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# federal register

WEDNESDAY, MARCH 28, 1979




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**May 17, 1979**
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### HOW TO USE THE FEDERAL REGISTER WORKSHOPS

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public workshop (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHEN:** May 17, 1979 at 10 a.m.

**WHERE:** Federal Building, Room 109, 601 E. 12th Street, Kansas City, Missouri.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

**RESERVATIONS:** Call 816–374–2466.

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**PERSONNEL MANAGEMENT OFFICE**

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**POSTAL SERVICE**

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Liquified natural gas facilities; comments by 4–1–79 ..... 12693; 3–8–79
Safety zones around structures and artificial islands on the Outer Continental Shelf and in navigable waters off Southern California; comments by 4–2–79. 10399; 2–20–79
Materials Transportation Bureau—
Radioactive materials transportation requirements; comments by 4–5–79 1852; 1–8–79
Office of the Secretary—
Financial assistance for participants in rulemaking proceedings of the National Highway Traffic Safety Administration; comments by 4–2–79 .... 4675; 1–23–79

**TREASURY DEPARTMENT**

Comptroller of the Currency—
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Internal Revenue Service—
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**ADMINISTRATIVE CONFERENCE OF THE UNITED STATES**

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**AGRICULTURE DEPARTMENT**

Forest Service—
Nezperce National Forest Grazing Advisory Board, Grangeville, Idaho (open), 4–4–79..... 15753; 3–15–79
Science and Education Administration—
National Plant Genetic Resources Board, Washington, D.C. (open), 4–4 and 4–5–79..... 13556; 3–12–79

**ARTS AND HUMANITIES, NATIONAL FOUNDATION**

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Humanities Panel, Washington, D.C. (closed), 4–3 through 4–6–79 ..... 12301; 3–6–79
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Music Advisory Panel, New York, N.Y. (partially open), 4–5 and 4–6–79..... 17236; 3–21–79
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Indiana Advisory Committee; Indianapolis, Ind., (open) 4–2–79..... 13058; 3–9–79
Maryland Advisory Committee; Baltimore, Md. (open), rescheduled for 4–3–79. 11818; 3–2–79
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Tennessee Advisory Committee, Jackson, Tenn. (open), 4–6–79 ..... 17542; 3–22–79
Vermont Advisory Committee, Montpelier, Vt. (open), 4–5–79 ..... 13058; 3–9–79/14613; 3–13–79
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**COMMERCE DEPARTMENT**

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Industry and Trade Administration—
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National Oceanic and Atmospheric Administration—
Gulf of Mexico Fishery Management Council, Biloxi, Miss. (open), 4–3 through 4–5–79..... 15521; 3–14–79
National Telecommunications and Information Administration—
Frequency Management Advisory Council, Washington, D.C. (open), 4–5–79..16952; 3–20–79
Office of the Secretary—
National Laboratory Accreditation Criteria Committee for Freshly Mixed Field Concrete, Washington, D.C. (open), 4–3 and 4–4–79..... 15755; 3–15–79

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Air Force Department—
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Army Department—
Historical Advisory Committee, Washington, D.C. (open), 4–6–79..5928; 1–30–79
Shoreline Erosion Advisory Panel, Fort Walton Beach, Fla. (open), 4–4 and 4–5–79..... 15526; 3–14–79
Navy Department—
Command, Control and Communications Subpanel of Chief of Naval Operations Executive Panel Advisory Committee, San Diego, Calif. (closed), 4–3 and 4–4–79..... 16030; 3–16–79
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Wage Committee, Washington, D.C. (Closed), 4–3–79 ..... 11268; 2–28–79

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Education Office—
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Women's Educational Programs National Advisory Council, Washington, D.C. (partially open), 4–3–through 4–6–79 ...16961; 3–20–79
Health Resources Administration—
National Advisory Council on Health Professions Education, Hyattsville, Md. (partially open), 4–2 through 4–5–79..... 15773; 3–15–79
National Institutes of Health—
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Transplantation Biology and Immunology Committee, Dallas, Tex. (partially open), 4–5–79..... 11126; 2–29–79
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Secretary's Advisory Committee on the Rights and Responsibilities of Women, Washington, D.C. (open), 4–5 and 4–6–79..... 12109; 3–5–79

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**INTERNATIONAL TRADE COMMISSION**

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**LABOR DEPARTMENT**

Occupational Safety and Health Administration—
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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

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NASA Advisory Council (NAC), Space Science Advisory Committee, Washington, D.C. (open), 4–4 through 4–8–79 .. 13595; 3–12–79
Space and Terrestrial Applications Steering Committee (STASC), Proposal Evaluation Advisory Subcommittee, Greenbelt, Md. (closed), 4–3, 4–4 and 4–5–79 ..... 13595; 3–12–79

**NATIONAL SCIENCE FOUNDATION**

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**NUCLEAR REGULATORY COMMISSION**

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Reactor Safeguards Advisory Committee, Subcommittee on Consideration of Class-9 Accidents, Washington, D.C. (open), 4–4–79 ..... 16985; 3–20–79
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**TRADE NEGOTIATIONS, OFFICE OF THE SPECIAL REPRESENTATIVE**

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**TRANSPORTATION DEPARTMENT**

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Internal Revenue Service—
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[Last Listing Mar. 9, 1979]

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CSA—Summer Youth Recreation Programs; purposes, conditions, funding, financial policies, and application procedures; comments by 4–18–79 ..... 16455; 3–19–79
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**Applications Deadlines:**

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EPA—Water pollution control: Clean Water Act, Safe Drinking Water Act and Resource Conservation and Recovery Act programs; guidance for FY 1980 State/EPA agreements ..... 17294; 3–21–79
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LSC—Legal Services of Northeastern Wisconsin, et al., grants and contracts; solicitation of written comments or recommendations ..... 17236; 3–21–79
Labor/ETA—Employment Transfer and Business Competition Determinations; applications ..... 17809; 3–23–79

# rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

[3410-05-M]

## Title 7—Agriculture

## CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

### SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Reg.; 1979 Crop Rye Supplement]

## PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

### Subpart—1979 Crop Rye Loan and Purchase Program

AGENCY: Commodity Credit Corporation, Department of Agriculture.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the: (1) Final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates and premiums and discounts under which Commodity Credit Corporation (CCC) will extend price support on 1979-crop rye. This rule will enable eligible rye producers to obtain loans and purchases on their eligible 1979-crop rye.

EFFECTIVE DATE: March 28, 1979.

ADDRESS: Price Support and Loan Division, ASCS, U.S. Department of Agriculture, 3732 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Merle Strawderman, ASCS, (202) 447-7973.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the FEDERAL REGISTER on August 23, 1978, 43 FR 37458 stating that the Department of Agriculture proposed to make determinations and issue regulations relative to a loan and purchase program for the 1979 crop of feed grains including rye. Such determinations included determining loan and purchase rates and other related program provisions. Interested persons were given until October 6, 1978, to respond. Two recommendations were received concerning the loan and purchase program for rye. Both recommendations received called for increasing the loan rate for rye. After considering applicable factors, it has been determined that the loan and purchase rates for 1979 crop rye on a national average will be $1.70 per bushel.

Producers who wish to secure loans can do so by contacting their local Agricultural Stabilization and Conservation Service Office or Agricultural Service Center.

FINAL RULE

The General Regulations Governing Price Support for 1978 and Subsequent Crops, and any amendments thereto and the 1978 and Subsequent Crops Rye Loan and Purchase Regulations, and any amendments thereto in this Part 1421 are further supplemented for the 1979 crop of rye. Accordingly, the regulations in 7 CFR 1421.350 and through 1421.354 and the title of the subpart are revised to read as provided below effective as to the 1979 crop of rye. The material previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

Subpart—1979 Crop Rye Loan and Purchase Program

Sec.

1421.350 Purpose.
1421.351 Availability.
1421.352 Maturity of loans.
1421.353 Warehouse charges.
1421.354 Loans and purchases rates and premiums and discounts.

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 105 A, 401, 63 Stat. 1051, as amended (7 U.S.C. 1444 c, 1421).

### Subpart—1979 Crop Rye Loan and Purchase Program

§ 1421.350 Purpose.

This supplement contains additional program provisions which together with the provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, the 1978 and Subsequent Crops Rye Loan and Purchase Program regulations, and any amendments thereto, apply to loans on and purchase of the 1979 crop or rye.

§ 1421.351 Availability.

(a) *Loans.* Producers desiring to participate in the program through loans must request a loan on their 1979 crop of eligible rye on or before March 31, 1980.

(b) *Purchases.* A producer desiring to offer eligible 1979 crop rye not under loan for purchase must execute and deliver to the county ASCS office on or before March 31, 1980, a Purchase Agreement (Form CCC-614) indicating the approximate quantity of 1979 crop rye they will sell to CCC.

§ 1421.352 Maturity of loans.

Loans mature on demand but not later than the last day of the ninth calendar month following the month the loan is disbursed.

§ 1421.353 Warehouse charges.

If storage is not provided for through loan maturity the county office shall deduct storage charges at the daily storage rate for the storing warehouse times the number of days from the date the commodity was received or date through which storage has been provided for to the maturity date.

§ 1421.354 Loan and purchase rates, premiums and discounts.

(a) *Basic loan and purchase rates.* Basic county rates per bushel for loan and settlement purposes for rye and established for rye grading U.S. No. 2 or better, or U.S. No. 3 on the factor of test weight only and are as follows:

1979 CROP RYE LOAN AND PURCHASE RATES

| County | Rate per bushel |
|---|---|
| ALABAMA | |
| All Counties | $1.81 |
| ARIZONA | |
| All Counties | 1.78 |
| ARKANSAS | |
| All Counties | 1.75 |
| CALIFORNIA | |
| Alameda | 1.95 |
| Los Angeles | 1.95 |
| Sacramento | 1.95 |
| San Diego | 1.95 |
| San Francisco | 1.95 |
| San Joaquin | 1.95 |
| All Other Counties | 1.82 |
| COLORADO | |
| All Counties | 1.64 |
| CONNECTICUT | |
| All Counties | 1.79 |
| DELAWARE | |
| All Counties | 1.84 |

1979 CROP RYE LOAN AND PURCHASE RATES—Continued

| County | Rate per bushel |
|---|---|
| **FLORIDA** | |
| All Counties | 1.88 |
| **GEORGIA** | |
| All Counties | 1.88 |
| **IDAHO** | |
| All Counties | 1.73 |
| **ILLINOIS** | |
| Cook | 1.82 |
| St. Clair | 1.82 |
| All Other Counties | 1.76 |
| **INDIANA** | |
| All Counties | 1.74 |
| **IOWA** | |
| Pottawattamie | 1.73 |
| Woodbury | 1.73 |
| All Other Counties | 1.69 |
| **KANSAS** | |
| Wyandotte | 1.73 |
| All Other Counties | 1.63 |
| **KENTUCKY** | |
| All Counties | 1.81 |
| **LOUISIANA** | |
| East Baton Rouge | 1.97 |
| Jeffereson | 1.97 |
| Orleans | 1.97 |
| St. Charles | 1.97 |
| West Baton Rouge | 1.97 |
| All Other Counties | 1.78 |
| **MAINE** | |
| All Counties | 1.79 |
| **MARYLAND** | |
| Baltimore | 1.95 |
| All Other Counties | 1.8 |
| **MASSACHUSETTS** | |
| All Counties | 1.79 |
| **MICHIGAN** | |
| All Counties | 1.66 |
| **MINNESOTA** | |
| Hennepin | 1.75 |
| St. Louis | 1.75 |
| All Other Counties | 1.69 |
| **MISSISSIPPI** | |
| All Counties | 1.83 |
| **MISSOURI** | |
| St. Louis | 1.86 |
| All Other Counties | 1.73 |
| **MONTANA** | |
| All Counties | 1.54 |
| **NEBRASKA** | |
| All Counties | 1.63 |
| **NEVADA** | |
| All Counties | 1.68 |
| **NEW HAMPSHIRE** | |
| All Counties | 1.79 |
| **NEW JERSEY** | |
| All Counties | 1.81 |
| **NEW MEXICO** | |
| All Counties | 1.68 |
| **NEW YORK** | |
| Albany | 1.95 |
| New York City | 1.95 |
| All Other Counties | 1.79 |
| **NORTH CAROLINA** | |
| All Counties | 1.88 |
| **NORTH DAKOTA** | |
| All Counties | 1.59 |

1979 CROP RYE LOAN AND PURCHASE RATES—Continued

| County | Rate per bushel |
|---|---|
| **OHIO** | |
| All Counties | 1.74 |
| **OKLAHOMA** | |
| All Counties | 1.71 |
| **OREGON** | |
| Clatsop | 1.96 |
| Multnomah | 1.96 |
| All Other Counties | 1.83 |
| **PENNSYLVANIA** | |
| Philadelphia | 1.95 |
| All Other Counties | 1.79 |
| **RHODE ISLAND** | |
| All Other Counties | 1.79 |
| **SOUTH CAROLINA** | |
| Charleston | 1.95 |
| All Other Counties | 1.86 |
| **SOUTH DAKOTA** | |
| All Other Counties | 1.63 |
| **TENNESSEE** | |
| Shelby | 1.88 |
| All Other Counties | 1.83 |
| **TEXAS** | |
| Galveston | 1.97 |
| Harris | 1.97 |
| Jefferson | 1.97 |
| Nueces | 1.97 |
| San Patricio | 1.97 |
| All Other Counties | 1.76 |
| **UTAH** | |
| All Counties | 1.63 |
| **VERMONT** | |
| All Counties | 1.79 |
| **VIRGINA** | |
| Chesapeake (Norfolk) | 1.95 |
| All Other Counties | 1.94 |
| **WASHINGTON** | |
| Clark | 1.96 |
| Cowlitz | 1.96 |
| King | 1.96 |
| Pierce | 1.96 |
| All Other Counties | 1.83 |
| **WEST VIRGINIA** | |
| All Counties | 1.81 |
| **WISCONSIN** | |
| Douglas | 1.75 |
| Milwaukee | 1.83 |
| All Other Counties | 1.74 |
| **WYOMING** | |
| All Counties | 1.63 |

(b) *Schedule of Premiums and Discounts for 1979-Crop Rye.* (1) *Premiums.*

Rye, grading U.S. No. 1: +2. (2) *Discounts.*

a. Rye, grading U.S. No. 3 on account of test weight: −2.

b. Rye, grading U.S. No. 3 on account of "thin" rye: 15.1−17.0% thins, −3; 17.1−19.0% thins, −5; 19.1−21.0% thins, −7; 21.1−23.0% thins, −9; and 23.1−25.0% thins, −11.

c. Rye, grading U.S. No. 3 for factors other than test weight or % of thins: −5.

d. Weed control discount (where required by § 1421.24): −10.

(c) *Other.* Rye with quality factors exceeding limits shown in foregoing schedule or rye that (1) contains in excess of 14 percent moisture, (2) is weevily, (3) is musty, (4) is sour, shall not be eligible for loan. In the event quantities of rye exceeding limits shown are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule of discounts as provided by the Kansas City Commodity Office for settlement purposes. Such discounts will be established not later than the time delivery of rye to CCC begins and will thereafter be adjusted from time to time as CCC determines appropriate to reflect changes in market conditions. Producers may obtain schedules of such factors and discounts at county ASCS offices approximately one month prior to the loan maturity date.

