, and also anticipates receiving comments from those states willing to accommodate processing facilities during the public comment period, and/or the public hearing on the application and draft EIS (§ 971.212). If, during this time, the Administrator receives a sufficiently detailed alternative U.S. site proposal, or determines that the applicant's justification is insufficient, the regulations authorize the Administrator to require the applicant to supply additional relevant information (§ 971.209).

There would be, however, potential uncertainties in processing manganese nodules in foreign locations, such as the reliability of the potential host country's commitment to meet cost estimates (e.g., taxes), and the requirement to assure return of processed minerals to the U.S., if required by the Administrator in the national interest. NOAA recognizes that the "satisfactory assurances" required to be provided by the applicant in such cases may be limited, as these assurances would be contingent upon the cooperation and approval of the host country. NOAA would be prepared if circumstances dictated to assist the applicant, through the Department of State, the Federal Emergency Management Agency and the General Services Administration, in securing the appropriate agreements from foreign nations that they will comply with and enforce agreements pertinent to manganese nodule processing and return of resources recovered under the U.S. issued commercial recovery permit.

Foreign processing of manganese nodules will be subject to an environmental review similar to that for domestic locations. Executive Order 12114 requires the environmental review of major Federal actions abroad. This would apply to the permitting of a commercial recovery project which includes plans for foreign-based processing. NOAA Directive 02-10 incorporates Executive Order 12114 requirements into those used by NOAA components in satisfying the NEPA mandate. According to the Directive, the EIS for an international project should be as complete and detailed as possible, under the circumstances. Environmental impact statements for the issuance of commercial recovery permits which include a proposal to process nodules outside of the United States will conform with all appropriate NEPA and Executive Order 12114 requirements.

Marine Environmental Issues

Because this is a new industry, only preliminary information exists on the technology and consequent environmental effects to be expected from commercial-scale seabed mining. Compounding this information deficit is the lack of complete knowledge about the deep ocean environment where mining is to occur. NOAA, in response to requirements of Section 109 of the Act, is pursuing a research program concerning the deep seabed environment. Therefore, at this time NOAA is issuing regulations in the form of broad guidelines and general principles regarding environmental protection (§§ 971.204, 971.406, 971.419, 971.423-971.425, 971.429, and 971.600-971.605), in order to maintain flexibility in responding to further information that will be developed from environmental research, mining technology development, and monitoring of license phase mining tests (if tests occur). As necessary, the regulations can be revised in response to newly acquired information, and permit TCRs can be written or amended to provide more detailed guidance.

Most of the environmental impact concerns associated with deep seabed mining have been shown to have little probability of emerging as significant adverse impacts during commercial scale mining. This conclusion will continue to be verified prior to commercial mining by means of NOAA-sponsored research coupled with the monitoring of license phase mining tests (if any) and permit phase mining tests expected to precede commercial mining.

Top priority is being placed on the benthic environment as that is where adverse impacts will occur, although their significance cannot yet be defined. Accordingly, NOAA monitoring requirements emphasize the study of the benthic environment—its natural characteristics, mining impacts, and recovery of the benthos following mining—since this environment is expected to sustain impacts for a longer period of time than the water column and less is known about this environment. Shorter term study requirements focus on monitoring water column impacts.

The large volume of scientific information that will be acquired by industry over many years of commercial mining should contribute substantially to understanding the deep sea environment and its response to impacts. The proposed regulations require that data and samples be collected for regulatory purposes using standardized, scientifically accepted techniques, and be submitted to, and documented and archived at NOAA designated repositories to be available for scientific analysis and comparison at a future date. NOAA will provide for independent scientific review of environmental data to verify the quality of the collected data.

Baseline Data. A reasonable knowledge of the environmental characteristics of proposed permit areas is a necessity to assess "significant adverse effects" from deep seabed mining. (As called for in sections 103(a)(2)(C), 114, 106(c), and 105(a)(4) of the Act). Additionally section 103(a)(2)(C) specifies that a recovery plan must contain . . . "details of the area or areas proposed for commercial recovery . . . and such other information as is necessary and appropriate to carry out the provisions" of the Act. The Act also requires NOAA to issue TCRs specific to a minesite when "differing physical and environmental characteristics" require additional consideration in order to protect the quality of the environment (section 105(b)(1)).

Although few data exist in the public domain for potential sites outside of the DOMES area (the area which was the subject of NOAA's PEIS on deep seabed mining and within which all present NOAA license sites occur), considerable information is available in the DOMES area. The PEIS characteristics were augmented by data from the license

applicants and presented in the EIS on each license. Additional data may be collected voluntarily by licensees during the exploration cruises and certainly will be collected should license phase mining tests be proposed.

Licensees not planning to test prior to the permit phase would have a choice under the proposed rules. They could either collect additional baseline data prior to filing a permit application (which data would be incorporated into the permit EIS and considered in the development of monitoring TCRs) or they could rely on permit phase monitoring to validate the permit EIS characterization of their site(s) based on other existing data [§ 971.602(a)]. The former choice would tend to reduce the chance of unusual environmental conditions being detected during commercial mining.

Monitoring. The Act requires that the licensee or permittee conduct a monitoring program to detect environmental effects from seabed mining activities according to guidelines issued by the Administrator of NOAA (section 114(3)). The primary purpose of such monitoring is to ensure the early and accurate detection of significant adverse impacts on the environment caused by commercial recovery activities. As noted above, an important secondary purpose of monitoring is to validate the EIS characterization of the permit site.

Because insufficient environmental data were developed from test mining prior to the Act, NOAA is requiring that a monitoring program (§ 971.602) which addresses concerns in the PEIS and permits EIS to be implemented during any testing that may be proposed for the early phase of permit activity (§ 971.602(g)). Should sufficient test mining occur under a license, permit monitoring requirements may be reduced.

The results from test mining should give a much better indication of the short-term, near-field environmental effects to be expected from commercial-scale mining. However, monitoring of full scale mining is required by Section 114 of the Act to be conducted even if test monitoring shows no problems. The purposes of this monitoring are to verify that effects of scaling up equipment or duration of operations agree with predictions of short-term, near field effects that were based on small-scale or limited duration equipment tests and to test hypotheses of long-term, far-field effects. The existence and magnitude of long-term, far-field effects, if detected, cannot be addressed adequately until the initiation of full-scale mining. A permittee may be expected to monitor a limited distance beyond its minesite boundaries [§ 971.602(d)] should significant effects be detectable at the boundaries of a permit area (e.g., plume effects from mining at the periphery of a claim). The permittee will be required to monitor affected areas over a long enough time period so that an evaluation can be made of (1) the time of recovery, (2) the pattern of recovery, and (3) secondary effects, if any, on other components of the ecosystem [§ 971.602(b)].

Monitoring requirements will be more intensive during the early years of commercial-scale production, but are likely to be diminished as data are collected and analyzed, and more effective monitoring schemes are developed. Monitoring will, however, be required throughout the term of the permit.

The proposed regulations require submission of a monitoring plan at the time of permit application [§ 971.203(b)(5)]. Because, compared to an exploration license application, the commercial recovery permit application would include more details on the technology, and, in some cases, also reflect test mining conducted under a license, NOAA expects that a more detailed plan will be submitted with the permit application than submitted for a license. NOAA's Technical Guidance Document might be useful to applicants, both in the preparation of monitoring plans and in describing proposed mining systems, but adherence is not required. Rather, specific environmental parameters are required to be addressed in the plan [§ 971.602(c)] but the methods of examination would be up to the applicants, within the framework of scientific acceptability.

Because test mining or commercial recovery will probably not begin immediately upon permit issuance, it is possible for the monitoring plan to be fine-tuned prior to actual field work [§ 971.602(f)]. Both the monitoring plan submitted with the application and subsequent changes to the plan, once approved by NOAA, will be incorporated into the permittee's TCRs [§ 971.602(f)].

Significant Adverse Effects. The determination of "significant adverse effects" from seabed mining activities could trigger NOAA action to deny a permit, or to restrict or alter mining activities to mitigate the adverse effects. Because of the lack at this time of specific environmental information from the minesite and longer duration test mining, the regulations do not define "significant adverse effects". This determination will be made on a case-by-case basis. However, the regulations narrow the scope of the inquiry by indicating those activities which are not considered to have a significant adverse effect, and those activities with potential for "significant adverse effect" [§ 971.601(e)]. Even if adverse environmental effects are attributable to seabed mining, but are of short duration and local scale, with no apparent food chain effects, NOAA probably would not consider these to be "significant adverse effects" (e.g., temporary decrease in phytoplankton productivity as observed during test mining). As commercial-scale mining becomes imminent and more data become available, NOAA hopes to be able to clarify what types of effects, if any, may constitute "significant adverse" environmental effects.

Mitigation. Because NOAA's monitoring of pre-license phase mining tests demonstrated no significant adverse effect, as discussed in the PEIS, NOAA believes it to be inappropriate, at this time, to require development of plans (e.g., subsurface discharge) to mitigate adverse effects which appear to have a low probability of becoming significant. However, since mitigation is usually technology or methodology associated, it is expected that industry will develop measures during technology development for technial purposes that will have the added benefit of minimizing environmental impact, (e.g., by minimizing the depth of cut of the collector and the amount of sediment in the surface discharge) and can demonstrate efforts to that end [§ 971.603(a) and (b)]. Therefore, all permit applicants are required to provide a brief description of the selected technologies, including a discussion of those characteristics of the proposed mining system relevant to collector contact, benthic discharge, and surface discharge [§ 971.203(b)(4)]. The proposed regulations require the applicant to report all changes in technology or methodology in the annual report [§§ 971.413(e) and (f), 971.425, 971.426 and 971.801(b)] and to submit requested changes with environmental implications to NOAA for approval prior to their implementation [§§ 971.413(f) and 971.603(b)(1)].

NOAA will continue to assess the results of monitoring and research and will develop and evaluate possible methods of mitigation, as appropriate. Should the need arise, the Administrator, as authorized in the Act, could issue an emergency order to suspend immediately a permit or activities under a permit if necessary to prevent a significant adverse effect on the environment [§ 971.417(h)(2)].

Role of Federal Observers. The Act authorizes NOAA at its discretion to place observers onboard mining vessels (Sec. 114 (1)) to assess the effectiveness of the TCRs; they also may be used to report failure to comply with TCRs. The proposed regulations would allow NOAA to exercise its option to place Federal observers onboard mining ships to observe operations and, when appropriate, collect additional data to improve estimates of environmental effects, test new or alternative methodologies or equipment for monitoring, or evaluate possible mitigation techniques [§ 971.602(i)]. The purpose of such data collections would be to evaluate the effectiveness of TCRs, (which will generally be uniform for all permittees), in protecting the environment, in meeting other general program objectives and for cost-effectiveness. NOAA recognizes that such activities must be closely coordinated with those of the mining vessel in order to avoid or minimize interference with equipment tests or mining.

The regulations propose that the permittee provide temporary accommodations and food for the observer. However at this time NOAA does not proposes to charge a permittee for other costs of observer placement because the activities of observers during the early years of mining operations under a commercial recovery permit will primarily benefit the general public and the industry as a whole (including unidentified potential members) rather than the individual permittee on whose vessel the observer is placed.

In the further should NOAA shift the emphasis of the observer program toward assessing individual compliance with a permit requirement, thereby conferring a special benefit to a particular permittee, NOAA may exercise its discretion (pursuant to 31 U.S.C. 9701) to charge a permittee for all or part of the costs related to placing observers aboard mining vessels.

In the meantime as operations under a commercial recovery permit are not scheduled to commence for a number of years, NOAA would not have sufficient information on which to base a reasonable fee for observers on U.S. flag ships engaged in deep seabed mining.

Technology Requirements. The Act specifies that the Administrator of NOAA must require in permits the use of the best available technologies (BAT) to assure the protection of health, safety, and the environment wherever mining activities would have a significant effect on safety, health or the environment (section 109(b)). This requirement, however, does not apply if "the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies."

Inasmuch as the PEIS concluded that significant effects on safety, health or environment have not been detected during test mining, and the infancy of the ocean mining industry makes the specification of best available technologies premature at best, NOAA concludes it is inappropriate at this time to require use of best available technologies (§ 971.603). As better information becomes available concerning technological alternatives, NOAA will reassess the conclusion. Should NOAA determine that specific BAT provisions are required, they will be incorporated into the permittee's TCRs. However, NOAA expects that a permittee will use those technologies and practices that will tend to minimize adverse environmental effects.

In those instances where technological approaches are developed with varying consequences to the environment, NOAA may either issue recommendations that a permittee consider improving certain aspects of its operations or issue guidelines for further systems development. These guidelines, however, likely would involve performance standards and would not prescribe a particular technology or methodology to be employed. Although NOAA has not specified a "BAT" at this time, this does not suggest that at some future time technological requirements will not be established.

NOAA does not anticipate establishing additional standards or requirements for technologies affecting safety and health, as the requirements of the laws administered by the United States Coast Guard combined with NOAA's responsibilities for the consideration of adverse environmental effects appear sufficient for meeting the intent of this provision in the Act.

Although activities ancillary to deep seabed mining will have onshore effects, NOAA has not established a separate BAT standard for onshore activities, and will defer to the regulatory authority of EPA, other Federal agencies, and the state and local governments in these areas.

Technology Modification. Because one of the roles of NOAA is to facilitate the development of this new industry, NOAA does not wish to place undue burdens on permittees by requiring notification of all technological changes prior to implementation. Accordingly, the regulations provide that permit TCRs include the requirement for permittees to include in their annual report technological or operational modifications [§§ 971.413 (e) and (f), 971.425, 971.426 and 971.801(b)], and for them to submit to NOAA for approval prior to implementation those technology or methodology changes that have environmental implications [§§ 971.413(f) and 971.603(b)(1)].

Contingency Measures. NOAA has determined that there is no need for environmental contingency measures, since it is highly unlikely that operational failures would result in significant adverse environmental effects (e.g., breakage in pipe string resulting in temporary "nodule spill" (PEIS, 1981)). Any effect would be expected to be local, of short duration, and temporary in nature.

Stable Reference Areas. Section 109(f) of the Act requires the Administrator of NOAA to negotiate with other mining nations to establish areas of the ocean in which no mining will occur to serve as reference areas against which mining impacts can be evaluated and to insure a representative and stable biota of the deep seabed. Although NOAA cannot fully implement stable reference areas at this time because the Act precludes their being established unilaterally, NOAA will designate areas within minesites as impact reference areas (IRAs) which would be intensively studied both before and after mining as part of the permittee's monitoring plan (§ 971.602). The number of IRAs within a permit area could vary depending on the environmental heterogeneity of the area. NOAA will select the areas to be designated as impact areas at the time of permit issuance in consultation with the affected applicant to minimize interference with its minesite exploitation strategy.

NOAA intends to pursue the potential designation of preservation reference areas (PRAs) away from potential minesites in order to ensure the preservation of a "representative and stable biota of the deep seabed." Because such areas are to represent the areas to be mined and detailed environmental data are not yet available, NOAA is unable to state the number and size of such potential areas, until additional information is provided through research. NOAA will identify and propose the PRAs at the time of permit issuance, but will not formally designate them unless there is agreement with other mining nations.

Changes to Permits and/or Terms, Conditions and Restrictions

A permittee may file a formal objection to the TCRs within 60 days of receipt of a notice of issuance or

transfer of a permit (§ 971.411). Within 90 days of receiving a formal objection to the TCRs, the Administrator must act on the objection and publish a notice of his decision in the **Federal Register**, as well as provide his written decision to the permittee. If the permittee can demonstrate that a dispute still exists on a material issue of fact, the Administrator must provide for a formal hearing. If the permittee still objects to the TCRs after the formal hearing, the objection is subject to the judicial review process as provided in Chapter 7 of Title 5, United States Code.

At anytime during the duration of a permit, which is normally twenty years but which can be extended (§ 971.415), the Administrator may modify the TCRs in a permit for the following reasons: (1) To avoid unreasonable interference with the interests of other nations in the exercise of the freedom of the high seas; (2) to protect the quality of the environment or to promote the safety of life and property at sea; (3) to avoid a conflict with any international obligation of the United States; and (4) to avoid any situation which may reasonably be expected to lead to armed conflict (§ 971.414). In recognition of the fact that changes in circumstances encountered, and in information or technology developed, by a permittee during the life of the permit may require a revision of the permit itself, or of the commercial recovery plan associated with it, the regulations (§ 971.413) provide for the submission of an application for such revisions by a permittee.

In the cases of both a modification of a TCR (at NOAA's initiative) and the revision of a permit or recovery plan (at the permittee's initiative) the procedures for processing the change are essentially the same but they do differ, based on the degree or extent of the change. Basically, there are three degrees of change: significant, major and minor (§ 971.412). A proposed change is considered significant and must follow the full application procedures, including a public hearing, if it would result in: (1) An increase of more than five percent in the size of the commercial recovery area; and/or (2) a change in the location of five percent or more of the commercial recovery area.

A proposed modification of a TCR is considered to be a major change and can be implemented by the Administrator after a notice thereof is published in the **Federal Register**, followed by a 60-day comment period, whenever the proposed modification does not meet the criteria for a significant change but does raise questions as to the sufficiency of the TCR to accomplish its intended purpose. This provision is similar in nature to that in the exploration regulations and has a similar basis and purpose.

A proposed revision to a permit or recovery plan constitutes a major change and can be acted upon by the Administrator after a notice thereof is published in the **Federal Register**, with a 60-day opportunity for public comment, when the revision would not meet the criteria for a significant change, but would raise a question as to: the applicant's ability to meet the requirements for certifying the original application or for issuing or transferring the permit; the sufficiency of the original TCRs to accomplish their intended purpose; or the antitrust characteristics of the permittee.

If a proposed TCR modification or a proposed permit or recovery plan revision is not considered to be either a significant or major change, it may be approved by the Administrator with only a written finding that the change will comply with the requirements of the Act and its implementing regulations.

Classification Under Executive Order 12291

The NOAA Administrator considers these regulations to be major with respect to the criteria of Executive Order 12291 (E.O. 12291) of February 17, 1981, because they will foster and govern development of the United States deep seabed mining industry. As explained on page 7, several provisions of the Act require identical or nearly identical responses in each of two phases of deep seabed mining activity (exploration and commercial recovery). As a result, NOAA is consolidating these portions of the regulations. Accordingly, these proposed regulations will supercede Subparts I, J, and K of 15 CFR Part 970. NOAA has prepared and transmitted to the Office of Management and Budget a draft regulatory impact analysis as specified by section 3 of E.O. 12291. The Administrator of NOAA has determined that these draft rules are within the authority delegated by law and consistent with Congressional intent. The rules are authorized by Section 308 of the Act.

Regulatory Impact Analysis

NOAA has prepared a draft regulatory impact analysis on these regulations. This analysis, which examines the potential impact of the proposed regulations, is available to all interested parties. The analysis examines the various alternatives NOAA considered as it addressed the major issues in the regulations, including alternatives advocated by interest groups; considers benefit and cost implications of the alternatives; and explains NOAA's reasons for making the choices reflected in these regulations. The analysis includes a draft regulatory flexibility analysis in compliance with the Regulatory Flexibility Act, Pub. L. 96–354.

Summary of Analysis Related to Regulatory Flexibility

Because of the large scale and costs of deep seabed mining operations, the primary involvement of small business concerns in this industry is expected to be as contractors or subcontractors, rather than as sole owners or operators. Only one license, obtained by the overall operator, is required. The general regulatory approach selected by NOAA for these regulations was designed to provide the greatest flexibility for, and to minimize any adverse economic impact on, any entity—large or small—which may be involved in deep seabed mining development. The regulations do not impose any reporting, recordkeeping, or other compliance requirements on small governmental jurisdictions or small organizations. Copies of the draft regulatory impact analysis, which contains an analysis related to regulatory flexibility, may be obtained by writing to NOAA, Chief, Ocean Minerals and Energy Division, at the address specified in the ADDRESSES section of this rulemaking.

Paperwork Reduction Act, Public Law 96–511

Pursuant to the requirements of the Paperwork Reduction Act NOAA has evaluated the paperwork requirements incurred through compliance with the regulations proposed for the issuance and maintenance of commercial recovery permits. The paperwork resulting from most of the regulatory provisions, especially those dealing with the application process, consists largely of information generated by industry in the pursuit of financial assistance and general management, and entails little or no additional paperwork than would otherwise be necessary in conducting deep seabed operations. The balance of paperwork results from environmental monitoring which will be the direct result of implementation of the Act through regulatory measures. The data gathered are only those necessary for compliance with the statutory mandate.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget, OMB

No. 0648–0170. Comments on the information collection requirements of this rule should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Commerce, the National Oceanic and Atmospheric Administration; with a copy to James P. Lawless at the address specified in the ADDRESSES section of this rulemaking.

Environmental Assessment

Pursuant to section 109(c) of the Act and the National Environmental Policy Act of 1969, NOAA has prepared a final programmatic environmental impact statement (PEIS) assessing the environmental impacts of commercial recovery in the area of the oceans in which such activities by any United States citizen will likely first occur under the authority of the Act. The PEIS was filed with the Environmental Protection Agency in September 1981. Copies may be obtained by writing NOAA, Chief, Ocean Minerals and Energy Division, at the address specified in the ADDRESSES section of this rulemaking. NOAA has also prepared an environmental assessment (EA) which updates the PEIS and which confirms a finding of no significant impact on the quality of the human environment from the promulgation of these regulations. The EA is available at the above location for review upon request.

List of Subjects in 15 CFR Parts 970 and 971

Administrative practice and procedures, Marine resources, Marine safety, Reporting requirements, Seabed mining.

Accordingly, it is proposed to add new Part 971 and amend Part 970 to 15 CFR Chapter IX, Subchapter D, as follows.

Dated: July 21, 1986.

J. Curtis Mack II,

Deputy Administrator.

PART 971—DEEP SEABED MINING REGULATIONS FOR COMMERCIAL RECOVERY PERMITS

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Issuance/Transfer; Modification/Revision; Suspension/Revocation

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Authority: 30 U.S.C. 1401 *et seq.*

Subpart A—General

§ 971.100 Purpose.

The purpose of this part is to implement the responsibilities and authorities of the Administrator of the National Oceanic and Atmospheric Administration (NOAA) pursuant to Pub. L. 96–283, the Deep Seabed Hard Mineral Resources Act (the Act), to issue to eligible United States citizens permits for the commercial recovery of deep seabed hard minerals.

§ 971.101 Definitions.

For purposes of this part, the term

(a) "Act" means the Deep Seabed Hard Mineral Resources Act (Pub. L. 96–283; 94 Stat. 553; 30 U.S.C. 1401 *et seq.*);

(b) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration, or the Administrator's designee;

(c) "Applicant" means an applicant for a commercial recovery permit pursuant to the Act and this part; as used in subparts H, I and J of this part, "applicant" also means an applicant for an exploration license pursuant to the Act and Part 970 of the title.

(d) "Commercial recovery" means—

(1) Any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary purpose of marketing or commercially using such resource to earn a net profit, whether or not such net profit is actually earned;

(2) If such recovered hard mineral resource will be processed at sea, such processing; and

(3) If the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(e) "Continental Shelf" means—

(1) The seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(2) The seabed and subsoil of similar submarine areas adjacent to the coast of islands;

(f) "Controlling interest", for purposes of paragraph (q)(3) of this section, means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(g) "Deep seabed" means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside—

(1) The Continental Shelf of any nation; and

(2) Any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States;

(h) "Exploration" means—

(1) Any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of—

(i) The nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) The environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(2) The taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

(i) "Hard mineral resource" means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals, at least one of which is manganese, nickel, cobalt, or copper;

(j) "Licensee" means the holder of a license issued under NOAA regulations to engage in exploration;

(k) "NOAA" means the National Oceanic and Atmospheric Administration;

(l) "Permittee" means the holder of a permit issued or transferred under this part to engage in commercial recovery;

(m) "Person" means any United States citizen, any individual, and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(n) "Reciprocating state" means any foreign nation designated as such by the Administrator under section 118 of the Act;

(o) "Recovery plan" or "commercial recovery plan" means the plan submitted by an applicant for a commercial recovery permit pursuant to § 971.203;

(p) "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(q) "United States citizen" means—

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(3) Any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in paragraph (q)(1) or (q)(2).

§ 971.102 Nature of permits.

(a) A permit issued under this part authorizes the holder thereof to engage in commercial recovery within a specific portion of the sea floor consistent with the provision of the Act and this part and consistent with the specific terms, conditions, and restrictions (TCRs) applied to the permit by the Administrator.

(b) A permit issued under this part is exclusive with respect to the holder thereof as against any other United States citizen or any citizen, national or governmental agency of, or any legal entity organized or existing under the laws of, any reciprocating state.

(c) A valid existing license under 15 CFR Part 970 will entitle the holder, if otherwise eligible under the provisions of the Act and implementing regulations, to a permit for commercial recovery from an area selected from within the license area. Such a permit will recognize the right of the holder to recover hard mineral resources, and to own, transport, use, and sell hard mineral resources recovered under the permit and in accordance with the requirements of the Act and this part.

§ 971.103 Prohibited activities and restrictions.

(a) *Prohibited activities and exceptions.*

(1) No United States citizen may engage in any commercial recovery unless authorized to do so under—

(i) A permit issued pursuant to the Act and implementing regulations; or

(ii) A license, permit or equivalent authorization issued by a reciprocating state.

(2) The prohibitions of paragraph (a)(1) of this section do not apply to any of the following activities:

(i) Scientific research, including that concerning hard mineral resources;

(ii) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the seabed or significantly affect the environment;

(iii) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design, construction or testing is conducted onshore, or does not involve the recovery of any but incidental hard mineral resources;

(iv) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under the Act and implementing regulations, a license or permit or equivalent authorization

issued by a reciprocating state, or any relevant international agreement; and

(v) Activities, other than exploration or commercial recovery activities, of the Federal Government.

(3) No United States citizen may interfere or participate in interference with any activity conducted by any permittee which is authorized to be undertaken under a permit issued by the Administrator to a permittee under the Act or with any activity conducted by the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the commercial recovery of hard mineral resources. For purposes of this section, interference includes physical interference with activities authorized by the Act, this part, and a license or permit issued pursuant thereto; the filling of a specious claim in the United States or any other nation; and any other activity designed to harass, or which has the effect of harassing, persons conducting deep seabed mining activities authorized by law. Interference does not include the exercise of any superior rights granted to United States citizens by the Constitution of the United States, or any Federal or State law, treaty, or agreement or regulation promulgated pursuant thereto.

(4) United States citizens shall exercise their rights on the high seas with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

(b) *Restrictions on issuance of permits.* The Administrator will not issue any permit—

(1) After the date on which any relevant international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of the permit is not inconsistent with that agreement;

(2) The recovery plan of which, submitted pursuant to the Act and implementing regulations, would apply to an area to which applies, or would conflict with:

(i) Any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under 15 CFR Part 970 or this part;

(ii) Any exploration plan or recovery plan associated with any existing license or permit; or

(iii) An equivalent authorization which has been issued, or for which fromal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to the Act and implementing regulations;

(3) Authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such permit is issued to a person other than the licensee for such area;

(4) Which authorizes commercial recovery to commence before January 1, 1988;

(5) The recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for that permit:

(i) The applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant; or

(ii) A permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 106 of the Act;

(6) Or approve the transfer of a permit, except to a United States citizen; or

(7) That would authorize commercial recovery activities in an area other than for which the applicant therefor holds a vaild exploration license under part 970 of this title.

§ 971.104 OMB control number.

The information collection requirements and reporting and recordkeeping requirements contained in this part were approved by the Office of Management and Budget under control number 0648–0170.

Subpart B—Applications

§ 971.200 General.

(a) *Who may apply; how.* Any United States citizen holding a valid exploration license may apply to the Administrator for issuance of a commercial recovery permit for all or part of the area to which the license applies. Any holder of a commercial recovery permit may apply to the Administrator for transfer of the permit. Applications must be submitted in the form and manner drescribed in this subpart.

(b) *Place, form and copies.* An application for the issuance or transfer of a commercial recovery permit must be in writing, verified and signed by an authorized officer or other authorized representative of the applicant. The application and 25 copies thereof must be submitted to: Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, Suite 704, 1825 Connecticut Avenue, NW., Washington, DC 20235.