NOTE: This rule has been determined to be not significant under the USDA criteria implementing Executive Order 12044 and contains necessary operating decisions needed to implement the national average for 1979 rye loan and purchase rates announced November 11, 1978. An approved Final Impact Statement is available from Bruce Weber, ASCS (202) 447-7987.

Signed at Washington, D.C., on March 21, 1979.

STEWART N. SMITH,
*Acting Executive Vice President,*
*Commodity Credit Corporation.*

[FR Doc. 79-9310 Filed 3-27-79; 8:45 am]

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[6210-01-M]

## Title 12—Banks and Banking

## CHAPTER II—FEDERAL RESERVE SYSTEM

### SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. E; Docket No. R-0193]

## PART 205—ELECTRONIC FUND TRANSFERS

### Authority, Purpose and Scope, Definitions, Exemptions, Issuance of Access Devices, Liability of Consumer for Unauthorized Transfers, and Model Disclosure Clauses

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting in final form portions of Regulation E to implement two sections of the Electronic Fund Transfer Act that became effective on February 8, 1979. The regulatory proposal was published for comment on Friday, December 29, 1978 (43 FR 60933). Section 205.4 implements section 911 of the Act and relates to issuance of access devices; section 205.5 implements § 909 and relates to liability of consumers for unauthorized electronic fund transfers. The Board is also adopting sections on the regulation's scope and purpose

(§ 205.1), definitions (§ 205.2) exemptions (§ 205.3), and model disclosure clauses (Appendix A). Finally, the Board is issuing an analysis of the economic impact of the adopted portions of the Act and regulation, as required by section 904 of the Act.

The Board believes that it is important for consumers to be informed about their liability for unauthorized transfers. Consequently, the Board is separately publishing for comment a proposal that would require financial institutions to give consumers certain disclosures prior to the effective date of the remaining sections of the Act. The Board proposes to make delivery of those disclosures a precondition to imposing any liability on a consumer. (See FR Doc. 79-9262, a proposed rule document affecting 12 CFR 205 in this issue).

EFFECTIVE DATE: March 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Regarding the regulation: Dolores S. Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-2412). Regarding the economic impact analysis: Frederick J. Schroeder, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-2584).

SUPPLEMENTARY INFORMATION: (1) *Introduction; General Matters.* The Board is adopting in final form five sections and an appendix of Regulation E[1] to implement certain provisions of the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630), enacted on November 10, 1978. These sections of Regulation E were published for comment on December 29, 1978. The Board received 134 comments on the proposal and, based on the comments received and its own analysis, has revised the proposed regulation, the model clauses contained in the appendix, and the analysis of the economic impact of the regulation.

Section 909 of the Act sets limits on consumer liability for unauthorized electronic fund transfers which occur after loss, theft or unauthorized use of an EFT card or other access device. Section 911 establishes a partial ban on the unsolicited issuance of EFT access devices. Because these two sections of the Act became effective on February 8, 1979, and financial institutions need to know the requirements of the regulation implementing them, the Board believes the public interest requires that the regulation be effective immediately. The delayed effective date requirement of 12 CFR 262.2(d) is therefore suspended, as permitted by 12 CFR 262.2(e). The expanded procedures set forth in the Board's policy statement of January 15, 1979 (44 FR 3957), were not followed in developing the regulation since the proposal was initiated before the policy statement was adopted and since expedited action was necessary because of the early effective date of these statutory provisions.

Section 904(a)(1) of the Act requires the Board, when prescribing regulations, to consult with the other Federal agencies that have enforcement responsibilities under the Act. Members of the Board's staff met with staff members from the enforcement agencies prior to the issuance of the proposal, and have consulted again with them on the final rule.

Federal savings and loan associations should note that they are subject to the provisions of Regulation E and that there may be some inconsistency between this regulation and the Federal Home Loan Bank Board's regulation governing remote service units (12 CFR 545. -2). The Board of Governors has been advised by the Bank Board that § 545.4-2 will be amended promptly to conform to the Act and Regulation E.

Section 904(a)(2) requires the Board to prepare an analysis of the economic impact of the regulation on the various participants in electronic fund transfer systems, the effects upon competition in the provision of electronic fund transfer services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. Section 904(a)(3) requires the Board to demonstrate, to the extent practicable, that the consumer protections provided by the proposed regulation outweigh the compliance costs imposed upon consumers and financial institutions. The Board's analysis of the regulation's economic impact is published in section (4) below. The final regulation and the economic impact statement have been transmitted to Congress.

The Board is also adopting Appendix A to the regulation, Model Disclosure Clauses. Although section 904(b) of the Act, which requires the Board to issue model disclosures for optional use by financial institutions, does not become effective until May 1980, the Board believes that issuance of these clauses now is appropriate because certain disclosures are presently required by §§ 205.4(a)(3), (b), and (d). The clauses are discussed in greater detail in section (3) below.

The Board had solicited comment on whether certain requirements of the regulation should be modified, as permitted by section 904(c), to alleviate undue compliance burdens on small financial institutions. Comments on this issue do not, in the Board's opinion, presently justify any modification of the regulatory requirements for small financial institutions. The Board will again solicit comment on possible modifications when the rest of the regulation is issued for comment.

The Board had proposed rescinding five public information letters on Regulation Z (445, 520, 528, 921, and 1082). Letters 445, 520, 528, and 1082 will not be rescinded as they do not conflict with the provisions of Regulation E. The last paragraph of Letter 921 is rescinded effective immediately, as it states that unsolicited issuance of an access device permitting credit extensions under a preexisting overdraft agreement is not permitted. Issuance of such devices (in accordance with the requirements of § 205.4(b)) is now permitted by § 205.4(c)(iii).

Section 914, which assigns administrative enforcement of the Act and the regulation to various Federal agencies, does not become effective until 1980. The Board intends, however, to enforce the effective requirements of the Act and Regulation E as to State member banks under the general enforcement authority contained in § 1818b of the Financial Institutions Supervisory Act (12 U.S.C. 1818b (1974)). Other financial institutions should consult the agency with supervisory jurisdiction over them to determine the agency's position as to enforcement.

(2) *Regulatory Provisions. Section 205.1—Authority, Purpose and Scope.* This section had been proposed as a general introduction to electronic fund transfer services for consumers and financial institutions. Comments on this section generally opposed inclusion of a descriptive statement of the scope of electronic fund transfers within the body of the regulation, arguing that doing so might limit the development of new EFT services. The Board has therefore amended this section to provide a general statement concerning the scope and purpose of the Act and regulation.

*Section 205.2—Definitions.* In response to numerous comments pointing out that a user of the regulation cannot fully grasp the meaning of the substantive provisions before learning the meaning of the defined terms, the definitions have been placed near the beginning of the regulation.

(a) "Access device" and "accepted access device." The phrase "that may be used by the consumer" has been inserted in the definition of "access device" to indicate that an access device must be something that the consumer uses to make electronic fund

[1] Please note that the original Regulation E, Purchase of Warrants, was rescinded as of November 8, 1978 (43 FR 53708, Friday, November 17, 1978).

transfers. For example, data on magnetic tape, used by an institution to initiate preauthorized transfers, do not constitute access devices.

The definition of "accepted access device" has been expanded by the addition of two clauses. The first makes an access device "accepted" if it was issued on an unsolicited basis but has subsequently been validated upon the consumer's request in accordance with § 205.4(b). As pointed out in public comments, a request for validation, like a request for the device itself, indicates that the consumer wishes to have and use the device.

The second clause renders "accepted" any access device issued in renewal of or in substitution for an accepted access device, when the new device is received by the consumer. This corresponds to similar language in the Regulation Z definition of "accepted credit card."

Note that under § 205.4(a)(3), a financial institution will be permitted to renew an access device that was issued on an unsolicited basis before February 8, 1979, and that may not be an "accepted access device," provided certain disclosures are given. Any renewal device thus issued does not become an "accepted access device" until the consumer for whom the access device is intended has received the device and has signed it or used it or has authorized another person to use it. (See the discussion regarding § 205.4(a)(3), below.)

(b) "Account." There are two changes in this definition. One is the substitution of "credit plan" for "open end credit plan" in the exclusion of occasional or incidential credit balances. In the proposed regulation, "open end credit plan" was defined in § 205.12(1); the term has been deleted since it tied "open end credit plan" to certain Regulation Z concepts, and would have narrowed the exclusion to credit plans meeting the precise qualifications of Regulation Z. The Board believes that occasional or incidental credit balances in other types of credit plans should also qualify for the exclusion. "Credit plan" hinges on the broad definition of "credit," discussed below, and therefore serves this purpose better than "open end credit plan."

The other change is the deletion of the last sentence, excluding accounts held pursuant to bona fide trust agreements. Virtually identical language has been added to the section on exemptions (§ 205.3(f)); the purpose of the change is to group together all exemptions.

(c) "Act." This definition is identical to the proposed version.

(d) "Business day." The definition of this term differs from the proposed definition. The phrase "or the issuer," following "financial institution," has been deleted as unnecessary, since the definition of "financial institution" now includes persons who issue access devices and provide EFT services by agreement with a consumer.

"Business day" is defined as any day on which the offices of the consumer's financial institution are open to the public for carrying on "substantially all business functions." "Substanially all business functions" includes the "back-office" operations of the institution. Thus, for example, if the offices of an institution are open on Saturday for handling most transactions with customers (such as deposits, withdrawals, and loan applications) but not for processing claims of account errors or performing other internal functions, then Saturday is not a business day for that institution.

The Board solicited comment on whether the regulation should set a uniform rule as to what constitutes a business day, such as that set forth in § 226.9 of Regulation Z for rescission purposes. Some comments favored the Regulation Z rule (Monday through Saturday, exclusive of Federal holidays) or a similar rule, such as Monday through Friday, exclusive of Federal and State holidays. Others advocated defining as a business day any day on which the institution is capable of receiving notice of loss or theft of access devices. Under this definition, for example, a Sunday on which all offices of an institution were closed, but on which the institution maintained telephone lines for reporting loss or theft of an access device, would be a business day.

The Board believes that while weekend availability of telephone lines for reporting stolen or lost access devices is desirable, most consumers will not consider a weekend day a business day, especially if the institution's offices are closed. However, institutions should have the flexibility to keep their offices open on a weekend day and have it considered a business day. Loss or theft would, of course, be reportable at the institution's offices. The Board has added a requirement, discussed below, that an institution disclose what its business days are when it issues an access device on an unsolicited basis, as well as when it renews a device under § 205.4(a)(3).

(e) "Consumer." This definition is identical to the proposed definition.

(f) "Credit." A definition of the term "credit" has been added. "Credit" is defined broadly, using the same language as in Regulation B. This term replaces "extension of credit" (proposed § 205.12(i)) and "open end credit plan" (proposed § 205.12(1)), both of which have been deleted.

(g) "Electronic fund transfer." This definition is identical to the proposed version.

(h) "Electronic terminal." This definition is identical to the proposed version. It should be noted that this term includes merchant-operated terminals through which the consumer can make deposits or withdrawals.

(i) "Financial institution." The definition has been revised in the following ways. First, the phrase "State or Federal" is inserted before "mutual savings bank"to reflect the fact that, by recent legislation, mutual savings banks may have Federal charters. Second, reference to agents is omitted. Third, language has been added to include within the definition persons who, by agreement with consumers, provide electronic fund transfer services and who also issue access devices for such services. The addition of this language makes it possible to eliminate the term "issuer" from the regulation, and to use "financial institution" instead (including in the provisions on issuance of access devices).

Restructuring the definitional framework as it relates to financial institutions and issuers carries out the intent of § 904(d) of the Act, which directs the Board to ensure that the requirements of the regulation generally (and not merely those relating to issuance) are made applicable to persons who provide EFT services but do not hold consumers' accounts.

Finally, a new paragraph within § 205.2(i) permits two or more institutions that are subject to the regulation, with respect to a given EFT system or service, to agree among themselves as to which of them will carry out the duties imposed by the Act and the regulation. This does not alter an institution's obligations (to provide disclosures, for example), but merely sanctions indirect compliance with those obligations.

(j) "State." The statutory definition of "State" has been added to the regulation.

(k) "Unauthorized electronic fund transfer." This definition is identical to the proposed version. Some comments suggested that language be added so as to exclude from the scope of this term any transfer made possible by the consumer's negligence. However, the Board believes that it was the intent of Congress to adopt the framework set forth in the definition and in rules on liability for unauthorized use (§ 205.5) in place of a negligence standard, not in addition to it.

Definitions that appeared in the proposed regulation and that have been deleted from the final version are "credit card" (§ 205.12(f)), "extension of credit" (§ 205.12(i)), "issuer" (§ 205.12(k)), and "open end credit plan" (§ 205.12(1)). Reasons for the deletion of "issuer" and "open end credit plan" have been discussed above. "Credit card" has been deleted be-

cause it appears only in §§ 205.4(c) and 205.5(d); references to Regulation Z have been added as appropriate in order to specify the meaning of the term. "Extension of credit" has been deleted because its function is served by the new term "credit."

Some commenters urged that the Board add a definition of the term "error," which appears in the definition of "unauthorized electronic fund transfer" (§ 205.2(j)). The Board has decided not to do so. The error resolution provisions of the Act (section 908) do not become effective until May 1980, which gives the Board the time necessary to develop regulations implementing these provisions. As part of that process, the Board may decide to modify the statutory definition of "error," as authorized by section 908(f)(7). In the interim, the statutory definition is available as a guide.

*Section 205.3—Exemptions.* This section corresponds to § 205.2 of the proposal and implements the exemptions contained in section 903 of the Act. It remains unchanged, with three exceptions discussed below.

Section 205.3(a) exempts from the regulation's requirements check guarantee or authorization services that do not "directly result in a debit or credit to a consumer's account." Some comments asked whether the practice of "memo-posting" or putting a hold on the consumer's funds, in the amount of the guaranteed or authorized check, constitutes a direct debit to the account for purposes of Regulation E. It is the Board's opinion that memo-posting does not directly result in a debit to the account, and services employing such holds are exempt (because the transfer of funds is not complete until the paper instrument, i.e., the check, is cleared through the check payment system).

The Board has amended the language of § 205.3(b), Wire transfers, to clarify that transfers for consumers by any network similar to Fedwire (that is used primarily for financial institution or business transfers) are exempt.

Section 205.3(c), dealing with securities and commodities transfers, has been amended to specifically exempt purchases or sales of commodities through brokers registered with the Commodity Futures Trading Commission. The Board had solicited comment on whether transfers involving mutual fund or pension accounts should be exempted, but will defer any action on such exemptions pending further public comment on the rest of the regulation, as such accounts do not appear to be seriously affected by the effective sections of the regulation.

The Board had also solicited comment on whether § 205.3(d), dealing with automatic transfers, should be expanded to include other intrainstitutional transfers. The comments generally supported expansion of the exemption; the three major suggested changes were (1) to exempt all automatic transfers between a consumer's deposit accounts (including transfers between checking and savings accounts, share and share draft accounts, and savings and NOW accounts) within a single financial institution or between institutions, (2) to exempt all automatic transfers between a consumer's accounts and between the consumer's accounts and the financial institution's accounts (e.g., automatic mortgage or other loan payments, automatic debiting of checking account service charges), and (3) to exempt all preauthorized automatic transfers between a consumer's accounts, and between a consumer's accounts and the institution's or third parties' accounts.