The Administrator may waive in whole or in part, at his discretion, the requirement that 25 copies of an application be filed with NOAA.

(c) *General contents.* The application must contain a proposed commercial recovery plan and the financial, technical, enironmental and other information specified in this part, which in total are necessary for the Administrator to make the determinations required by the Act and this part.

(d) *Identification of requirements.* Each portion of the application should identify the requirements of this part to which it responds.

(e) *Information previously submitted in connection with an exploration license application.* Information previously submitted as part of an exploration license application may be incorporated in the commercial recovery permit application by reference.

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in its application not be subject to public disclosure, it must so request, at the time of submitting the information, pursuant to § 971.802 which will govern disposition of the request.

(g) *Pre-application consultation.* The Administrator will make NOAA staff available to potential applicants for pre-application consultations on how to respond to the provisions of this part. In appropriate circumstances, the Administrator will provide written confirmation to the applicant of oral guidance resulting from such consultations.

Contents

§ 971.201 Statement of financial resources.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator pursuant to § 971.301 that, upon issuance or transfer of the permit, the applicant will have access to the financial resources to carry out, in accordance with this part, the commercial recovery program set forth in the applicant's commercial recovery plan.

(b) *Specific.* In particular, the information on financial resources must include the sources and timing of funds to meet the applicant's scheduled expenditures in the recovery plan and the applicant's reason to believe the funds will be forthcoming. These sources may include cash flow, reserves, and outside funding.

§ 971.202 Statement of technological experience and capabilities.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator pursuant to § 971.301 that, upon issuance or transfer of the permit, the applicant will have the technological capability to carry out, in accordance with the regulations contained in this part, the commercial recovery program set out in the applicant's commercial recovery plan.

(b) *Specific.* In particular, the information submitted pursuant to this section must describe in detail the equipment, knowledge, and skills the applicant possesses, or to which it can demonstrate access. The information must include:

(1) A description of the technology or the equipment and methods to be used by the applicant in carrying out each step in the mining process, including nodule collection, retrieval, transfer to ship, environmental monitoring, transport to processing facilities, nodule processing, waste disposal and compliance with applicable water quality standards. The description must include:

(i) An analysis of the performance of experimental systems, sub-systems, or analogous machinery;

(ii) The rationale for extrapolating from test results to commercial mining. The more test data offered with the application the less analysis will be expected; and

(iii) Anticipated system reliability within the context of anticipated production time lost through equipment failure.

(2) A functional description of the positions, qualifications, experience, and availability of qualified persons on whom the applicant will rely to operate its equipment.

§ 971.203 Commercial recovery plan.

(a) *General.* The application must include a proposed commercial recovery plan which describes the applicant's projected commercial recovery activities for the twenty year period to be covered by the proposed permit. The plan must be more detailed for that portion of the permit term leading up to the initiation of commercial recovery. The plan must include sufficient information for the Administrator, pursuant to this part, to make the necessary determinations pertaining to the certification and issuance or transfer of a permit and to the development and enforcement of the TCRs for a permit.

(b) *Specific.* The plan must include:

(1) A description of all activities, in each step of nodule mining and processing, proposed to be carried out during the period of the permit (see § 971.202(b)(1));

(2) A description of the characteristics of the area or areas proposed and the sequence of their commercial recovery which meets requirements for resource assessment (§ 971.501), logical mining unit (§ 971.501), diligence (§ 971.503), and conservation of resources pursuant to Subpart E (especially § 971.502);

(3) The intended commercial recovery schedule, including expenditures and financing, which must be responsive to the diligence requirements in § 971.503. The schedule should address, to the extent foreseeable, the approximate projected schedule for equipment testing, construction of facilities (for mining, transporting, and processing nodules as well as disposing of wastes), and recovery of nodules and production of metals in commercial quantities;

(4) A description of the methods and technology to be used for the activities in paragraphs (b)(1) and (b)(3) of this section. The description must include those charactertistics of the proposed mining system relevant to collector contact, benthic discharge, and surface discharge. The plan should discuss how results of license phase test mining have been applied if relevant. With respect to waste disposal, the plan must discuss methods to be used for disposal of wastes from processed nodules, the areas for disposal, and identification of any toxic substances in wastes; and

(5) Environmental safeguards and monitoring systems, which must take into account requirements under Subpart F of this part and, for monitoring, § 971.424.

§ 971.204 Environmental and use conflict analysis.

(a) *Environmental information submission.* The application must be supported by sufficient marine environmental information for the Administrator to prepare an environmental impact statement (EIS) on the proposed mining activities, and to determine the appropriate permit TCRs based on environmental characteristics of the requested minesite.

(b) In preparing the EIS, the Administrator will attempt to characterize the environment in such a way as to provide a basis for the early warning (through monitoring) of significant adverse effects triggered by commercial mining (see Subpart F). In compiling these data, the Administrator will utilize existing information including the relevant license EIS, additional exploration data acquired by the applicant, and other data in the public domain.

(c) The application must include a monitoring plan for test mining and at-sea commercial recovery activities which meets the objectives and requirements of § 971.602.

(d) *Use conflict analysis.* The application must include information known to the applicant on other uses of the proposed mining area to support the Administrator's determination regarding potential use conflicts between commercial mining activities and those activities of other nations or of other U.S. citizens.

(e) *Onshore information.* Because of NEPA requirements, the Administrator must include in the EIS on the proposed permit the complete spectrum of activities resulting from the issuance of a permit. Therefore, onshore information including the location and operation of nodule processing facilities must be submitted with the application in accordance with the details in § 971.605.

§ 971.205 Vessel safety and documentation.

In order to provide a basis for the necessary determinations with respect to the safety of life and property at sea, pursuant to § 971.407, § 971.422 and Subpart G of this part, the application must contain the following information for vessels used in commercial recovery, except for those vessels under 300 gross tons which are engaged in oceanographic research:

(a) *U.S. flag vessel.* All mining ships and at least one of the transport ships used by each permittee must be documented under the laws of the United States. To the extent that the applicant knows which United States flag vessels it will use, it must include with its application copies of the vessels' current valid Coast Guard Certificates of Inspection.

(b) *Foreign flag vessel.* To the extent that the applicant knows which foreign flag vessel(s) it will be using for other purposes, the application must include evidence of the following:

(1) That any foreign flag vessel whose flag state is party to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) possesses current valid SOLAS 74 certificates;

(2) That any foreign flag vessel whose flag state is not party to SOLAS 74 but is party to the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60) possesses current valid SOLAS 60 certificates; and

(3) That any foreign flag vessel whose flag state is not a party to either SOLAS 74 or SOLAS 60 meets all applicable structural and safety requirements contained in the published rules of a

member of the International Association of Classification Societies (IACS).

(c) *Supplemental certificates.* If the applicant does not know at the time of submitting an application which vessels it will be using, it must submit the applicable certification for each vessel before the cruise on which it will be used.

§ 971.206 Statement of ownership.

(a) *General.* The application must include sufficient information to demonstrate that the applicant is a United States citizen.

(b) *Specific.* In particular, the application must include:

(1) Name, address, and telephone number of the United States citizen responsible for commercial recovery operations;

(2) A description of the citizen or citizens engaging in commercial recovery, including:

(i) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(ii) The state of incorporation or state in which the partnership of other business entity is registered;

(iii) The name and place of business of the registered agent or equivalent representative to whom notices and orders are to be delivered;

(iv) Copies of all essential and nonproprietary provisions in articles of incorporation, charter or articles of association; and

(v) The name of each member of the association, partnership, or joint venture, including information about the participation and/or ownership of stock of each partner of joint venturer.

§ 971.207 Antitrust information. [Reserved]

§ 971.208 Fee.

(a) *General.* Section 104 of the Act provides that no application for the issuance or transfer of a permit will be certified unless the applicant pays to NOAA an administrative fee which reflects the reasonable administrative costs incurred in reviewing and processing the application.

(b) *Amount.* A fee payment of $100,000, payable to the National Oceanic and Atmospheric Administration, Department of Commerce, must accompany each application. If the administrative costs of reviewing and processing the application are significantly less than or in excess of $100,000, the Administrator, after determining the amount of the under- or over-charge, as applicable, will refund the difference or require the applicant to pay the additional amount before issuance or transfer of the permit. In the case of an application for transfer of a permit to an entity which has previously been found qualified for a permit, the Administrator may reduce the fee in advance by an appropriate amount which reflects costs avoided by reliance on previous findings made in relation to the proposed transferee.

§ 971.209 Processing outside the United States.

(a) Except as provided in this section and § 971.408, the processing of hard minerals recovered pursuant to a permit shall be conducted within the U.S., provided that the President or his designee does not determine that this restriction contravenes the overriding national interest of the United States.

(b) If foreign processing is proposed, the applicant shall submit a justification demonstrating the basis for a finding pursuant to § 971.408(a)(1). The justification shall include an analysis of each factor which the applicant considers essential to its conclusion that processing at a site within the U.S. is not economically viable.

(c) If the Administrator determines that the justification provided by the applicant is insufficient, or if the Administrator receives during the public comment or hearing period what the Administrator determines to be a serious alternative U.S. processing site proposal, the Administrator may require the applicant to supply, within a specified reasonable time, additional information relevant to the § 971.408(a)(1) finding.

(d) The applicant must include in its application satisfactory assurances that such resources after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use if the Administrator determines pursuant to § 971.408 that the national interest necessitates such return. Assurances must include proposed arrangements with the host country.

Procedures

§ 971.210 Determination whether application is complete for further processing.

Upon receipt of an application, the Administrator will review it to determine whether it includes information specifically identifiable with and fully responsive to each requirement in § 971.201 through § 971.209. The Administrator will notify the applicant whether the application is complete within 60 days after it is received. The notice will identify, if applicable, in what respects the application is not complete, and will specify the information which the applicant must submit in order to make it complete, why the additional information is necessary, and a reasonable date by which the application must be completed. Application processing will not begin until the Administrator determines that the application is complete.

§ 971.211 Consultation and cooperation with Federal agencies.

(a) Promptly after receipt of a complete application, the Administrator will distribute a copy of the application to every Federal agency or department which, pursuant to section 103(e) of the Act, has identified programs or activities within its statutory responsibilities which would be affected by the activities proposed in the application (e.g., the Departments of State, Transportation, Justice, Interior, Defense, Treasury and Labor, as well as the Environmental Protection Agency, Federal Trade Commission, International Trade Administration and National Science Foundation). Based on its legal responsibilities and authorities, each such agency or department may, not later than 60 days after it receives a copy of the application, recommend certification of the application, issuance or transfer of the permit, or denial of such certification, issuance or transfer. The advice or recommendation by the Attorney General or Federal Trade Commission on antitrust review, pursuant to section 103(d) of the Act, must be submitted within 90 days after their receipt of a copy of the application.

(b) NOAA will use this process of consultation and cooperation to facilitate necessary Federal decisions on proposed commercial recovery activities, pursuant to the mandate of section 103(e) of the Act to reduce the number of separate actions required to satisfy Federal agencies' statutory responsibilities. The Administrator will not issue or transfer the permit during the 90 day period after receipt by the Attorney General and the Federal Trade Commission except upon written confirmation of the Attorney General and the Federal Trade Commission that neither intends to submit further comments or recommendations with respect to the application.

(c) In any case in which a Federal agency or department recommends a denial, it must set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and how the application may be amended, or how TCRs might be added to the permit, to assure compliance with such law or regulation.

(d) NOAA will cooperate with such agencies and with the applicant with the goal of resolving any concerns raised and satisfying the statutory responsibilities of these agencies.

(e) If the Administrator decides to issue or transfer a permit with respect to which denial of the issuance or transfer has been recommended by the Attorney General or the Federal Trade Commission, or to issue or transfer a permit without imposing TCRs recommended by the Attorney General or the Federal Trade Commission, as appropriate, the Administrator will, before or at issuance or transfer of the permit, notify the Attorney General and the Federal Trade Commission of the reasons for his decision.

§ 971.212 Public notice, hearing and comment.

(a) *Notice and comments.* The Administrator will publish in the **Federal Register**, for each complete application for a commercial recovery permit, notice that the application has been received. Subject to § 971.802, interested persons will be allowed to examine the materials relevant to the application, and will have at least 60 days after publication of notice to submit written comments to the Administrator.

(b) *Hearings.* After preparation of the draft environmental impact statement (EIS) on an application, the Administrator will hold a public hearing on the application and the draft EIS in an appropriate location and may employ additional methods he/she deems appropriate to inform interested persons about each application and to invite comments thereon.

(c) If the Administrator determines there exist one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia in accordance with the provisions of Subpart I of this part. The record developed in any such formal hearing will be part of the basis of the Administrator's decisions on an application.

(d) Hearings held pursuant to this section and other procedures will be consolidated, if practicable, with hearings held and procedures employed by other agencies.

§ 971.213 Amendment to an application.

After an application has been submitted to the Administrator, but before a determination is made on the issuance or transfer of a permit, the applicant must submit an amendment to the application if there is a significant change in the circumstances represented in the original application which affects the requirements of this subpart. Applicants should consult with NOAA to determine if changes in circumstances are sufficiently significant to require submission of an amendment. The application, as amended, would then serve as the basis for determinations by the Administrator under this part. For each amendment judged by the Administrator to be significant, the Administrator will provide a copy of that amendment to each other Federal agency and department which received a copy of the original application, and also will provide for public notice, hearing and comment on the amendment pursuant to § 971.212. After the issuance or transfer of a permit, any revision of the permit will be made pursuant to § 971.413.

§ 971.214 Consolidated license and permit procedures. [Reserved]

Subpart C—Certification of Applications

§ 971.300 General.

(a) Certification is an intermediate step between receipt of an application for issuance or transfer of a permit and actual issuance or transfer. It is a determination which focuses on the eligibility of the applicant.

(b) Before the Administrator may certify an application for issuance or transfer of a permit, the Administrator must determine that issuance of the permit would not violate any of the restrictions in § 971.103(b). The Administrator also must make written determinations with respect to the requirements set forth in § 971.301.

(c) To the maximum extent possible, the Administrator will endeavor to complete certification within 100 days after receipt of a complete application. If final certification or denial of certification has not occurred within 100 days after receipt of the application, the Administrator will inform the applicant in writing of the pending unresolved issues, the efforts to resolve them, and an estimate of the time required to do so.

§ 971.301 Required findings.

Before the Administrator may certify an application for a commercial recovery permit, the Administrator must:

(a) Approve the size and location of the commercial recovery area selected by the applicant, and this approval will occur unless the Administrator determines that (i) the area is not a logical mining unit under § 971.501, or (ii) commercial recovery activities in the proposed area would result in a significant adverse effect on the environment which cannot be avoided by imposition of reasonable restrictions; and

(b) Find that the applicant—

(i) Had demonstrated that, upon issuance or transfer of the permit, the applicant will be financially responsible to meet all obligations which may be required to engage in its proposed commercial recovery activities;

(ii) Had demonstrated that, upon permit issuance or transfer, it will possess, or have access to, the technological capability to engage in the proposed commercial recovery;

(iii) Has satisfactorily fulfilled all past obligations under any license or permit previously issued or transferred to the applicant under the Act;

(iv) Has a commercial recovery plan which meets the requirements of § 971.203; and

(v) Has paid the permit fee specified in § 971.208.

§ 971.302 Denial of certification.

(a) The Administrator may deny certification of an application if the Administrator finds that the requirements of this subpart, or the requirements for issuance or transfer under § 971.403 through § 971.408, have not been met.

(b) When the Administrator proposes to deny certification the Administrator will send to the applicant, and publish in the **Federal Register**, written notice of intention to deny certification. The notice will include:

(1) The basis upon which the Administrator proposes to deny certification; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny certification:

(1) On the 30th day after the date the notice is sent to the applicant, under paragraph (b) of this section, unless before the 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) in which the applicant must correct a deficiency, if that deficiency has not been corrected before that day and an administrative review requested

pursuant to paragraph (c)(1) is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempts to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies certification, he will send to the applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying certification is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

§ 971.303 Notice of certification.

Upon making a final determination to certify an application for a commercial recovery permit, the Administrator will promptly send written notice of the determination to the applicant.

Subpart D—Issuance/Transfer/Terms, Conditions and Restrictions

§ 971.400 General.

(a) *Proposal.* After certification of an application pursuant to Subpart C of this part, the Administrator will proceed with a proposal to issue or transfer a permit for the commercial recovery activities described in the application.

(b) *Terms, conditions and restrictions.* (1) Within 180 days after certification (or such longer period as the Administrator may establish for good cause shown in writing), the Administrator will propose terms and conditions for, and restrictions on, the proposed commercial recovery which are consistent with the provisions of the Act and this part as set forth in § 971.418 through § 971.430. Proposed and final TCRs will be uniform in all permits, except to the extent that differing physical and environmental conditions and/or mining methods require the establishment of special TCRs for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The Administrator will propose TCRs in writing to the applicant, and public notice thereof will be provided pursuant to § 971.401. The proposed TCRs will be included with the draft of the EIS on permit issuance.

(2) If the Administrator does not propose TCRs within 180 days after certification, the Administrator will notify the applicant in writing of the reasons for delay and of the approximate date on which the proposed TCRs will be completed.

(c) *Findings.* Before issuing or transferring a commercial recovery permit, the Administrator must make written findings in accordance with the requirements of § 971.403 through § 971.408. These findings will be made after considering all information submitted with respect to the application and proposed issuance or transfer. The Administrator will make a final determination of issuance or transfer of a permit, and will publish a final EIS on that action, within 180 days (or such longer period of time as the Administrator may establish for good cause shown in writing) following the date on which proposed TCRs and the draft EIS are published.

Issuance/Transfer; Modification/Revision; Suspension/Revocation

§ 971.401 Proposal to issue or transfer and proposed terms, conditions and restrictions.

(a) *Notice and comment.* The Administrator will publish in the **Federal Register** notice of each proposal to issue or transfer, and of proposed terms and conditions for, and restrictions on, a commercial recovery permit. Subject to § 971.802, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) The Administrator will hold a public hearing according to § 971.212(b) in an appropriate location and may employ such additional methods as he deems appropriate to inform interested persons about each proposal and to invite their comments thereon.

(2) If the Administrator determines there exist one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing, which may be consolidated with a hearing held by another agency, will be held in the District of Columbia in accordance with the provisions of Subpart I of this part. The record developed in any such formal hearing will be part of the basis for the Administrator's decisions on issuance or transfer of, and on TCRs for, the permit.

§ 971.402 Consultation and cooperation with Federal agencies.

Before issuance or transfer of a commercial recovery permit, the Administrator will conclude any consultations in cooperation with other Federal agencies which were initiated pursuant to § 971.211. These consultations will be held to assure compliance with, among other statutes, the Endangered Species Act of 1973, as amended, the Marine Mammal Protection Act of 1972, as amended, and the Fish and Wildlife Coordination Act. The Administrator also will consult, before any issuance, transfer, modification or renewal of a permit, with any affected Regional Fishery Management Council established pursuant to section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852) if the activities undertaken pursuant to the permit could adversely affect any fishery within the Fishery Conservation Zone, or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond that zone.

§ 971.403 Freedom of the high seas.

(a) Before issuing or transferring a commercial recovery permit, the Administrator must find the recovery proposed in the application will not unreasonably interfere with the exercise of the freedoms of the high seas by other nations, as recognized under general principles of international law.

(b) In making this finding, the Administrator will recognize that commercial recovery of hard mineral resources of the deep seabed is a freedom of the high seas. In the exercise of this right, each permittee shall act with reasonable regard for the interests of other nations in their exercise of the freedoms of the high seas.

(c)(1) In the event of a conflict between the commercial recovery program of an applicant or permittee and a competing use of the high seas by another nation or its nationals, the Administrator, in consultation and cooperation with the Department of State and other interested agencies, will enter into negotiations with that nation to resolve the conflict. To the maximum extent possible the Administrator will endeavor to resolve the conflict in a manner that will allow both uses to take place such that neither will unreasonably interfere with the other.

(2) If both uses cannot be conducted harmoniously in the area subject to the recovery plan, the Administrator will decide whether to issue or transfer the permit.

§ 971.404 International obligations of the United States.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the

commercial recovery proposed in the application will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States.

§ 971.405 Breach of international peace and security involving armed conflict.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the recovery proposed in the application will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

§ 971.406 Environmental effects.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application cannot reasonably be expected to result in a significant adverse effect on the quality of the environment, taking into account the analyses and information in any applicable EIS and any TCRs associated with the permit. This finding also will be based upon the requirements in Subpart F.

§ 971.407 Safety at sea.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application will not pose an inordinate threat to the safety of life and property at sea. This finding will be based on the requirements in § 971.205 and Subpart G.

§ 971.408 Processing outside the United States.

(a) Before issuing or transferring a commercial recovery permit which authorizes processing outside the U.S., the Administrator must find, after an opportunity for an agency hearing (see § 971.212(b)) that:

(1) The processing of the quantity concerned of hard mineral resource at a place other than within the United States is necessary for the economic viability of the commercial recovery activities of the permittee; and,

(2) Satisfactory assurances have been given by the permittee that such resources, after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use, if the Administrator so requires after determining that the national interest necessitates such return.

(b) At or after permit issuance the Administrator may determine, or revise a prior determination, that the national interest necessitates return to the U.S. of a specified amount of hard mineral resource recovered pursuant to the permit and authorized to be processed outside the United States. Considerations in making this determination may include:

(1) The national interest in an adequate supply of minerals;

(2) The foreign policy interests of the United States; and

(3) The multi-national character of deep seabed mining operations.

(c) As appropriate, TCRs will incorporate provisions to implement the decision of the Administrator made pursuant to this section.

§ 971.409 Denial of issuance or transfer.

(a) The Administrator may deny issuance or transfer of a permit if he finds that the applicant or the proposed commercial recovery activities do not meet the requirements of this part for the issuance or transfer of a permit.

(b) When the Administrator proposes to deny issuance or transfer, he will send to the applicant, and publish in the **Federal Register**, written notice of his intention to deny issuance or transfer. The notice will include:

(1) The basis upon which the Administrator proposes to deny issuance or transfer; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny issuance or transfer:

(1) On the 30th day after the date the notice is sent to the applicant under paragraph (b) of this section, unless before the 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) in which the applicant must correct a deficiency, if the deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (c)(1) is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies issuance or transfer, the Administrator will send to the applicant written notice of a the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying issuance of a permit is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

§ 971.410 Notice of issuance or transfer.

If the Administrator finds that the requirements of this subpart have been met, he will issue or transfer the permit along with the appropriate TCRs. Notice of issuance or transfer will be made in writing to the applicant and published in the **Federal Register.**

§ 971.411 Objections to terms, conditions and restrictions.

(a) The permittee may file a notice of objection to any TCR in the permit. The permittee may object on the grounds that any TCR is inconsistent with the Act or this part, or on any other grounds which may be raised under applicable provisions of law. If the permittee does not file notice of an objection within the 60-day period immediately following the permittee's receipt of the notice of issuance or transfer under § 971.410, the permittee will be deemed conclusively to have accepted the TCRs in the permit.

(b) Any notice of objection filed under paragraph (a) of this section must be in writing, must indicate the legal or factual basis for the objection, and must provide information relevant to any underlying factual issues deemed by the permittee as necessary to the Administrator's decision upon the objection.

(c) Within 90 days after receipt of the notice of objection, the Administrator will act on the objection and publish in the **Federal Register,** as well as provide to the permittee, written notice of the decision.

(d) If, after the Administrator takes final action on an objection, the permittee demonstrates that a dispute remains on a material issue of fact, the Administrator will provide for a formal hearing which will proceed in accordance with Subpart I of this part.

(e) Any final determination by the Administrator on an objection to TCRs in a permit, after the formal hearing provided in paragraph (d), is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

§ 971.412 Changes in permits and permit terms, conditions, and restrictions.

(a) During the duration of a commercial recovery permit, changes in the permit or its associated commercial recovery plan may be initiated by either the permittee or the Administrator.

(b) A significant change is one which, if approved, would result in:

(1) An increase of more than five percent in the size of the commercial recovery area; or,

(2) A change in the location of five percent or more of the commercial recovery area.

(c) A major change is one affecting one or more of:

(1) The bases for certifying the original application pursuant to § 971.301;

(2) The bases for issuing or transferring the permit pursuant to § 971.403 through § 971.406;

(3) The TCRs issued as part of the permit pursuant to § 971.418 through § 971.430; or

(4) The ownership of a permittee (or the membership of the joint venture, partnership or other entity on whose behalf the permit was issued); and which change is sufficiently broad in scope to raise a question as to:

(i) The permittee's ability to meet the requirements of the sections cited in the above clauses (1) and (2);

(ii) The sufficiency of the TCRs to accomplish their intended purpose; or

(iii) The antitrust characteristic of the permittee.

(d) A minor change is one that is clearly more modest in scope than the changes described in paragraph (b) or (c) of this section.

(e) A permittee may not implement a significant or major change, as defined in paragraphs (b) and (c) of this section, until an application for revision of the permit or its associated commercial recovery plan has been approved by the Administrator. However, advance notice of proposed major changes in a permittees corporate membership or legal structure is not required, unless practicable, but the Administrator expects prompt notification of the occurrence of such a major change.

§ 971.413 Revision of a permit.

(a) During the term of a commercial recovery permit, the permittee may submit to the Administrator an application for a revision of the permit or the commercial recovery plan associated with it to accommodate changes desired by the permittee. In some cases it may be advisable to recognize at the time of filing the original permit application that, although the essential information for issuing or transferring a permit as specified in § 971.201 through § 971.209 must be included in such application, some details may have to be provided in the future in the form of a revision. In such instances, the Administrator may issue or transfer a permit which would authorize commercial recovery activities and plans only to the extent described in the application.

(b) An application by a permittee for a revision of a permit or its associated commercial recovery plan involving a significant change, as defined in § 971.412(b), must be followed by the full application procedures in this part, including a public hearing.

(c) An application by a permittee for a revision of a permit or its associated commercial recovery plan involving a major change, as defined in § 971.412(c) (See also § 971.425 of this part), will be acted on after notice thereof is published by the Administrator in the **Federal Register** with a 60-day opportunity for comment and consultation with appropriate Federal agencies.

(d)(1) The Administrator will approve a revision if the Administrator finds in writing that the revision will comply with the requirements of the Act and this part.

(2) Notice of the Administrator's decision on the proposed revision will be provided to the permittee in writing and published in the **Federal Register.**

(e) A permittee may notify the Administrator of minor changes, as defined in § 971.412(d), subsequently in the annual report (See § 971.801 of this part).

(f) If the relative importance of the change is unclear to the permittee, the Administrator should be notified in advance so that the Administrator can decide whether a revision in accordance with § 971.412(e) is required.

§ 971.414 Modification of permit terms, conditions, and restrictions.

(a) After issuance or transfer of any permit, the Administrator, after consultation with appropriate Federal agencies and the permittee, may modify the TCRs in a permit for the following purposes:

(1) To avoid unreasonable interference with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general prinicples of international law. This determination will take into account the considerations listed in § 971.403;

(2) If relevant data and information (including, but not limited to, data resulting from activities under a permit) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea;

(3) To avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(4) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict, as determined in writing by the President.

(b) A proposal by the Administrator to modify the TCRs in a permit is significant and must be followed by the full application procedures in this part, including a public hearing, if it would result in either of the changes identified in § 971.412(b).

(c) All proposed modifications other than those described in paragraph (b) of this section will be acted on after the Administrator provides:

(i) Written notice of the proposal to the permittee; and

(ii) Publication of the proposal in the **Federal Register** with a 60-day opportunity for comment.

(d)(1) The Administrator will effect a modification of the TCRs if the Administrator finds in writing that the proposed modification will comply with the requirements of the Act and this part.

(2) Upon adopting a TCR modification, the Administrator shall issue to the permittee as amended permit including the modified TCRs, and shall publish notice of issuance in the **Federal Register.**

(3) The procedures for objection to modification of the TCRs are the same as those for objection to a TCR under § 971.411 of this part.

§ 971.415 Duration of a permit.

(a) Each commercial recovery permit will be issued for a period of 20 years and for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area listed in the permit.