The Board has decided to defer any action on whether intrainstitutional transfers other than those specified by the Act should be similarly exempted pending further public comment and analysis. The issues raised by the proposed expansion of the exemption are, in the Board's opinion, best considered in the context of the other requirements of the Act. The Board believes that such transfers are not materially affected by the portions of the Act now in effect and will again raise the issue when proposing the relevant sections of the regulation.

The exemption from the scope of the Act and regulation for any trust account held by a financial institution pursuant to a bona fide trust agreement was contained in the definition of "account." It has been moved to the exemption section for clarity. The Board does not believe, as suggested by some commenters, that the Act intended to limit the exempted accounts to those for which the financial institution is the trustee.

*Section 205.4—Issuance of Access Devices.* Section 205.4 corresponds to § 205.3 of the proposed regulation. Proposed § 1205.3(a)(1) permitted issuance of access devices in response to either oral or written requests. The Act is silent on this point. The majority of the commenters favored permitting oral requests, arguing that this would be more convenient for both financial institutions and consumers. For this reason, and because it is desirable to have the same rules apply to EFT devices and to credit cards (which under Regulation Z may be issued upon oral request), the Board has decided to adopt § 205.4(a)(1) in the form proposed; an oral request for an access device will suffice to authorize issuance. Note that if an institution issues an access device in response to a fraudulent request (whether oral or written) and the device is intercepted and used, the consumer whose account is affected will bear no liability, since the device will not be an "accepted access device."

Footnote 1, which has been added to § 205.4(a)(1), addresses the question of whether all holders of a joint account must request an access device before the institution may issue a device or devices. The footnote explains that if a holder of a joint account requests an access device, the institution may issue a device to the requesting holder; it may also issue a device for the other holder(s) in response to a specific request for the additional card(s). The Board believes it is appropriate for an account holder to be able to request an access device for a joint account holder. In addition, a more stringent requirement could easily be circumvented, since oral requests are permitted under the regulation.

Section § 205.4(a)(2) remains unchanged; its applicability is limited to the issuance of renewal or substitute devices that take the place of accepted access devices.

Many commenters asked the Board for a "grandfather" provision that would permit them to renew access devices that were issued on an unsolicited basis before the effective date of the Act, without regard to whether the device being replaced is an accepted access device. They argued that such a provision is necessary because in many cases where unsolicited access devices were sent out, the financial institution is unable to determine (or is able to do so only at great expense) whether a particular device was ever used by the consumer. Since these institutions do not know which of their existing EFT devices are "accepted," they would have to treat all devices as unaccepted and to seek a request for renewal rather than renew automatically. This, it was suggested, would be confusing and irritating to a consumer who has been using the device, and burdensome for the institution. In addition, since some institutions may have access devices outstanding that require renewal only infrequently or not at all, imposing greater requirements on institutions whose access devices require renewal more frequently would be anticompetitive.

The Board has therefore added § 205.4(a)(3), which permits the issuance of a validated renewal or substitute access device, but only on the condition that the financial institution disclose to the consumer the consumer's liability for unauthorized transfers, the telephone number and address to be used to report the loss or theft of the card or an unauthorized transfer, and the institution's business days.

The Board believes it would not be fair to consumers who are using their access devices to have financial institutions require a further application. At the same time, the Board recognizes that other consumers will not want the renewal devices. Requiring these disclosures about the consummer's liability to be made when an institution renews a device that may or may not have been accepted will, in the Board's opinion, enable consumers to make an informed decision about whether or not to keep and use the access device.

Note that while § 205.4(a)(3) sanctions the renewal of a prior access device that may not have been accepted, the consumer will incur no liability from the issuance since the renewal device does not become an accepted access device until the consumer accepts the device by signing or using it, or by authorizing another person to use it.

Section 205.4(b) specifies the conditions under which access devices may be issued on an unsolicited basis. Sections § 205.4(b)(1), (2) and (3) correspond to §§ 205.3(b)(1)(i), (ii) and (iii) of the proposal and are substantially unchanged.

Section 205.4(b)(4) combines proposed §§ 205.3(b)(1)(iv) and § 205.3(b)(2). The change in structure emphasizes that the requirement for verification of personal identity applies only to access devices issued on an unsolicited basis.

The substance of proposed § 205.3(b)(2) has been revised by the addition, to the four specified means of verification of personal identity, of language that would also permit use of any other reasonable means of verification. The Board believes that limiting verification methods to a specified few would risk hampering technological innovation in this area. Such innovation might produce methods that would provide greater certainty and security than any of the four methods listed. In any event, it should be noted that if an institution fails to verify identity (even if it employed reqsonable means), and thus validates an access device for an imposter, the device will not become an "accepted access device." Hence the consumer whose account is depleted will bear no liability whatever.

The provision concerning what constitutes validation (proposed § 205.3(b)(3)) has been incorporated as a continuation of the introductory language of § 205.4(b). The phrase "all procedures" has been substituted for "any procedure" to make clear that, if several steps are needed to activate the access device, validation consists of performing not just one, but all of them. (On the other hand, note that if a solicited access device can be used in the institution's system to initiate a transfer immediately upon issuance, then it is "validated" even though no validation procedure was performed after issuance.) The word "enable" replaces the word "permit," to underscore that validation relates to the physical possibility of use of the device, not merely the permissibility of use under an agreement between the institution and the consumer.

The Board solicited comment on whether it should specify methods of validation. The vast majority of comments urged that limiting means of validation would stifle technological development. On this basis, the Board has decided not to make any change in the validation provisions in this respect.

Section 205.3(a) concerns the relationship of this regulation to Regulation Z, and corresponds to proposed § 205.3(c). The provision has been restructured for clarity and one significant change has been made. Section 205.4(c)(1) lists the activities that are covered by the issuance rules of Regulation E, while § 205.4(c)(2) states what is covered by the counterpart provisions of Regulation Z. A category, set forth in § 205.4(c)(1)(iii), has been added to the coverage of Regulation E (with a corresponding exception in § 205.4(c)(2)(iii)). The category is access devices that are also credit cards solely by virtue of their capacity to access an existing overdraft credit line attached to the consumer's account.

The Board believes this change is appropriate for a number of reasons. First, as comments pointed out, the consumer has already requested the overdraft credit line itself, and thus the issuance of an access device does not force unwanted credit on the consumer. Also, since the device must be issued unvalidated (to comply with § 205.4(b)(1)), it cannot be used until validated at the recipient's request and upon verification of the recipient's identity. Thus, there is less danger of unauthorized use following interception of the device than in the case of ordinary credit cards. Finally, this revision brings the rules on the relationship between the EFT and TIL Acts in the area of issuance into closer conformity with the corresponding rules regarding liability for unauthorized use.

The disclosures to be given with an unsolicited access device appear in § 205.4(d). The Board believes these disclosures are necessary to provide adequate information to consumers receiving access devices they did not request. This provision differs in several ways from proposed § 205.3(d). Language has been added clarifying the rule that the disclosures must be in a form that the recipient can retain. A new disclosure is required (§ 205.4(d)(3)), namely, what days constitute the institution's business days. This disclosure is necessary because the regulation permits variance among institutions as to what constitutes a business day, and it is important for consumers to know which days count toward the two days that they have to report a lost or stolen access device. The disclosure concerning the right to stop payment of preauthorized transfers (proposed § 205.3(d)(6)) has been deleted, since preauthorized transfers are not made by use of access devices.

The remaining disclosure requirements are substantially the same as proposed. Section 205.4(d)(4), corresponding to proposed § 205.3(d)(3), has been changed by the deletion of the words "and nature," which added nothing to "type." It should be pointed out that if there are limitations on the frequency or dollar amount of transfers for security reasons, the institution must disclose that fact. Only the details of the limitations are exempt from disclosure. Sections 205.4(d) (7), (8) and (9) (corresponding to proposed §§ 205.3(d) (7), (8) and (9)) have been revised so that the requirements are to disclose the institution's policies and not the consumer's rights (under State law, for example).

The disclosure requirement regarding charges, set forth in § 205.4(d)(5), gives rise to the question of whether the institution must disclose the entire account maintenance charge, even if part of it is imposed on similar accounts not accessible by electronic means. The Board believes that the answer is no; the disclosure need include only those charges, or components of charges, that relate to electronic fund transfers or to EFT capability on an account.

As adopted, the regulation imposes disclosure requirements only when a financial institution issues an unsolicited access device under § 205.4(b) or renews what may be an unaccepted access device issued before February 8, 1979, under § 205.4(a)(3). Note, however, that the Board is separately publishing for comment in this issue a proposal that would require financial institutions, as to all accounts that can be accessed by an EFT device, to disclose a consumer's potential liability and that would make delivery of those disclosures a precondition of imposing any liability on the consumer.

*Section 205.5—Liability of Consumer for Unauthorized Transfers.*

This section implements section 909 of the Act and sets forth the conditions under which a consumer may be held liable for unauthorized electronic fund transfers involving an access device, and the limits on such liability.

Section 205.5(a) sets forth two general conditions that must be met before any liability can be imposed upon a consumer for unauthorized transfers. First, the access device must be an "accepted access device," as that term is defined in § 205.2(a). Under that definition, an accepted access device is one that (1) the consumer requests and receives, signs, uses, or authorizes another person to use; (2) was issued on an unsolicited basis and has been validated at the consumer's request; or (3) is a renewal or substitute device that takes the place of an accepted access device.

The second condition that must be met before any liability can be imposed on a consumer is that the financial institution must have provided a means whereby the consumer to whom the access device was issued can be identified. Comments on this second requirement raised two questions. The proposal employed the word "user" instead of "consumer" (now in the final rule) for identification purposes. Commenters asked whether this word meant that each user of the card had to have a separate identifer (e.g., a personal identification number or PIN). The Board believes that such a requirement is not mandated by the Act, and that the requirement of identification is a general one (i.e., electronic terminals need not have the capability to identify each separate user of an access device as an authorized user as a precondition to liability).

Commenters also inquired whether the examples of means of identification (which are not exclusive) permit the use of PINs and other alphabetical or numerical codes as sufficient identifiers. The Board believes that the words "electronic or mechanical confirmation" include within their scope the use of PINs.

Note that, under the statutory language of section 909(b), the financial institution has the burden of proving that a transfer was unauthorized, that the access device was an accepted access device, and that the financial institution has complied with the consumer identification requirement. Note also that the Board is publishing for comment a proposal that would make disclosure of consumer liability a precondition to imposing any liability on the consumer.

Section 205.5(b) has been substantially revised. As a preliminary matter, the Board continues to believe that the intention of Congress was to provide limits on liability for a series of unauthorized transfers arising from a single loss or theft of the device, not for each unauthorized transfer from an account; the regulation so provides. The comments addressing this issue were divided, but the comments in support of the Board's interpretation argued, and the Board agrees, that a significant consumer benefit of the Act would be lost if the provision were changed.

The most significant revision of this subsection is the deletion of the words "or possible unauthorized transfer" after the words "loss or theft of the access device." A significant number of comments pointed out that the statutory language imposing liability before the end of 60 days after the transmittal of a periodic statement showing unauthorized transfers is limited to unauthorized use following loss or theft of an access device and does not include, as the proposed regulatory language and accompanying footnote suggested, any affirmative duty on the part of a consumer to be aware of and report possible unauthorized use not resulting from loss or theft of the device, or to examine a periodic statement before 60 days. The Board agrees with this position and has accordingly deleted the phrase.

Some commenters indicated that the proposed regulation did not make clear what liability limits apply in the case of failure to report unauthorized transfers appearing on a periodic statement. It was suggested that the proposed language could be interpreted to impose zero liability for transfers occuring before the end of the 60 day period after transmittal of a statement. Section 205.5(b) has been restructured to clarify that the $50 liability limit (or the amount of unauthorized transfers, if less) applies to transfers before the close of the 60 days.

Section 205.5(b)(3) makes clear that all three tiers of liability can apply to a series of unauthorized transfers. For example, a consumer could be liable for $50 for transfers that occurred before the close of two business days after the consumer learns of the loss or theft, for another $450 for transfers occuring after the close of the two business days and before the elapse of the 60-day period following transmittal of a periodic statement, and for an unlimited amount of liability for transfers occurring after the close of the 60 days, if the financial institution can prove when the consumer learned of the loss or theft, and that the losses occurring after the close of 2 business days and after the close of the 60 days would not have occurred but for the failure of the consumer to notify the financial institution.

A number of comments suggested that the Board specify maximum time periods for extension of the notice periods when extenuating circumstances prevent the consumer from notifying the institution of loss or theft of the access device or unauthorized transfers. The Board does not believe that such time periods can be uniform, given the wide variety of circumstances that may arise which could delay notification by the consumer.

Section 205.5(b)(5) (corresponding to proposed § 205.4(d)(3)) has been amended to conform more closely to the statutory language. It states that an applicable State law, or an agreement between the consumer and the institution, that provides for less liability than is imposed by the Federal law will determine the consumer's liability for unauthorized transfers. Some commenters suggested that the Board preempt State credit card liability laws (that have been interpreted to apply to EFT cards) that provide for less consumer liability than the Federal EFT law. The Board declines to do so at this time.

The Board had solicited comment on whether a financial institution could specify a particular person or office to be notified in the event of loss or theft of the access device or unauthorized transfer. The comments from financial institutions on this question were in favor of such latitude; other commenters opposed it. The Board believes that § 909(a) precludes it from permitting an institution to designate a particular person to receive such notice; consequently, no change has been made to that portion of § 205.5(c).

The Board has added, however, a provision similar to one contained in § 226.13(e) of Regulation Z. It provides that written communication of loss, theft or unauthorized transfer is effective upon receipt by the financial institution or, if not actually received, upon expiration of the time usually required for transmission, whichever is earlier. The Board believes that the disclosure of a telephone number and address for notification of loss, theft or unauthorized transfer will encourage prompt communication by consumers. Additionally, the model disclosure clause implementing the provision as to advisability of prompt reporting of loss or theft (§ A(2) of Appendix A) has been amended to encourage telephone notification.

Section 205.5(d) remains virtually unchanged from the proposal. It provides that a consumer's liability for unauthorized transfers shall be detemined solely in accordance with the EFT Act and Regulation E if the electronic fund transfer was accomplished by means of an access device that is also a credit card or if the transfer was

also an extension of credit under an overdraft plan. It also provides that the Truth in Lending Act and Regulation Z determine the liability of a consumer for unauthorized use with a credit card that is also an access device, but that does not involve an electronic fund transfer.

(3) *Model Disclosure Clauses.* Appendix A to the regulation sets forth model clauses for use in fulfilling the disclosure requirements of §§ 205.4(a)(3), (b), and (d). These clauses, and others to be issued by the Board, will satisfy the requirements for initial disclosures (section 905 of the Act) when these go into effect in May 1980. The Board may, however, revise these clauses when it issues the additional clauses.

Use of the model clauses is optional. Further, financial institutions may make changes as appropriate in order to reflect the services they offer. Note that this is true even for § A(2), the model disclosure of liability for unauthorized use, contrary to what was stated in the FEDERAL REGISTER material accompanying the proposed regulation. The Board has decided that since § 205.5 mandates lesser liability than the limits set forth in the EFT Act if contract or State law so provides, it would be apropriate for the disclosure to reflect the lesser liability. Institutions may choose to use the model clauses or only some of the required disclosures, while making other required disclosures by using clauses of their own design.

Use of the model clauses that appropriately reflect the institution's EFT program will protect the institution from civil and criminal liability under sections 915 and 916 of the Act for failure to make disclosure in proper form, as provided in section 915(d)(2). Note that sections 915 and 916 do not take effect until May 1980.

In response to comments on the proposed versions, the model clauses have been revised, and one new clause added. The more noteworthy changes are discussed briefly below.

In § A(1), the phrase "to transfer money into or out of your account" has been added, to distinguish use of the access device for EFT purposes from other possible use (for example, as a credit card).

In § A(2), a sentence has been added to one of the options for the first paragraph, encouraging consumers to telephone rather than write to report loss or theft of an access device. Also, the phrase "or money is missing from your account" has been deleted from both alternative first paragraphs, reflecting a corresponding change in § 205.5.

Section A(4), the institution's business days, is a new model clause, corresponding to the new disclosure requirement set forth in § 205.4(d)(3). The remaining clauses have been renumbered accordingly.

In § A(5)(a), the item relating to learnig account balances has been deleted, since while some EFT devices may indeed be usable for this purpose, no electronic fund transfer is involved and the required disclosure concerns only such transfers. The item concerning periodic payments has also been deleted, since such payments are preauthorized and no access device is used. A sentence has been added at the end of A(5)(a) in response to comments pointing out that some institutions, because of legal restrictions or because they share some terminals but not others, may not be able to offer the same EFT services at all terminals.

Section A(5)(b) contains two new items. Item (3) relates to frequency limitations in point-of-sale systems; item (4) provides language for use when security considerations prevent disclosure of frequency limits other than those set forth in item (1), (2) or (3), or of any frequency limits whatever. A new disclosure, for dollar limits in point-of-sale systems, has been added to § A(5)(c).

Section A(7) has been rephrased to make clear that the listed items are instances in which the institution will routinely disclose information about the consumer's account, but that they are not the only instances in which the institution will ever disclose such information. Item (2) has been reworded to indicate, among other things, that reports to credit bureaus and the like are not made only upon request. The item relating to the Right to Financial Privacy Act of 1978 has been deleted, since the disclosure requirement under that Act was repealed by Congress on February 27, 1979.

(4) *Economic Impact Analysis of sections 909 and 911. Introduction.* Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of the regulations that the Board issues to implement the Act. The following economic analysis accompanies § 205.4 of the regulation, which implements section 911 of the Act, and § 205.5 of the regulation, which implements section 909 of the Act.[2] The analysis must consider the costs and benefits of the regulation to suppliers and users of EFT services, the effects of the regulation on competition in the provision of electronic fund transfer services among large and small financial institutions, and the effects of the regulation on the availability of EFT services to different classes of consumers, particularly low-income consumers.

The regulation in part reiterates provisions of the statute and in part amplifies the statute. Therefore, the economic analysis considers impacts of both the regulations and the statute, and throughout the analysis a distinction will be made between costs and benefits of the regulation and those of the statute. *It is also important to note that the following analysis assumes that the regulation and the Act have no relevant economic impact if they are less restrictive than current industry practices or State law. In this case, the regulation will not affect costs, benefits, competition, or availability and will not inhibit the market mechanism. The following analysis of the regulation and the Act is relevant only if their provisions are more constraining than those provisions under which institutions would otherwise operate.*

*Section 205.4—Issuance of Access Devices.* (a) Impact of the Act and regulation on costs and benefits to institutions, consumers and other users. A primary purpose of the Act is the prevention of loss from unauthorized electronic fund transfers from consumers' accounts. The Act seeks to prevent such loss by restricting unsolicited distribution of validated EFT cards[3] which might be intercepted and used without the consumer's knowledge. The potential risk to the consumer of such a loss varies depending upon whether or not the consumer had an existing account with the financial institution. If the institution sent a card to a consumer without an existing account, perhaps as a marketing device to gain new customers, an interception of the card could not result in any potential loss to the consumer since the consumer had not placed funds in the associated account. Consumers who already hold accounts will benefit most from the prohibition on unsolicited issuance of validated cards because these consumers will be protected from the potential loss of both funds on deposit and funds available through preexisting overdraft credit lines.

The Act establishes a two-step procedure which requires that validation occur separately from the issuance of unsolicited cards; the regulation reiterates this requirement without amplification. This provision of the Act creates the important benefit of preventing losses from unauthorized use that might occur from interception of already validated cards in transit to con-

[2] These sections took effect on February 8, 1979. Another economic analysis will be prepared by the Board when additional sections of the regulation are written to implement the other sections of the Act. Costs, benefits and effects identified in the present analysis will be re-evaluated at that time to take into account newly available information on the development and use of EFT services.

[3] The term "card" in this economic impact analysis refers to any access device as defined in § 205.2(a) of the regulation.

sumers or in the possession of consumers who never requested them and do not use them. It also prevents costs and consumer inconvenience associated with establishing that any losses were from an unaccepted card.

Losses from interception have been experienced both with EFT cards and credit cards. Results of a 1976 survey of 292 institutions issuing EFT cards showed that 40 institutions reported losses related to mail-intercept since first offering EFT services, and that these losses were 11 per cent of total losses.[4] For these 40 institutions, there were 170 instances of loss, with average dollar loss of $291.00 per instance.[5] However, the dollar loss per outstanding card was low since the total number of cardholding customers for the institutions in the survey was several million. For credit cards issued prior to the 1970 prohibition on unsolicited cards, 300,000 per year were estimated to be stolen out of an estimated 200 million credit cards outstanding in the late 1960's; this figure includes mail-intercept as well as other card theft.[6]

The Act does permit the distribution of unsolicited, but unvalidated, cards. The most general effect of this provision will be seen in the number of accepted cards. Although the quantitative impact of the Act's validation rules on the number of accepted cards cannot be predicted, experience in the credit card industry in the years prior to the prohibition of unsolicited cards under Regulation Z can give an indication of the bounds of acceptance rates relative to either a more or less restrictive regulation.[7] Unsolicited credit card distribution resulted in a much higher acceptance and usage rate than distribution based on solicitation of consumer requests for cards. The Marine Midland experience in 1966 points our these differences; 33,357 promotional mailings resulted in only 221 applications for credit cards (less than one percent) while 731 direct mailings of cards resulted in 19 percent usage in a short period and 99 percent retention.[8] Based on this experience, it is expected that allowing distribution of unsolicited, but unvalidated, EFT cards will result in a larger card base and more chance of acceptance by merchants and consumers than would the complete prohibition of distribution of unsolicited cards. On the other hand, the card base, the acceptance level and some of the potential benefits due to economies of scale in EFT are expected to be smaller than would be the case if issuers were able to issue validated cards that were not solicited. Because the Act requires a two-step procedure for distributing and validating cards, costs to financial institutions will be increased through additional postage and handling. Costs are also increased by the Act's requirement of positive validation by the consumer. Required processing costs will be greater for every card that is accepted, and marketing expenses needed to achieve given acceptance rates for unsolicited cards will increase.

The lower acceptance rate expected for unsolicited cards under the Act may have the anti-competitive effect of raising a barrier to entry for financial institutions wanting to expand their card bases in markets in which they have small or zero shares, and where other financial institutions are already well established. The higher processing cost per new accepted card intensifies the effect, making entry by new competitors less likely.

The regulation has classifed unsolicited cards issued before February 8, 1979, as accepted for purposes of § 205.4(a). In this way the regulation allows institutions to renew or replace already issued, unsolicited cards without having to verify the consumer's identity, validate the cards and make disclosures under § 205.4(b)(2). This provision imposes no direct costs on consumers or institutions and, at the same time, it eliminates costs that institutions would otherwise incur if, regarding unsolicited cards issued prior to February 8, 1979, as not accepted, the institutions had to comply with the Act's requirements governing unsolicited cards.

Furthermore, the regulation shifts to financial institutions all liability for unauthorized use of unaccepted, unsolicited cards that have already been issued. This provision, which conforms with the specific provisions of the statute, protects consumers who have received unsolicited cards and never accepted them. Financial institutions are exposed to all risks from unauthorized use of those cards, but institutions may protect themselves from the risks by invalidating unaccepted cards.

The regulation's provision that verification may be by any reasonable means appears flexible enough to ensure that benefits from innovation in verification technology are not precluded. Several commenters expressed concern that specification of permissible methods of verification would stifle cost-reducing innovation.

The Act further requires that a disclosure of consumers' rights and liabilities accompany each unsolicited access device, but the Act's full set of disclosures, as set forth in section 905, is not required until May 1980. To implement § 911 of the Act, the regulation, in § 205.4(b)(2), requires an interim set of disclosures to accompany each unsolicited card sent before May 1980. Two costs to financial institutions arise. One is the cost due to legal fees and paperwork resulting from the requirement of two sets of disclosures. Model disclosure clauses provided by the Board pursuant to the Act should mitigate this cost. The other cost arises from the Act's requirement that disclosures accompany the card.

Third-party processors argued, in particular, that this requirement would increase costs of issuance because of the need to match proper disclosure statements with cards for different institutions and customers. Different disclosures may be needed for different card recipients because of variations in State laws or practices of issuing institutions within an EFT system (as, for example, in a multibank holding company). Particularly when cards are issued by a party other than the financial institution, sorting costs may be significant. Another cost would occur if third-party processors were unwilling to bear the risk of failing to make the proper disclosures to each consumer, or if they were to require costly insurance against such risk. However, commenters provided no estimates of the additional costs expected to be associated with compliance with this statutory provision.

(b) Effects of the Act and regulation upon competition among large and small financial institutions in the provision of electronic transfer services. A critical factor in a financial institution's ability to compete in the issuance of debit cards, particularly for point-of-sale systems, is the willingness of merchants to accept the cards. One influence on merchant acceptance of EFT cards is the size of the outstanding card base. Financial institutions attempt to use marketing strategies that will achieve a high acceptance ratio for the lowest cost. The

[4] Linda Fenner Zimmer, "Cash Dispensers and Automated Tellers: Statistical Data and Analysis with Selected Case Histories." Fourth Status Report (Park Ridge, N.J.: August 1977), pp. 222-224. These data must be interpreted with the awareness that security measures have greatly improved since 1976.

[5] *Ibid.*

[6] Sylvia Porter as quoted from *The Washington Star* in U.S. Congress, "Unsolicited Credit Cards," Hearings before the Subcommittee on Financial Institutions of the Committee on Banking and Currency, Senate, 91st Congress, 1st Session, 1969, p. 243.

[7] Analogies with credit card distribution are illustrative and not intended to obscure fundamental differences between credit cards and EFT cards. For example, fraudulent use could occur immediately for an intercepted credit card, but the consumer's liability would be strictly limited to $50. An intercepted EFT card could be used fraudulently only if the personal identification number (PIN) were intercepted or discovered, but the consumer's liability would be determined in accordance with the Act.

[8] Bank Credit-Card and Check-Credit Plans (Washington, D.C.: Board of Governors of the Federal Reserve System), July 1968, p. 27.

credit card experience in the late 1960's showed that the institutions' most successful strategy in achieving a large card base was large mailings of unsolicited cards. By allowing the distribution of unsolicited (athough unvalidated) cards, the Act does not restrict entry potential for institutions as severely as was the case in the credit card industry when distribution of unsolicited cards was completely prohibited. As a result of this prohibition, companies that had not already entered the industry on a large scale were at a major disadvantage compared to the large-scale participants. Entry into the industry was difficult and competition was restrained. If a financial institution seeks to develop a point-of-sale system, a larger card base and greater volume of transactions will probably be required to make the system economically feasible than would be the case with the operation of a system of automated teller machines. For this reason, the Act's issuance restrictions may make entry into the point-of-sale EFT market more difficult for smaller institutions, thereby disadvantaging them to the extent that point-of-sale EFT is an important means of competing. These institutions have a smaller base of existing customers to whom to issue cards and hence may not be able to generate sufficient transaction volumes. The issuance restrictions may make it more difficult to increase their card bases to sufficient sizes to cost-justify POS systems.

A majority of commenters on the size issue stated that small institutions neither need nor should have special provisions under the regulation. Small financial institutions might enter EFT markets directly, or by means of a holding company, a correspondent institution, a shared system, or other organizational structure that can confer on small institutions some of the entry advantages of large size. Special provisions for small institutions might leave consumers who deal with them less protection in EFT activities.

Several public comments argued that small institutions know their customers and communities more personally and would likely experience relatively lower EFT losses than larger institutions. It was also pointed out, however, that a small institution trying to expand might know as little about its target customers as a large institution. Therefore, no clear effect, by size of firm, is likely to be exerted by the Act or regulation.

(c) Effects of the Act and regulation on availability of electronic transfer services to different classes of consumers, especially low-income. If cards are sent unsolicited only to institutions' present consumer deposit account holders, then EFT service availability would be distributed, by this means, to low-income consumers according to their representation in the group of all account holders. Table I presents data on financial assets by income class, from which it can be seen that usage of depository services rises with income.

Public comments on the proposed regulation indicated that, while most institutions do not limit EFT and other financial service availability by income or employment status of existing account holders, other institutions do. Therefore, financial institutions might not send unsolicited cards to all present account holders. To the extent that such cards represent a costly nonprice means of attracting or maintaining deposits, institutions may send cards only to high-volume customers to reduce the cost per dollar of account balance. In such an event, the distribution of EFT services would evolve away from low-income to higher-income customers. On the other hand, marketing opportunities may exist that will encourage institutions to offer EFT services to low-income consumers.

The provisions of the Act and regulation do not appear likely to influence these aspects of card issuance, nor to affect the availability of EFT services to different classes of consumers.

*Section 205.5—Conditions of liability of consumer for unauthorized transfers.* (a) Impact of the Act and regulation on costs and benefits to institutions, consumers and other users. Another primary purpose of the Act is the limitation of consumer and financial institution liability for losses due to to unauthorized electronic fund transfers involving consumers' accounts. The total net cost or benefit of the Act to society is related to the extent to which the Act promotes an efficiency gain in the payments mechanism and reduces losses (including security costs) associated with all fund transfers, including the expected dollar loss resulting from fraud or unauthorized use of debit cards.

The impact of the liability provisions of the Act, which are reiterated in the implementing regulation, on the aggregate loss may be felt in three ways, two of which are benefits and the third a cost. First, by building in incentives for consumers to report quickly loss or theft of a card or discovery of unauthorized use, the Act should reduce the number of unauthorized transfers. Second, the relatively long period which consumers have in which to report unauthorized use before they assume full liability for loss will increase financial institutions' incentives for tight security systems. Third, however, is the possibility of increased unauthorized use because the Act does not hold the consumer specifically liable for negligence. For example, a consumer's liability for unauthorized use of a card does not increase if the consumer puts the identification number on the card. Through these same effects, the liability provisions of the Act will also influence the efficiency of the economy's payments mechanism.

The regulation provides that, for unsolicited cards issued before February 8, 1979, the consumer is not subject to the Act's liability provisions unless the cards have been requested and received, signed, used, or authorized for another person to use, and thus accepted. The regulation thereby extends protection from loss to all consumers holding unaccepted cards. This is a benefit to consumers that may be offset to some extent by the increased liability exposure of institutions that otherwise would have had the option of not restoring funds transferred from these consumers' accounts by unauthorized use of unaccepted debit cards. This provision of the regulation goes beyond the explicit language of the statute but clearly expresses the intent of Congress to protect consumers from losses due to unsolicited cards.