(b) If the permittee has substantially complied with the permit and its associated recovery plan and requests an extension of the permit, the Administrator will extend the permit with appropriate TCRs, consistent with the Act, for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area to which the recovery plan associated with the permit applies. The Administrator may make allowance for deviation from the recovery plan for good cause, such as significantly

changed market conditions. However, a request for extension must be accompanied by an amended recovery plan to govern the activities by the permittee during the extended period.

(c) Successive extensions may be requested, and will be granted by the Administrator, based on the criteria specified in paragraphs (a) and (b).

§ 971.416 Approval of permit transfers.

(a) The Adminstrator may transfer a permit after a written request by the permittee. After a permittee submits a transfer request to the Administrator, the proposed transferee will be deemed an applicant for a commercial recovery permit, and will be subject to the requirements and procedures of this part.

(b) The Administrator will transfer a permit if the proposed transferee is a United States citizen and proposed commercial recovery activities meet the requirements of the Act and this part, and if the proposed transfer is in the public interest. The Administrator will presume that the transfer is in the public interest if it meets the requirements of the Act and this part. In case of mere change in the form or ownership of a permittee, the Adminstrator may waive relevant determinations for requirements for which no changes have occurred since the preceding application.

§ 971.417 Suspension or modification of activities; suspension or revocation of permits.

(a) The Administrator may:

(1) In addition to, or in lieu of, the imposition of any civil penalty under Subpart J of this part, or in addition to the imposition of any fine under Subpart J, suspend or revoke any permit issued under this part, or suspend or modify any particular activities under such a permit, if the permittee substantially fails to comply with any provision of the Act, this part, or any term, condition or restriction of the permit; and

(2) Suspend or modify particular activities under any permit, if the President determines that such suspension or modification is necessary:

(i) To avoid any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States; or

(ii) To avoid any situtation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(b) Any action taken by the Administrator in accordance with paragraph (a)(1) will proceed pursuant to the procedures in § 971.1003. Any action taken in accordance with paragraph (a)(2) will proceed pursuant to paragraphs (c) through (i) of this section.

(c) Prior to taking any action specified in paragraph (a)(2) the Administrator will publish in the **Federal Register**, and send to the permittee, written notice of the proposed action. The notice will include:

(1) The basis of the proposed action; and

(2) If the basis for the proposed action is a deficiency which the Administrator believes the permittee can correct:

(i) The action necessary to correct the deficiency; and

(ii) The time which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(d) The Adminstrator will take the proposed action:

(1) On the 30th day after the date notice is sent to the permittee, under paragraph (c) of this section, unless before the 30th day the permittee files with the Administrator a written request for an administrative review of the proposed action; or

(2) On the last day of the period established under paragraph (c)(2)(ii) in which the permittee must correct the deficiency, if such deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (d)(1) is not pending or in progress.

(e) If a timely request for administrative review of the proposed denial is made by the permittee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of this part. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the adminstrative law judge orders differently.

(f) The Adminstrator will serve on the permittee, and publish in the **Federal Register**, written notice of the action taken including the reasons therefor.

(g) Any final determination by the Administrator to take the proposed action is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

(h) The issuance of any notice of proposed action under this section will not affect the continuation of commercial recovery activities by a permittee, except when:

(1) The President determines by Executive Order that an immediate suspension or modification of particular activities under that permit, is necessary for the reasons set forth in paragraph (a)(2); or

(2) The Administrator determines that immediate suspension of such a permit or immediate suspension or modification of particular activities under a permit, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life or property at sea, and the Administrator issues an emergency order requiring immediate suspension. The permittee may seek administrator review of any emergency suspension or modification imposed under this paragraph after it has been imposed. The Administrator will determine whether any administrative review granted will be in the form of an informal or formal hearing.

(i) The Administrator will immediately rescind the suspension order as soon as he has determined that the cause for suspension has been removed.

Terms, Conditions and Restrictions

§ 971.418 Diligence requirements.

The TCRs in each commercial recovery permit must include provisions to assure diligent development consistent with § 971.503, including a requirement that recovery at commercial scale be underway within ten years from the date of permit issuance unless that deadline is extended by the Administrator for good cause.

§ 971.419 Environmental protection requirements.

(a) Each commercial recovery permit must contain TCRs established by the Administrator pursuant to Subpart F which prescribe actions the permittee must take in the conduct of commercial recovery activities to assure protection of the environment.

(b) Before establishing the TCRs pertaining to environmental protection, the Administrator will consult with the Administrator of the Environmental Protection Agency, the Secretary of State and the Secretary of the department in which the Coast Guard is operating. The Administrator also will take into account and give due consideration to the information contained in the final site-specific EIS prepared with respect to the proposed permit.

§ 971.420 Resource conservation requirements.

For the purpose of conservation of natural resources, each permit issued under this part will contain, as needed, TCRs which have due regard for the prevention of waste and the future

opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the recovery area. The Administrator will establish these requirements pursuant to § 971.502.

§ 971.421 Freedom of the high seas requirements.

Each permit issued under this part must include appropriate restrictions to ensure that commercial recovery activities do not unreasonably interfere with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law. The Administrator will consider the factors in § 971.403 in establishing these restrictions.

§ 971.422 Safety at sea requirements.

The Secretary of the department in which the Coast Guard is operating, in consultation with the Adminstrator, will require in any permit issued under this part, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized under the permit comply with conditions regarding design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea. These requirements will be established with reference to Subpart G of this part.

§ 971.423 Best available technology.

The Administrator will require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant effect on safety, health, or the environment, (see § 971.601(c)), except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies.

§ 971.424 Monitoring requirements.

Each commercial recovery permit will require the permittee:

(a) To allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the permittee in commercial recovery activities to:

(1) Monitor activities at times, and to the extent, the Administrator deems reasonable and necessary to assess the effectiveness of the TCRs of the permit; and

(2) Report to the Administrator whenever those officers or employees have reason to believe there is a failure to comply with the TCRs;

(b) To cooperate with Federal officers and employees in the performance of monitoring functions; and

(c) To monitor the environmental effects of the commercial recovery activities in accordance with a monitoring plan approved and issued by NOAA as permit TCRs and to submit data and other information as necessary to permit evaluation of environmental effects. The environmental monitoring plan and reporting will respond to the concerns and procedures discussed in Subpart F.

§ 971.425 Changes of circumstances.

Each permit must require the permittee to advise the Administrator of any changes of circumstances which might constitute a revision which would be a major change under § 971.412(c). Changes in ownership, financing, and use conflicts are examples, as are technology or methodology changes including those which might result in adverse environmental effects (see § 971.601).

§ 971.426 Annual report and records maintenance.

Each permit will require the permittee to submit an annual report and maintain information in accordance with § 971.801 including compliance with the commercial recovery plan and the quantities of hard mineral resources recovered and the disposition of such resources.

§ 971.427 Processing outside the United States.

If appropriate, TCRs will incorporate provisions to implement the decision of the Administrator regarding the return of resources processed outside the United States, in accordance with § 971.408.

§ 971.428 Other necessary permits.

Each permit will provide that securing the deep seabed mining permit for activities described in the recovery plan and accompanying application does not eliminate the need to secure all other Federal, state, and local permits.

§ 971.429 Special terms, conditions, and restrictions.

Although the general criteria and standards to be used in establishing TCRs for a permit are set forth in this part, as referenced in § 971.418 through § 971.428, the Administrator may impose special TCRs for the conservation of natural resources, protection of the environment, or the safety of life and property at sea when required by differing physical and environmental conditions.

§ 971.430 Other Federal requirements.

Pursuant to § 971.211, another Federal agency, upon review of a commercial recovery permit application submitted under this part, may propose that certain TCRs be added to the permit, to assure compliance with any law or regulation within that agency's area of responsibility. The Administrator may include appropriate TCRs in a permit.

Subpart E—Resource Development

§ 971.500 General.

Several provisions in the Act relate to appropriate mining techniques or mining efficiency. These raise what could be characterized as resource development issues. In particular, section 103 (a)(2)(C) requires a resource assessement to be provided with the recovery plan. Section 103(a)(2)(D) of the Act provides that the applicant will select to size and location of the area of a recovery plan, which will be approved unless the Administrator finds that the area is not a "logical mining unit" or the commercial recovery activities in the proposed site would result in a significant adverse effect on the quality of the environment which cannot be avoided by the imposition of reasonable restrictions. Also, pursuant to Section 108 of the Act, the applicant's recovery plan and the TCRs of each permit must be designed to ensure diligent development. In addition, for the purpose of conservation of natural resources, Section 110 of the Act provides that each permit is to contain, as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the resources.

§ 971.501 Resource assessment, recovery plan, and logical mining unit.

(a) The applicant must submit with the application a resource assessment to provide a basis for assessing the area applied for. This assessment must include a discussion of mineable and unmineable areas, taking into account nodule grade, nodule concentration, and other factors such as seafloor topography. These areas may be delineated graphically. The resources in the area must be described in relation to the applicant's production requirements, operating period, and recovery efficiency in order to justify the area applied for.

(b) The applicant's recovery plan must discuss the chronology of areas to be

mined in order for the Administrator to determine if selective mining, to improve cash flow in the early years, is part of a long range plan.

(c) The recovery plan should discuss how results of license phase test mining have been applied with respect to mining efficiency.

(d) In the case of a commercial recovery permit, a logical mining unit is an area of the deep seabed:

(1) In which hard mineral resources can be recovered in sufficient quantities to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit in an efficient, economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant set out in the recovery plan;

(2) Which is not larger that necessary to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit; and

(3) In relation to which the permittee's estimated production requirements are not found by the Administrator to be unreasonable.

(e) Approval by the Administrator of a proposed logical mining unit will be based on a case-by-case review of each application. The area need not consist of contiguous segments, as long as each segment would be efficiently mineable and total proposed area constitutes a logical mining unit.

(f) In describing the area, the applicant must present the geodetic coordinates of the points defining the boundaries referred to the World Geodetic System (WGS) Datum. A boundary between points must be a geodesic. If grid coordinates are desired, the Universal Transverse Mercator Grid System must be used.

§ 971.502 Conservation of resources.

(a) If the Administrator establishes terms, conditions and restrictions relating to conservation of resources, he will employ a balancing process in the consideration of the state of the technology being developed, the processing system utilized and the value and potential use of any waste, the environmental effects of the recovery activities, economic and resource data, and the national need for hard mineral resources.

(b) The application must set forth how the applicant's proposed method of collecting nodules will conserve resources either by collecting a large percentage of nodules in each area to be mined or by providing for the future opportunity for commercial recovery of the unrecovered balance of the resources.

(c) If the applicant proposes a refining process that does not include the use of manganese in a productive manner, it may not render the manganese unavailable to future users by dispersing the tailings over a vast area unless such a scheme is necessary for the financial practicability of the commercial recovery activities of the applicant. A permittee must advise the Administrator in the annual report of the location, composition and quantity of manganese in tailings which remain after processing. Should national needs for manganese develop during the duration of a permit, the Administrator may cancel the exception granted involving dispersion of tailings. Applicants seeking an exception would be required to demonstrate how and in what time frame their commercial recovery processing activities could be modified to respond to new national needs.

§ 971.503 Diligent commercial recovery.

(a) Each permittee must pursue diligently the activities described in its approved commercial recovery plan. This requirement applies to the full scope of the plan, including environmental safeguards and monitoring systems. Permit TCRs will require periodic reasonable expenditures for commercial recovery by the permittee, taking into account the size of the area of the deep seabed to which the recovery plan applies and the amount of funds estimated by the Administrator to be required to initiate commercial recovery of hard mineral resources within the time limit established by the Administrator. However, required expenditures will not be established at a level which would discourage commercial recovery or operational efficiency.

(b) To meet the diligence requirement, the applicant must propose to the Administrator an estimated schedule of activities and expenditures pursuant to § 971.203(b)(3). The schedule must show, and the Administrator must be able to make a reasonable determination, that the applicant can reasonably develop the resources in the permit area within the term of the permit. There must be a reasonable relationship between the size of the recovery area and the financial and technological resources reflected in the application. The permittee must initiate the recovery of nodules in commercial quantities within ten years of the issuance of the permit unless this deadline is extended by the Administrator for good cause.

(c) Once commercial recovery is achieved, the permittee must, within reasonable limits and taking into consideration all relevant factors, maintain commercial recovery throughout the period of the permit. However, the Administrator will, for good cause shown, authorize temporary suspension of commercial recovery activities. The duration of any suspension will not exceed one year, unless the Administrator determines that conditions justify an extension of the suspension.

(d) Ultimately, the diligence requirement will involve a retrospective determination by the Administrator, based on the permittee's reasonable conformance to the approved recovery plan. This determination, however, will take into account the need for some degree of flexibility in a recovery plan. It also will include consideration of the needs and stage of development of the permittee based on the approved recovery plan; legitimate periods of time when there is no or very low expenditure; and allowance for a certain degree of flexibility for changes encountered by the permittee in market conditions or other factors.

(e) The permittee must submit a report annually reflecting its conformance to the schedule of activities and expenditures contained in the permit and its associated recovery plan. In case of any changes requiring a revision to an approved permit and recovery plan, the permittee must advise the Administrator in accordance with § 971.413.

Subpart F—Environmental Effects

§ 971.600 General.

The Act contains several provisions which relate to environmental protection. For example, section 105(a)(4) requires that, before the Administrator may issue a commercial recovery permit, he must find that the commercial recovery proposed in the application cannot reasonably be expected to result in a significant adverse effect on the quality of the environment. In addition, each permit issued must contain TCRs which prescribe actions the permittee must take in the conduct of commercial recovery activities to assure protection of the environment (section 109(b)). The Act also provides for modification by the Administrator or any TCR if relevant data and information indicates that modification is required to protect the quality of the environment (section 105(c)(1)(B)). The Administrator also may order an immediate suspension or modification of activities (section

106(c)), or require use of best available technologies (section 109(b)), to prevent a significant adverse effect on the environment. Furthermore, each permit issued under the Act must require the permittee to monitor the environmental effects of commercial recovery activities in accordance with guidelines issued by the Administrator, and to submit information the Administrator finds necessary and appropriate to assess environmental effects and to develop and evaluate possible methods of mitigating adverse effects (section 114).

§ 971.601 Significant adverse environmental effects.

(a) *Determination of significant adverse effects.* The Administrator will determine the potential for or the occurrence of any significant adverse effect or impact (for the purposes of section 103(a)(D), 105(a)(4), 106(c) and 109(b) (second sentence) of the Act), on a case by case basis.

(b) *Basis for determination.* Determinations will be based upon the best information available, including relevant environmental impact statements NOAA-collected data and monitoring, and other data provided by the applicant or permittee.

(c) *Related considerations.* In making a determination, the Administrator may take into account any TCRs or other mitigation measures.

(d) *Activities with no significant environmental effect.* NOAA believes that exploration-type activities, as listed in the license regulations (15 CFR 970.701), require no further environmental assessment.

(e) *Activities with potential for significant adverse effects.* NOAA research has identified at-sea testing of recovery equipment, the recovery of manganese nodules in commercial quantities from the deep seabed and the construction and operation of commercial-scale processing facilities as activities which may have some potential for significant environmental effects.

(f) *Related terms, conditions and restrictions.* Permits will be issued with TCRs containing environmental requirements with respect to protection (pursuant to § 971.419), mitigation (pursuant to § 971.419), or best available technology requirements (pursuant to § 971.423), as appropriate, and monitoring requirements (pursuant to § 971.424) to acquire more information on the environmental effects of deep seabed mining.

§ 971.602 At-sea monitoring.

(a) An applicant must submit with its application a monitoring plan designed to achieve the primary purpose of the monitoring requirement in the Act, which is to ensure early and accurate detection of significant adverse effects on the environment caused by commercial recovery activities. A secondary purpose of monitoring, which the plan must address, is to validate the EIS characterization of the affected environment.

(b) The monitoring plan shall focus on assessing (1) the spatial extent and duration of the mining ship discharge, with limited emphasis on the effects on the plankton; (2) the areal extent and severity of the benthic impact, including recovery rate and pattern of benthic recolonization; and (3) any secondary effects that result from the impact of the mining collector and benthic plume.

(c) *The following specific environmental parameters must be proposed for examination in the applicant's monitoring plan:*

(1) Upper water column—

Nutrients
Endangered species (observations)
Salinity, temperature, density
Currents and direct current shear
Vertical distribution of light
Suspended particulate material dispersion
In-situ settling velocity
Zooplankton and trace metals uptake
Fish larvae
Behavior of biota

(2) Lower water column and seafloor—

Currents
Suspended particulate material dispersion
In-situ settling velocity
Sediment
Topography
Benthic blanketing, impact, and recovery

(d) The monitoring plan shall include provision for monitoring those areas impacted by the permittee's mining activities, even if such areas fall outside its minesite.

(e) In addition to the considerations in: (a) Above, the plan should take into account the need for the Administrator to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects.

(f) After the Administrator's approval of the monitoring plan, this plan will become a permit TCR. The monitoring plan TCR will authorize refinement of the monitoring plan prior to testing and commercial-scale recovery, and at other appropriate times, if refinement is necessary to reflect accurately proposed operations, or to incorporate recent research or monitoring results.

(g) If test mining is proposed, the applicant shall include in the monitoring plan a monitoring plan for the test(s) as well as a strategy for using the result to monitor more effectively commercial-scale recovery.

(h) The monitoring plan shall include a sampling strategy that is based on sound statistical methods, that equipment and methods be scientifically accepted, that the personnel who are planning, collecting and analyzing the data be scientifically well qualified, and that the resultant data be submitted to the Administrator in accordance with formats of the National Oceanographic Data Center.

(i) Pursuant to section 114(1) of the Act, the Administrator intends to place observers onboard mining vessels, not only to ensure that permit TCRs are followed, but also to evaluate the effectiveness of monitoring strategies, both in terms of protecting the environment and in being cost-effective (See § 971.1005), and, if necessary, to develop potential mitigation measures. If modification of permit TCRs or regulations is required to protect the quality of the environment, the Administrator may modify TCRs pursuant to § 971.414, or the regulations pursuant to § 971.804.

§ 971.603 Mitigation.

(a) NOAA is not specifying particular mitigation methodologies or techniques at this time, but expects applicants and permittees to develop and carry out their operations, to the extent possible, to minimize adverse environmental effects, and to be able to demonstrate efforts to that end. Based upon monitoring results, NOAA may find it necessary in the future to specify particular procedures for minimizing environmental effects. These procedures would be incorporated into permit TCRs.

(b) NOAA is not defining a specific technology, at this time, as being the best available technology (BAT), pursuant to section 109(b) of the Act, because of the embryonic nature of the industry. NOAA will review the situation as more information becomes available from the monitoring of test mining and initial commercial-scale mining. NOAA expects that good engineering practice will cause the permittees to have developed, and continue to improve, technology and operating procedures to minimize both the amount of material discharged by the mining ship and the area of the seafloor affected by the benthic plume. When more data are available, NOAA will assess the need for specifying a

technology or standards that operations must meet and evaluate the costs versus benefits of specifying a technology or standard for protection of the environment. These requirements, if issued, would be incorporated into permit TCRs.

(c) NOAA will require the permittee to report, prior to implementation, any proposed technological or operational changes that will increase or have unknown environmental effects. Changes in composition, concentration or size distribution of suspended particulates discharged from the mining vessel, water depth of vessel discharge, depth of cut in the seafloor of the mining collector, and direction or amount of sediment discharged at the seafloor are factors of concern to NOAA. If proposed changes have a high potential for increasing adverse environmental effects, the Administrator may disapprove or require modification of the changes.

§ 971.604 Stable Reference Areas. [Reserved]

§ 971.605 Onshore information.

(a) To assist the Administrator in complying with NEPA requirements and to enable NOAA to function as lead agency in preparing permit site-specific environmental impact statements (EISs) and facilitating the preparation and processing of other enviornmental documents and permits, the applications must include the following information:

(1) The location and affected environment of port, transport, processing and waste disposal facilities and associated facilities (e.g., maps, land use and layout);

(2) A description of the environmental consequences and socio-economic effects of construction and operation of the facilities, including waste characteristics and toxicity;

(3) Any mitigating measures that may be proposed;

(4) Certification of consistency with a federally approved state coastal management program, where applicable, with which the state coastal management program has concurred, and evidence of the status of compliance with other state or local requirements relating to protection of the environment; and

(5) Alternative sites and technologies considered by the applicant and the considerations which eliminate their selection.

(b) The applicant must consult with NOAA as early as possible concerning the information to be submitted to NOAA to prepare an adequate environmental impact statement.

(c) The requirements of paragraphs (a)(1)–(3) and (5) of this section also apply if approval of processing outside the United States is requested by the applicant. A certification of consistency need not be submitted if the application proposes activities which will not affect land and water uses of the coastal zone of a state with an approved coastal zone management program. Information detailing the socio-economic impacts of foreign processing activities is not required.

Subpart G—Safety of Life and Property at Sea

§ 971.700 General.

The Act contains several requirements that relate to assuring the safety of life and property at sea. For example, before the Administrator may issue a permit, he must find that the proposed recovery will not pose an inordinate threat to the safety of life and property at sea (section 105(a)(5)). The Coast Guard, in consultation with NOAA, must require in any permit issued under the Act, in conformity with principles of international law, that vessels documented in the United States and used in activities authorized under the permit comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the safety of life and property at sea (Section 112(a)). The Administrator may impose or modify TCRs for a permit if required to promote the safety of life and property at sea (section 105(c)(1)(B)).

§ 971.701 Criteria for safety of life and property at sea.

Response to the safety at sea requirements in essence will involve vessel inspection requirements, as identified by present laws and regulations. The primary inspection statutes pertaining to United States flag vessels are: 46 App. U.S.C. 86 (Loadlines) and 46 U.S.C. 3301 (Inspection of Seagoing Barges, Seagoing Motor Vessels, and Freight Vessels). United States flag vessels will be required to meet all applicable regulatory requirements, including the requirement for a current valid Coast Guard Certificate of Inspection (pursuant to § 971.205(a)). United States flag vessels are under United States jurisdiction on the high seas and subject to domestic enforcement procedures. With respect to foreign flag vessels, the SOLAS 74 or SOLAS 60 certificate requirements specified in § 971.205(b) apply.

Subpart H—Miscellaneous

§ 971.800 General.

Ths subpart contains miscellaneous provisions pursuant to the Act which are applicable to exploration licenses and commercial recovery permits.

§ 971.801 Records to be maintained and information to be submitted by licensees and permittees.

(a)(1) In addition to the information specified elsewhere in the part and in 15 CFR Part 970, each licensee and permittee must keep such records, consistent with standard accounting principles, as specified by the Administrator in the license or permit. Such records shall include information which will fully disclose expenditures for exploration for, or commercial recovery of hard mineral resources in the area under license or permit, and any other information which will facilitate an effective audit of these expenditures.

(2) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination, to any books, documents, papers, and records of licensees and permittees which are necessary and directly pertinent to verification of the expenditures referred to in paragraph (a)(1) of this section.

(b) In addition to the information specified elsewhere in this part and in 15 CFR Part 970, each applicant, licensee or permittee will be required to submit to the Administrator, upon request, data or other information the Administrator may reasonably need for purposes of:

(1) Making determinations with respect to the issuance, revocation, modification, or suspension of the license or permit in question;

(2) Evaluating the effectiveness of license of permit TCRs;

(3) Compliance with the biennial Congressional report requirement contained in Section 309 of the Act; and

(4) Evaluation of the exploration or commercial recovery activities conducted by the licensee or permittee.

At a minimum, licensees and permittees shall submit an annual written report within 90 days after each anniversary of the license or permit issuance or transfer, discussing exploration or commercial recovery activities and expenditures. The report shall address diligence requirements (see § 971.503 and 15 CFR 970.602), implementation of any approved monitoring plan (see § 971.602 and 15 CFR 970.522(c) and 970.702(a)), and applicable changes

which do not constitute revisions (see § 971.413(e) and 15 CFR 970.513(c)). Permittees must also report the tonnage of nodules recovered (§ 971.426) and discuss manganese conservation measures (see § 971.502).

§ 971.802 Public disclosure of documents received by NOAA.

(a) *Purpose.* This section provides a procedure by which persons submitting information pursuant to this part and 15 CFR Part 970 may request that certain information not be subject to public disclosure. The substantiation requested is intended to assure that NOAA has a complete and proper basis for determining the legality and appropriateness of withholding or releasing the identified information if a public request for disclosure is received.

(b) *Written requests for confidential treatment.* (1) Any person who submits any information pursuant to this part or 15 CFR Part 970, which information is considered by that person to be protected by the Trade Secrets Act (18 U.S.C. 1905) or otherwise to be a trade secret or commercial or financial information which is privileged or confidential, may request that the Administrator give the information confidential treatment.

(2)(i) Any request for confidential treatment of information:

(A) Should be submitted at the time of submission of information;

(B) Should state the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurence of a certain event, or permanently);

(C) Must be submitted in writing; and

(D) Must include the name, mailing address, and telephone number of an agent of the submitter who is authorized to receive notice of requests for disclosure of the information pursuant to paragraph (d) of this section.

(ii) If information is submitted to the Administrator without an accompanying request for confidential treatment, the notice referred to in paragraph (d)(2) of this section need not be given. If a request for confidential treatment is received after the information itself is received, the Administrator will make efforts to the extent administratively practicable to associate the request with copies of the previously submitted information in the files of NOAA and the Federal agencies to which the Administrator distributed the information.

(3)(i) Information subject to a request for confidential treatment must be segregated from information for which confidential treatment is not being requested, and each page (or segregable portion of each page) subject to the request must be clearly marked with the name of the person requesting confidential treatment, the name of the applicant, licensee or permittee, and an identifying legend such as "Proprietary Information" or "Confidential Treatment Requested." Where this marking proves impracticable, a cover sheet containing the identifying names and legend must be securely attached to the compilation of information for which confidential treatment is requested. Each copy of the information for which confidential treatment has been requested must be cross-referenced to the appropriate section of the application or other document. All information for which confidential treatment is requested pertaining to the same application or other document must be submitted to the Administrator in a package separate from that information for which confidential treatment is not being requested.

(ii) Each copy of any application or other document with respect to which confidential treatment of information has been requested must indicate, at each place in the application or document where confidential information has been deleted, that confidential treatment of information has been requested.

(4) Normally, the Administrator will not make a determination as to whether confidential treatment is warranted until a request for disclosure of the information is received. However, on a case-by-case basis, the Administrator may make a determination in advance of a request, where it would facilitate obtaining voluntarily submitted information (rather than information required to be submitted under this part).

(c) *Substantiation of request for confidential treatment.* (1) Any request for confidential treatment may include a statement of the basis for believing that the information is deserving of confidential treatment, which addresses the issues relevant to a determination of whether the information is a trade secret, or commercial or financial information which is privileged or confidential. To the extent permitted by applicable law, part or all of any substantiation statement submitted will be treated as confidential if so requested, and must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(2) Issues addressed in the statement should include:

(i) The commercial or financial nature of the information;

(ii) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(iii) The nature and extent of the competitive harm which would result from public disclosure of the information;

(iv) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(v) The extent to which persons other than the person submitting the information possess, or have access to, the same information; and

(vi) The nature of the measures which have been and are being taken to protect the information from disclosure.

(d) *Requests for disclosure of trade secrets, privileged, or confidential information.* (1) Any request for disclosure of information submitted, reported or collected pursuant to this part must be made in accordance with 15 CFR 903.7.

(2) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) of the request for disclosure to the person who requested confidential treatment of the information or to the designated agent. The notice also will:

(i) Inquire whether that person continues to maintain the request for confidential treatment;

(ii) Notify that person of the date (generally, not later than the close of business on the fourth working day after issuance of the notice) by which the person is strongly encouraged to deliver to the Administrator a written statement that the person either:

(A) Waives or withdraws the request for confidential treatment in full or in part; or

(B) Confirms that the request for confidential treatment is maintained;

(iii) Inform that person that by a date the Administrator specifies (generally, not later than the close of business on the fourth working day after issuance of the notice), the person:

(A) Is strongly encouraged to deliver to the Administrator a written statement addressing the issues listed in paragraph (c)(2) of this section, describing the basis for believing that the information is deserving of confidential treatment, if this statement was not previously submitted;

(B) Is strongly encouraged to deliver to the Administrator an update of or supplement to any statement previously

submitted under paragraph (c) of this section; and

(C) May present to the Administrator in a form the Administrator deems appropriate (such as by telephone or in an informal conference) arguments against disclosure of the information; and

(iv) Inform that person that the burden is on him to assure that any response to the notice is delivered to the Administrator within the time specified in the notice.