Limited data on actual loss experience for unauthorized use of EFT and credit cards indicate that losses have not been high. For example, an Interbank ATM (Automated Teller Machine) loss survey of 125 banks showed that, on transactions volume of 10,486,000 and dollar volume of $41.0 million, the total annual fraud loss was $290,000, less than one per cent of dollar volume, and represented less than $0.03 per transaction.[9] A payment Systems, Inc., survey of officials at 45 financial institutions offering card-activated EFT services estimated that annual average fraud loss per active card was about $0.10 compared to an average of about $0.03 per card for the total card base.[10] *Nilson Reports* estimated that total credit card fraud loss for 1978 would be $62.8 million on total transactions volume of $44 billion, which is less than two-tenths of one per cent of dollar volume.[11]

Although few specific data on loss experience were reported in public comments, there were several general observations. Commenters noted that

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[9] John A. Colin, *What's New in Money-Matics?* Remarks made at the Bank Administration Institute Eighth National Security Conference (Atlanta, Ga.: n.p.; 1977), quoted in Veronica M. Bennett, "Card Fraud and Security in EFT Systems," (Atlanta: Payment Systems, Inc., White Paper, September 7, 1978), p. 13.

[10] Bennett, p. 17.

[11] Spencer Nilson, editor of *Nilson Reports*, during a telephone interview, November 1978.

losses from unauthorized or fraudulent use of EFT were lower per transaction than check losses. Many financial institutions commented that most or all EFT-related losses were absorbed by the institution; three reasons were given for this practice. First, competitive strategies lead institutions to make EFT as attractive as possible, particularly when EFT systems are new, operating costs are relatively higher, and customer usage is being actively solicited. Second, institutions may seek to maintain customers' good will be absorbing losses. Third, and perhaps most significantly, the costs of investigation, proof of consumer negligence, and other litigation are high per instance of loss, making absorption of losses often the economically best alternative. When the behavior of financial institutions is determined by these factors, the Act and implementing regulation will have little impact.

The conditions of liability imposed by the Act set a minimum liability standard that must be assumed by all financial institutions offering EFT services. This means that all institutions are treated equally in terms of a floor on requirements. The Act sets the limits within which an institution can shift the liability burden to consumers. The distribution of liability between user and supplier of EFT services depends on the timing of reporting of loss, theft or unauthorized use; under the Act, the consumer assumes more liability by taking more time to report.

However, competition may lead banks to assume more liability than the regulation requires and thus reduce costs to the consumer and increase consumer acceptance. Results of a 1978 ATM Security Survey by the American Bankers Association indicate that, at present, banks do not have standard liability provisions.[12] The respondents of the survey (approximately 135 banks, half of which had deposits greater than $1.0 billion and only 6 per cent of which had deposits less than $100 million) established liability as follows: (i) case-by-case basis: 55.8 per cent; (ii) bank absorbs all losses: 24.3 per cent; (iii) set dollar limit: 9.9 per cent; and (iv) customer responsible for all losses until loss reported: 8.1 per cent.

The Act imposes a liability structure that would require financial institutions to establish details of the fact pattern surrounding loss, theft or unauthorized use of an EFT card in order to recover more than $50 from a consumer alleging EFT losses. For example, a consumer's liability for loss of funds due to loss or theft of an EFT card depends on the consumer's claim as to when the loss or theft was discovered, not when it actually occurred. The burden of proof as to when the discovery was made is on the financial institution. In most cases the costs of litigation would far exceed the amount potentially recoverable. Furthermore, the Act relieves consumers of any negligence burden, which discourages careful handling of cards. These provisions of the Act, while limiting the losses of consumers, may increase overall system loss, and therefore social costs, by reducing incentives for consumers to provide security. The liability provisions of the Act may not be constraints, however, as when State law or policies of a financial institution are even more favorable to consumers.

On balance, to the extent that they are constraining, the Act's liability provisions, as reiterated in the regulation, may shift an additional cost burden onto the financial institutions. While the Act states that a consumer is to be liable for up to $50 for each unauthorized EFT, the regulation states that liability is limited to $50 for a series of unauthorized transfers occurring prior to the time the institution is notified or otherwise believes that an unauthorized transaction has taken place. This interpretation of the Act, based on the legislative history, shifts more of the liability to financial institutions.

Many commenters stated that EFT losses were relatively lower per transaction dollar than either credit card or check losses. Institutional controls and security are improving, and, as EFT services become more widespread, more lost, stolen and unauthorized cards will be captured by on-line ATMs or point-of-sale terminals. These factors and the tendency of institutions to absorb EFT-related losses make even a qualitative assessment of the economic impact of the Act's liability provisions difficult.[13] Perhaps the clearest benefits of the Act's liability rules derive from the prevention of individual cases of catastrophic losses by consumers in the case of loss or theft and the promotion of greater consumer confidence in EFT, circumstances that may promote EFT use and thereby increase the social benefits flowing from it.

Finally, commenters asserted that the Act's liability provisions are complicated and difficult to assess. The consumer faces greater liability under the Act than under statutes that govern credit card liability. This liability differential and the more complicated liability rules for debit cards relative to credit cards may make debit cards less attractive and hinder the widespread acceptance of EFT services, thereby reducing the contribution of EFT to efficiency gains in the payments mechanism. An additional disadvantage of the Act's provisions is that liability incurred for unauthorized transfers is not always within the control of the consumer or the financial institution, but depends on the timing of the unauthorized transfers. This characteristic of the Act may be another factor making debit cards inferior instruments to credit cards in the view of consumers, and thus hindering the acceptance of debit cards relative to credit cards.

(b) Effects of the Act and regulation upon competition among large and small financial institutions in the provision of electronic transfer services. Under the liability provisions of the Act, all institutions, regardless of size, are subject to the same standards. The regulation makes no exceptions or special provisions for small institutions. As noted above, most commenters favored this approach, arguing that exceptions and special provisions would not promote competition and would lead to confusion and possibly higher liability for some consumers, extensive litigation, and inequity. Entry barriers in markets for EFT services were thought to depend more no issuance restrictions than liability limits set by the Act.

A major difficulty in analyzing the impact of the Act on competition between small and large financial institutions is that the impact depends very much on the nature of the EFT systems involved. Thus, the effects of the Act depend on such considerations as whether widely-accepted franchise systems develop, whether systems are national or regional, or whether they are on-line or off-line. For example, systems that are widespread or off-line have a greater chance for unauthorized use. The Act could have a significant impact on the structure of the industry if small proprietary systems cannot bear the higher degree of risk.

Even without making predictions about the manner in which EFT systems will evolve, some general observations on the impact of the Act can be made. First, the Act will have the least impact on those institutions and franchise systems that are best able to assume the liability and incur per-unit costs related to determining liability according to the Act. To the extent that large systems and institutions benefit from scale and scope economies, they would be less affected than small institutions. In addition, larger institutions may enjoy economies of scale in purchasing security systems, thereby having a lower loss rate and more consumer confidence in their

[12] American Bankers Association, Payments System Planning Division, "Results of an ATM Security Survey," n.p., June 1978.

[13] The insurance industry may contract with consumers or financial institutions to bear the risk of EFT-related losses.

system than small institutions. On the other hand, to the extent that the Act shifts the burden to the institutions, small institutions may avoid some of the costs since they are more likely to have a close relationship with customers and may therefore be better able to prescreen and educate them. Finally, with respect to POS systems, small institutions are less likely to be in large metropolitan areas. Therefore, they would tend to be in areas in which there is less crime and in which there is a lessened likelihood of unauthorized use because proprietors would recognize customers.

While most commenters agreed that smaller institutions were less exposed to EFT risk by virtue of more personal customer contact and location, there was disagreement as to whether the Act impeded competition by exposing smaller institutions to greater liability for losses. Comments also indicated that security systems and other means of limiting liabilities by limiting EFT losses were not necessarily less accessible or less cost justified for smaller institutions; rather, liability-related costs depended on card base, type of customer, and type of security chosen, regardless of institutional size.

(c) Effects of the Act and regulation on availability of electronic transfer services to different classes of consumers, especially low-income. In order to evaluate the effects of the Act's liability provisions on availability of EFT services to different classes of consumers, it is useful to look at present usage rates of available EFT systems by income class. Data from the Air Force showing use of automatic payroll deposit by income level of active duty personnel can be seen in Table II. Similar data for employees of the Board of Governors of the Federal Reserve System can be seen in Table III. The data indicate that usage of available systems increases with income level. A 1976 consumer panel survey in South Carolina shows reasons that households, arranged by income, have chosen not to use ATMs (see Table IV).[14] The two major reasons for not using ATMs were that the service was not needed or was unavailable; there is no apparent relationship between either the need for or availability of ATMs and income level. Thus, the two sets of data suggest that even when EFT services are available to all income classes, usage rate varies by income.

The Act may affect both EFT service availability to, and usage by, different income classes of consumers, especially low-income consumers. In this respect, the impact of the Act will probably be related to the amount of potential liability and the complexity of the liability provisions. The amount of potential liability as a percentage of consumer assets will be, on average, greater for low-income consumers than for higher-income consumers. However, the absolute dollar value of potential loss through unauthorized use for low-income consumers is relatively low. As can be seen in Table V, only a small proportion of lower-income families have more than $500 in a checking or savings account. An institution would be more likely to refund a given percentage loss from a low-balance account, relative to a higher-balance account, to avoid incurring investigation and litigation costs needed to prove the consumer's liability; this likelihood, which would benefit the low-income consumer, is increased by the Act's liability provisions.

Finally, attention is focused on two additional issues. First, because consumer liability depends in part on the consumer's examination and understanding of periodic statements, the Act will disadvantage the low-income consumer to the extent that he or she is not educated to inspect and be able to understand statements. Second, the lack of any consumer negligence provision in the statute may, if it causes financial institutions to incur higher costs through increased liability, encourage institutions to charge EFT service fees that would make EFT more expensive for low-income consumers than it now is. The net impact of these and other aspects of the Act on EFT availability to low-income consumers is not possible to quantify and therefore cannot be empirically assessed.

*Conclusion.* This analysis has considered costs and benefits of the Act and regulation to existing and potential users and suppliers of EFT services. Because EFT systems are still rapidly evolving, because few data are available on existing EFT systems, and because the long-run effects of the Act and regulation will have to be measured historically, the net costs and benefits of the statutory and regulatory provisions cannot be quantified at this time. For similar reasons, it is difficult to determine the net impact of the Act and regulation on competition among large and small institutions and on the availability of EFT services to low-income and other consumers until effects identified here can be meaningfully measured.

Section 904(a)(3) of the Act directs the Board to assess whether the consumer protections of the proposed regulation outweigh total compliance costs. Sections (1) and (2) above indicate the ways in which the proposed regulation makes provisions for consumer protection not explicitly made in the Act. The Board's preliminary assessment is that the compliance costs arising from these provisions and not directly from the Act are likely to be outweighed by the consumer protections these provisions afford.

TABLE I.—*Families Without Savings or Checking Accounts or Liquid Assets by Family Income, 1977*[a]

[Percentage distribution]

| Family income | No savings accounts | No checking accounts | No liquid assets[a] |
|---|---|---|---|
| Less than $3,000 | 57.2 | 44.7 | 30.2 |
| $3,000 to $4,999 | 52.7 | 49.7 | 33.5 |
| $5,000 to $7,499 | 38.3 | 33.8 | 15.7 |
| $7,500 to $9,999 | 33.3 | 23.8 | 9.9 |
| $10,000 to $14,999 | 21.4 | 15.2 | 5.6 |
| $15,000 to $19,999 | 11.7 | 11.3 | 3.4 |
| $20,000 to $24,999 | 10.4 | 4.4 | [b] |
| $25,000 and more | 5.9 | 2.0 | .6 |

[a] Liquid assets include savings accounts, certificates of deposit, checking accounts, and U.S. Government bonds.

[b] Less than one-half of 1 percent.

[c] Source: Thomas A. Durkin and Gregory E. Elliehausen, "1977 Consumer Credit Survey," (Washington, D.C.: Board of Governors of the Federal Reserve System, 1977): tables 21-7, 21-8, and 21-9.

TABLE II.—*Air Force Active Duty Personnel Usage of Automatic Payroll Deposit by Income in 1978*[a]

| Annual income[a] | Number of employees | Employees using automatic payroll deposit | |
|---|---|---|---|
| | | Number | Percent |
| Less than $7,500 | 0 | | |
| $7,500 to $9,999 | 168,611 | 77,297 | 45.8 |
| $10,000 to $11,999 | 142,981 | 97,400 | 68.1 |
| $12,000 to $14,999 | 96,107 | 72,931 | 75.9 |
| $15,000 to $19,999 | 78,858 | 64,203 | 81.4 |
| $20,000 to $24,999 | 41,106 | 36,717 | 89.3 |
| $25,000 and over | 41,876 | 37,876 | 90.5 |

[a] Dollar income equals regular military compensation rates plus a factor to account for bonuses, special pay, and special allowances.

[b] Source: Accounting and Finance Center, Department of the Air Force.

[14] The panel surveyed includes urban households with annual income greater than $6,000.

TABLE III.—*Employees of the Board of Governors of the Federal Reserve System Usage of Automatic Payroll Deposit by Income in 1978**

| Annual income* | Number of employees | Employees using automatic payroll deposit | |
|---|---|---|---|
| | | Number | Percent |
| Less than $7,500 | 21 | 1 | 4.8 |
| $7,500 to $9,999 | 59 | 5 | 8.5 |
| $10,000 to $11,999 | 133 | 29 | 21.8 |
| $12,000 to $14,999 | 262 | 109 | 41.6 |
| $15,000 to $19,999 | 312 | 179 | 57.4 |
| $20,000 to $24,999 | 163 | 103 | 63.2 |
| $25,000 and over | 530 | 433 | 81.7 |

*This includes some part-time employees.

*Source: Board of Governors of the Federal Reserve System.

TABLE IV.—*Selected Reasons Households Have Not Used Automated Teller Machines, by Income*[1] *(Percent)*

| Income of total household | Unsafe, poor lighting and local | Not needed; other facilities available | Not available | Suspicious of system | Encourages overspending | Never heard of them | Misc. |
|---|---|---|---|---|---|---|---|
| Under $7,000 | 0 | 43.8 | 33.3 | 8.3 | 0 | 10.4 | 4.2 |
| $7,000-10,999 | 1.3 | 32.9 | 44.7 | 14.5 | 0 | 2.6 | 3.9 |
| $11,000-15,999 | 0.6 | 37.3 | 39.9 | 15.8 | 0 | 3.8 | 2.5 |
| $16,000-20,000 | 0.9 | 47.9 | 38.5 | 8.5 | 2.6 | 1.7 | 0 |
| Over $20,000 | 0.5 | 47.3 | 37.4 | 12.6 | 0.5 | 1.4 | 0.5 |

[1]Source: Olin S. Pugh and Franklin J. Ingram, "EFT and the Public," *The Bankers Magazine* 161 (March-April 1978): p. 45, table 4.