(3) To the extent permitted by applicable law, part or all or of any statement submitted in response to any notice issued under paragraph (d)(2) will be treated as confidential if so requested by the person submitting the response. Any response for which confidential treatment is requested must be segregated, marked and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(4) Upon the expiration of the time allowed for response under paragraph (d)(2) of this section, the Administrator will determine, in consultation with the General Counsel for the Department of Commerce, whether confidential treatment is warranted based on the information then available to NOAA.

(5) If the person who requested confidential treatment waives or withdraws that request, the Administrator will proceed with appropriate disclosure of the information.

(6) If the Administrator determines that confidential treatment is warranted, he will so notify the person requesting confidential treatment, and will issue an initial denial of the request for disclosure of records in accordance with 15 CFR 903.8.

(7) If the Administrator determines that confidential treatment is not warranted for part or all of the information, the Administrator immediately will isssue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) to the person who requested confidential treatment. The notice will state:

(i) The basis for the Administrator's determination;

(ii) That the Administrator's determination constitutes final agency action on the request for confidential treatment;

(iii) That the final agency action is subject to judicial review under Chapter 7 of Title 5, United States Code; and

(iv) That on the fourth working day after issuance of the notice described in this paragraph (d)(7), the Administrator will make the information available to the person who requested disclosure unless the Administrator has first been notified of the filing of an action in a Federal court to obtain judicial review of the determination, and the court has issued an appropriate order preventing or limiting disclosure.

(8) The Administrator will keep a record of the date any notice is issued and of the date any response is received, by the Administrator, under this paragraph (d).

(9) In all other respects, procedures for handling requests for records containing information submitted to, reported to, or collected by the Administrator pursuant to this part will be in accordance with 5 CFR Part 903. For example, if ten working days have passed after the receipt of a request for disclosure and, despite the exercise of due diligence by the agency, the Administrator cannot make a determination as to whether confidential treatment is warranted, the Administrator will issue appropriate notice in accordance with 15 CFR 903.8(b)(5).

(e) *Direct submissions of confidential information.* If any person has reason to believe that it would be prejudiced by furnishing information required from it to the applicant, licensee or permittee, that person may file the required information directly with the Administrator. Information for which the person requests confidential treatment must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(f) *Protection of confidential information transmitted by the Administrator to other agencies.* Each copy of information for which confidential treatment has been requested which is transmitted by the Administrator to other Federal agencies will be accompanied by a cover letter containing:

(1) A request that the other Federal agency maintain the information in confidence in accordance with applicable law (including the Trade Secrets Act, 18 U.S.C. 1905) and any applicable protective agreement entered into by the Administrator and the Federal agency receiving the information;

(2) A request that the other Federal agency notify the Administrator immediately upon receipt of any request for disclosure of the information; and

(3) A request that all copies of the information be returned to the Administrator for secure storage or disposal promptly after the Federal agency determines that it no longer needs the information for its official use.

§ 971.803 Relinquishment and surrender of licenses and permits.

(a) Any licensee or permittee may at any time, without penalty:

(1) Surrender to the Administrator a license or permit issued to the licensee or permittee; or

(2) Relinquish to the Administrator, in whole or in part, any right to conduct any exploration or commercial recovery activities authorized by the license or permit.

(b) Any licensee or permittee who surrenders, or relinquishes any right under, a license or permit will remain liable with respect to all violations and penalties incurred, and damage to persons or property caused, by the licensee or permittee as a result of activities engaged in by the licensee or permittee under the license or permit.

§ 971.804 Amendment to regulations for conservation, protection of the environment and safety of life and property at sea.

The Administrator may amend the regulations in this part and 15 CFR Part 970 at any time as the Administrator determines to be necessary and appropriate in order to provide for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The amended regulations will apply to all exploration or commercial recovery activities conducted under any license or permit issued or maintained pursuant to this part or 15 CFR Part 970, except that amended regulations which provide for conservation of natural resources will apply to activities conducted under an existing lecense or permit during the present term of that license or permit only if the Administrator determines that the amended regulations providing for conservation of natural resources will not impose serious or irreparable economic hardship on the licensee or permittee. Any amendment to regulations under this section will be made pursuant to the procedures in Subpart I of this part.

§ 971.805 Computation of time.

Saturdays, Sundays and Federal Government holidays will be included in computing the time period allowed for filing any document or paper under this part of 15 CFR Part 970, but when a time period expires on any of these days, that time period will be extended to include the next following Federal Government work day. Filing periods expire at the close of business on the day specified, for the office specified.

Subpart I—Uniform Procedures

§ 971.900 Applicability.

The regulations of this subpart govern the following hearings conducted by NOAA under this part and under 15 CFR Part 970:

(a) All adjudicatory hearings required by section 116(b) of the Act to be held on the following actions upon a finding by the Administrator that one or more specific and material issues of fact exist which require resolution by formal process, including but not limited to:

(1) All applications for issuance or transfer of licenses or permits;

(2) All proposed TCRs on a license or permit; and

(3) All proposals to modify significantly a license or permit;

(b) Hearing conducted under section 105(b)(3) of the Act on objection by a licensee or permittee to any term, condition and restriction in a license or permit, or to modification thereto, where the licensee or permittee demonstrates, after final action by the Administrator on the objection, that a dispute remains as to a material issue of fact;

(c) Hearings conducted in accordance with section 106(b) of the Act pursuant to a timely request by an applicant or a licensee or permittee for review of:

(1) A proposed denial of issuance or transfer of a license or permit; or

(2) A proposed suspension or modification of particular activities under a license or permit after a Presidential determination pursuant to section 106(a)(2)(B) of the Act;

(d) Hearings conducted in accordance with section 308(c) of the Act to amend regulations for the purpose of conservation of natural resources, protection of the environment, and safety of life and property at sea;

(e) Hearings conducted in accordance with § 971.302 or 15 CFR 970.407 on a proposal to deny certification of an application; and

(f) Hearings conducted in accordance with 15 CFR Part 970, Subpart C to determine priority of right among preenactment explorers.

§ 971.901 Formal hearing procedures.

(a) *General.* (1) All hearings described in § 971.900 are governed by Subpart C of 15 CFR Part 904, as modified by this section. The rules in this subpart take precedence over 15 CFR Part 904, Subpart C, to the extent there is a conflict.

(2) Hearings held under this section will be consolidated insofar as practicable with hearings held by other agencies.

(3) For the purposes of this subpart, "involved applicant, licensee or permittee" means an applicant, licensee or permittee the status of whose application, license, permit or activities conducted under the license or permit may be altered by the Administrator as a result of proceedings under this subpart.

(b) *Decision to hold a hearing.* Whenever the Administrator finds that a formal hearing is required by the provisions of this part or 15 CFR Part 970, he will provide for a formal hearing. Upon deciding to hold a formal hearing, the Administrator will refer the proceeding to the Department of Commerce Office of Administrative Law Judges for assignment to an Administrative Law Judge to serve as presiding officer for the hearing.

(c) *Notice of formal hearing.* (1) The Administrator will publish notice of the formal hearing in the **Federal Register** at least 15 days before the beginning of the hearing, and will send written notice by registered or certified mail to any involved applicant, licensee or permittee and to all persons who submitted written comments upon the action in question, or who testified at any prior informal hearing on the action or who filed a request for the formal hearing under this part or 15 CFR Part 970.

(2) Notice of a formal hearing will include, among other things:

(i) Time and place of the hearing and the name of the presiding judge;

(ii) The name and address of the person(s) requesting the formal hearing or a statement that the formal hearing is being held by order of the Administrator;

(iii) The issues in dispute which are to be resolved in the formal hearing;

(iv) The due date for filing a written request to participate in the hearing in accordance with paragraphs (f)(2) and (f)(3) of this section; and

(v) Reference to any prior informal hearing from which the issues to be determined arose.

(d) *Powers and duties of the administrative law judge.* In addition to the powers enumerated in 15 CFR Part 904, Subpart C, judges will have the power to:

(1) Regulate the course of the hearing and the conduct of the parties, interested persons and others submitting evidence, including but not limited to the power to require the submission of part or all of the evidence in written form if the judge determines a party will not be prejudiced thereby, and if otherwise in accordance with law;

(2) Rule upon requests submitted in accordance with paragraph (f)(2) of this section to participate as a party, or requests submitted in accordance with paragraph (f)(3) of this section to participate as an interested person in a proceeding, by allowing, denying, or limiting such participation; and

(3) Require, at or prior to any hearing, the submission and exchange of evidence.

(e) *Argument.* At the close of the formal hearing, each party will be given the opportunity to submit written arguments on the issues before the judge.

(f) *Hearing Participation.*

(1) Parties to the formal hearing will include:

(i) The NOAA General Counsel;

(ii) Any involved applicant, licensee or permittee; and

(iii) Any other person determined by the judge, in accordance with paragraph (f)(2) below, to be eligible to participate as a full party.

(2) Any person desiring to participate as a party in a formal hearing must submit a request to the judge to be admitted as a party. The request must be submitted within ten days after the date of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. Such person will be allowed to participate if the judge finds that the interests of justice and a fair determination of the issues would be served by granting the request. The judge may entertain a request submitted after the expiration of the ten days, but such a request may only be granted upon an express finding on the record that:

(i) Special circumstances justify granting the request;

(ii) The interests of justice and a fair determination of the issues would be served by granting the request;

(iii) The requestor has consented to be bound by all prior written agreements and stipulations agreed to by the existing parties, and all prior orders entered in the proceedings; and

(iv) Granting the request will not cause undue delay or prejudice the rights of the existing parties.

(3)(i) Any interested person who desires to submit evidence in a formal hearing must submit a request within ten days after the dates of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. The judge may waive the ten day rule for good cause, such as if the interested person, making this request after the expiration of the ten days, shows that he lacked prior knowledge of the formal hearing, and the evidence he proposes to submit may significantly affect the outcome of the proceedings.

(ii) The judge may permit an interested person to submit evidence at any formal hearing if the judge

determines that such evidence is relevant to facts in dispute concerning the issue(s) being adjudicated. The fact that an interested person may submit evidence under this paragraph at a hearing does not entitle the interested person to participate in other ways in the hearing unless allowed by the judge under paragraph (f)(3)(iii) below.

(iii) The judge may allow an interested person to submit oral testimony, oral arguments or briefs, or to cross-examine witnesses or participate in other ways, if the judge determines:

(A) That the interests of justice would be better served by allowing such participation by the interested person; and

(B) That there are compelling circumstances favoring such participation by the interested person.

(g) *Definition of issues.* (1) Whenever a formal hearing is conducted pursuant to this section the Administrator may certify the issues for decision to the judge, and if the issues are so certified, the formal hearing will be limited to those issues.

(2) Whenever a formal hearing is conducted pursuant to a request by an applicant, licensee or permittee for review of a denial of issuance or transfer of a license or permit in accordance with section 106(a)(4) of the Act, or pursuant to an objection to any term, condition, or restriction in a permit in accordance with section 105(b)(3) or (c)(4) of the Act, no issues may be raised by any party or interested person that were not submitted previously to the administrative record on the action, unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise the new issues shows that it could not reasonably have ascertained the issues or a prior stage in the administrative process, or that it could not have reasonably anticipated the relevance or materiality of the information sought to be introduced.

(h) *Decisions.*—(1) *Proposed findings of fact and conclusions of law.* The judge will allow each party to file with the judge proposed findings of fact, and in appropriate cases conclusions of law, together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs must be filed within ten days after the hearing or within such additional time as the judge may allow. Such proposals and briefs must refer to all portions of the record and to all authorities relied upon in support of each proposal. Reply briefs must be submitted within ten days after receipt of the proposed findings and conclusions to which they respond, unless the judge allows additional time.

(2) *Recommended decision.* As soon as practicable, but normally not later than 90 days after the conclusion of the formal hearing, the judge will evaluate the record of the formal hearing and prepare and file a recommended decision with the Administrator. The decision will contain findings of fact, when appropriate, conclusions regarding all material issues of law, and a recommendation as to the appropriate action to be taken by the Administrator. The judge will serve a copy of the decision on each party and upon the Administrator.

(3) *Final decision.* (i) As soon as practicable, but normally not later than 60 days after receipt of the recommended decision, the Administrator will issue a final decision. The final decision will include findings of fact and conclusions regarding material issues of law or discretion, as well as reasons therefor. The final decision may accept or reject all or part of the recommended decision.

(ii) With respect to hearings held pursuant to section 116(b), the Administrator may defer announcement of his findings of fact until the time he takes final action with respect to any action described in section 116(a).

(iii) The Administrator will base the final decision upon the record already made except that the Administrator may issue orders:

(A) Specifying the filing of supplemental briefs; or

(B) Remanding the matter to the judge for the receipt of further evidence, or otherwise assisting in the determination of the matter.

(i) *Filing and service of documents.* (1) Whenever the regulations in this subpart or an order issued hereunder require a document to be filed within a certain period of time, such document will be considered filed as of the date of the postmark, if mailed, or (if not mailed) as of the date actually delivered to the office where filing is required. Time periods will begin to run on the day following the date of the document, paper, or event which begins the time period.

(2) All submissions must be signed by the person making the submission, or by the person's attorney or other authorized agent or representative.

(3) Service of a document must be made by delivering or mailing a copy of the document to the known address of the person being served.

(4) Whenever the regulations in this subpart require service of a document, such service may effectively be made on the agent for the service of process or on the attorney for the person to be served.

(5) Refusal of service of a document by the person, his agent, or attorney will be deemed effective service of the document as of the date of such refusal.

(6) A certificate of the person serving the document by personal delivery or by mailing, setting forth the manner of the service, will be proof of the service.

Subpart J—Enforcement

§ 971.1000 General.

(a) *Purpose and scope.* (1) Section 302 of the Act authorizes the Administrator to assess a civil penalty, in an amount not to exceed $25,000 for each violation, against any person found to have committed an act prohibited by Section 301 of the Act. Each day of a continuing violation is a separate offense.

(2) Section 106 of the Act describes the circumstances under which the Administrator may suspend or revoke a license or permit, or suspend or modify activities under a license or permit, in addition to or in lieu of imposing of a civil penalty, or in addition to imposing a fine.

(3) Section 306 of the Act makes provisions of the customs laws relating to, among other things, the remission or mitigation of forfeitures, applicable to forfeitures of vessels and hard mineral resources. The Administrator is authorized to entertain petitions for administrative settlement of property seizures made under the Act which would otherwise proceed to judicial forfeiture.

(4) Section 114 of the Act authorizes the Administrator to place observers on vessels used by a licensee or permittee under the Act to monitor compliance and environmental effects of activities under the license or permit.

(5) Section 117 of the Act describes the circumstances under which a person may bring a civil action against an alleged violator or against the Administrator for failure to perform a nondiscretionary duty, and directs the Administrator to issue regulations governing procedures prerequisite to such a civil action.

(6) The regulations in this subpart provide uniform rules and procedures for the assessment of civil penalties (§§ 971.1001–§ 971.1002), and license and permit sanctions (§ 971.1003); the remission or mitigation of forfeitures (§ 971.1004); observers (§ 971.1005); protection of certain information related to enforcement (§ 971.1006); and procedures requiring persons planning to bring a civil action under section 117

of the Act to give advance notice (§ 971.1007).

(b) *Filing and service of documents.* (1) Except as otherwise provided by this subpart, filing and service of documents required by this subpart will be in accordance with § 971.901(i). The method for computing time periods set forth in § 971.901(i) also applies to any action or event, such as payment of a civil penalty, required by this subpart to take place within a specified period of time.

(2) If an oral or written request is made to the Administrator within ten days after the expiration of a time period established in this subpart for the required filing of documents, the Administrator may permit a late filing if the Administrator finds reasonable grounds for an inability or failure to file within the time periods. All extensions will be in writing. Except as provided by this paragraph, by 15 CFR 904.102 or by order of an administrative law judge, no requests for an extension of time may be granted.

§ 971.1001 Assessment procedure.

Subpart B of 15 CFR Part 904 governs the procedures for assessing a civil penalty under the Act, and the rights of any person against whom a civil penalty is assessed.

§ 971.1002 Hearing and appeal procedures.

(a) *Beginning of hearing procedures.* Following receipt of a written request for a hearing timely filed under 15 CFR 904.102, the Administrator will begin procedures under this section by forwarding the request, a copy of the NOVA, and any response thereto to the Department of Commerce, Office of Administrative Law Judges.

(b) Subpart C of 15 CFR Part 904 governs the hearing and appeal procedures for civil penalties assessed under the Act.

§ 971.1003 License and permit sanctions.

(a) *Application of this section.* This section governs the suspension or revocation of any license or permit issued under the Act, or the suspension or modification of any particular activity or actitities under a license or permit, which suspension, revocation or modification is undertaken in addition to, or in lieu of, imposing a civil penalty under this subpart, or in addition to imposing a fine.

(b) *Basis for sanctions.* The Administrator may act under this section with respect to a license or permit issued under the Act, or any particular activity or activities under such a license or permit, if the licensee or permittee substantially fails to comply with any provision of the Act, any regulation or order issued under the Act, or any term, condition, or restriction in the license or permit.

(c) *Nature of sanctions.* In the Administrator's discretion and subject to the requirements of this section, the Administrator may take any of the following actions or combinations thereof with respect to a license or permit issued under the Act:

(1) Revoke the license or permit;

(2) Suspend the license or permit, either for a specified period of time or until certain stated requirements are met, or both; or

(3) Modify any activity under the license or permit, as by imposing additional requirements or restraints on the activity.

(d) *Notice of sanction.* (1) The Administrator will prepare a notice of sanction (NoS) setting forth the sanction to be imposed and the basis therefor. The NoS will state:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation, license or permit, or order allegedly violated;

(iii) The nature and duration of the proposed sanction;

(iv) The effective date of the sanction, which is 30 days after the date of the notice unless the Administrator establishes a different effective date under paragraph (d)(4) or paragraph (e) of this section;

(v) That the licensee or permittee has 30 calendar days from receipt of the notice in which to request or waive a hearing, under paragraph (f) of this section; and

(vi) The determination made by the Administrator under paragraph (e)(1) of this section, and any time period that the Administrator provides the licensee or permittee under paragraph (e)(1) to correct a deficiency.

(2) If a hearing is requested in a timely manner, the sanction becomes effective as provided in the final decision of the Administrator issued pursuant to paragraph (g) of this section, unless the Administrator provides otherwise under paragraph (d)(4) of this section.

(3) The NoS will be served personally or by registered or certified mail, return receipt requested, on the licensee or permittee. The Administrator will also publish in the Federal Register a notice of his intention to impose a sanction.

(4) The Administrator may make the sanction effective immediately or otherwise earlier than 30 days after the date of the NoS if the Administrator finds, and issues an emergency order summarizing such finding and the basis therefor, that an earlier date is necessary to:

(i) Prevent a significant adverse effect on the environment; or

(ii) Preserve the safety of life and property at sea.

If the Administrator acts under this paragraph (d)(4), the Administrator will serve the emergency order as provided in paragraph (d)(3) of this section.

(5) The NoS will be accompanied by a copy of this subpart and the applicable provisions of 15 CFR Part 904 and 15 CFR Part 971 Subpart I.

(e) *Opportunity to correct deficiencies.* (1) Prior to issuing the NoS, the Administrator will determine whether the reason for the proposed section is a deficiency which the licensee or permittee can correct. Such determination, and the basis therefor, will be set forth in the NoS.

(2) If the Administrator determines that the reason for the proposed sanction is a deficiency which the licensee or permittee can correct, the Administrator will allow the licensee or permittee a reasonable period of time, up to 180 days from the date of the NoS, to correct the deficiency. The NoS will state the effective date of the sanction, and that the sanction will take effect on that date unless the licensee or permittee corrects the deficiency within the time prescribed or unless the Administrator grants an extension of time to correct the deficiency under paragraph (e)(3) of this section.

(3) The licensee or permittee may, within the time period prescribed by the Administrator under paragraph (e)(2) of this section, request an extension of time to correct the deficiency. The Administrator may, for good cause shown, grant an extension. If the Administrator does not grant the request, either orally or in writing before the effective date of the sanction, the request will be considered denied.

(4) When the licensee or permittee believes that the deficiency has been corrected, the licensee or permittee shall so advise the Administrator in writing. The Administrator will, as soon as practicable, determine whether or not the deficiency has been corrected and advise the licensee or permittee of such determination.

(5) If the Administrator determines that the deficiency has not been corrected by the licensee or permittee within the time prescribed under paragraph (e)(2) or (e)(3) of this section, the Administrator may:

(i) Grant the licensee or permittee additional time to correct the deficiency, for good cause shown;

(ii) If no hearing has been timely requested under paragraph (f)(1) of this section, notify the licensee or permittee that the sanction will take effect as provided in paragraph (e)(2) or (e)(3) of this section; or

(iii) If a request for a hearing has been timely filed under paragraph (f)(1) of this section, and hearing proceedings have not already begun, or if the Administrator determines under paragraph (f)(3) of this section to hold a hearing, notify the licensee or permittee of the Administrator's intention to proceed to a hearing on the matter.

(f) *Opportunity for hearing.* (1) The licensee or permittee has 30 days from receipt of the NoS to request a hearing. However, no hearing is required with respect to matters previously adjudicated in an administrative or judicial hearing in which the licensee or permittee has had an opportunity to participate.

(2) If the licensee or permittee requests a hearing, a written and dated request shall be served either in person or by certified or registered mail, return receipt requested, at the address specified in the NoS. The request shall either attach a copy of the relevant NoS or refer to the relevant NOAA case number.

(3) If no hearing is requested under paragraph (f)(2) of this section, the Administrator may nonetheless order a hearing if the Administrator determines that there are material issues of fact, law, or equity to be further explored.

(g) *Hearing and decision.* (1) If a timely request for a hearing under paragraph (f) of this section is received, or if the Administrator orders a hearing under paragraph (f)(3) of this section, the Administrator will promptly begin proceedings under this section by forwarding the request, a copy of the NoS and any response thereto to the Department of Commerce Office of Administrative Law Judges which will docket the matter for hearing. Written notice of the referral will promptly be given to the licensee or permittee, with the name and address of the attorney representing the Administrator in the proceedings (the agency representative). Thereafter, all pleading and other documents must be filed directly with the Department of Commerce Office of Administrative Law Judges, and a copy must be served on the opposing party (respondent or agency representative).

(2) Except as provided in this section, the hearing and appeal procedures in 15 CFR Part 904 Subpart C apply to any hearing held under this section.

(3) If the proposed sanction is the result of a correctable deficiency, the hearing will proceed concurrently with any attempt to correct the deficiency unless the parties agree otherwise or the Administrative law Judge orders differently.

(4) As soon as practicable, but normally not later than 90 days after the conclusion of the formal hearing, the judge will file with the Administrator a recommended decision prepared in accordance with § 971.901(h)(2).

(5) The Administrator will issue a final decision in accordance with § 971.901(h)(3). The decision will be a final order of the Administrator.

(6) The Administrator will serve notice of the final decision on the licensee or permittee in the manner described by paragraph (d)(3) of this section.

§ 971.1004 Remission or mitigation of forfeitures.

(a) Authorized enforcement officers are empowered by section 304 of the Act to seize any vessel (together with its gear, furniture, appurtenances, stores, and cargo) which reasonably appears to have been used in violation of the Act, if necessary to prevent evasion of the enforcement of this Act, or of any regulation, order or license or permit issued pursuant to the Act. Enforcement agents may also seize illegally recovered or processed hard mineral resources, as well as other evidence related to a violation. Section 306 of the Act provides for the judicial forfeiture of vessels and hard mineral resources.

(b) Subpart F of 15 CFR Part 904 governs procedures regarding seized property that is subject to forfeiture or has been forfeited under the Act, including the remission or mitigation of forfeitures.

(c) Unless otherwise directed in a notice concerning the seized property, a petition for relief from forfeiture under the Act and pursuant to 15 CFR 904.506(b) shall be addressed to the Administrator and filed with the Ocean Minerals and Energy Division at the address specified in § 971.200(b).

§ 971.1005 Observers.

(a) *Purpose of observers.* Each licensee and permittee shall allow, at such times and to such extent as the Administrator deems reasonable and necessary, an observer (as used in this section, the term "observer" means "one or more observers") duly authorized by the Administrator to board and accompany any vessel used by the licensee or permittee in exploration or commercial recovery activities (hereafter referred to in this section as a "vessel"), for the purpose of observing, evaluating and reporting on:

(1) The effectiveness of the terms, conditions, and restrictions of the license or permit;

(2) Compliance with the Act, regulations and orders issued under the Act, and the license or permit terms, conditions, and restrictions; and

(3) The environmental and other effects of the licensee's or permittee's activities under the license or permit.

(b) *Notice to licensee or permittee.* (1) The Administrator may notify a licensee or permittee that the Administrator plans to place an observer aboard a vessel.

(2) The Administrator normally will issue any such notice as far in advance of placement of the observer as is practicable.

(3) *Contents of notice.* The notice given by the Administrator may include, among other things:

(i) The name of the observer, if known at the time notice is issued;

(ii) The length of time which the observer likely will be aboard the vessel;

(iii) Information concerning activities the observer is likely to conduct, such as:

(A) Identification of special activities that the observer will monitor;

(B) Planned tests of equipment used for monitoring;

(C) Activities of the observer that are likely to require assistance from the vessel's personnel or crew or use of the vessel's equipment; and

(D) Planned tests of alternative operating procedures or technologies for mitigation of environmental effects.

(iv) Information concerning the equipment that will be brought aboard the vessel, such as a description of the monitoring equipment, and any special requirements concerning the handling, storage, location or operation of, or the power supply for, the equipment.

(c) *Licensee's and permittee's responsibilities for observer placement.* Upon request by the Administrator, a licensee or permittee shall facilitate observer placement by promptly notifying the Administrator regarding the timing of planned system tests and the departure date of the next voyage, or, if the vessel is at sea, suggesting a time and method for transporting the observer to the vessel.

In addition, the licensee or permittee shall notify NOAA of the date of departure of planned cruises 60 days in advance of ship departure from port for purposes of NOAA's determination of

whether to place Federal observers onboard. If cruise plans are changed by more than 30 days from the date stated by the exploration or commercial recovery plan, the licensee or permittee shall notify NOAA as soon as such changes are made, or 90 days prior to the previously scheduled departure.

(d) *Duties of licensee, permittee, owner or operator.* Each licensee, permittee, owner or operator of a vessel aboard which an observer is assigned shall:

(1) Allow the observer access to and use of the vessel's communications equipment and personnel when the observer deems such access necessary for the transmission and receipt of messages;

(2) Allow the observer access to and use of the vessel's navigation equipment and personnel when the observer deems such access necessary to determine the vessel's location;

(3) Provide all other reasonable cooperation and assistance to enable the observer to carry out the observer's duties; and

(4) Provide temporary accommodations and food to the observer aboard the vessel which are equivalent to those provided to officers of the vessel.

(3) *Reasonableness of observer activities.* (1) To the maximum extent practicable, observation duties will be planned and carried out in a manner that minimizes interference with the licensee's or permittee's activities under the license or permit.

(2) The Administrator will assure that equipment brought aboard a vessel by the observer is reasonable as to size, weight, and electric power and storage requirements, taking into consideration the necessity of the equipment for carrying out the observer's functions.

(3) The observer will have no authority over the operation of the vessel or its activities, or the officers, crew, or personnel of the vessel. The observer will comply with all rules and regulations issued by the licensee or permittee, and all orders of the Master or senior operations official, with respect to ensuring safe operation of the vessel and the safety of its personnel.

(f) *Non-interference with observer.* Licensees, permittees and other persons are reminded that the Act (see, for example, sections 301(3) and 301(4)) makes it unlawful for any person subject to section 301 of the Act to interfere with any observer in the performance of the observer's duties.

(g) *Confidentiality of information.* NOAA recognizes the possibility that an observer, in performing observer functions, will record information which the licensee or permittee considers to be proprietary. NOAA intends to protect such information consistent with applicable law. The Administrator may in appropriate cases provide the licensee or permittee an opportunity:

(1) To review those parts of the observer's report which may contain proprietary information; and

(2) To request confidential treatment of such information under § 971.802.

§ 971.1006 Proprietary enforcement information.

(a) Proprietary and privileged information seized or maintained under Title III of the Act concerning a person or vessel engaged in commercial recovery will not be made available for general or public use or inspection.

(b) Although presentation of evidence in a proceeding under this subpart is not deemed general or public use of information, the Administrator will, consistent with due process, move to have records sealed, under 15 CFR Part 904 Subpart C, or other applicable provisions of law, in any administrative or judicial proceeding where the use of proprietary or privileged information is required to serve the purpose of the Act.

§ 971.1007 Advance notice of civil actions.

(a) *Actions against alleged violators.* (1) No civil action may be filed in a United States District Court under Section 117 of the Act against any person for alleged violation of the Act, or any regulation, or license or permit term, condition, or restriction issued under the Act, until 60 days after the Administrator and any alleged violator receive written and dated notice of alleged violation.

(2) The notice shall contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation or license or permit allegedly violated; and

(iii) Any documentary or other evidence of the alleged violation.

(b) *Action against the Administrator.* (1) No civil action may be filed in a United States District Court under Section 117 of the Act against the Administrator for an alleged failure to perform any act or duty under the Act which is not discretionary until 60 days after receipt by the Administrator of a written and dated notice of intent to file the action.

(2) The notice shall contain:

(i) A specific reference to the provisions of the Act, regulation or permit believed to require the Administrator to perform a nondiscretionary act or duty;

(ii) A precise description of the nondiscretionary act or duty believed to be required by such provision;

(iii) A concise statement of the facts believed to show a failure to perform the act or duty; and

(iv) Any documentary or other evidence of the alleged failure to perform the act or duty.

PART 970—DEEP SEABED MINING REGULATIONS FOR EXPLORATION LICENSES

The authority citation for 15 CFR Part 970 continues to read as follows:

Authority: 30 U.S.C. 1401 *et seq.*

1. In the Index to 15 CFR Part 970, the entry for Subpart I is revised and Subparts J and K are removed and reserved to read as follows:

Subpart I—Miscellaneous

Sec.
970.900 Other Applicable Regulations

Subparts J and K [Reserved]

§ 970.200 [Amended]

2. In § 970.200, paragraph (f) is revised to read as follows:

* * * * *

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in his application treated as confidential, he must so indicate pursuant to 15 CFR 971.802.

§ 970.212 [Amended]

3. In § 970.212, paragraphs (a) and (b)(2) are revised to read as follows:

(a) *Notice and comments.* The Administrator will publish in the **Federal Register**, for each application for an exploration license, notice that such application has been received. Subject to 15 CFR 971.802, interested persons will be permitted to examine the materials relevant to such application. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) * * *

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia in accordance with the provisions of Subpart I of 15 CFR Part 971. The record developed in any such formal hearing will be part of the basis of the Administrator's decisions on an application.

* * * * *

§ 970.302 [Amended]

4. In § 970.302, paragraph (j) is amended by revising paragraph (j)(1)(i) introductory text, and paragraph (j)(1)(i)(A) to read as follows:

§ 970.302 Procedures and criteria for resolving conflicts.

* * * * *

(j) *Unresolved domestic conflict*—(1) *Procedure.* (i) In the case of an original domestic conflict or a new domestic conflict, the applicants will be allowed until April 15, 1983, to resolve the conflict or agree in writing to submit the conflict to a specified binding conflict resolution procedure. If, by April 15, 1983, all applicants involved in an original or new domestic conflict have not resolved that conflict, or agreed in writing to submit the conflict to a specified binding conflict resolution procedure, the conflict will be resolved in a formal hearing held in accordance with Subpart I of 15 CFR Part 971, except that:

(A) The General Counsel of NOAA will not, as a matter of right, be a party to the hearing; however, the General Counsel may be admitted to the hearing by the administrative law judge as a party or as an interested person pursuant to 15 CFR 971.901 (f)(2) or (f)(3); and

* * * * *

§ 970.407 [Amended]

5. In § 970.407, paragraph (d) is revised to read as follows:

* * * * *

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of 15 CFR Part 971. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempts to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

* * * * *

§ 970.501 [Amended]

6. In § 970.501, paragraphs (a) and (b)(2) are revised to read as follows:

(a) *Notice and comment.* The Administrator will publish in the Federal Register notice of each proposal to issue or transfer, and of terms and conditions for, and restrictions on, an exploration license. Subject to 15 CFR 971.802, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) * * *

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia in accordance with the provisions of Subpart I of 15 CFR Part 971. The record developed in any such formal hearing will be part of the basis for the Administrator's decisions on issuance or transfer of, and of terms, conditions and restrictions for the license.

* * * * *

§ 970.508 [Amended]

7. In § 970.508, paragraph (d) is revised to read as follows:

* * * * *

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of 15 CFR Part 971. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

* * * * *

§ 970.510 [Amended]

8. In § 970.510, paragraph (d) is revised to read as follows:

* * * * *

(d) If, after the Administrator takes final action on an objection, the licensee demonstrates that a dispute remains on a material issue of fact, the Administrator will provide for a formal hearing which will proceed in accordance with Subpart I of 15 CFR Part 971.

§ 970.511 [Amended]

9. In § 970.511, paragraphs (a)(1), (b), (e) and (i)(2) are revised to read as follows:

(a) The Administrator may:

(1) In addition to, or in lieu of, the imposition of any civil penalty under Subpart J of 15 CFR Part 971, or in addition to the imposition of any fine under Subpart J, suspend or revoke any license issued under this part, or suspend or modify any particular activities under such a license, if the licensee substantially fails to comply with any provision of the Act, this part, or any term, condition or restriction of the license; and

* * * * *

(b) Any action taken by the Administrator in accordance with paragraph (a)(1) will proceed pursuant to the procedures in 15 CFR 971.1003. Any action taken in accordance with paragraph (a)(2) will proceed pursuant to paragraphs (c) through (i) of this section.

* * * * *

(e) If a timely request for administrative review of the proposed action is made by the licensee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of 15 CFR Part 971. If the proposed action is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

* * * * *

(i) * * *

(2) The Administrator determines that immediate suspension of such a license, or immediate suspension or modification of particular activities under a license, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life or property at sea, and the Administrator issues an emergency order in accordance with 15 CFR 971.1003(d)(4).

* * * * *

10. In Subpart I, § 970.900 is revised and §§ 970.901 through 970.906 are removed, to read as follows:

§ 970.900 Other Applicable Regulations.

The regulations in Subparts H, I and J of 15 CFR Part 971 are consolidated regulations and are applicable both to licenses under this part and to permits under 15 CFR Part 971. The regulations in 15 CFR Subparts H, I and J govern records to be maintained and information to be submitted by licensees and permittees, public disclosure of documents received by NOAA, relinquishment and surrender of licenses and permits, amendment of regulations, computation of time, uniform hearing procedures, and enforcement under the Act.

Subparts J and K [Removed and Reserved]

11. Subparts J and K (§§ 970.1000–970.1107) are removed and reserved.

[FR Doc. 86–16650 Filed 7–24–86; 8:45 am]

BILLING CODE 3510–12–M

Federal Register

Friday
July 25, 1986

Part III

Department of Agriculture

Forest Service

36 CFR Part 291

Recreation Management; Recovery of Reservation System Costs; Final Rule and Notice

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 291

Occupancy and Use of Sites and Areas of Concentrated Public Use; Recovery of Reservation System Costs

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture hereby establishes regulations to recover Federal costs associated with administration of user reservation systems on some National Forest System recreation areas and sites. This action is necessary to continue protection of resources and to preserve opportunities for high quality recreation experiences at heavily used areas.

EFFECTIVE DATE: This rule is effective August 25, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lennon, Recreation Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, (202) 447-2311.

SUPPLEMENTARY INFORMATION: Some highly popular National Forest recreation areas, recreation sites, and Wilderness Areas have reached their use capacity. Further increases in the numbers of people using these areas and sites will result in crowded conditions, unavailable facilities, a degraded recreation or Wilderness experience, and damage to the resource. In such cases, the Forest Service sometimes institutes a reservation system. By controlling numbers of recreation visitors through reservations, the Forest Service ensures that the area or site continues to be available for use, that the quality of the recreation opportunity remains at the desired level, and that recreationists will be able to participate in the activity when they arrive at the area or site.

The Forest Service cost for processing requests and issuing and checking reservations (permits) on an area or site has risen sharply over the last several years. On one Wild and Scenic River, the cost of administering a reservation system has grown to $40,000 a year.

Because issuance of a reservation is a special service to the user, the agency has proposed revising its regulations to permit recovery of Federal costs associated with this service. The proposed rule was published on Nov. 15, 1984, at 49 FR 45177.

Under the proposed rule, fee levels would be based upon anticipated costs, which are forecasted to range from $2.00 to $8.00. Fees would be nonrefundable. The proposed rule would also require posting areas subject to fees.

Comments on the proposed rule were received from 29 parties: Federal agencies (5), private industry (2), citizens' groups (10), and individuals (12). Major comments and responses are summarized below.

Public Comments and Responses

Comment: The reservation fee singles out certain National Forest user groups for inequitible treatment and will create an unnecessary burden upon those users from the standpoint of costs and time to get a permit.

Response: The fee system will apply to a limited group of users. However, these same users are receiving the benefits from the reservation service and those benefits are costing significant amounts above the normal operation and maintenance costs. The operational and maintenance costs will continue to be financed by appropriated funds. Direction developed to implement this rule will establish the importance of applying the fee in situations where it may be done without burdensome time and cost impacts to the user and the administrator.

Comment: Tax monies have already been paid for the management of National Forests, therefore, additional fees should not be required.

Response: The regulations at 31 U.S.C. 9701 state that where special services are provided for a particular group of users, a fee may be charged for that service. The agency has determined that, in the situations described above, there are users who are getting the benefits of reservations and that the costs of the reservations are sufficient to warrant recovery of the costs.

Comment: Several reviewers asked where the money collected for reservations would go and if it will be available for use on the unit that collects it.

Response: By law, the money must be deposited in the U.S. Treasury and will not be directly available for use on the unit. Returning the monies to the local unit would require new legislation.

Comment: Implementation of the rule should be delayed until the entire Forest Service fee proposal can be coordinated and examined by the President's Commission on American Outdoors.

Response: The Forest Service has been actively considering a proposal for a general use fee. That proposal is of much broader scope with extensive policy ramifications and would require legislation. It has been placed before the President's Commission as an item that the Forest Service would like to see thoroughly discussed. The subject of this rulemaking is of a different nature and much narrower in scope and implication, is based upon existing law, and meets a current resource management need. Therefore, we feel it is advisable to move forward with implementation of this rule.

Comment: Additional details are needed to understand how the rule will be applied.

Response: Implementation instructions have been developed for issuance in the Forest Service Manual, the principal source of direction to Forest Service personnel. Included in the instructions are delegations of authority to Forest Supervisors to collect fees, as well as a list of criteria Supervisors are to use in determining where fees will be collected. As a general matter, a reservation system will be considered when recreation use is near or above the use capacity of the site or area and the system would be a service to the user. Fees will be imposed when it is economical and administratively practical. Necessary criteria for fees are: the costs of the permit reservation system are significant; and conditions exist which lend themselves to the implementation of a reservation fee without burdensome and costly requirements on the user and agency. For practical purposes, a substantial number of people would usually need to use the site or area before implementation of user fees would be cost beneficial. The full text of this directive appears as a separate notice in this issue of the **Federal Register.**

Additional Comments: In addition to the preceding major comments received on the proposed rule, reviewers made a number of suggestions:

—Distinguish between recreation areas and Wilderness Areas.
—Broaden the scope of the rule to include recreation sites.
—Include a citation to Pub. L. 97-258 concerning fees and charges.
—Explain what is meant by "other special services."

Response: The final rule adopts the first three suggestions and deletes the phrase "other special services."

The following comments were received that relate to aspects of the overall reservation (permit) process:

—No limits on use should be imposed unless users stay overnight.
—Permit systems discourage use and over-regulate users.
—Reservation fees should not be used as a method to adjust allocations between publics served by outfitters and guides and those that are not.

Response: These comments relate to matters beyond the scope of this rule and cannot be dealt with as part of this rulemaking.

Except as noted in the foregoing discussion of comments received, the final rule is identical to the proposed rule.

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12291, and it has been determined that the regulation is not a major rule. It will result in an insignificant increase in costs to individual users of the selected sites and areas while permitting the Government to recoup administrative expenses for the reservation system. Because the regulation applies to individual recreation users in a limited situation, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

The Assistant Secretary of Agriculture for Natural Resources and the Environment has determined that this action will not have a significant economic impact on a substantial number of small entities.

This rule is determined to be limited in context and intensity and to produce little or no environmental effects, individually or cumulatively, to either the biological or physical component of the human environment. Therefore, it is unnecessary to prepare an environmental assessment or an environmental impact statement.

Lists of Subjects in 36 CFR Part 291

Recreation and recreation area.

PART 291—[AMENDED]

Therefore, for the reasons set forth above, Part 291 of Chapter II of Title 36 of the Code of Federal Regulations is hereby amended as follows:

1. Part 291 is amended by adding a table of contents and by revising the authority citation, to read as follows. The authority which follows § 291.9 is removed.

Sec.

291.9 Admission fees and recreation use fees.
291.10 Reservation fees.

Authority: 30 Stat. 35, as amended (16 U.S.C. 551); Sec. 1, 33 Stat. 628 (16 U.S.C. 472); Sec. 4(b,c), Pub. L. 92–347, 86 Stat. 459, as amended (16 U.S.C. 460*l*–6a); Sec. 10(d), Pub. L. 90–542, 82 Stat. 916 (16 U.S.C. 1281(d)); Sec. 7(i), Pub. L. 90–543, 82 Stat. 925, as amended (16 U.S.C. 1246(i)); Sec. 4(b), Pub. L. 88–577, 78 Stat. 893 (16 U.S.C. 1133(b)); Sec. 4(a), Pub. L. 95–495, 92 Stat. 1650; 96 Stat. 1051 (31 U.S.C. 9701).

Section 291.10 is added to read as follows:

§ 291.10 Reservation fees.

(a) The Forest Service may charge fees to recover expenses incurred in providing reservation services for the public use of recreation areas and sites and Wilderness Areas where limitations on use are deemed necessary or desirable to achieve the management purposes of an area of the National Forest System. The Chief of the Forest Service or his delegate shall establish the amount of such fees.

(b) Forest Service officials shall prominently post clear notice that a reservation fee has been established at each area, site or Wilderness Area and at appropriate locations therein. Publications distributed at such areas, sites, and Wilderness Areas shall also include such notice.

Dated: June 5, 1986.

Douglas W. MacCleery,

Acting Assistant Secretary, Natural Resources and Environment.

[FR Doc. 86–16681 Filed 7–24–86; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Recovery of Reservation System Costs; Notice of Interim Directive and Request for Public Comment

AGENCY: Forest Service, USDA.

ACTION: Notice of interim directive; request for public comment.

SUMMARY: The Forest Service is issuing an Interim Directive to guide its personnel in determining if fees should be collected to recover the cost of administering a reservation system at certain recreation sites and areas or wilderness areas. The directive is necessary to implement new rules published in this same issue of the **Federal Register** authorizing the collection of reservation fees. Public comments are invited.

EFFECTIVE DATE: This Interim Directive is effective upon receipt by Forest Service personnel through the Forest Service directive system, which is estimated to occur by August 11, 1986.

Comments must be received by October 23, 1986.

ADDRESSES: Send written comments to R. Max Peterson, Chief (2330), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

The public may inspect comments received on this policy in the office of the Director, Recreation Management Staff, Room 4225, South Building, 14th and Independence SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lennon, Recreation Staff, Phone No. (202) 447-2311.

SUPPLEMENTARY INFORMATION: In a final rule published in this issue of the **Federal Register**, the Forest Service, at 36 CFR 291.10, authorizes the collection of fees for reservation services on the National Forest System. In order to provide timely direction to Forest Service personnel for implementing this new rule, it is necessary to issue an interim directive to Chapter 2330 of the Forest Service Manual, the principal source of agency policy.

Under the interim directive, the Chief delegates authority to Forest Supervisors to determine if fees should be charged and to determine the amount of such fees the directive establishes criteria to guide Supervisors in making these determinations.

In accordance with agency regulations on public participation at 36 CFR 216, the Forest Service hereby invites public comment on the interim direction, which is effective for up to one year after the date of publication. Comments received will be considered in developing the final policy which will be published as an amendment to the Forest Service Manual. Notice of the final policy also will be published in the **Federal Register**. The full text of the interim directive appears at the end of this notice.

Dated: May 20, 1986.

F. Dale Robertson,

Associate Chief, Forest Service.

Forest Service Manual

Washington, DC

Interim Directive No.
Duration: One year.
Chapter: 2330—Publicly-Managed Recreation Opportunities Posting Notice:

This interim directive provides direction for the recovery of costs associated with the operation of a reservation system on a recreation site, recreation area, or wilderness area.

2331.28—Reservation. A reservation is a permit issued to an individual or group that reserves a recreation opportunity in a portion of a recreation site, recreation area, or wilderness area for a stated period of time (Section 2334.35).

2331.28a—Authority. The authority to charge a reservation fee is granted under the following statutes: The Organic Act (30 Stat. 35; 16 U.S.C. 551) which authorizes the Secretary of Agriculture to regulate the occupancy and use of the National Forest; the Land and Water Conservation Fund Act (16 U.S.C. 460*l*-6a) which authorizes the charging of fees for the use of certain facilities and for special services; and the Fees and Charges Act of 1951 (65 Stat. 290; 31 U.S.C. 9701) which directs that services rendered by government agencies to the public shall be self sustaining to the fullest extent possible.

2331.28b—Objective. To recover costs associated with administration of recreation reservation services.

2331.28c—Policy. 1. Consider charging a fee for providing reservation services when the following conditions exist:

a. The recreation use of a site or area is near or above the established capacity, and controls have been implemented to protect the recreation experience, facilities, and/or forest resources.

b. Substantial numbers of forest visitors are utilizing the site or area.

c. Costs of administering a reservation system are significant enough to warrant a cost recovery effort.

d. The site or conditions lend themselves to a reservation fee system that can be implemented without burdensome and costly requirements on the user or administrator.

2. Establish the fee amount to recover only those costs directly associated with the service provided, including such activities as handling of reservation requests, issuance of the reservation permit, and the on-site checking of the reservation permit. Document the costs used to establish the fee amount.

3. Where practicable, use commercial reservation services.

4. Clearly post a reservation fee requirement at the site or area and at appropriate locations therein. Notice should also be given in published materials that the recreationist would likely use.

2331.28d—Responsibility. The Forest Supervisor is responsible for determining when a reservation fee will be charged and what the amount of such fee will be.

[FR Doc. 86-16683 Filed 7-24-86; 8:45 am]
BILLING CODE 3410-11-M

Federal Register

Friday
July 25, 1986

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 812

Review of Investigational Device Exemptions Regulations; Invitation To Submit Comments, Data, and Information; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 86N-0072]

Review of Investigational Device Exemptions Regulations; Invitation To Submit Comments, Data, and Information

AGENCY: Food and Drug Administration.

ACTION: Request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing its review of the investigational device exemptions (IDE) regulations. This notice invites interested persons to submit comments, data, and information to assist FDA in assessing the benefits, costs, and need for revision of these regulations. In addition, FDA invites comments on several issues involved in implementing the Federal Food, Drug, and Cosmetic Act as it applies to investigational devices.

DATE: Comments, data, and information by September 23, 1986.

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

FOR FURTHER INFORMATION CONTACT: Raymond F. Coakley, Jr., Center for Devices and Radiological Health (HFZ-83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of July 14, 1981 (46 FR 36333), FDA published a notice announcing the agency's plan for conducting a systematic review of its rules and asked the public to comment on those FDA regulations that are perceived to be most burdensome. The purpose of the initial review was to identify regulations that might impose unnecessary burdens on the public generally or on specific segments of the public such as small business and, for such regulations, to explore alternative measures for protecting the public health.

As a result of a systematic assessment of public comments received in response to the July 14, 1981, notice and of other available information, FDA published a notice in the **Federal Register** of July 2, 1982 (47 FR 29004), that identified the agency's rules initially selected for highest priority review. The July 2, 1982, notice also advised that FDA intended to select other rules for review.

FDA is now announcing that the agency is reviewing the IDE regulations (21 CFR Part 812). Although the July 2, 1982, notice did not identify the IDE regulations among those initially selected for review, experience indicates a need for their review. As part of its review, FDA will examine alternative approaches that might better carry out the purposes of section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) and other sections of the act relating to investigational devices. Review of the IDE regulations is also consistent with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354) and Executive Order 12291.

The IDE Regulations

Among other general provisions respecting control of medical devices intended for human use set forth in section 520 of the act, section 520(g) provides for the investigational use of medical devices by experts qualified by scientific training and experience to investigate the safety and effectiveness of such devices. The overriding congressional policy respecting clinical investigations of the safety and effectiveness of medical devices is set out in section 520(g)(1) of the act, which states: "[i]t is the purpose of section 520(g) to encourage, to the extent consistent with the protection of the public health and safety and with ethical standards, the discovery and development of useful devices intended for human use and to that end to maintain optimum freedom for scientific investigators in their pursuit of that purpose." An implicit purpose of section 520(g) of the act and of the IDE regulations is to ensure that what should be done in the course of responsible research with medical devices is actually done.

Section 520(g) of the act authorizes FDA to grant to any device intended for human use an exemption from the provisions of the act that relate to misbranding, registration, listing, premarket notification, performance standards, premarket approval, banned devices, recordkeeping and reporting requirements, current good manufacturing practice requirements, and restrictions on the distribution of devices and on the use of color additives to permit devices to be used in clinical investigations to determine their safety and effectiveness. Section 520(g) of the act also directs the agency to prescribe, by regulation, procedures and conditions for such exemptions. Accordingly, in the **Federal Register** of January 18, 1980 (45 FR 3732), FDA issued a final rule (21 CFR Part 812), to provide procedures for the conduct of clinical investigations of medical devices (the IDE regulations). Part 812 became effective July 16, 1980.

The IDE regulations apply to any device that is the object of clinical research involving human subjects to determine its safety or effectiveness (an "investigational device"). The IDE regulations require submission to FDA, and approval by FDA, of an Application for an Investigational Device Exemption (IDE application) before a sponsor of an investigation may begin a clinical investigation of any device that meets the definition of a "significant risk" device (see § 812.3(m)). An investigation of a device other that significant risk is deemed to have an approved application if the sponsor satisfies certain abbreviated requirements of the IDE regulations, including the requirement that the sponsor of the investigation, obtain approval of the investigation by an institutional review board (IRB) functioning in conformance with 21 CFR Part 56 (see §812.2(b)(1)). FDA has exempted investigations of some categories of devices from the requirements of the IDE regulations (see § 812.2(c)).

Review Procedures

During the last few years, FDA task forces have been examining and identifying major issues in a number of the agency's medical device activities, including its IDE program, with only limited public participation. The complete retrospective review of the IDE regulations being announced in this notice will complement this earlier work and allow the public greater opportunity to participate in the review than has been provided to date.

The major steps that FDA intends to follow in its review of the IDE regulations are:

1. Through this notice, to invite interested persons to submit comments, data, and information to assist FDA in assessing the benefits, drawbacks, and need for revision of the IDE regulations in whole or in part;

2. To analyze any data received in response to this notice, together with any data obtained by FDA from its experience in conducting the IDE program and its own research;

3. To evaluate societal benefits and costs (including benefits and costs to the public health and to the agency) of the IDE regulations and of any feasible alternatives to existing provisions of the regulations; and

4. To propose action the agency believes appropriate based on the outcome of the three steps listed above.

FDA may invite further public comment as the review progresses. In addition, if FDA initiates rulemaking to amend the IDE regulations as a result of the review procedures, FDA will provide interested persons an opportunity for comment on any such proposal.

Activities Related to This Review

The American Society of Artificial Internal Organs (ASAIO) has submitted to FDA a citizen petition (Docket No. 84P-0387). The petition requests FDA to amend the IDE regulations to allow certain limited investigations, or "feasibility studies," involving significant risk devices to be subject to fewer requirements of the IDE regulations than currently apply to clinical investigations of such devices. The petition addresses issues respecting clinical investigations involving medical devices that coincide with some of those already identified by FDA through its experience in implementing the IDE regulations and by its task forces during their review of the regulations. FDA published in the **Federal Register** of April 1, 1986 (51 FR 11266) a notice requesting comments on the petition. FDA will consider, in connection with its complete retrospective review of the IDE regulations, any comments submitted to the docket established for ASAIO's citizen petition.

FDA also recently published in the **Federal Register** notices of the availability of: (1) Guidance for the emergency use of unapproved medical devices (50 FR 42866; October 22, 1985, Docket No. 85D-0291) and (2) a guideline for preparing notices of availability of investigational medical devices (51 FR 11642; April 4, 1986, Docket No. 85D-0006). FDA will also consider, in connection with its review of the IDE regulations, any comments submitted to these dockets.

Invitation to Submit Comments, Data, and Information

FDA invites all interested persons, including manufacturers, dealers and distributors of medical devices, the clinical community (study subjects, investigators, sponsors, clinical monitors, and IRB's), and the public in general, to submit comments, data, and information about the actual or the potential impact that the IDE regulations have on any of them. FDA also invites comments and views regarding relevant issues, including the need to revise any part of the IDE regulations or to change any of FDA's programs for implementation of the regulations.

FDA encourages persons who intend to submit comments, data, or information to analyze carefully the characteristics of clinical investigations that might affect the scope or applicability of their comments. Such characteristics include, for example, risks to subjects (minimal (see § 56.102(i))), significant or other than significant (see § 812.3(m)), clinical purpose (diagnosis, monitoring, or therapy), or device complexity (e.g., from simple mechanical devices to complex electronic devices).

FDA emphasizes that it is important that persons who submit comments clearly and completely characterize the investigations that are the subjects of their concern. FDA also urges persons submitting comments to include sufficient analysis and discussion to explain completely the rationale supporting a particular view.

Information Desired

As discussed above, FDA welcomes comments on any issues related to the IDE program. FDA advises, however, that agency task forces have identified certain issues respecting benefits and costs that they perceive to be associated with the IDE regulations and that they consider to be relevant to any review of the regulations. They also have suggested some areas for consideration of alternatives to the current provisions of the regulations.

To provide an economic perspective on the regulations, several kinds of information on cost impacts and on benefits of the regulations will be helpful. Among costs, the following distinctions are relevant: baseline versus incremental, direct versus indirect, private versus societal, and one-time versus recurring. In this respect, FDA is particularly interested in "hard" cost data which credibly identify incremental costs of the IDE regulations and distinguish incremental costs from baseline costs. FDA is also interested in data which distinguish between one-time costs and recurring costs, expressed in dollars, type of personnel (professional, technical, or support), and staff hours.

FDA considers baseline costs associated with the IDE regulations to be those that would have been incurred for the same functions and purposes absent regulations, whereas incremental costs are the out-of-pocket costs of compliance with the particulars of the regulations, over and above the baseline costs.

FDA considers direct private costs associated with the IDE regulations to include recordkeeping, reporting, or other paperwork and clerical costs, and personnel time for research, consultations, meetings, and administration. Indirect private costs include effects such as delayed or diminished sales revenues due to delays in marketing attributable to requirements of the IDE regulations, or from misunderstandings of or uncertainties about the interpretation of the regulations. FDA has not been able to identify direct societal costs attributable to the IDE regulations and believes that such costs are probably minimal.

FDA notes that both costs and benefits of the IDE regulations may be social and personal as well as financial. Furthermore, when considering alternatives to any regulation, cost analyses necessarily involve costs saved as well as costs incurred and benefits analyses necessarily involve benefits lost by increased risks.