TABLE V.—*Percentage Distribution of Checking and Savings Accounts—1977*[1]

| | Amount of checking accounts (dollars) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | None | 1-99 | 100-499 | 500-999 | 1,000-1,999 | 2,000-4,999 | 5,000-9,999 | 10,000 and more | Total |
| Family income (dollars): | | | | | | | | | |
| Less than 3,000 | 44.7 | 15.3 | 22.7 | 6.0 | 6.0 | 4.0 | .7 | .7 | 100 |
| 3,000-4,999 | 49.7 | 14.5 | 26.8 | 3.4 | 2.8 | 2.8 | ([2]) | ([2]) | 100 |
| 5,000-7,499 | 33.8 | 16.9 | 29.0 | 10.6 | 5.8 | 2.4 | 1.0 | .5 | 100 |
| 7,500-9,999 | 23.8 | 21.0 | 31.4 | 12.4 | 5.7 | 3.3 | 1.9 | .5 | 100 |
| 10,000-14,999 | 15.2 | 19.3 | 38.3 | 13.1 | 6.9 | 4.8 | 1.4 | .9 | 100 |
| 15,000-19,999 | 11.3 | 16.6 | 36.9 | 12.5 | 12.8 | 6.3 | 2.8 | .9 | 100 |
| 20,000-24,999 | 4.4 | 10.3 | 42.9 | 16.3 | 14.7 | 7.5 | 2.4 | 1.6 | 100 |
| 25,000 and more | 2.0 | 7.4 | 19.2 | 20.9 | 23.2 | 18.3 | 4.0 | 4.9 | 100 |

| | Amount of savings accounts (dollars) | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | None | 1-199 | 200-499 | 500-999 | 1,000-1,999 | 2,000-4,999 | 5,000-9,999 | 10,000-14,999 | 15,000-24,999 | 25,000 or more. | Total |
| Family income (dollars): | | | | | | | | | | | |
| Less than 3,000 | 57.2 | 10.5 | 8.6 | 2.0 | 5.9 | 5.3 | 3.9 | 1.3 | 3.9 | 1.3 | 100 |
| 3,000-4,999 | 52.7 | 9.6 | 9.6 | 5.4 | 5.4 | 6.6 | 5.4 | 1.8 | 1.2 | 2.4 | 100 |
| 5,000-7,499 | 38.3 | 10.7 | 13.8 | 7.1 | 7.1 | 13.3 | 3.6 | 1.5 | 2.0 | 2.6 | 100 |
| 7,500-9,999 | 33.3 | 12.6 | 15.0 | 7.7 | 6.3 | 13.0 | 2.4 | 3.4 | 1.0 | 5.3 | 100 |
| 10,000-14,999 | 21.4 | 11.6 | 15.3 | 8.9 | 10.3 | 11.6 | 6.9 | 4.7 | 4.2 | 5.2 | 100 |
| 15,000-19,999 | 11.7 | 12.0 | 14.0 | 11.7 | 10.4 | 17.9 | 8.8 | 5.8 | 3.2 | 4.5 | 100 |
| 20,000-24,999 | 10.4 | 4.1 | 10.8 | 9.1 | 14.9 | 21.2 | 17.0 | 4.1 | 5.4 | 2.9 | 100 |
| 25,000 and more | 5.9 | 2.1 | 4.7 | 4.7 | 7.0 | 18.2 | 14.1 | 15.8 | 13.8 | 13.8 | 100 |

[1] Source: Thomas A. Durkin and Gregory E. Elliehausen, "1977 Consumer Credit Survey," (Washington, D.C.: Board of Governors of the Federal Reserve System, 1977): tables 21-8 and 21-9.
[2]Less than .5 percent.

(5) Therefore, pursuant to the authority granted in Pub. L. 95-630 (to be codified in 15 U.S.C. 1693b), the Board hereby adopts 12 CFR Part 205, effective March 30, 1979, as follows:

## PART 205—ELECTRONIC FUND TRANSFERS

Sec.

205.1 Authority, Purpose, and Scope.
205.2 Definitions.
205.3 Exemptions.
205.4 Issuance of Access Devices.
205.5 Liability of Consumer for Unauthorized Transfers.

Appendix A—Model Disclosure Clauses.

AUTHORITY: Pub. L. 95-630, 92 Stat. 3730 (15 U.S.C. 1693b).

REGULATION E

## PART 205—ELECTRONIC FUND TRANSFERS

### § 205.1 Authority, Purpose, and Scope.

(a) *Authority.* This regulation, issued by the Board of Governors of the Federal Reserve System, implements Title IX (Electronic Fund Transfer Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.).

(b) *Purpose and Scope.* In November 1978, the Congress enacted the Electronic Fund Transfer Act. The Congress found that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers, but that the unique characteristics of these systems make the application of existing consumer protection laws unclear, leaving the rights and liabilities of users of electronic fund transfer systems undefined. The Act establishes the basic rights, liabilities, and responsibilities of consumers who use electronic money transfer services and of financial institutions that offer these services. This regulation is intended to carry out the purposes of the Act, including, primarily, the protection of individual consumers engaging in electronic transfers. Except as otherwise provided, this regulation applies to all persons who are financial institutions as defined in § 205.2(i).

### § 205.2 Definitions.

For the purposes of this regulation, the following definitions apply, unless the context indicates otherwise:

(a)(1) "Access device" means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer for the purpose of initiating electronic fund transfers.

(2) An access device becomes an "accepted access device" when the consumer to whom the access device was issued:

(i) Requests and receives, or signs, or uses, or authorizes another to use, the access device for the purpose of transferring money between accounts or obtaining money, property, labor or services;

(ii) Requests validation of an access device issued on an unsolicited basis; or

(iii) Receives an access device issued in renewal of, or in substitution for, an accepted access device, whether such access device is issued by the initial financial institution or a successor.

(b) "Account" means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held either directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(c) "Act" means the Electronic Fund Transfer Act (Title IX of the Consumer Credit Protection Act, 15 U.S.C. 1601 et seq.).

(d) "Business day" means any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions.

(e) "Consumer" means a natural person.

(f) "Credit" means the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(g) "Electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone.

(h) "Electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines.

(i) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a State or Federal mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer. The term also includes any person who issues an access device and agrees with a consumer to provide electronic fund transfer services. Two or more financial institutions that jointly provide electronic fund transfer services may contract among themselves to fulfill the requirements that the Act and this regulation impose on any or all of them.

(j) "State" means any State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the above.

(k) "Unauthorized electronic fund transfer" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include any electronic fund transfer (1) initiated by a person who was furnished with the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution involved that transfers by that person are no longer authorized, (2) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (3) that constitutes an error committed by the financial institution.

**§ 205.3 Exemptions.**

This regulation does not apply to the following:

(a) *Check guarantee or authorization services.* Any service that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument and that does not directly result in a debit or credit to a consumer's account.

(b) *Wire transfers.* Any wire transfer of funds for a consumer through the Federal Reserve Communications System or other similar network that is used primarily for transfers between financial institutions or between businesses.

(c) *Certain securities or commodities transfers.* Any transfer the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with, or regulated by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(d) *Automatic transfers from savings to demand deposit accounts.* Any automatic transfer from a savings account to a demand deposit (checking) account under an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining a specified minimum balance in the consumer's checking account as permitted by 12 CFR Part 217 (Regulation Q) and 12 CFR Part 329.

(e) *Certain telephone-initiated transfers.* Any transfer of funds that (1) is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution and (2) is not under a telephone bill-payment or other prearranged plan or agreement in which periodic or recurring transfers are contemplated.

(f) *Trust accounts.* Any trust account held by a financial institution under a bona fide trust agreement.

**§ 205.4 Issuance of access devices.**

(a) *General rule.* A financial institution may issue an access device to a consumer only:

(1) In response to an oral or written request or application for the device;[15] or

(2) As a renewal of, or in substitution for, an accepted access device, whether issued by the initial financial institution or a successor.

(3) As a renewal of, or in substitution for, an access device issued before February 8, 1979 (other than an accepted access device, which can be renewed or substituted under paragraph (a)(2) of this section), provided that the disclosures set forth in paragraphs (d)(1), (2), and (3) of this section accompany the renewal or substitute device; except that for a renewal or substitution that occurs before July 1, 1979, the disclosures may be sent within a reasonable time after the renewal or substitute device is issued.

(b) *Exception.* Notwithstanding the provisions of paragraph (a)(1) of this section, a financial institution may distribute an access device to a consumer on an unsolicited basis if:

(1) The access device is not validated;

(2) The distribution is accompanied by a complete disclosure, in accordance with paragraph (d) of this section, of the consumer's rights and liabilities that will apply if the access device is validated;

(3) The distribution is accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of the access device if validation is not desired; and

(4) The access device is validated only in response to the consumer's oral or written request or application for validation and after verification of the consumer's identity by any reasonable means, such as by photograph, fingerprint, personal visit, or signature comparison. An access device is considered validated when a financial institution has performed all procedures necessary to enable a consumer to use it to initiate an electronic fund transfer.

(c) *Relation to Truth in Lending.* (1) The Act and this regulation govern

(i) Issuance of access devices;

(ii) Addition to an accepted credit card, as defined in 12 CFR 226.2(a) (Regulation Z), of the capability to initiate electronic fund transfers; and

(iii) Issuance of access devices that permit credit extensions only under a preexisting agreement between a consumer and a financial institution to extend the credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) The Truth in Lending Act (15 U.S.C. 1601 et seq.) and 12 CFR Part 226 (Regulation Z), which prohibit the unsolicited issuance of credit cards, govern

(i) Issuance of credit cards as defined in 12 CFR 226.2(r);

(ii) Addition of a credit feature to an accepted access device; and

(iii) Issuance of credit cards that are also access devices, except as provided in paragraph (c)(1)(iii) of this section.

(d) *Transitional disclosure requirements.* Until May 10, 1980, a financial institution may satisfy the disclosure requirements of paragraph (b)(2) of this section by disclosing to the consumer, in a written statement that the consumer may retain, the following terms in readily understandable language:

(1) The consumer's liability under § 205.5, or under other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized transfers.

(2) The telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) The financial institution's business days, as determined under § 205.2(d).

(4) The type of electronic fund transfers that the consumer may initiate, including any limitations on the frequency or dollar amount of the transfers. The details of the limitations need not be disclosed if their confidentiality is necessary to maintain the security of the electronic fund transfer system.

(5) Any charges for electronic fund transfers or for the right to make transfers.

(6) The conditions under which the financial institution in the ordinary course of business will disclose information about the consumer's account to third parties.

(7) Whether or not the financiaal institution will provide documentation of electronic fund transfers, such as receipts or periodic statements, to the consumer.

(8) Whether or not the financial institution has error resolution procedures, and, if so, a summary of those procedures.

(9) The conditions under which the financial institution will assume liability for the institution's failure to make electronic fund transfers.

[15] In the case of a joint account, a financial institution may issue an access device to each account holder for whom the requesting holder specifically requests an access device.

**§ 205.5— Liability of Consumer for Unauthorized Transfers.**

(a) *General rule.* A consumer is liable, within the limitations described in paragraph (b) of this section, for unauthorized electronic fund transfers involving the consumer's account only if the access device used for the transfers is an accepted access device and the financial institution has provided a means (such as by signature, photograph, fingerprint, or electronic or mechanical confirmation) to identify the consumer to whom the access device was issued.

(b) *Limitations on amount of liability.* The amount of a consumer's liability for an unauthorized electronic fund transfer or a series of transfers arising from a single loss or theft of the access device shall not exceed $50 or the amount of unauthorized electronic fund transfers that occur before notice to the financial institution under paragraph (c) of this section, whichever is less, unless one or both of the following exceptions apply:

(1) If the consumer fails to notify the financial institution within 2 business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of $500 or the sum of

(i) $50 or the amount of unauthorized electronic fund transfers that occur before the close of the 2 business days, whichever is less, and

(ii) the amount of unauthorized electronic fund transfers that the financial institution establishes would not have occurred but for the failure of the consumer to nofity the institution within 2 business days after the consumer learns of the loss or theft of the access device, and that occur after the close of 2 business days and before notice to the financial institution.

(2) If the consumer fails to report within 60 days of transmittal of the periodic statement any unauthorized electronic fund transfer that appears on the statement, the consumer's liability shall not exceed the sum of

(i) The lesser of $50 or the amount of unauthorized electronic fund transfers that appear on the periodic statement or that occur during the 60-day period, and

(ii) The amount of unauthorized electronic fund transfers that occur after the close of the 60 days and before notice to the finanical institution and that the financial institution establishes would not have occurred but for the failure of the consumer to notify the financial institution within that time.

(3) Paragraphs (b)(1) and (2) of this section may both apply in some circumstances. Paragraph (b)(1) shall determine the consumer's liability for any unauthorized transfers that appear on the periodic statement and occur before the close of the 60-day period, and paragraph (b)(2)(ii) shall determine liability for transfers that occur after the close of the 60-day period.

(4) If a delay in notifying the financial institution was due to extenuating circumstances, such as extended travel or hospitalization, the time periods specified above shall be extended to a reasonable time.

(5) If applicable State law or an agreement between the consumer and financial institution imposes lesser liability than that provided in paragraph (b) of this section, the consumer's liability shall not exceed that imposed under that law or agreement.

(c) *Notice to financial institution.* For purposes of this section, notice to a financial institution is given when a consumer takes such steps as are reasonably necessary to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive the information. Notice may be given to the financial institution, at the consumer's option, in person, by telephone, or in writing. Notice in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier. Notice is also considered given when the financial institution becomes aware of circumstances that lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be made.

(d) *Relation to Truth in Lending.* (1) A consumer's liability for an unauthorized electronic fund transfer shall be determined solely in accordance with this section if the electronic fund transfer

(i) Was initiated by use of an access device that is also a credit card as defined in 12 CFR 226.2(r), or

(ii) Involves an extension of credit under an agreement between a consumer and a financial institution to extend the credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) A consumer's liability for unauthorized use of a credit card that is also an access device but that does not involve an electronic fund transfer shall be determined solely in accordance with the Truth in Lending Act and 12 CFR Part 226 (Regulation Z).

**APPENDIX A—MODEL DISCLOSURE CLAUSES**

This appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of §§ 205.4(a)(3), (b) and (d). Section 915(d)(2) of the Act provides that use of these clauses in conjunction with other requirements of the regulation will protect financial institutions from liability under §§ 915 and 916 of the Act to the extent that the clauses accurately reflect the institutions' electronic fund transfer services.

Financial institutions need not use any of the provided clauses, but may use clauses of their own design in conjunction with the model clauses. The inapplicable portions of words or phrases in parentheses should be deleted. Financial institutions may make alterations, substitutions or additions in the clauses in order to reflect the services offered, such as technical changes (e.g., substitution of a trade name for the word "card," deletion of inapplicable services), or substitution of lesser liability limits in § A(2).

**SECTION A(1)—DISCLOSURE THAT ACCESS DEVICE IS NOT VALIDATED AND HOW TO DISPOSE OF DEVICE IF VALIDATION IS NOT DESIRED (§ 205.4(b)(3))**

(a) *Accounts using cards.* You cannot use the enclosed card to transfer money into or out of your account until we have validated it. If you do not want to use the card, please (destroy it at once by cutting it in half).

FINANCIAL INSTITUTION MAY ADD VALIDATION INSTRUCTIONS HERE

(b) *Accounts using codes.* You cannot use the enclosed code to transfer money into or out of your account until we have validated it. If you do not want to use the code, please (destroy this notice at once).

FINANCIAL INSTITUTION MAY ADD VALIDATION INSTRUCTIONS HERE

**SECTION A(2)—DISCLOSURE OF CONSUMER'S LIABILITY FOR UNAUTHORIZED TRANSFERS AND OPTIONAL DISCLOSURE OF ADVISABILITY OF PROMPT REPORTING (§ 205.4(d)(1))**

(a) *Liability disclosure.* (Tell us AT ONCE if you believe your (card) (code) has been lost or stolen. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days, you can lose no more the $50 if someone used your (card) (code) without your permission.) (If you believe your (card) (code) has been lost or stolen, and you tell us within 2 business days after you learn of the loss or theft, you can lose no more than $50 if someone used your (card) (code) without your permission.)