FDA believes that benefits of the IDE regulations include unmeasured (and perhaps, unmeasurable) effects, e.g., reduced exposure to unreasonable, insufficiently analyzed, or inadequately monitored experimental risks to individuals involved with an investigational device. Nevertheless, FDA wishes to quantify such benefits to human subjects as well as to investigators and sponsors, especially medical device firms, e.g., in improved experimental designs. Although quantitative benefit information is highly desirable, FDA anticipates that such information may be scarce and therefore solicits information on relevant qualitative indicators as well.

FDA asks those who respond to associate cost data with specific provisions of the IDE regulations, where possible, and to illustrate the cost data with specific examples. FDA recognizes, however, that the assessment of costs, as well as benefits, necessarily involves some anecdotal information and qualitative description. Such "soft" data may illustrate perceptions of troublesome (or successful) areas of regulation, whether costly or not, or may be otherwise helpful. FDA will accept credible evidence of this kind.

The agency task forces have identified the following areas, among others, as especially significant with respect to FDA's IDE program. Accordingly, areas in which FDA particularly encourages interested persons to comment, with typical examples wherever possible, include:

A. Policy and Procedural Issues

1. *Cost recovery.* The IDE regulations currently permit a sponsor to charge for a device an amount no greater than the

cost of research, development, manufacture, and handling (§ 812.7). How might FDA better identify and quantify the costs whose recovery is permitted? How do the current provisions respecting cost recovery encourage or discourage the development of innovative devices and prolongation of the investigational status of a device?

2. *Enforcement.* The IDE regulations currently prohibit promotion, commercialization, and undue prolongation of investigation of devices (§ 812.7). How might FDA better define these terms? Should FDA continue to examine compliance with the informed consent regulations (Part 50) through the IDE regulations?

3. *Responsibilities of clinical investigators and sponsors.* The IDE regulations now provide only for withdrawal of approval of IDE's as an administrative remedy for noncompliance. The IDE regulations do not now have provisions for disqualifying sponsors or investigators, although such provisions were included in proposed regulations published on September 27, 1977 (42 FR 49612) for sponsors, and August 8, 1978 (43 FR 35210) for investigators. These proposed regulations are still under consideration by FDA. Thus, FDA does not now have available to it regulatory alternatives for protecting the rights and safety of subjects involved in clinical investigations of medical devices, alternatives that are available to the agency in other areas of clinical investigations (see, e.g., 21 CFR Parts 312 and 511).

Should the IDE regulations provide for the disqualification of sponsors of medical device clinical investigations that are conducted in violation of the regulations? Should the IDE regulations provide for the disqualification of clinical investigators who violate the IDE regulations? Should FDA be forced to withdraw an IDE to disqualify a clinical investigator from entitlement to receive investigational-use devices? Is the threat of IDE withdrawal sufficient to ensure that sponsors of clinical investigations and clinical investigators comply with the regulations?

4. *Investigations of other than significant risk devices.* The IDE regulations permit sponsors of most clinical investigations involving other than significant risk devices to begin an investigation without direct notification to or approval by FDA (§ 812.2). What portion of the investigations identified by sponsors and IRB's as other than significant risk do, in fact, belong in such category? How many of these investigations fail to comply with the abbreviated requirements of the IDE regulations? Is more surveillance or control of these investigations needed by FDA or IRB's? Should the IDE regulations require sponsors to register these investigations with FDA, e.g., by a short form application or notification?

5. *The IDE application.* The IDE regulations currently require a sponsor to submit to FDA a detailed application for the investigation of any device that meets the definition of a significant risk device, without regard to its other characteristics (§ 812.20). Do the regulations require some unnecessary items to be included in an IDE application? Do the regulations fail to require any necessary items? How might FDA adjust its requirements for details in the application and in the investigational plan, according to differing characteristics among various kinds of investigations?

6. *Regulatory flexibility.* How might FDA amend the IDE regulations to increase flexibility while continuing to monitor critical features of clinical investigations?

7. *The IRB performance.* The IDE regulations give IRB's complying with Part 56 authority to review, approve, require modifications of, and disapprove investigations covered by Part 812. How well are IRB's meeting the requirements of the IDE regulations and Part 56? What additional guidance or oversight is needed to lessen the burden on, or improve the performance of, IBR's? Should FDA rely more on IRB's to review the report of prior investigations of a device and the investigational plan for a clinical investigation of a device? If so, how can FDA ensure that IRB's apply appropriate and uniform standards in their decisions?

B. Costs and Benefits of the IDE Regulations

1. *Applicability (§ 812.2).* What are the benefits (including cost reduction) and drawbacks of providing abbreviated requirements for certain device investigations, e.g., to what extent does this regulatory provision achieve the congressional policy of encouraging the discovery and development of useful devices, to the extent consistent with the protection of the public health and safety and with ethical standards?

2. *Import and export requirements (§ 812.18).* What are the costs and benefits attributable to the regulations to manufacturers or others of complying with the import and export provisions of the regulations?

3. *The IDE application (§ 812.20).* What are the costs attributable to the regulations to sponsors of preparing IDE applications or supplemental applications, e.g., compiling the report of prior investigations and the investigational plan, describing the quality control procedures, and gathering information to support the explanation of why sale does not constitute commercialization? The benefits or drawbacks of having FDA and IRB's review the investigational plan for a study? The benefits and drawbacks of the provisions which permit deviations from the investigational plan to protect the life or physical well-being of a subject in an emergency?

4. *Responsibilities of sponsors (Subpart C).* What are the costs attributable to the regulations to sponsors of selecting investigators and monitors and of complying with the monitoring provisions of the regulations? The costs attributable to the regulations to sponsors of assembling the material necessary for presentation to an IRB, of interaction with IRB's, and of responding to IRB requirements respecting either significant risk or other devices? Other costs attributable to the regulations to sponsors, investigators, or others, e.g., because of awaiting approval, conducting an investigation in compliance with a signed agreement, supervising device use, and disposing of an investigational device?

5. *IRB review (Subpart D).* In a typical year, what are the costs to IRB's of reviewing significant risk device investigations as compared to the costs of reviewing other investigations, with the total number of investigations in each category?

6. *Records and reports (Subpart G).* What are the costs and benefits of recordkeeping attributable to the requirements of § 812.140 and of reporting attributable to the requirements of § 812.150? The direct private costs to sponsors of data collection and clerical services attributable to the requirements of each of these sections? The benefits and drawbacks of requiring sponsors to report to FDA, and to all reviewing IRB's unanticipated adverse effects? The benefits and drawbacks of requiring investigators to report such effects to the sponsor and reviewing IRB's?

7. What are any other benefits or drawbacks attributable to the IDE regulations?

C. Alternatives to the IDE Regulations

FDA believes that persons involved in or familiar with clinical investigations of medical devices may have specific suggestions on changes in the agency's regulatory program that might reduce costs of other burdens associated with

the regulations, consistent with the congressional policy set out in section 520(g)(1) of the act. FDA welcomes suggestions for such improvements, especially if supported by persuasive evidence or reasoning. Comments which discuss the relative costs and benefits of any suggested alternative would be helpful.

1. Are these alternatives to any recordkeeping or reporting currently required by the IDE regulations? Are there any device investigations for which the particular records required to be maintained and reports required to be prepared and submitted are or are not appropriate, and why not? What are the purposes for which records should be maintained and reports should be prepared and submitted and by whom? How long should records be retained? What is the appropriate content of reports and the appropriate means to update the content?

2. What are alternative methods to monitor compliance with particular provisions of the IDE regulations?

3. Are there any other changes in the IDE regulations, or in the program for implementation of the regulations, that would (i) Improve the protection of the public health, especially research subjects; (ii) Further minimize regulatory burdens; (iii) Optimize the freedom of investigators to conduct scientific research; or (iv) Encourage the development of useful medical devices? Suggestions to achieve any of these purposes should strike a balance with the others.

Response to this Notice

This notice is issued under the Federal Food, Drug, and Cosmetic Act as amended by the Medical Device Amendments of 1976 (secs. 301, 501, 502, 520, 701(a), 702, 704, 801, 52 Stat. 1042–1043 as amended, 1049–1051 as amended, 1055, 1056–1058 as amended, 67 Stat. 477 as amended, 90 Stat. 565–574 (21 U.S.C. 331, 351, 352, 360j, 371(a), 372, 374, 381)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Interested persons may submit written comments, data, or information to the Dockets Management Branch (address above). Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be indentified with the docket number found in brackets in the heading of this document. Comments should be submitted by September 23, 1986; however, comments received after that date will be included in the analysis, if possible. Any comments, data, or information submitted in response to this notice will be available for inspection in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 18, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–16718 Filed 7–24–86; 8:45 am]

BILLING CODE 4160–01–M

federal register

Friday
July 25, 1986

Part V

Department of the Interior

Bureau of Land Management

43 CFR Part 2800

Rights-of-Way Principles and Procedures; Amendment of Procedures for Recovery of Costs; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR PART 2800

Rights-Of-Way, Principles and Procedures; Amendment of Procedures for Recovery of Costs

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Rulemaking.

SUMMARY: This proposed rulemaking would amend the existing cost recovery procedures in 43 CFR 2800 by revising and relocating the existing cost recovery procedures. This change would provide for the recovery of reasonable costs, using the criteria of section 304(b) of the Federal Land Policy and Management Act of 1976, of processing and monitoring right-of-way grants and temporary use permits issued under the authority of title V of the Federal Land Policy and Management Act.

DATE: Comments should be submitted by September 23, 1986. Comments received or postmarked after the above date may be considered as part of the decisionmaking process on issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Darrell Barnes, (202) 343–5441.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management is authorized by the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) to collect from right-of-way applicants the costs of processing and administering right-of-way grants or temporary use permits. Until recently, the procedures for the recovery of costs under both Acts were consolidated in Part 2800 of Title 43 of the Code of Federal Regulations. Effective February 11, 1985, the recovery of costs under the Mineral Leasing Act were relocated to Part 2800 of Title 43 of the Code of Federal Regulations (50 FR 1308). The Bureau published a proposed rulemaking in the **Federal Register** of January 18, 1983 (48 FR 2110), designed to update the cost recovery regulations and to make more adequate provision for recovery by the United States of the reasonable costs of processing and monitoring rights-of-way granted under the Federal Land Policy and Management Act. After the close of the 60-day comment period, and while the comments were being reviewed, the United States Court of Appeals for the Tenth Circuit in a consolidation appeal of three cost recovery cases held that the Department of the Interior must consider the factors listed in section 304(b) of the Federal Land Policy and Management Act (43 U.S.C. 1734(b)) in establishing costs for processing right-of-way applications under title V of the Federal Land Policy and Management Act (*Nevada Power Company* v. *Watt*, 711 F. 2d 913 (10th Cir. 1983)(*Nevada Power*)). The factors that must be considered are: (1) actual costs (exclusive of management overhead); (2) the monetary value of the rights or privileges sought by the applicant; (3) the efficiency to government processing involved; (4) that portion of the costs incurred for the benefit of the general public interests rather than for the exclusive benefit of the applicant; and (5) the public service provided; and (6) other factors relevant to determining the reasonableness of costs. The Court further held that the existing regulations establishing the procedures for application processing did not provide for this consideration. The Court held, however, that reasonable costs of processing may include the reasonable costs of preparing an environmental impact statement.

The Court ruling further stated that the Department of the Interior could determine and assess the reasonable costs of processing an individual right-of-way application either by rulemaking or by case adjudication. After studying the decision and the possible alternatives, the Department has decided to develop regulations which provide procedures and criteria for assessing reasonable costs on a case-by-case basis. In arriving at the procedures, careful consideration was given to the comments received on the proposed rulemaking of January 17, 1983, discussed above, and the comments received on the proposed rulemaking on Mineral Leasing Act right-of-way processing published in the **Federal Register** of June 25, 1984 (49 FR 25972). Most of the comments made the point that existing cost recovery regulations did not take into account the costs incurred for the benefit of the general public. In response to this point, this proposed rulemaking establishes specific criteria for establishing the costs that would be reimbursed to the United States for processing of a right-of-way grant or temporary use permit application to reflect the public benefit and public service factors, among others, under the Federal Land Policy and Management Act.

As part of the development process for this proposed rulemaking, careful consideration was given to the reasonableness factors in section 304(b) of the Federal Land Policy and Management Act in an attempt to define the best method of estimating the reasonable amounts an applicant or holder should reimburse the United States in connection with processing an application for a right-of-way grant or temporary use permit.

Consideration and Definition of Reasonable Recovery Factors

Actual Costs

Under the Federal Land Policy and Management Act, it is reasonable to begin the calculation of a fee with actual costs as the benchmark. The courts have recognized that it is not unconstitutional for an agency to charge the actual costs of application processing, including the costs of an environmental impact statement (see, e.g., *Mississippi Power and Light Co.* v. *Nuclear Regulatory Comm.*, 601 F. 2d 223 (5th Cir. 1979).

The term "actual costs" as it is used in this proposed rulemaking represent the financial measure or resources expended on processing an application for a right-of-way or in monitoring the construction, operation and termination of a facility authorized by a grant or permit. Cost information is based on Federal agency accounting and reporting systems which conform to the accounting principles and standards prescribed by the Comptroller General of the United States. The elements of costs associated with right-of-way grant or temporary use permit applications are classified as "direct" or "indirect" costs.

Direct costs include agency expenditure for labor, material, stores and equipment usage identified with the performance of right-of-way responsibilities. Direct costs include, but are not limited to, gross wages and fringe benefits of Federal employees, material, stores, equipment and contract costs.

Indirect costs are allocated to specific project and reimbursement on a pro-rata basis. The Bureau of Land Management's accounting system identifies both direct and indirect costs. Thus, a ratio between direct and indirect costs can be determined. An indirect cost rate is determined annually and applied to direct costs to determine the amount charged for indirect costs.

This method of calculating costs is a generally acceptable practice in both the private and public sectors. Clients are normally billed for direct costs, plus a percentage of direct costs are added to compensate for indirect costs.

Certain governmental functions are excluded from actual costs in this proposed rulemaking. These functions involve costs which are essential for the functioning of the government, and would be incurred in the absence of any particular cost recoverable activities. The excluded costs include management overhead costs which are the salaries and other costs associated with the Bureau directorate, including all State Directors. Section 304(b) of the Federal Land Policy and Management Act requires that management overhead be excluded from chargeable costs. Additionally, costs related to the entire headquarters' staff are excluded except where an individual of that staff is required to perform work in the field on a specific case.

Actual costs do not include costs of studies or other work which the Department of the Interior is required to perform regardless of receipt of an application(s) for a right-of-way grant or temporary use permit. For example, an applicant will not be charged for the costs of land use planning triggered by his/her application because the Bureau of Land Management is required by statute to carry out land use planning regardless of the existence of an application. The legislative history of the Federal Land Policy and Management Act supports this approach (See *Nevada Power*, 711 F. 2d at 923).

Monetary Value of the Rights or Privileges Sought

In trying to determine the meaning of the term "monetary value" found in section 304(b) of the Federal Land Policy and Management Act, a number of different issues were considered. Moreover, it was not determined necessary to calculate a precise figure for monetary value. The equitable considerations presented by this factor are more qualitative than quantative. Besides, the monetary value of a right-of-way grant generally bears little relation to the cost of processing the application. Much of the processing cost is likely to be based on the environmental considerations rather than value of the lands traversed. Consequently, as noted in the legislative history of the Federal Land Policy and Management Act, it is possible for a right-of-way with a low monetary value to trigger a host of environmental studies that make the right-of-way prohibitively expensive. In an effort to apply some objective standard and to meet these equitable concerns, we have identified several approaches that serve as indicators of monetary value.

The proposed rulemaking would define monetary value as the objective value of the right-of-way grant. This could be stated as the financial worth of the entire project to the applicant. This could be estimated by identifying the difference in cost, in current dollars, between the proposed and the next least costly alternative open to the applicant to accomplish the same purpose or end as the proposed right-of-way. Alternatives could be either the same facility but located on non-Federal lands or an entirely different project or method of achieving the same result.

Another possibility would be to estimate monetary value by computing the residual return or residual profit of the project. Residual profit means the profit that remains after all costs, depreciation and fair return on invested capital are subtracted from gross return. In practice, this residual profit is very difficult to calculate. Assumptions regarding what is fair return to capital must be made. There are questions of whether there is residual profit when utilities are involved and whether the right-of-way should reflect the entire dollar amount of the residual profit.

Another approach that could be used is to determine whether the level of cost reimbursement could make acquisition of the right-of-way prohibitively expensive. In other words, would the costs so burden the applicant that the project could not go forward. This reflects the reservations expressed in the legislative history of the Federal Land Policy and Management Act that an applicant for a minor right-of-way grant should not be burdened with huge environmental costs and those costs should not put an applicant out of business. If processing costs would be prohibitively expensive to a particular applicant, the State Director could consider reducing the level of cost reimbursement under section 2808.5(b) of the proposed rulemaking to allow the processing and issuance of the right-of-way application.

Fair market value was also considered as part of the effort to define monetary value, but was not used. Congress did not intend the use of the fair market value concept in this situation. First, Congress specifically says fair market value when it means it (See section 504(g) of the Federal Land Policy and Management Act (43 U.S.C. 1764(g)(1982)) concerning fair market value for rental of rights-of-way under title V of that Act). It did not use the term in section 304(b) of the Act.

Public Benefits

In trying to reach a reasonable decision on a definition of the term "public benefits," the Department of the Interior was guided by the decision of the Tenth Circuit Court of Appeals in two cases, *Alumet* v. *Andrus*, 607 F. 2d 911 (10th Cir. 1979) (*Alumet*) and *Nevada Power, supra*. In *Alumet*, the Court rejected the argument that all environmental impact statement costs are *per se* a public benefit and consequently may not be charged to an applicant. In *Nevada Power*, the Tenth Circuit rejected the opposite notion that under section 304(b) of the Federal Land Policy and Management Act all environmental impact statement costs are a private benefit *per se*. This leads to the conclusion that the Court would be uncomfortable with any test which automatically allocates costs between public and private benefits, such as a 50/50 or 25/75 ratio, for example.

In *Nevada Power*, the Tenth Circuit found that while the Secretary of the Interior is not precluded from charging an applicant the full costs of an environmental impact statement, the Federal Land Policy and Management Act requires the Secretary to consider that portion of the costs which are incurred for the benefit of the general public, rather than for an applicant, in determining reasonable costs. One could spend considerable time discussing the "metaphysical" question of whether a particular portion of an environmental impact statement benefits the applicant or the general public.

There are other issues which cloud the question of public benefits that need to be considered. For example, consideration of environmental issues and alternatives in an environmental impact statement may be considered by industry to be of public benefit. But the process of completing an environmental impact statement often provides substantial benefits to the applicant. Public comment on environmental issues often helps to diffuse political opposition to a project. An environmental impact statement may uncover an environmentally acceptable alternative which may allow an otherwise unacceptable project to be built. Special studies of seismic and climatic conditions sometimes reveal that the applicant's original proposal would not meet necessary engineering standards or is otherwise flawed. When an accident is prevented or money saved because higher standards are used, an applicant benefits because the

movement of its commodity is not interrupted. These types of benefits are difficult to measure and may not be apparent until after a project has been completed and has operated for many years. Such future measurements are meaningless to the Bureau of Land Management which uses the revolving fund established by section 304(b) of the Federal Land Policy and Management Act to finance current processing of applications for such projects.

The approach used in the proposed rulemaking recognizes two levels of public benefit. First, public benefit includes the costs of studies for information which the Bureau of Land Management is required, by statute or regulation, to collect regardless of the application (e.g., land use planning, wilderness study) and thus cannot be charged to the applicant (See *National Cable Television Ass'n* v. *United States*, 415 U.S. 336 (1974)). As a matter of standard agency practice, such information is not included in the Bureau's billing for actual costs. Thus, no additional reduction is necessary.

Second, public benefit includes the costs of studies and data collection undertaken solely for application processing but that may have some value to the Bureau of Land Management separate and apart from processing the application. For example, a wildlife, cultural resources or other study that is considered useful as baseline data to retain for assessing future applications would fall into the public benefit category. Accordingly, it is recognized that work undertaken on an application would be for the benefit of the general public whenever it is determined that a study will be of use to the Bureau in another context. If, however, the data generated by an applicant's project was or is expected to be useful only for processing the application or monitoring the grant, it will not be given credit for public benefit.

Costs incurred for the benefit of the general public are, therefore, defined in the proposed rulemaking as funds expended by the United States in connection with the processing of an application that provide value or utility to the United States or the general public apart from application processing. Section 2808.5 of this proposed rulemaking would provide authority for the authorized officer to consider public benefits on a case-by-case basis and, where determined appropriate, to waive or reduce costs required to be reimbursed.

Public Services

To distinguish the factor of public services from public benefit, the proposed rulemaking would develop a definition which recognizes the services which the applicant may provide as a result of the right-of-way that can be considered quasi-governmental or as serving a public program. Both the House and Senate reports on the bills that became the Federal Land Policy and Management Act contained language describing what the Secretary of the Interior should take into consideration when establishing fees. The Senate report says the Secretary should consider "the extent to which applicants" proposals and the *Federal program* to which the applications relate . . . are mutually beneficial to the Federal government and provide significant public benefits." (S. Rep. No. 583, 94th Cong., 1st Sess. 55–56 (1975) (emphasis added)). The House Report says "that the Secretary should consider the benefits to *public programs* in determining whether collection of specific costs is appropriate. . ." (H.R. Rep. No. 1163, 94th Cong., 2d Sess. 15 (1976) (emphasis added)). The outright exemptions from the cost recovery provisions of the regulations contained in section 2808.1(b) and discretionary exemptions under section 2808.5 of the proposed rulemaking are provided to comport with the intent of Congress. While the foregoing quotes speak of public benefits, they were made before the conference committee on the Federal Land Policy and Management Act introduced the term "public service." Nonetheless, the quotes express elements of public service as they have been organized in the proposed rulemaking's consideration of the factors.

In addition, the term "public service provided" would be defined in the proposed rulemaking as tangible improvements, such as roads, trails, recreation facilities, etc., of positive public value expected in connection with the construction and operation of the project for which a right-of-way grant is sought.

For example, a hydroelectric or water supply project may provide a water-based recreational facility on the public lands that was previously unavailable. Construction and maintenance of ancillary roads or the right-or-way itself may also provide desirable access to public lands. Where such additional uses are beneficial, a reduction for this factor may be considered. The relative merits of such service benefits can be expressed in "user days" which not only provide an easy method to set a value on the service (value of a user day), but would also provide a method to quantify the amount of benefits from public service.

Generally, public service does not exist where the consumer pays for the full cost of the service provided. Some right-or-way holders, primarily utilities, raise the argument that they provide a public service even though the customer pays for such service. The reasoning is that the charge which can be made is held artificially low through ratemaking by governmental agencies. Proper ratemaking, however, takes into account all appropriate utility costs. Ratemaking and right-of-way application processing are two distinct processes; to permit such cross compensation would undermine the integrity of each process.

Accordingly, the public service factor, as it is applied in the proposed rulemaking, would permit the Bureau of Land Management to exempt from cost reimbursement governmentally sponsored projects funded through general tax revenues.

Section 2808.5 of the proposed rulemaking would provide flexibility for unique, tangible public service benefits to be considered on a case-by-case basis and would allow for a reduction or waiver of reimbursable costs where the authorized officer determines that they exist.

Efficiency to Government Processing

The term "efficiency to government processing" would be defined in the proposed rulemaking as the ability of the government to process an application with a minimum of waste, expense and effort. Such a determination requires the consideration of cost recovery from the point of view of the Federal Budget, including the ability of the Bureau of Land Management under the budget process to respond to applications in a timely and efficient manner. Two separate considerations are required.

The first consideration relates to the establishment of a cost recovery process that does not cost more to operate than would be collected or would not unduly increase the costs to be recovered. Estimates made by the Bureau of Land Management based on experience indicate that the cost of maintaining actual cost data on a specific case is prohibitive where the amount potentially collectable is small. This is caused principally by the need to extensively reorder the Bureau's automated cost accounting system to add a relatively few items of information. Such changes affect more

than just the right-of-way portion of the cost accounting system.

The Bureau of Land Management's studies and estimates of the cost to process certain groups of applications supports the Bureau's use in the past of an actual cost cutoff separating the non-major cases for which specific costs data are not kept from major cases where such data are kept.

These general criteria have been incorporated into this proposed rulemaking. For major cases that require the gathering of original data to comply with the National Environmental Policy Act of other statutes, or when an interdisciplinary team must be formed to evaluate the data and/or an environmental impact statement is required, actual cost data will be kept. For cases falling in the non-major actual cost category, on the other hand, cost reimbursement is established through average costs of a group(s) of similar projects.

The second consideration relates to the Bureau of Land Management's ability to react efficiently to an application and process the application in a timely manner. The Federal Budget process cannot be adjusted quickly to changes in workload. Also, an agency cannot ordinarily request and obtain a standing appropriation based on conjectural situations. Such situations are those in which appropriations are requested simply to be available if needed and thus avoid delays in governmental operations, with fire suppression and other "emergency" measures being the best examples of this situation.

Individual cases at the low end of actual costs have less impact on the efficiency of governmental processing than those at the high end. Small funding shifts of appropriated funds can generally be made without a major effect on other Bureau operations; large shifts cannot be accommodated within the resources of the agency. Without appropriate cost reimbursement, there could be delays ranging from six months to more than two years in processing a case while appropriations are requested and obtained. The legislative record for appropriations for the Trans-Alaska Pipeline System provides a good example of this problem.

Under the proposed rulemaking, more than 90 percent of the right-of-way applications will fall under the categories requiring a fixed cost reimbursement fee. The variations between the fixed fees, based on average costs, and the Bureau of Land Management's actual costs will be minor and will not affect efficiency. The few large cases initiated each year (10 to 20 per year over the last four years) will require individual analysis. For these latter cases, it is expected that the work can be efficiently handled except where the applicant requests expedited, non-standard handling.

If the Bureau of Land Management were to honor every request for expedited handling, it would have to provide special or additional staffing. As a result, actual costs might exceed the amount that would be reasonable under this factor. The proposed rulemaking would provide that in those instances where an applicant makes a request for expedited processing, no work requiring the use of funds of the United States could be performed until adequate funding is provided through the appropriations process or otherwise made available.

Additionally, in the proposed rulemaking there is a provision that permits the applicant to choose to do all or part of any special study or analysis to standards established by the authorized officer. An applicant also may choose to waive consideration of reasonable costs and agree to pay all actual costs. These provisions would allow flexibility for an applicant to choose to go ahead with a project requiring expedited handling where funds are not otherwise available for the immediate completion of such work by the Bureau of Land Management.

Other Factors

The Federal Land Policy and Management Act provides that the Bureau of Land Management consider "other factors relevant to determining the reasonableness of the cost." In this proposed rulemaking, the State Director would have flexibility to take into account a wide range of special circumstances, including unique instances of public benefits or public services, not mentioned in preceding paragraphs, on a case-by-case basis. Where determined appropriate, the State Director may waive or reduce the costs required to be reimbursed. Other factor considerations are set forth in § 2808.5 of this proposed rulemaking.

Proposed Method To Apply the Reasonable Cost Recovery Factors in Major Cases

Because of the difficulty for both the United States and applicants to develop, analyze and compare data under any of the above discussed factors and alternatives, a simple method has been chosen for this proposed rulemaking. In trying to establish a reasonable approach to the reimbursement of cost, the Tenth Circuit Court of Appeals recognized the inherent difficulty that the Secretary of the Interior faces in applying the factors set out in section 304(b) of the Federal Land Policy and Management Act by describing the process as "unscrambling eggs" and "metaphysical." Beyond the issue of definitions, is one of interrelating the factors in such a manner that sense is made of seemingly conflicting aspects.

The Court noted that the Secretary of the Interior has considerable discretion to consider the factors and make a reasonable determination of how best to apply the 304(b) factors. The proposed rulemaking uses the factors in terms of the estimated costs of constructing the proposed facilities on public lands for which a right-of-way grant or temporary use permit is sought. The estimate of the costs to construct the proposed facilities on public lands would be provided by the applicant and reviewed and approved by the authorized officer. The Department of the Interior has made the judgment that where the actual costs of processing the application are one percent or less of the costs of construction of the proposed facilities on public lands, the Bureau of Land Management should collect full actual costs.

This approach also is reasonable from the standpoint that having to pay actual costs up to the one percent of construction costs ceiling is not so onerous as to put an applicant out of business. A need to balance such equities was recognized by Senator McClure in his colloquy with Senator Haskell in the Senate—House Conference on the Federal Land Policy and Management Act (See Conference Report on S. 507 "Resources Lands Management," United States Senate, unpublished Meeting and Markup Transcript at 29 (Sept. 15, 1976), reprinted in 18 Department of Interior, Legislative History of the Federal Land Policy and Management Act of 1976).

Additionally, a precedent has been established by a similar ceiling approach now used by the State of New York. Under State law, corporations are required to pay a fee based on the actual costs to the State to prepare an environmental impact statement and related activities. The New York law provides, however, that in no case shall it exceed one-half of one percent of the total cost of a non-residential project; for residential projects, it shall not exceed two percent.

Added benefits to use of such an approach are that it is efficient for both the applicant and the United States from the standpoint of ease of use, it avoids complex data collection and calculations and can readily be

determined in advance of the filing of an application. It may also tend to make the United States increase its efficiency in order to stay under the one percent of actual costs level in the studies that it performs. Use of the estimated costs of construction on public lands gives a readily available dollar value which, when considered in relation to the actual costs factor, can be used to establish a reasonable level of actual cost reimbursement.

In making its comments on this proposed rulemaking, the public is specifically requested to review the reasonableness factors and suggest methods of applying those factors to the reimbursement of costs requirement, including a discussion of what percentage of reduction should be applied in the instances where those factors are significant. Recommendations for the amount of reduction have ranged from 10 to 100 percent. The comments should provide a detailed explanation for the recommended percentage of reduction and should be specific and supported by a proposed methodology, as well as appropriate data.

Cost Recovery Exemptions

Generally, under the consideration of the public service provided, Federal agencies and State and local governments or agencies or instrumentalities thereof should be exempt from the cost reimbursement provisions. This exemption would not apply in those instances where a principal source of the entities' revenues is derived from charges levied on customers for services rendered that are similar to services rendered by a profitmaking business entity. It is reasonable to exempt these entities as they provide a valuable public service at no charge and are supported by public funding. The proposed rulemaking would provide for such exemptions and also would provide for exemptions where a road use agreement or reciprocal road agreement is involved.

The Proposed System

The cost reimbursement procedures for non-major cases, categories I through IV, where the data necessary to comply with the National Environmental Policy Act or other statutes are available in the office of the authorized officer and no environmental impact statement or interdisciplinary team analysis of data is required, have been separated from the major cases. Major cases require the collection of new data and/or the preparation of an environmental impact statement. The separation is accomplished by use of a series of work descriptions and a processing fee schedule as follows:

(1) *Category I.* An application for right-of-way grant or temporary use permit authorizing the use of the public lands for which the data necessary to comply with the National Environmental Policy Act or other statutes are available in the office of the authorized officer or is furnished by the applicant; and no field examination of the lands affected by the application is required.

(2) *Category II.* An application for a right-of-way grant or temporary use permit authorizing the use of the public lands for which the data necessary to comply with the National Environmental Policy Act or other statutes are available in the office of the authorized office or is furnished by the applicant; and one field examination of the lands affected by the appliction to verify the existing data is required.

(3) *Category III.* An application for a right-of-way grant or temporary use permit authorizing the use of the public lands for which the data necessary to comply with the National Environmental Policy Act or other statutes are available in the office of the authorized officer or is furnished by the applicant; and two field examinations of the lands affected by the application are required.

(4) Category IV. An application for a right-of-way grant or temporary use permit authorizing the use of the public lands for which some original data are required to be gathered to comply with the National Environmental Policy Act or other statutes; and two or three field examinations of the lands affected by the application are required.

(5) Category V. An application for a right-of-way grant or temporary use permit authorizing the use of the public lands for the gathering of original data is required to comply with the National Environmental Policy Act or other statutes may be required; or three or more field examinations of the lands affected by the application are required.

Category	Fee
I	$125
II	300
III	550
IV	925
V	(1)

[1] As required.

Non-Major Cases

In developing categories I through IV, a team of Bureau of Land Management personnel knowledgeable in processing right-of-way cases reviewed some 160 actual cases. The same case information was provided by Bureau field offices detailing the type of work performed and the estimated cost of doing the specific tasks involved. This review showed that processing costs had little relationship to the length or size of the right-of-way sought. Cost increments were shown to be related to: (1) the amount of information necessary to meet the requirements of the National Environmental Policy Act; (2) whether this information was available in Bureau files or needed to be collected on the ground; (3) the number of necessary field examinations of the proposed and alternative areas to be utilized by the right-of-way project; and (4) the type of appraisal required to estimate the annual rental to be charged for the right-of-way. Additionally, Bureau field offices have, since November 12, 1982, kept and reported actual time and cost on some 500 right-of-way projects falling in the four categories used in this proposed rulemaking for non-major cases. These data were listed and analyzed with automatic data processing equipment. These analyses affirmed the category definitions used in this proposed rulemaking and provided data for the foregoing proposed fee schedule. Analysis of the study data indicated that applicants would benefit from having a fixed table of costs since, in most cases, the expense of calculating and maintaining actual cost records would cost more than the fixed fee schedule charges.

Categories I through IV generally involve the processing of applications where the data necessary for processing the application has already been collected as part of the Bureau of Land Management's planning system, other application processing or as part of a Federal or other resource study. Little or no additional information is required. It is the nature of these projects that they are of local benefit and are not of regional or national significance. The Bureau generally has found that because they are small, local in impact and require no environmental impact statement, there is little opportunity for public benefits or public services associated with these projects.

It should be noted that Category I through IV cost reimbursement charges do not include the cost of appraisals to determine fair market value rental because this cost serves a public benefit, i.e., the determination of rental based on the fair market value of the use of the involved lands, thus assuring a proper return to the taxpayer.

Where an application is determined to be in Categories I through IV under the proposed rulemaking, the cost reimbursement required is listed in the fee schedule. However, where an

applicant believes that a specific application provides independent value or utility which benefits the general public or provides significant public services, an applicant may seek a reduction or waiver of such payment under section 2808.5 of the proposed rulemaking.

Major Cases

Where the authorized officer determines an application to be a major case (Category V), the proposed rulemaking provides that, in those instances, when the actual costs of processing the application are one percent or less of the costs of constructing the proposed facilities on public lands, the applicant would pay all actual costs of processing. Where the actual costs are greater than one percent of the cost of construction of the facility on the public lands segment, the United States shall pay for that portion of the actual costs that exceed the one percent of construction costs.

After determining that an application is a major case, the authorized officer would be required to:

1. Prepare a preliminary scoping of the processing issues involved, identifying any potential conflicts with resource values or other projects;

2. Develop a preliminary work plan, setting out specific needs, such as the degree of environmental study needed and a rational timeframe for completing the work;

3. Complete a preliminary financial plan, estimating the actual costs to be incurred by the United States in the processing of the application and monitoring the grant or permit; and

4. Obtain a construction cost estimate from the applicant which identifies that portion of total costs that are involved in constructing the proposed facility on public lands.

The authorized officer would be required to discuss the preliminary data, including cost estimates, with the applicant. Where possible, differences in scope, timing and the like would be worked out with the applicant. The applicant might also choose to do all, or any part, of the environmental assessment or other studies, subject to the approval of the appropriate official of the Bureau of Land Management or to pay all of the estimated actual costs of the work identified in the work plan. These options may be of benefit in meeting an applicant's project schedule and/or in reducing overall costs.

Following the discussions with the applicant, the authorized officer would be required to prepare a final determination of the preliminary scoping, work plan and cost plan estimating the actual costs to be incurred by the United States, identifying the portion of actual costs to be paid by the applicant, and where appropriate, the portion to be paid by the United States. Where an applicant believes that a specific Category V application provides independent value or utility which benefits the general public or provides significant public services, or the payment of its portion of costs is prohibitive, an applicant may seek a reduction or waiver of cost reimbursement under section 2808.5 of the proposed rulemaking.

Monitoring Costs

In a process similar to that used for determining application cost reimbursement, the following fee schedule for monitoring right-of-way grants or temporary use permits by category was developed:

Category	Fee
I	$50
II	75
III	100
IV	200
V	(1)

[1] Shall be included with cost determined under application processing.

The monitoring fees for Categories I through IV also were derived after the analysis of actual cost information provided by various Bureau of Land Management field offices. Analysis of the monitoring data indicated that the average right-of-way grant or temporary use permit in Categories I through IV require one field examination. The data indicates that an average field examination costs $200. The estimated number of right-of-way grants or temporary use permits by category that can normally be examined in a single day (i.e., one field trip) are: (1) Category I, four grants; (2) Category II, three grants; (3) Category III, two grants; and (4) Category IV, one and one-half grants. Dividing the $200 average filed examination costs by the number of grants per category that can be monitored per day gives the cost of monitoring one grant by category.

The monitoring fee for major grants is established at the same time as the application processing fee is established. The one percent of construction costs will apply to both processing and monitoring costs. Since monitoring creates neither new studies providing public benefits nor additional public services from the right-of-way, no further reduction from actual costs for these factors is likely.

The principal author of this proposed rulemaking is Darrell Barnes, Division of Rights-of-Way, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this proposed rulemaking will not substantially increase the payments made by right-of-way applicants for the processing and monitoring of their applications/grants. The changes made by the proposed rulemaking will make the procedures for reimbursement of costs fairer for users and will recover for the United States a greater portion of the costs incurred in handling right-of-way applications. The impact of the proposed rulemaking will be the same, regardless of the size of the entity applying for a right-of-way grant.

The information collection requirements contained in this proposed rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1004–0157.

List of Subjects in 43 CFR Part 2800

Administrative practice and procedure, Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way.

Under the authority of title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1771), it is proposed to amend Part 2800, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 2800—[AMENDED]

1. The authority citation for part 2800 continues to read:

Authority: 43 U.S.C. 1761–1771.

2. Section 2800.0–5 is amended by adding new paragraphs (o) through (s) to read:

§ 2800.0–5 Definitions.

* * * * *

(o) "Actual costs" means the financial measure of resources expended or used by the Bureau of Land Management in processing a right-of-way application or

monitoring the construction, operation and termination of a facility authorized by a grant or permit. "Actual costs" includes both direct and indirect costs, exclusive of management overhead.

(p) "Monetary value of the rights and privileges sought" means the objective value of the right-of-way or permit.

(q) "Public benefit" means funds expended by the United States or an applicant in connection with the processing of an application for studies and data collection that have value or utility to the Untied States or the general public separate and apart from application processing.

(r) "Public service provided" means tangible improvements, such as roads, trails, recreation facilities, etc., with significant public value that are expected in connection with the construction and operation of the project for which a right-of-way grant is sought.

(s) "Efficiency to the Government processing" means the ability of the United States to process an application with a minimum of waste, expense and effort.

§ 2802.1 [Amended]

3. Section 2802.1(c) is amended by removing from where it appears the citation "§ 2803.1–1" and replacing it with the citation "subpart 2808".

§ 2802.4 [Amended]

4. Section 2802.4(a) is amended by removing from where it appears the citation "§ 2803.1–1" and replacing it with the citation "subpart 2808".

§ 2802.5 [Amended]

5. Section 2802.5(a)(1) is amended by removing from where it appears the citation "§ 2803.1–1" and replacing it with the citation "subpart 2808".

§ 2803.1–1 [Removed]

6. Section 2803.1–1 is removed in its entirety.

§ 2803.6–5 [Amended]

7. Section 2803.6–5(d) is amended by removing from where it appears the citation "§ 2803.1–1" and replacing it with the citation "subpart 2808".

8. A new Subpart 2808 is added to read:

Subpart 2808—Reimbursement of Costs

Sec.

2808.1 General.
2808.2 Cost recovery categories.
2808.2–1 Application categories.
2808.2–2 Category determinations.
2808.3 Fees and payments.
2808.3–1 Application fees.
2808.3–2 Periodic advance payments.
2808.3–3 Cost incurred for a withdrawn or denied application.
2808.3–4 Joint liability for payments.
2808.4 Reimbursement of cost of monitoring.
2808.5 Other cost considerations.
2808.6 Actions pending decisions on appeal.

Subpart 2808—Reimbursement of Costs

§ 2808.1 General.

(a) An applicant for a right-of-way grant or temporary use permit under this part shall reimburse the United States in advance for the expected reasonable administrative and other costs incurred by the United States in processing the application, including the preparation of any reports or statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), prior to the United States having incurred such costs.

(b) The regulations in this subpart do not apply to the following:

(1) Federal agencies;

(2) State and local governments or agencies or instrumentalities thereof when a right-of-way grant or temporary use permit is granted for governmental purposes benefiting the general public, however, if the principal source of revenue results from charges being levied on customers for services similar to those rendered by a profitmaking corporation or business, they shall not be exempt; or

(3) Cost share roads or reciprocal right-of-way agreements.

§ 2808.2 Cost recovery categories.

§ 2808.2–1 Application categories.

(a) The following categories shall be used to establish the appropriate nonrefundable fee for each application pursuant to the fee schedule in § 2808.3–1 of this title:

(1) *Category I.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and no field examination is required.

(2) *Category II.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and 1 field examination to verify existing data is required.

(3) *Category III.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and 2 field examination to verify existing data are required.

(4) *Category IV.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which some original data are required to be gathered to comply with the National Environmental Policy Act and other statutes; and 2 or 3 field examinations are required.

(5) *Category V.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the gathering of original data are required to comply with the National Environmental Policy Act and other statutes; and 3 or more field examinations are required.

§ 2808.2–2 Category determination.

(a) The authorized officer shall determine the appropriate category and collect the required application processing fee pursuant to §§ 2808.3–1 and 2808.5 of this title before processing an application. A record of the authorized officer's category determination shall be made and given to the applicant. This determination is a final decision for purposes of appeal under § 2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2808.6 of this title.

(b) During the processing of an application, the authorized officer may change a category determination to place an application in Category V at any time it is determined that the application requires the preparation of an environmental impact statement. A record of change in category determination under this paragraph shall be made and furnished to the applicant. The revised determination is appealable in the same manner as an original category determination under paragraph (a) of this section.

§ 2808.3 Fees and payments.

§ 2808.3–1 Application fees.

(a) The fee by category for processing an application for a right-of-way or temporary use permit is:

Category	Fee
I	$125
II	300
III	550
IV	925
V	[1]

[1] As required.

(b) Where the amount submitted by the applicant under paragraph (a) of this section exceeds the amount of the required fee determined by the authorized officer, the excess shall be refunded. If requested in writing by the applicant, the authorized officer may apply all or part of any such refund to the grant monitoring fee required under § 2808.4 of this title or to the rental payment required by § 2803.1–2 of this title.

(c) Upon a determination that an application falls under Category V, the authorized officer shall:

(1) Complete a preliminary scoping of the issues involved;

(2) Prepare a preliminary work plan;

(3) Develop a preliminary financial plan, estimating the actual costs to be incurred by the United States in the processing of the application; and

(4) Require the applicant to submit a construction cost estimate for the project which identifies the portion of those costs which will be used to construct the proposed facilities on the public lands for which a right-of-way grant or temporary use permit is desired.

(d) The authorized officer shall discuss the preliminary plans and data and verify the construction cost estimate submitted and developed under paragraph (c) of this section with the applicant.

(e) (1) The applicant is encouraged to do all or part of any special study or analysis required in connection with the processing of the application to standards established by the authorized officer. After coordination with the applicant as required by paragraph (d) of this section, the authorized officer shall develop final scoping, work and financial plans which reflect any work the applicant agrees to do and determine the amount of actual costs to be reimbursed by the applicant.

(2) An applicant may choose to waive consideration of reasonable costs under paragraph (e)(1) of this section and agree to pay all actual costs incurred by the United States in processing the application and monitoring the grant or temporary use permit. The waiver shall be in writing and shall be filed with the authorized officer.

(f) Where a request for a waiver has been filed under paragraph (e)(2) of this section or where the estimated actual costs of processing the application, as determined under paragraph (e) of this section, are determined to be 1 percent or less of the estimated cost of constructing the proposed facilities on public lands, the applicant shall reimburse the United States for all actual costs of processing the application before the grant or permit shall issue.

(g) (1) Where the estimated actual costs of processing the application, as determined under paragraph (e) of this section, are determined to exceed 1 percent, the applicant shall not be responsible for any actual costs exceeding 1 percent of the estimated costs of construction on public lands unless said applicant agrees in writing to assume all actual costs.

(2) Where the costs of processing an application are determined to exceed 1 percent or where a State Director has granted a waiver or reduction in such costs, the necessary funding shall be provided either through the Bureau's appropriation process or otherwise made available for the processing of the application or such processing shall not proceed.

(h) The authorized officer shall provide the applicant with a written determination of the reasonable costs to be reimbursed by the applicant or holder and those that will be funded by the United States under paragraphs (e) through (g) of this section and § 2808.5 of this title. This determination is a final decision for purposes of appeal under § 2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2808.6 of this title.

§ 2808.3–2 Periodic advance payments.

(a) The authorized officer may periodically estimate the reasonable costs expected to be incurred by the United States for specific work periods in processing the application under the provisions of §§2808.3–1 (e) through (g) of this title and shall inform the applicant of the estimated amount to be reimbursed for the period and the applicant shall make payment of such estimated reimbursable costs within the time specified in the notice of the amount to be reimbursed.

(b) If the payments required by paragraph (a) of this section exceed the actual costs incurred by the United States, the authorized officer shall adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. An applicant shall not set off or otherwise deduct any debt due it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(c) The authorized officer may re-estimate the actual costs determined under §§ 2808.3–1 (e) through (g) of this title at any time it is determined that a change warranting a re-estimate occurs. An appeal of a re-estimate shall be treated in the same manner as an original estimate made under § 2808.3–1(e) of this title.

(d) Before issuance of a right-of-way grant or temporary use permit, an applicant shall pay such additional amounts as are necessary to reimburse the United States in full for any costs incurred, but not yet paid under § 2808.3–1(h) of this title.

§ 2808.3–3 Costs incurred for a withdrawn or denied application.

(a) An applicant whose application is denied is liable for any costs incurred by the United States in processing the application. Those amounts that have not been paid are due within 30 days of the receipt of a bill from the authorized officer identifying the amount due.

(b) An applicant who withdraws an application before a grant or temporary use permit is issued is liable for all costs incurred by the United States in processing the application up to the date the authorized officer receives the written notice of withdrawal, and for costs subsequently incurred in terminating the processing of said application. Those amounts that have not been paid are due within 30 days of receipt of a bill from the authorized officer identifying the amount due.

§ 2808.3–4 Joint liability for payments.

(a) When 2 or more applications for a right-of-way grant are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States as required by § 2808.3 of this title, subject however, to the provisions of § 2808.1(b) of this title. Each applicant shall be responsible for the reimbursement of the reasonable costs identified with his/her application. Costs that are not readily identifiable with either of the applications, such as costs for portions of an environmental impact statement that relate to all of the applications, generally, shall be paid by each applicant in equal shares or such other proportion as may be agreed to in writing by the applicants and the authorized officer prior to the United States incurring such costs.

(b) When, through partnership, joint venture or other business arrangement, more than 1 person, partnership, corporation, association or other entity apply together for a right-of-way grant or temporary use permit, each such applicant shall be jointly and severally liable for costs under § 2808.3 of this title for the entire system, subject however, to the provision of § 2808.1(b) of this title.

§ 2808.4 Reimbursement of costs for monitoring.

(a) After issuance of a right-of-way grant or temporary use permit for which a fee was assessed under § 2808.3 of this title, the holder shall, prior to the United States incurring such costs, reimburse the United States for costs to be incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way grant or temporary use permit area, and for protection and rehabilitation of the lands involved, under the following schedule:

(1) The fee, by category, as determined under § 2808.2–2 of this title, for monitoring a right-of-way grant or temporary use permit is as follows:

Category	Fee
I	$50
II	75
III	100
IV	200
V	[1]

[1] Shall be included with costs determined under § 2808.3.

(b) The holder shall submit the payment for the cost of monitoring along with the written acceptance of the terms and conditions of the grant or permit. The amount of the required payment shall be determined under the schedule in paragraph (a) of this section. Acceptance of the terms and conditions of the grant or permit shall not be effective unless the required payment is made.

§ 2808.5 Other cost considerations.

(a) The State Director, after consultation with an applicant or holder may reduce or waive cost reimbursement by § 2808.3 of this title. In reaching a decision, the State Director may require the applicant/holder to submit a written analysis of the case showing specific monetary value consideration, public benefits, public services or other data or information which support a proposed finding that an application, grant or temporary use permit qualifies for a reduction or waiver of cost reimbursement. Action on a Category V application shall be suspended pending the State Director's decision.

(b) The State Director may base the decision to reduce or waive reimbursable costs on any of the following factors:

(1) The applicant's/holder's financial condition is such that payment of the fee would result in undue financial hardship;

(2) The application processing or grant monitoring costs are determined to be grossly excessive in relation to the monetary value of the public lands directly affected by the right-of-way grant or the costs of constructing the facilities or project requiring the right-of-way;

(3) A major portion of the application processing or grant monitoring costs are the results of issues not related to the actual right-of-way or temporary use permit;

(4) The applicant/holder is a nonprofit organization, corporation or association which is not controlled by or a subsidiary of a profitmaking enterprise;

(5) The studies undertaken in connection with the processing of the application have a public benefit;

(6) The facility or project requiring the right-of-way grant will provide a special service to the public or to a program of the Secretary;

(7) A right-of-way grant is needed to construct a facility to prevent or mitigate damages to any lands or improvements or mitigate hazards or danger to public health and safety resulting from an Act of God, an act of war or negligence of the United States;

(8) The holder of a valid existing right-of-way grant is required to secure a new right-of-way grant in order to relocate facilities which are required to be moved because the lands are needed for a Federal or federally funded project, if such relocation is not funded by the United States;

(9) Relocation of a facility on a valid existing right-of-way grant requires a new or amended right-of-way grant in order to comply with the law, regulations or standards of public health and safety and environmental protection which were not in effect at the time the original right-of-way grant or temporary use permit was issued; or

(10) It is demonstrated that because of compelling public benefits or public services provided, or for other causes, collection of reimbursable costs by the United States for processing an application, for a grant or permit would be inconsistent with prudent and appropriate management of the public lands and the equitable interest of the applicant/holder or of the United States.

(d) The State Director may consider a reduction or waiver of fees under this section in determining reimbursable costs made under § 2808.3 of this title. Said determination is a final decision for purposes of appeal under § 2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2808.6 of this title.

(e) Notwithstanding a finding by the State Director that there is a basis for reduction of the costs required to be reimbursed under this subpart, the State Director may not reduce such costs if funds to process the application(s) or to monitor the grant(s) or permit(s) are not otherwise available or may delay such decision pending the availability of funds.

§ 2808.6 Action pending decision on appeal.

(a) Where an appeal is filed on an application determined under § 2808.2–2(a) of this title to be in Category I through IV, an application shall not be accepted for processing without payment of the fee for such application according to the category determined by the authorized officer; however, when payment is made, the application may be processed and, if proper, the grant or temporary use permit issued. The authorized officer shall make any refund or other adjustment directed as a result of an appeal.

(b) Where an appeal is filed for an application determined under § 2808.2–2(a) of this title to be in Category V or for a related cost reimbursement determination under § 2808.3–1 (e) through (g) or § 2808.5(d) of this title, processing of the application shall be suspended pending the outcome of the appeal.

Dated: July 3, 1986

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86–16776 Filed 7–24–86; 8:45 am]

BILLING CODE 4310–84–M

Federal Register

Friday
July 25, 1986

Part VI

Department of Labor

Employment and Training Administration

20 CFR Part 602

Federal-State Unemployment Compensation Program: Unemployment Insurance Quality Control Program; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 602

Federal-State Unemployment Compensation Program: Unemployment Insurance Quality Control Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor is proposing to issue regulations to establish a permanent quality control (QC) program in the Federal-State unemployment insurance (UI) system. The creation of a QC system has been mandated by the Secretary of Labor and the President's Fiscal Year 1986 Budget includes a provision for a UI QC program. The establishment of the UI QC program is a major initiative to improve program performance and revenue collection, and to reduce inaccurate benefit payments and claims denials, administrative errors, and abuse in the UI system.

DATE: Written comments must be received by the close of business on August 25, 1986.

ADDRESS: Submit comments to Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room 7112, Patrick Henry Building, 601 D Street NW., Washington, DC 20213.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room 7112, Patrick Henry Building, 601 D Street NW., Washington, DC 20213. Telephone: (202) 376–6636 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Recent reviews of benefit payments and revenue collections indicate potentially serious problems in the Federal-State unemployment insurance (UI) program. A random audit of benefit payments in 46 States found a percentage of errors in making payments which needs to be reduced. In addition, audits of benefit payment control, tax accounting and cash management activities indicated the need for improvement in all of these functions. To address these needs, a program of quality control (QC) will be initiated; QC will expand upon previous efforts, notably the random audit program, and provide the basis for diagnosing problems and taking corrective actions.

"QC Will Be Mandatory"

The QC program will be the principal means by which the Federal-State UI partners evaluate the administration of a State's UI law and achieve improvement in program operations. Its design relies heavily on the experience of the random audit program, which was voluntary for the States. Given the importance of ensuring the accurate and timely payment of benefits to eligible UI claimants and the accurate and prompt collection of UI contributions, however, participation of the States in the QC program will be mandatory.

The purpose and scope of the UI QC program is described in Subpart A. Subpart A explains what the QC program is designed to accomplish and defines which laws the regulations apply to in the States.

"State Law"

The Secretary of Labor (Secretary) has no reason to believe that a mandatory QC program will require any State to amend its law to fulfill the methods of administration requirement in section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)) as the QC program is an expansion/enhancement of other Federal-State UI evaluation programs, such as the random audit and the quality appraisal, which have been operative in State agencies for some time. States are encouraged, however, to review their laws to ensure that an adequate legal basis exists for implementing QC.

"Major Objectives"

Subpart B, *Federal Requirements*, defines the authority under which these regulations are issued. It also explains the Secretary's interpretation of the authority allowing the Department to make the QC program mandatory. The proposed rule contains requirements for the UI QC program. It describes Federal responsibilities and State responsibilities for implementing and maintaining a QC program. Because the integrity of the data is vital to the success of the QC program, Subpart C, *State Responsibilities*, contains requirements which ensure the objectivity of the QC unit and eliminate potential conflicts of interest. Subpart C also provides:

(1) That the State shall perform sampling and case investigation in accordance with standard procedures, transmit data so obtained and other required reports to the Department, and publish findings in a format prescribed by the Department of Labor (Department) (§ 602.21); and

(2) That the Department may determine the QC program, or a part of the program, is not necessary for the proper and efficient administration of a State law and, therefore, the State need not administer the QC program in whole or in part. The section is written broadly to allow the Department sufficient discretion in reaching a determination; however, it is not presently anticipated that the section will be implemented in cases other than those in which the costs of operating a QC program might be deemed excessive in relation to the overall results obtained (§ 602.22).

Subpart D, *Federal Responsibilities*, defines the management and oversight responsibilities that the Federal government has under these regulations. These responsibilities include establishing required methodologies and procedures, maintaining a computer data base, validation of QC methodology, and review of QC operational procedures and samples.

Subpart E, *QC Grants to States*, provides:

(1) That the Secretary has the authority to recapture QC granted funds which are expended in a manner inconsistent with the requirements of the proposed rule (602.41); and

(2) That the Secretary will withhold all grants for administration from a State that fails to implement a QC program (§ 602.42).

Discussion of Consultations

The Department published an Advance Notice of Proposed Rulemaking in the **Federal Register** on September 26, 1984, at 49 FR 38083, to inform interested persons of its intentions to establish a permanent QC program for the UI system. During the 30-day comment period the Department received five letters with comments. Prior to and after the request for formal comments the Department held numerous meetings with those involved in the UI system to solicit ideas and reactions to the proposd design of the QC system.

In June 1985, the Secretary of Labor decided to delay the planned July 1985 implementation of the UI QC program as the QC program is a major policy initiative with far-reaching and long-term implications for the UI system. These regulations reflect the decisions of the Secretary based on the contributions of reviewers.

"Review Process"

The Secretary directed the undertaking of wide-ranging policy review. The purpose of the review was to explore fully and formally the basic policy decisions forming the framework of the QC system and to ensure full participation of the many groups involved in UI administration.