If you do NOT tell us within 2 business days after you learn of the loss or theft of your (card) (code), and we can prove we could have stopped someone from using your (card) (code) without your permission if you had told us, you could lose as much as $500.

Also, if your statement shows transfers that you did not make, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

**SECTION A(3)—DISCLOSURE OF TELEPHONE NUMBER AND ADDRESS TO BE NOTIFIED IN EVENT OF UNAUTHORIZED TRANSFER (§ 205.4(d)(2))**

(a) *Address and telephone number.* If you believe your (card) (code) has been lost or

stolen or that someone has transferred or may transfer money from your account without your permission, call:

[Telephone number]

or write:

[Name of person or office to be notified]

[Address]

SECTION A(4)—DISCLOSURE OF WHAT CONSTITUTES BUSINESS DAY OF INSTITUTION (§ 205.4(d)(3))

(a) *Business day disclosure.* Our business days are (Monday through Friday) (Monday through Saturday) (any day including Saturdays and Sundays). Holidays are (not) included.

SECTION A(5)—DISCLOSURE OF TYPES OF AVAILABLE TRANSFERS AND LIMITS ON TRANSFERS (§ 205.4(d)(4))

(a) *Account access.* You may use your (card) (code) to (1) withdraw cash from your (checking) (or) (savings) account.

(2) Make deposits to your (checking) (or) (savings) account.

(3) Transfer funds between your checking and savings accounts whenever you request.

(4) Pay for purchases at places that have agreed to accept the (card) (code).

(5) Pay bills directly (by telephone) from your (checking) (or) (savings) account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

(b) *Limitations on frequency of transfers.*

(1) You may make only [insert number, e.g., 3] cash withdrawals from our terminals each [insert time period, e.g., week].

(2) You can use your telephone bill-payment service to pay [insert number] bills each ([insert time period]) (telephone call).

(3) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(4) For security reasons, there are (other) limits on the number of transfers you can make using our (terminals) (telephone bill-payment service) (point-of-sale transfer service).

(c) *Limitations on dollar amounts of transfers.*

(1) You may withdraw up to [insert dollar amount] from our terminals each ([insert time period]) (time you use the (card) (code)).

(2) You may buy up to [insert dollar amount] worth of goods or services each ([insert time period]) (time you use the (card) (code)) in our point-of-sale transfer service.

SECTION A(6)—DISCLOSURE OF CHARGES FOR TRANSFERS OR RIGHT TO MAKE TRANSFERS (§ 205.4(d)(5))

(a) *Per transfer charge.* We will charge you [insert dollar amount] for each transfer you make using our (automated teller machines) (telephone bill-payment service) (point-of-sale transfer service).

(b) *Fixed charge.* We will charge you [insert dollar amount] each [insert time period] for our (automated teller machine service) (telephone bill-payment service) (point-of-sale transfer service).

(c) *Average or minimum balance charge.* We will only charge you for using our (automated teller machines) (telephone bill-payment service) (point-of-sale transfer service) if the (average) (minimum) balance in your (checking account) (savings account) (accounts) falls below [insert dollar amount]. If it does, we will charge you [insert dollar amount] each (transfer) ([insert time period]).

SECTION A(7)—DISCLOSURE OF ACCOUNT INFORMATION TO THIRD PARTIES (§ 205.4(d)(6))

(a) *Account information disclosure.* We will disclose information to third parties about your account or the transfers you make: (1) Where it is necessary for completing transfers, or

(2) In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or

(3) In order to comply with government agency or court orders, or

(4) If you give us your written permission.

By order of the Board of Governors, March 21, 1979.

GRIFFITH L. GARWOOD,
*Deputy Secretary.*

[FR Doc. 79-9261 Filed 3-27-79; 8:45 am]

[4210-01-M]

## Title—24 Housing and Urban Development

## CHAPTER X—FEDERAL INSURANCE ADMINISTRATION; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI 5300]

## PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

### Status of Participating Communities; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Md. 20034, phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-5581 or Toll Free Line 800-424-8872.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), administered by the Federal Insurance Administration, enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administration has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of eligible communities.

| State | County | Location | Community No. | Effective dates of authorization/ cancellation of sale of flood insurance in community | Special flood hazard area identified |
|---|---|---|---|---|---|
| New York | Delaware and Broome | Deposit, village of | 360043-B | Feb. 15, 1979, suspension withdrawn. | June 14, 1974 and Oct. 24, 1975. |
| Do | Cattaraugus | Ellicottville, village of | 360070-B | do | May 24, 1974 and July 30, 1976. |
| Do | Westchester | Pleasantville, village of | 360927-B | do | Apr. 12, 1974. |
| Do | do | Tuckahoe, village of | 360934-B | do | May 10, 1974 and June 18, 1976. |
| Oklahoma | Pittsburg | McAlester, city of | 400170-B | do | Feb. 15, 1974 and May 28, 1976. |
| Oregon | Grant | Unincorporated areas | 410074-A | do | Oct. 18, 1974. |
| Pennsylvania | Northumberland | Ralpho, township of | 421027-B | do | June 28, 1974 and June 4, 1976. |
| South Carolina | Lexington | West Columbia, city of | 450140-C | do | June 28, 1974 and July 9, 1976. |
| South Dakota | Davison | Mitchell, city of | 460021-B | do | Mar. 22, 1974 and Feb. 6, 1976. |
| Utah | Utah | Provo, city of | 490159-B | do | Feb. 15, 1974 and June 4, 1976. |
| Do | Cumberland | Unincorporated areas | 510043-A | do | Oct. 18, 1974. |
| Vermont | Lamoille | Johnson, town of | 500063-B | do | June 21, 1974 and Jan. 28, 1977. |
| Do | do | Johnson, village of | 500232-C | do | Apr. 5, 1974 and Nov. 26, 1976. |
| Do | Windsor | Woodstock, village of | 500161-B | do | Sept. 13, 1974 and Dec. 10, 1976. |
| Wisconsin | Marathon | Unincorporated areas | 550245-A | do | Feb. 1, 1979. |

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969) as amended 39 F.R. 2787, Jan. 24, 1974.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: March 21, 1979.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 79-9087 Filed 3-27-79; 8:45 am]

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[4210-01-M]

[Docket No. FI 5299]

## PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

### Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Md. 20034, phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-5581 or Toll Free Line 800-424-8872.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), administered by the Federal Insurance Administration, enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administration has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553 (b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of eligible communities.

| State | County | Location | Community No. | Effective dates of authorization/ Cancellation of sale of flood insurance in community | Special flood hazard area Identified |
|---|---|---|---|---|---|
| Wisconsin | Racine | Union Grove, village of | 550586 | Mar. 15, 1979, emergency. | June 27, 1975 and Dec. 9, 1977. |
| North Carolina | Rutherford | Spindale, town of | 370356-A | Mar. 16, 1979, emergency, Mar. 16, 1979, regular. | June 27, 1976, and Dec. 9, 1977. |
| New Hampshire | Merrimack | Henniker, town of | 330114-B | Mar. 14, 1979, emergency, Mar. 14, 1979 regular. | Mar. 15, 1974 and Feb. 11, 1977. |
| Illinois | Whiteside | Lyndon, village of | 170917 | Mar. 15, 1979, emergency. | Oct. 8, 1976. |
| Missouri | Platte | Lake Waukomis, city of | 290700 | Mar. 20, 1979, emergency. | Sept. 10, 1976. |
| South Dakota | Lake | Unincorporated areas | 460276-A | ....do | June 7, 1977. |

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969) as amended 39 F.R. 2787, Jan. 24, 1974.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: March 21, 1979.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 79-9086 Filed 3-27-79; 8:45 am]

[4210-01-M]

[Docket No. FI 5301]

## PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

### Withdrawal of Flood Insurance Maps

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: This rule lists communities where Flood Insurance Rate Maps or Flood Hazard Boundary Maps published by the Federal Insurance Administration, have been temporarily withdrawn for administrative or technical reason. During that period that the map is withdrawn, the insurance purchase requirement of the National Flood Insurance Program is suspended.

EFFECTIVE DATES: The date listed in the fifth column of the table.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-5581 or Toll Free Line 800-424-8872.

SUPPLEMENTARY INFORMATION: The list includes the date that each map was withdrawn, and the effective date of its republication, if it has been republished. If a flood prone location is now being identified on another map, the community name for the effective map is shown.

The Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, requires, at Section 102, the purchase of flood insurance as a condition of Federal financial assistance if such assistance is: (1) For acquisition and construction of buildings, and (2) for buildings located in a special flood hazard area identified by the Secretary of Housing and Urban Development.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction of buildings in these areas unless the community has entered the program. The denial of such financial assistance has no application outside of the identified special flood hazard areas of such flood-prone communities.

Prior to July 1, 1975, the statutory requirement for the purchase of flood insurance did not apply until and unless the community entered the program and the special flood hazard areas were identified by the issuance of a flood insurance map. However, after July 1, 1975, or one year after identification, whichever is later, the requirement applies to all communities in the United States that are identified as having special flood hazard areas within their community boundaries, so that, no such financial assistance can legally be provided for buildings in these areas unless the community has entered the program.

The insurance purchase requirement with respect to a particular community may be altered by the issuance or withdrawal of the Federal Insurance Administration's (FIA's) official Flood Insurance Rate Map (FIRM) or the Flood Hazard Boundary Map (FHBM). A FHBM is usually designated by the letter "E" following the community number and a FIRM by the letter "R" following the community number. If the FIA withdraws a FHBM for any reason the insurance purchase requirement is suspended during the period of withdrawal. However, if the community is in the Regular Program and only the FIRM is withdrawn but a FHBM remains in effect, then flood insurance is still required for properties located in the identified special flood hazard areas shown on the FHBM, but the maximum amount of insurance available for new appplications or renewal is first layer coverage under the Emergency Program, since the community's Regular Program status is suspended while the map is withdrawn. (For definitions see 24 CFR Part 1909 et seq.)

As the purpose of this revision is the convenience of the public, notice and public procedure are unnecessary, and cause exists to make this amendment effective upon publication. Accordingly, Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended as follows:

1. Present § 1915.6 is revised to read as follows:

**§ 1915.6 Administrative withdrawal of maps.**

(a) *Flood Hazard Boundary Maps (FHBM's).*

The following is a cumulative list of withdrawals pursuant to this Part: 40 FR 5149, 40 FR 17015, 40 FR 20798, 40 FR 46102, 40 FR 53579, 40 FR 56672, 41 FR 1478, 41 FR 50990, 41 FR 13352, 41 FR 17726, 42 FR 8895, 42 FR 29433, 42 FR 46226, 42 FR 64076, 43 FR 24019, 44 FR 815, and 44 FR 6383. (*Enter page number of this notice in Federal Register.*)

(b) *Flood Insurance Rate Maps (FIRM's).*

The following is a cumulative list of withdrawals pursuant to this Part: 40 FR 17015, 41 FR 1478, 42 FR 49811, 42 FR 64076, and 43 FR 24019.

2. The following additional entries (which will not appear in the Code of Federal Regulations) are made Pursuant to § 1915.6:

| State | Community name and number | County | Hazard ID date | Recession date | Reason |
|---|---|---|---|---|---|
| Alabama | City of Fruithurt 010236 | Cleburne | Oct. 15, 1976 | Feb. 9, 1979 | 1 |
| Arizona | Town of Surprise 040053 C | Maricopa | Dec. 5, 1975 | Dec. 15, 1978 | 1A |
| California | City of Cypress 060217 C | Orange | June 7, 1974 | do | 1A |
| Do | City of Irwindale 060129 C | Los Angeles | Sept. 26, 1975 | do | 1A |
| Do | City of Rialton 060280 C | San Bernardino | June 6, 1974 | Feb. 9, 1979 | 1A |
| Illinois | City of Burbank 170069 | Cook | June 11, 1976 | do | 1A |
| Louisiana | Cullen, town 220235 C | Webster | Oct. 17, 1975 | Feb. 12, 1979 | 1A |
| Missouri | Concordia, city 290745 C | LaFayette | Feb. 2, 1975 | Feb. 9, 1979 | 1A |
| Maryland | City of Marydel 240115 | Caroline | Feb. 4, 1977 | do | 1 |
| Minnesota | Clearbrook, city 270559 | Clearwater | Nov. 1, 1974 | do | 1 |
| Do | Lexington, city 270014 C | Anoka | Mar. 29, 1974 | Feb. 12, 1979 | 1A |
| Do | Nicollet, city 270315 | Nicollet | Apr. 5, 1974 | Feb. 9, 1979 | 1 |
| Do | Pease, city 2702911 | Mille | Feb. 13, 1976 | do | 1 |
| Montana | Dawson, county 300140 | | Jan. 16, 1979 | Feb. 12, 1979 | 4 |
| Oklahoma | Hugo, city 400040 C | Choctaw | May 7, 1976 | do | 1A |
| Oregon | City of Haines 410003 | Bater | Dec. 6, 1974 | do | 1 |
| Texas | Electra, city 480659 | Wichita | Dec. 13, 1976 | Feb. 9, 1979 | 1 |
| Washington | Coulee, city 530050 | Grant | Oct. 24, 1975 | do | 1 |
| Do | Rock Island, city 530039 | Douglas | Jan. 24, 1975 | do | 1 |
| Wisconsin | Village of Woodman 550156 | Grant | Aug. 8, 1975 | do | 1 |
| California | City of Paramount 065049 C | Los Angles 20 | Mar. 31, 1972 | Feb. 20, 1979 | 1A |
| Iowa | City of Dickens 190355 | Clay | Sept. 5, 1975 | do | 1 |
| Do | City of Tiffin 190173 | Johnson | Nov. 22, 1974 | do | 1 |
| Do | City of Vincent 190819 | Iowa | June 3, 1977 | do | 1 |
| Do | City of Dixon 190726 | Scott | Sept. 19, 1975 | do | 1 |
| Do | City of Doon 190446 | Lyon | do | do | 1 |
| Do | City of Everly 190356 | Clay | do | do | 1 |
| Do | City of Fontanelle 190579 | Adair | July 18, 1975 | do | 1 |
| Do | City of Garnivillo 190580 | Clayton | Aug. 8, 1975 | do | 1 |
| Do | City of Granville 190737 | Sioux | Sept. 26, 1975 | do | 1 |
| Do | City of Allerton 190543 | Wayne | do | do | 1 |
| Do | City of Altoona 190546 | Polk | do | do | 1 |
| Do | City of Aurora 190698 | Buchanan | Aug. 22, 1975 | do | 1 |
| Do | City of Baxter 190552 | Jasper | Sept. 12, 1975 | do | 1 |
| Do | City of Beaman 190400 | Grundy | Aug. 22, 1975 | do | 1 |
| Do | City of Boone 190555 | Boone | Sept. 22, 1975 | do | 1 |
| Do | City of Boyden 190556 | Sioux | Aug. 29, 1975 | do | 1 |
| Do | City of Britt 190558 | Hancock | Aug. 8, 1975 | do | 1 |
| Do | City of Callender 190277 | Webster | Nov. 8, 1974 | do | 1 |
| Do | City of Clarksville 190336 | Butler | Oct. 10, 1978 | do | 1 |
| Do | City of Deep River 190496 | Poweshek | Sept. 19, 1975 | do | 1 |
| Do | City of Gravity 190738 | Taylor | do | do | 1 |
| Do | City of Ireton 190511 | Van Burgen | Jan. 24, 1975 | do | 1 |
| Do | City of Kalona 190601 | Washington | Sept. 26, 1975 | do | 1 |
| Do | City Of Keota 190435 | Keokuk | do | do | 1 |

| State | Community name and number | County | Hazard ID date | Recession date | Reason |
|---|---|---|---|---|---|
| Do | City of Keystone 190602 | Benton | Sept. 19, 1975 | do | 1 |
| Do | City of LaMotte 190430 | Jackson | Sept. 26, 1975 | do | 1 |
| Do | City of Lynnville 190165 | Jasper | Jan. 3, 1975 | do | 1 |
| Do | City of Modale 190148 | Harrison | Oct. 18, 1974 | do | 1 |
| Do | City of Nodaway 190003 | Adaws | Aug. 22, 1975 | do | 1 |
| Do | City of Ogden 190634 | Boone | Aug. 29, 1975 | do | 1 |
| Do | City of Okoboji 190788 | Dickinson | Sept. 19, 1975 | do | 1 |
| Do | City of San Born 190651 | O'Brien | July 16, 1976 | do | 1 |
| Minnesota | Lona Lake, city 270168 C | Hennepin | Apr. 16, 1976 | do | IA |
| Michigan | Birch Run, village 260590 C | Saginaw | Oct. 17, 1975 | do | IA |

KEY TO SYMBOLS

E The community is participating in the Emergency Program. It will remain in the Emergency Program without a FHBM.