The Secretary's review was announced in a notice published in the **Federal Register** on August 6, 1985, at 50 FR 31787 and a public meeting was announced to be held on August 21, 1985, 50 FR 31792, and inviting letters expressing viewpoints, suggestions, and alternative approaches from Governors, employer groups, organized labor, and State Employment Security Administrators. Each group was asked to comment specifically on nine (9) design issues which were described in the **Federal Register** on August 6, 1985, at 50 FR 31787. The nine design issues are described below.

"Design Issues"

1. System Operations

What should be the balance between State and Federal responsibilities in operating the system?

(a) Total State operation.
(b) Total Federal operations.
(c) Mixed Federal/State division of responsibilities.

2. Coverage

Should State coverage under the system be optional or required?

3. Access to Data

Who should have access to overall findings and case related data?

(a) Release data publicly on error rates and procedural deficiencies.
(b) Do not release data publicly.
(c) State option.

4. Scope

What should be the geographical or jurisdictional scope of the investigations?

(a) Single national sample.
(b) Representative State sample.

5. Investigative Objectives

Should the case reviews of the sample claims focus on administrative procedures, on program outcomes, or both?

6. Purpose of the Data Collected by the System

Should the system provide data for corrective action involving only operational and procedural problems or generate information which can be used to affect changes in Federal and State law and policy?

7. Methodology

Should the system feature standard definitions, procedures, and methodologies?

8. Error Correction Strategies

How can the system best accomplish the objective of ensuring States will take corrective action to reduce error rates or otherwise improve processes?

(a) Encourage but do not require corrective action.
(b) Provide incentives.
(c) Require corrective action.

9. Program Included

How comprehensive should the system be?

(a) A comprehensive system.
(b) A partial coverage system.
(c) Revenue collections.

"Responses to the Nine Design Issues"

A total of 61 written responses were received by the Department as of October 9, 1985. The distribution of these responses among the major interest groups was as follows:

Labor—5 responses
Business—3 responses
SESAs—24 responses
Governors—28 responses (including the National Conference of State Legislatures)
Other—1 response (IAPES)

The following shows how each organization by major interest group responded to the nine QC design issues presented in the **Federal Register** of August 6, 1985. Some of the responses did not specifically address the nine issues.

System Operations

What should be the balance between State and Federal responsibilities in operating the system?

	Mixed	State only	Federal only
Labor	2	0	0
Business	3	0	0
SESAs	14	1	0
Governors	13	1	0
Total	32	2	0

Coverage

Should State coverage under this system be mandatory or voluntary?

	Mandatory	Voluntary
Labor	0	2
Business	3	0
SESAs	11	5
Governors	9	5
Total	23	12

Access to Data

Who should have access to the overall findings and case related data?

	Release to Public		Release to DOL	
	State control	Federal control	Some data	All data
Labor	2	0	2	0
Business	0	3	0	3
SESAs	18	0	9	3
Governors	15	0	6	2
Total	35	3	17	8

Scope

What should be the geographical or jurisdictional scope of the investigations?

	State representative sample	National sample
Labor	3	0
Business	3	1
SESAs	16	0
Governors	11	0
Total	33	1

One (1) governor and one (1) labor group also favored subState samples.

Investigative Objectives

Should the case reviews of the sample claims focus on administrative procedures, on program outcomes or both?

	Both	Outcome only	Procedure only
Labor	2	0	0
Business	3	0	0
SESAs	14	0	1
Governors	11	1	0
Total	30	1	1

Purpose of the Data Collected By the System

Should the system provide data for corrective action involving only operational and procedural problems or generate information which can be used to effect changes in Federal and State law and policy?

	Narrow (errors only)	Broad (policy/leg. analysis)
Labor	4	0
Business	1	2
SESAs	22	2
Governors	13	4
Total	40	8

Methodology

Should the system feature standard definitions, procedures, and methodologies?

	Standardize		Other State standards
	But flexible	Not flexible	
Labor	2	0	0
Business	1	2	0
SESAs	16	1	1
Governors	11	1	2
Total	30	4	3

Error Correction Strategies

How can the system best accomplish the objective of ensuring States will take corrective action to reduce error rates or otherwise improve processes?

	Corrective action		Funding	Incentives
	Voluntary	Mandatory		
Labor	2	0	1	0
Business	3	0	1	0
SESAs	11	1	15	0
Governors	6	1	12	2
Total	22	2	29	2

In addition, one (1) business group specifically opposed provision of additional funds for corrective action. One (1) SESA suggested technical assistance would be an incentive for corrective action. One governor suggested relaxation of staffing requirements would help.

Programs Included

How comprehensive should the system be?

	Partial	Comprehensive
Labor	1	0
Business	0	3
SESAs	9	1
Governors	7	4
Total	17	8

	Tax	Denials	IB	Appeals	EB
Labor	4	4	0	0	0
Business	2	2	1	0	0
SESAs	17	9	2	1	0
Governors	15	9	3	1	1
Total	38	24	6	2	1

One State specifically indicated that Interstate Benefits (IB) and Extended Benefits (EB) should be tabled indefinitely.

In addition, the Interstate Conference of Employment Security Agencies (ICESA) presented a consensus proposal of recommendations to the Secretary on October 11, 1985. The proposal was based on a September 5, 1985 meeting that included representatives from ICESA, the National Conference of State Legislatures, the National Federation of Independent Businesses, the Council of State Chambers of Commerce, UBA, the U.S. Chamber of Commerce, and the AFL–CIO.

"Policy Decisions for the Nine Design Issues"

Listed below are decisions on the nine design issues which are reflected in the proposed regulations. The Department recognizes that the design decisions deal with both regulatory and procedural subjects. More detailed procedural aspects of the issues will be contained in a QC State Operations Handbook which the Department is preparing and which will be issued separately for comment.

1. System Operations

The QC system will provide mixed Federal/State division of responsibilities.

2. Coverage

QC will be mandatory for the States.

3. Access to Data

States will be required to release QC results annually using a standard format, retaining the option of release by States before any national release.

4. Scope

QC investigations will be conducted State-wide at Federally-established sample levels. Beyond the minimum sampling effort, States will be given the flexibility to examine subjects more closely through such choices as increased sample size, augmented sampling or special studies.

5. Investigative Objectives

Case reviews of the QC sample claims will focus on both outcomes and process.

6. Purpose

The QC program will focus on correcting, not just measuring problems. Data to support operational corrections will be required and data to affect policy and legislative changes will be optional.

7. Methodology

QC will feature a prescribed minimum sample size specified for each State, standard definitions and methodology, and offer flexibility for State-designed sampling and special studies.

8. Error Correction Strategies

The Department will encourage corrective action and foster it through technical assistance, but will not mandate corrective action.

9. Programs Included

QC will cover both paid and denied claims under all major regular benefit programs as well as tax activities and be gradually extended to other programs such as Extended Benefits and Trade Adjustment Assistance.

Authority

Section 302(a) of the Social Security Act (SSA)s (42 U.S.C. 502(a)) requires the Secretary of Labor to certify payment of granted funds to States in:

> such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law. . . .

Section 303(a)(1), (42 U.S.C. 503(a)(1)), stipulates that the Secretary shall make no certification for payment of granted funds unless he finds the State law includes provision for:

> Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

The proposed rule interprets section 303(a)(1) to require that States administer a QC program in accordance with Federal requirements and, therefore, QC is a condition for certification of granted funds by the Secretary.

In addition, under section 303(a)(6), (42 U.S.C. 503(a)(6)), the Secretary has authority to require States to make reports. Under this section, the Secretary has the authority to oversee implementation and operation of UI QC programs.

Classification—Executive Order 12291

The proposed rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, no regulatory impact analysis is required.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3502 *et seq.)*, the reporting or recordkeeping provisions that are included in this proposed rule have been submitted to and have been approved by the Office of Management and Budget (OMB). They have been assigned OMB control number 1205–0245.

Regulatory Flexibility Act

This proposed rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This rule implements an internal QC program, and has no significant economic impact on any small entities. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 602

Employment and Training Administration, Labor unemployment compensation.

Words of Issuance

For the reasons set out in the preamble, Chapter V of Title 20 of the *Code of Federal Regulations* is proposed to be amended as set forth below.

Signed in Washington, DC, on July 15, 1986.

William E. Brock,

Secretary of Labor.

Part 602 is added to 20 CFR Chapter V to read as follows:

PART 602—QUALITY CONTROL IN THE FEDERAL-STATE UNEMPLOYMENT COMPENSATION SYSTEM

Subpart A—General

Sec.

602.1 Purpose.
602.2 Scope.

Subpart B—Federal Requirements

602.10 Federal law requirements.
602.11 Secretary's interpretation.

Subpart C—State Responsibilities

602.20 Organization.
602.21 Sampling, study methodology, record keeping, and reporting.
602.22 Exceptions.

Subpart D—Federal Responsibilities

602.30 Management.
602.31 Oversight.

Subpart E—QC Grants to States

602.40 Funding.
602.41 Proper expenditure of QC granted funds.
602.42 Effect of failure to implement QC program.
Appendix A to Part 602—Standard for Claim Determination—Separation Information, Employment Security Manual (Part V, Sections 6010–6015)

Authority: 42 U.S.C. 1302.

Subpart A—General

§ 602.1 Purpose.

The purpose of this part is to prescribe a quality control (QC) program for the Federal-State unemployment compensation program, which is applicable to the State unemployment compensation programs and the Federal unemployment benefits and allowances programs administered by the State Employment Security Agencies under agreements with the Secretary of Labor. QC is designed to identify errors in weeks claimed and collections, analyze causes, and support the initiation of corrective action.

§ 602.2 Scope.

This part applies to all State laws approved by the Secretary of Labor under the Federal Unemployment Tax Act (section 3304 of the Internal Revenue Code of 1954, 26 U.S.C. 3304), to the administration of the State laws, and to any Federal unemployment benefit and allowance programs administered by the State Employment Security Agencies under agreements with the Secretary of Labor.

Subpart B—Federal Requirements

§ 602.10 Federal law requirements.

(a) Section 303(a)(1) of the Social Security Act, 42 U.S.C. 503(a)(1), requires that a State law include provision for:

> Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

(b) Section 303(a)(6) of the Social Security Act (42 U.S.C. 503(a)(6), requires that a State law include provision for:

> The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports.

(c) Section 303(b) of the Social Security Act, 42 U.S.C. 503(b), provides in part that:

> Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—
>
> * * * * *
>
> (2) a failure to comply substantially with any provision specified in subsection (a); the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such . . . failure to comply. Until he so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State. . . .

§ 602.11 Secretary's interpretation.

(a) The Secretary interprets section 303(a)(1) of the Social Security Act to require that a State law include provision for such methods of administration as will reasonably insure the full payment of unemployment benefits to eligible claimants, and collection of unemployment taxes, with the greatest accuracy feasible.

(b) The Secretary interprets sections 303(a)(1) and 303(a)(6) of the Social Security Act to authorize the Department of Labor to prescribe standard definitions, methodologies, and reporting requirements for the QC program and to ensure accuracy of QC findings.

(c) The Secretary interprets section 303(b)(2) of the Social Security Act to require that, in the administration of a State law, there shall be substantial compliance with the provisions required by sections 303(a) (1) and (6).

(d) To satisfy the requirements of sections 303(a) (1) and (6), a State law must contain a provision requiring, or which is construed to require, the establishment and maintenance of a QC program in accordance with the requirements of this part.

Subpart C—State Responsibilities

§ 602.20 Organization.

Each State shall establish a QC unit independent of, and not accountable to, any unit performing functions subject to evaluation by the QC unit. The organizational location of this unit shall be positioned to maximize its objectivity, to facilitate its access to information necessary to carry out its responsibilities and to minimize organizational conflict of interest.

§ 602.21 Sampling, study methodology, record keeping, and reporting.

(a) Each State shall:

(1) Select representative samples for QC study of at least a minimum size specified by the Department of Labor to ensure statistical validity;

(2) Complete prompt and in-depth case investigations to determine the degree of accuracy and timeliness in the

administration of the State unemployment compensation law as to benefit claims and payment and revenue collection, and conduct other measurements and studies necessary or appropriate for carrying out the purposes of this part;

(3) Classify benefit denials, as a result of such investigations, as proper or improper denials;

(4) Classify benefit payment cases, as a result of such investigations, as proper payments, underpayments, or overpayments;

(5) Make and maintain records pertaining to the QC program, and make all such records available in a timely manner for inspection, examination and audit by such Federal officials as the Secretary may designate or as may be required by law;

(6) Furnish information and reports to the Department of Labor, including weekly transmissions of case data entered into the automated QC system and annual reports; and

(7) Publish the results of the QC investigations in accordance with instructions provided by the Department of Labor.

(b) Each State shall perform the requirements of paragraph (a) of this section in accordance with instructions issued by the Department of Labor, pursuant to § 602.30(a) of this part, to assure standardization of procedures and methodologies in a manner consistent with these regulations. Such procedures shall include a questionnaire, prepared by the Department of Labor, which will obtain such demographic and other data as the Department deems necessary for the QC program.

(c) Any determinations resulting from QC investigations as to the accuracy of unemployment tax or benefit payment administration shall be set forth in writing, and shall be made in accordance with State unemployment compensation law, policy and regulation. Any such determinations with respect to individual benefit claims shall also be made in accordance with the Secretary's "Standard for Claim Determinations—Separation Information" in the *Employment Security Manual*, Part V, sections 6010–6015 (Appendix A of this part).

(d) Each State shall inform claimants that the information obtained from a QC investigation may affect their eligibility for benefits. Each State shall inform employers that the information obtained from a QC investigation of revenue may affect their tax liability.

(e) Use of the questionnaire referred to in paragraph (b) of this section shall be a requirement of the QC program and completion of the questionnaire by claimants shall be required by the States.

(Approved by the Office of Management and Budget under control number 1205–0245)

§ 602.22 Exceptions.

If the Department of Labor determines that the QC program, or any constituent part of the QC program, is not necessary for the proper and efficient administration of a State law, the Department shall use established procedures to advise the State that it is partially or totally excepted from the requirements of this part.

Subpart D—Federal Responsibilities

§ 602.30 Management.

(a) The Department of Labor shall establish required methodologies and procedures (as specified in § 602.21(b) of this part) for sampling, study methodology, recordkeeping, and reporting; and provide technical assistance as needed on the QC process.

(b) The Department of Labor shall maintain a computerized data base of case data which is transmitted to the Department for statistical and other analysis.

§ 602.31 Oversight.

The Department of Labor shall review QC operational procedures and samples, and validate QC methodology to ensure uniformity in the administration of the QC program and to ensure compliance with the requirements of this part. The Department of Labor shall, for purposes of determining eligibility for grants under Subpart E of this part, annually review the adequacy of the administration of a State's QC program.

Subpart E—QC Grants to States

§ 602.40 Funding.

The Department of Labor shall use established procedures to notify States of the availability of funds for the operation of a QC program.

§ 602.41 Proper expenditure of QC granted funds.

The Secretary may, after reasonable notice and opportunity for hearing to the State, take exception to and require repayment of an expenditure for the operation of a QC program if it is found such expenditure is not necessary for the proper and efficient administration of the QC program in the State. See sections 303(a)(8), 303(a)(9) and 303(b)(2), Social Security Act, 42 U.S.C. 503(a)(8), 503(a)(9), and 503(b)(2), and 20 CFR 601.5. For purposes of this section, an expenditure will be found not necessary for proper and efficient administration if such expenditure fails to comply with the requirements of Subpart C of this part.

§ 602.42 Effect of failure to implement QC program.

Any State which the Secretary finds, after reasonable notice and opportunity for hearing, has not implemented or maintained a QC program in accordance with this part will not be eligible for any grants under Title III of the Social Security Act until such time as the Secretary is satisfied that there is no longer any failure to comply substantially with any provision specified in this part. See sections 303(a)(1), 303(a)(6), and 303(b)(2), Social Security Act, 42 U.S.C. 503(a)(1), 503(a)(6) and 503(b)(2), and 20 CFR 601.5.

Appendix A to Part 602—Standard for Claim Determinations—Separation Information, Employment

Security Manual (Part V, Sections 6010–6015)

6010 *Federal Law Requirements.* Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

"Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 303(a)(3) of the Social Security Act requires that a State law include provision for:

"Opportunty for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law include provision for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation . . .

Section 3306(h) of the Federal Unemployment Tax Act defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

6011 *Secretary's Interpretation of Federal Law Requirements.* The Secretary interprets the above sections to require that a State law include provisions which will insure that:

A. Individuals who may be entitled to unemployment compensation are furnished such information as will reasonably afford them an opportunity to know, establish, and protect their rights under the unemployment compensation law of such State, and

B. The State agency obtains and records in time for the prompt determination and review of benefit claims such information as will reasonably insure that payment of benefits to individuals to whom benefits are due.

6012 *Criteria for Review of State Law Conformity with Federal Requirements*

In determining the conformity of a State law with the above requirements of the Federal Unemployment Tax Act and the Social Security Act as interpreted by the Secretary, the following criteria will be applied:

A. Is it required that individuals who may be entitled to unemployment compensation be furnished such information of their potential rights to benefits, including the manner and places of filing claims, the reasons for determinations, and their rights of appeal, as will insure them a reasonable opportunity to know, establish, and protect their rights under the law of the State?

B. Is the State agency required to obtain, in time for prompt determination of rights to benefits such information as will reasonably insure the payment of benefits to individuals to whom benefits are due?

C. Is the State agency required to keep records of the facts considered in reaching determinations of rights to benefits?

6013 *Claim Determinations Requirements Designed To Meet Department of Labor Criteria*

A. *Investigation of claims.* The State agency is required to obtain promptly and prior to a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.

This requirement embraces five separate elements:

1. It is the responsibility of the agency to take the initiative in the discovery of information. This responsibility may not be passed on to the claimant or the employer. In addition to the agency's own records, this information may be obtained from the worker, the employer, or other sources. If the information obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation is necessary. If the information obtained from other sources differs essentially from that furnished by the claimant, the agency, in order to meet its responsibility, is required to inform the claimant of such information from other sources and to afford the claimant an opportunity to furnish any further facts he may have.

2. Evidentiary facts must be obtained as distinguished from ultimate facts or conclusions. That a worker was discharged for misconduct is an ultimate fact or conclusion; that he destroyed a machine upon which he was working is a primary or evidentiary fact, and the sort of fact that the requirement refers to.

3. The information obtained must be sufficient reasonably to insure the payment of benefits when due. In general, the investigation made by the agency must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with the unemployment compensation law. On the other hand, the investigation should not be so exhaustive and time-consuming as unduly to delay the payment of benefits and to result in excessive costs.

4. Information must be obtained promptly so that the payment of benefit is not unduly delayed.

5. If the State agency requires any particular evidence from the worker, it must give him a reasonable opportunity to obtain such evidence.

B. *Recording of facts.* The agency must keep a written record of the facts considered in reaching its determinations.

C. *Determinatioan notices*

1. The agency must give each claimant a written notice of:

a. Any monetary determination with respect to his benefit year;

b. Any determination with respect to purging a disqualification if, under the State law, a condition or qualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in which it is determined that the claimant has met the requirements for purging, the agency may inform the claimant that he has purged the disqualification for a week by notation on his applicant identification card or otherwise in writing.

c. Any other determination which adversely affects [1] his rights to benefits, except that written notice of determination need not be given with respect to:

(1) A week in a benefit year for which the claimant's weekly benefit amount is reduced in whole or in part by earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2f(1). However, a written notice of determination is required if: (a) There is a dispute concerning the reduction with respect to any week (e.g., as to the amount computed as the appropriate reduction, etc.); or (b) there is a change in the State law (or in the application thereof) affecting the reduction; or

(2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent week is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraphs 2f(2) and 2h. However, a written notice of determination is required if: (a) There is a dispute concerning the denial or reduction of benefits with respect to such week; or (b) there is a change in the State law (or in the application thereof) affecting the denial or reduction; or (c) there is a change in the amount of the reduction except as to the balance covered by the last reduction in a series of reductions.

Note.—This procedure may be applied to determinations made with respect to any subsequent weeks for the same reason and on the basis of the same facts: (a) That claimant is unable to work, unavailable for work, or is disqualified under the labor dispute provision; and (b) reducing claimant's weekly benefit amount because of income other than earnings or offset by reason of overpayment.

2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.

The written notice of monetary determination must contain the information specified in the following items (except h) unless an item is specifically not applicable. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to deductions, seasonality factors, and information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination.

a. *Base period wages.* The statement concerning base-period wages must be in sufficient detail to show the basis of computation of eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show details of earnings.)

b. *Employer name.* The name of the employer who reported the wages is necessary so that the worker may check the wage transcript and know whether it is correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript.

c. *Explanation of benefit formula—weekly and miximum benefit amounts.* Sufficient information must be given the worker so that he will understand how his weekly benefit amount, including allowances for dependents, and his maximum benefit

[1] A determination "adversely affects" claimant's right to benefits if it (1) results in a denial to him of benefits (including a cancellation of benefits or wage credits or any reduction in whole or in part below the weekly or maximum amount established by his monetary determination) for any week or other period; or (2) denies credit for a waiting week; or (3) applies any disqualification or penalty; or (4) determines that he has not satisfied a condition of eligibility, requalification for benefits, or purging a disqualification; or (5) determines that an overpayment has been made or orders repayment or recoupment of any sum paid to him; or (6) applies a previously determined overpayment, penalty, or order for repayment or recoupment; or (7) in any other way denies claimant a right to benefits under the State law.

amount were figured. If benefits are computed by means of a table contained in the law, the table must be furnished with the notice of determination whether benefits are granted or denied.

The written notice of determination must show clearly the weekly benefit amount and the maximum potential benefits to which the claimant is entitled.

The notice to a claimant found ineligible by reason of insufficient earnings in the base period must inform him clearly of the reason for ineligibility. An explanation of the benefit formula contained in a booklet or pamphlet should be given to each claimant at or prior to the time he receives written notice of a monetary determination.

d. *Benefit year.* An explanation of what is meant by the benefit year and identification of the claimant's benefit year must be included in the notice of determination.

e. *Information as to benefits for partial unemployment.* There must be included either in the written notice of determination or in a booklet or pamphlet accompanying the notice an explanation of the claimant's rights to partial benefits for any week with respect to which he is working less than his normal customary full-time workweek because of lack of work and for which he earns less than his weekly benefit amount or weekly benefit amount plus earnings, whichever is provided by the State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which his weekly benefit amount is entered should be made.

f. *Deductions from weekly benefits*

(1) *Earnings.* Although written notice of determinations deducting earnings from a claimant's weekly benefit amount is generally not required (see paragraph 1c(1) above), where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction in sufficient detail to enable the claimant to verify the accuracy of the deduction, and his right to protest, request redetermination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in the State law or in the application of the law, an explanation of the change shall be included.

Where claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information:

(a) The method of computing deductions for earnings in sufficient detail to enable the claimant to verify the accuracy of the deduction;

(b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings (unless there is a dispute concerning the reduction with respect to a week or there has been a change in the State law or in the application of the law affecting the deduction) but that he may obtain such a written notice upon request; and

(c) A clear statement of his right to protest, request a redetermination, and appeal from any determination deducting earnings from his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advisedand advised also that he must request a written notice of determination before he takes any such action.

(2) *Other deductions*

(a) A written notice of determination is required with respect to the first week in claimant's benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from claimant's weekly benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request redetermination, or appeal.

(b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (2)(a), or a booklet or pamphlet given him with such notice explains (i) the several kinds of deductions which may be made under the State law (e.g., retirement pensions, vacation pay, and overpayments); (ii) the method of computing each kind of deduction in sufficient detail that claimant will be able to verify the accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of any deduction or the time in which any deduction may be made; (iv) that he will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a reduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

g. *Seasonality factors.* If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanations of seasonality factors which may affect determinations for subsequent weeks may be included in a booklet or pamphlet given claimant with his notice of monetary determination.

h. *Disqualification or ineligibility.* If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and what he must do in order to requalify for benefits or purge the disqualification. The statement must be individualized to indicate the facts upon which the determination was based, e.g., state, "It is found that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause," rather than merely the phrase "voluntary quit." Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

i. *Appeal rights.* The claimant must be given information with respect to his appeal rights.

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal or, if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request a redetermination.

(b) The period within which an appeal, protest, or request for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period. (It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protect, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered.

(b) An explanation of any circumstances (such as nonworkdays, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest, or request for redetermination from the local office.

If the information is given in separate material, the notice of determination would adequately refer to such material if it said, for example, "For other information about your (appeal), (protest), (redetermination) rights, see pages ——— to ——— of the ——————— (name of pamphlet or booklet) heretofore furnished to you."

6014 *Separation Information Requirements Designed To Meet Department of Labor Criteria*

A. *Information to agency.* Where workers are separated, employers are required to furnish the agency promptly, either upon agency request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits. Where workers are working less than full time, employers are required to furnish the agency promptly, upon

agency request, information concerning a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods.

When workers are separated and the notices are obtained on a request basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the employer be given a specific period within which to return the notice, preferably within 2 working days.

When workers are separated and notices are obtained upon separation, it is essential that the employer be required to send the notice to the agency with sufficient promptness to insure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the worker will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

B. *Information to worker*

1. *Information required to be given.* Employers are required to give their employees information and instructions concerning the employees' potential rights to benefits and concerning registration for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to (a) the name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.

2. *Methods for giving information.* The information and instructions required above may be given in any of the following ways:

a. *Posters prominently displayed in the employer's establishment.* The State agency should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

b. *Leaflets.* Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should supply employers with a sufficient number of leaflets.

c. *Individual notices.* Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the employer-information requirements. Such a program should stress the availability and location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.

6015 *Evaluation of Alternative State Provisions with Respect to Claim Determinations and Separation Information.*

If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012, he will so notify the State agency. If the Administrator of the Bureau does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy the criteria, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, § 601.5.

[FR Doc. 86-16740 Filed 7-24-86; 8:45 am]

BILLING CODE 4510-30-M

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Friday, July 25, 1986

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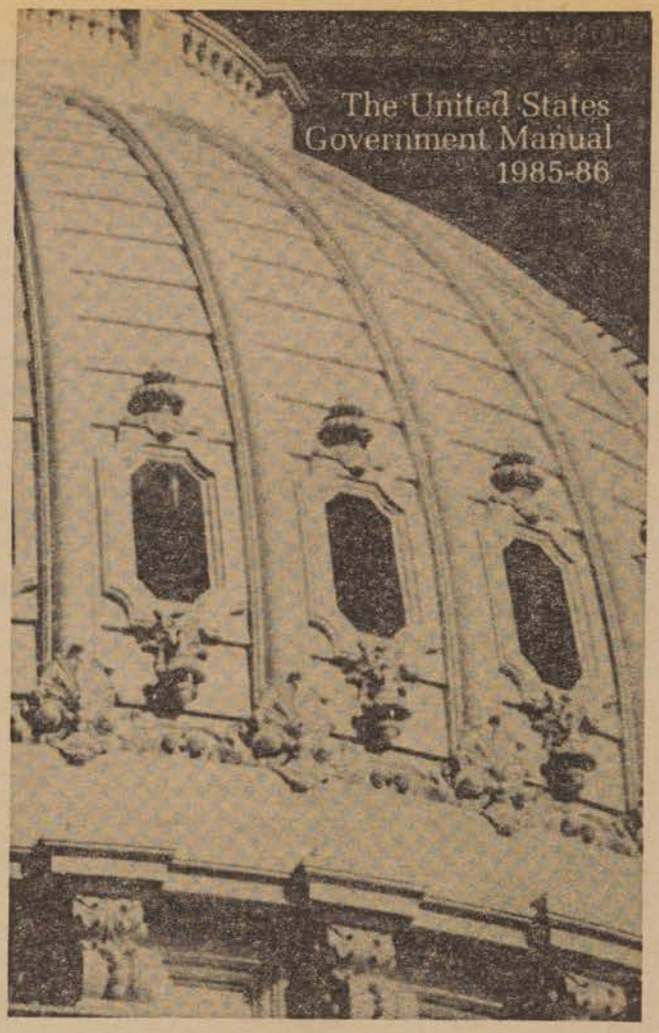
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