C The community is participating in the Emergency Program. It will be converted to the Regular Program without an FIA map.

R The community is participating in the Regular Program.

1. The Community is appealed its flood-prone designation and FIA determined the Community would not be inundated by a flood having a one-percent chance of occurrence in any given year.

1A. FIA determined the Community would not be inundated by a flood having a one-percent chance of occurrence in any given year.

2. The Flood Hazard Boundary Map (FHBM) contained printing errors or was improperly distributed. A new FHBM will be prepared and distributed.

3. The Community lacked land-use authority over the special flood hazard area.

4. A more accurate FIA map is the effective map for this community.

5. The FHBM does not accurately reflect the Community's special flood hazard areas (i.e., sheet flow flooding, extremely inaccurate map, etc.) A new FHBM will be prepared and distributed.

6. The Flood Insurance Rate Map was rescinded because of inaccurate flood elevations contained on the map.

7. The Flood Insurance Rate Map was rescinded in order to re-evaluate the mudslide hazard in this Community.

8. The T&E or H&E Map was rescinded.

9. A revision of the FHBM within a reasonable period of time was not possible. A new FHBM will be prepared and distributed.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969 as amended 39 FR 2787, Jan. 24, 1974.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: March 21, 1979.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 79-9088 Filed 3-27-79; 8:45 am]

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[4210-01-M]

[Docket No. FI-4710]

## PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

### Final Flood Elevation Determination for the City of Oak Grove, Jackson County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Oak Grove, Jackson County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Oak Grove, Jackson County, Mo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Oak Grove are available for review at the City Hall, Oak Grove, Mo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Oak Grove, Jackson County, Mo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Horseshoe Creek Tributary. | At county boundary..... | 784 |
| | 870 feet upstream of county boundary. | 784 |
| | At corporate limits, 0.39 mile upstream of county boundary. | 793 |
| | At corporate limits, 0.70 mile upstream of county boundary. | 805 |
| | 1.0 mile upstream of county boundary. | 816 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 23, 1979.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 79-9083 Filed 3-27-79; 8:45 am]

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[4210-01-M]

[Docket No. FI-4567]

## PART 1917—APPEALS FROM FLOOD PROPOSED ELEVATION DETERMINATIONS

### Final Flood Elevation Determination for the city of Elkton, Douglas County, Oreg.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Elkton, Douglas Conty, Oreg. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Elkton, Oreg.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Elkton, are available for review at city hall, Elkton, Oreg.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of Elkton, Oreg.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Umpqua River..... | 2,400 feet downstream of confluence with Elk Creek. | 117 |
| | 720 feet downstream of confluence with Elk Creek. | 119 |
| Elk Creek..... | State Highway 38—40 feet upstream of centerline. | 120 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o) (4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 STAT. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 25, 1979.

GLORIA M. JIMENEZ,
*Federal Insurance Aministrator.*

[FR Doc. 79-9084 Filed 3-27-79; 8:45 am]

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[4210-01-M]

[Docket No. FI-4669]

## PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

### Final Flood Elevation Determination for Minnehaha County, S. Dak.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Minnehaha County, S. Dak. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for Minnehaha County, S. Dak.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Minnehaha County, S.

Dak., are available for review at the lobby of the Courthouse, Minnehaha, County, S. Dak.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Minnehaha County, S. Dak.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| Big Sioux River | Downstream State Route 38. | 1,289 |
| | U.S. Route 16 | 1,293 |
| | Chicago Northwestern Railroad Bridge. | 1,301 |
| | Burlington Northern Railroad Bridge. | 1,307 |
| | County Route 121 | 1,310 |
| | State Route 38A | 1,431 |
| | Interstate Route 90 | 1,433 |
| | County Route 130 | 1,440 |
| Skunk Creek | U.S. Route 29 | 1,419 |
| | Marion Road | 1,425 |
| | U.S. Route 16 | 1,432 |
| | County Route 139 | 1,442 |
| | County Route 142 | 1,447 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: February 27, 1979.

GLORIA M. JIMENEZ,
*Federal Insurance Administrator.*

[FR Doc. 79-9085 Filed 3-27-79; 8:45 am]

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[3710-08-M]

## Title 32—National Defense

## CHAPTER V—DEPARTMENT OF THE ARMY

[NGR 638-40]

## PART 564—NATIONAL GUARD REGULATIONS

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The National Guard Bureau is revising its regulations concerning the care and disposition of remains of members of the National Guard. A major change is the assignment of responsibility to the State adjutants general for reporting deaths of Army National Guard members. In the review of this regulation, the proponent office has updated the information and rewritten the document to improve the regulatory language for better understanding by the public.

EFFECTIVE DATE: March 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Colonel Charles E. Coverdale, Jr. (202) 695-3312 or write: HQDA (NGB-ARL-T) Washington, D.C. 20310.

Dated: March 21, 1979.

ROBERT H. NEITZ,
*Colonel, USAF,*
*Executive, National Guard Bureau.*

Accordingly 32 CFR 564.41 is revised as set forth below.

### § 564.41 Burial.

(a) *Purpose.* The purpose of this section is to provide policies and designate responsibilities for the care and disposition of remains of members of the Army National Guard entitled to burial at Federal expense.

(b) *Authority.* Act of 10 August 1956 (70A Stat. 112) as amended, Title 10, U.S. Code, Sections 1481 through 1488, applicable to military personnel and their dependents.

(c) *Policy.* The provisions of AR 638-40 are applicable to battalion and higher level units of the Army National Guard, except as modified herein.

(d) *Responsibilities.*

(1) The Chief, National Guard Bureau is responsible for prescribing procedures for the care and disposition of remains of members of the ARNG who die while—

(i) Performing full-time training at other than an Active Army installation under sections 316, 502, 503, 504, and 505, Title 32, U.S.C.

(ii) Performing authorized travel to or from training outlined in (i) above.

(iii) Being hospitalized or undergoing treatment at Government expense for an injury incurred or disease contracted while performing duty indicated in (i) and (ii) above.

(iv) Performing inactive duty training (IDT) under section 502, Title 32, U.S.C. (It is to be noted that present law does not provide for payment of burial expenses from Federal funds for ARNG personnel killed while traveling to or from IDT.)

(2) Active Army installations are responsible for the care and disposition of remains of members of the National Guard who die while—

(i) Performing active duty for training under Title 10 and training or other full-time training duty at an Active Army installation under sections 502, 503, 504, and 505, Title 32, U.S.C.

(ii) Performing authorized travel to or from training specified in (i) above.

(iii) Being hospitalized or receiving treatment at Government expense as a result of injury incurred or disease contracted while performing duty indicated in (i) and (ii) above.

(3) State adjutants general are responsible for notification of death in accordance with Chapter 10, AR 600-10.

(e) *Limitation of burial expense.* Payment of burial expenses is limited to an amount not exceeding that allowed by the Government for such services and in no circumstances may payment exceed the amount actually expended. The amount allowed when relatives incur the expenses will be in accordance with the following limitation:

(1) If death occurs where a properly approved Contract for Care of Remains is in force (Army, Navy, or Air Force contracts), the amount to be allowed for each item will not exceed the amount allowable under such contract.

(2) If death occurs where no contract is in force, reimbursement for items or services, including preparation and casketing will be limited to the stipulated amount included in Chapter 4, AR 638-40.

(3) Reimbursement for transportation will be limited to the amount for which the Government could have obtained required common carrier transportation plus the charge made for hearse service from the common carrier terminal to the first place of delivery.

(4) Reimbursement for interment expenses is limited to the amounts provided in Chapter 13, AR 638-40.

(f) *Accountability for clothing.*

(1) If in a serviceable condition, the uniform in possession of the deceased will be used and accountability dropped in accordance with NGR 710-2.

(2) If a serviceable uniform is not in possession of the deceased, a request for issue of required items will be prepared. Accountability and responsibility for items issued will be terminated by the responsible officier upon execution of a statement on DA Form 3078 or 3345, substantially as follows:

The items of clothing enumerated above were issued to clothe the remains of _____ for funeral purposes. At the time of his/her death, the deceased was a member in good standing in this organization.

(g) *ARNG personnel serving in a nonpay status.* In accordance with Title 32, U.S.C. Section 503, a member may, with his/her consent, either with or without pay, be ordered to perform training or other duty in addition to that prescribed under Title 32, U.S.C. Section 502(a). Duty without pay will be considered for all purposes as if it were duty with pay.

[FR Doc. 79-9286 Filed 3-27-79; 8:45 am]

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[1505-01-M]

## Title 39—Postal Service

## CHAPTER I—UNITED STATES POSTAL SERVICE

## PART 955—RULES OF PRACTICE BEFORE THE BOARD OF CONTRACT APPEALS

### Adoption of Rules Providing for Optional Small Claims Expedited and Accelerated Procedures and Rules for Subpoenas

*Correction*

In FR Doc. 79-7153 appearing at page 13013 in the issue for Friday, March 9, 1979, and corrected at page 16015 in the issue for Friday, March 16, 1979, second column, the correction should have read "First column, tenth line of § 955.36(b)(1), * * *".

[6560-01-M]

## Title 40—Protection of Environment

## CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

### SUBCHAPTER C—AIR PROGRAMS

[FRL 1078-3]

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

### Oklahoma SIP—Chapter 7: Air Quality Surveillance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to Chapter 7: Air Quality Surveillance, of the Oklahoma Implementation Plan (SIP). The revision to Chapter 7 was submitted by the Governor as a general update of Oklahoma's air quality surveillance network. This revision reflects the latest information on the number of monitoring sites for applicable pollutants, their location, and their intended purpose.

EFFECTIVE DATE: April 27, 1979.

FOR FURTHER INFORMATION CONTACT: Jerry Stubberfield, Environmental Protection Agency, Region 6, Air Program Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2742.

SUPPLEMENTARY INFORMATION: The revision to Chapter 7 was submitted by the Governor on July 19, 1978, after adequate notice and public hearing. The revised Chapter 7 is a general update of Oklahoma's air quality surveillance network for particulate matter, sulfur dioxide, and photochemical oxidants.

Upon completion of a review of the revision, EPA published a proposed approval notice in the FEDERAL REGISTER on January 9, 1979 (44 FR 1990). In this notice, a detailed discussion on each revised part of Chapter 7 was provided. Interested persons were invited to comment on EPA's intended action within 30 days of the published proposal. No comments were received.

CURRENT ACTION

In this action, the revisions to Chapter 7: Air Quality Surveillance, of the Oklahoma SIP are being approved as proposed.

This notice of final rulemaking is issued under the authority of Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410-(a).

Dated: March 21, 1979.

DOUGLAS M. COSTLE,
*Administrator.*

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

### Subpart LL—Oklahoma

In § 52.1920, paragraph (c) is amended by adding a new paragraph (13) as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(13) A general update of Chapter 7: Air Quality Surveillance, was submitted by the Governor on July 19, 1978. (non-regulatory).

[FR Doc. 79-9233 Filed 3-27-78; 8:45 am]

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[6560-01-M]

[FRL 1078-1]

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

### Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves numerous administrative and procedural changes to Louisiana's State Implementation Plan (SIP). Also in this action, Sections 4.47, 4.72, 6.7 and 6.9 of the Louisiana regulations are disapproved. Revisions to Regulations 2.0 through 17.0 are made by the State as a general update of the SIP. These revisions reflect current applicability, operational procedures, and organizational structure.

EFFECTIVE DATE: April 27, 1979.

FOR FURTHER INFORMATION CONTACT:

Jerry Stubberfield, Environmental Protection Agency, Region 6, Air Program Branch, 1201 Elm Street, Dallas, Texas 75270 (214) 767-2742.

SUPPLEMENTARY INFORMATION: On December 9, 1977, the Governor of Louisiana, after adequate notice and public hearing, submitted administrative and procedural revisions to the Louisiana SIP. The revisions involve a general update of Regulations 2.0 through 17.0 and with the exception of four sections of these regulations, EPA's review indicated the revisions to be approvable. Accordingly, a notice of proposed rulemaking was published in the FEDERAL REGISTER on January 4, 1979 (44 FR 1189). In this notice, a description of the revisions was provided

along with EPA's reasons for proposing disapproval of Sections 4.47, 4.72, 6.7, and 6.9.

Interested persons were invited to comment on EPA's proposed action. Comments were to be submitted within 30 days of publication of the proposed action. No comments were received.

The four sections cited as having deficiencies fall into two general categories, definitions and new source review.

DEFINITIONS

The definitions of "particulate matter" are provided in Sections 4.47 and 4.72. The definitions include aerosols and finely divided liquids, which suggest that entrained water would be subject to control. Since the reference method used to determine compliance does not differentiate uncombined water, applicable emission limits could be unenforceable. EPA is promulgating definitions for particulate matter, one to be used for determining ambient concentrations, and one to be used for determining compliance with applicable emission limitations.

NEW SOURCE REVIEW

Section 6.7 allows the Technical Secretary of the Louisiana Air Control Commission (LACC) to grant a variance to Section 6.1, which will allow preliminary site preparation work to be accomplished prior to obtaining an approved permit. While examples of preliminary site preparation work are provided, construction activities are not limited to the examples, nor is a continuous construction program prohibited. As a result, a source could commence construction, as defined in Section 165 of the Clean Air Act. This procedure would be in conflict with preconstruction requirements for the prevention of significant deterioration (PSD), and is therefore, not approvable.

Section 6.9 allows the Technical Secretary to grant a variance to Section 6.1 of up to three months for conducting tests of proposed source modifications. This procedure also conflicts with PSD preconstruction requirements, as well as the Interpretative Ruling concerning emission offsets. Therefore, Section 6.9 is not approvable.

CURRENT ACTION

No comments or information has been received which would cause EPA's final action to be different than the action proposed on January 4, 1979. Therefore, the approvals and disapprovals are being promulgated as proposed.

This notice of final rulemaking is issued under the authority of Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410-(a).

Dated: March 21, 1979.

DOUGLAS M. COSTLE,
*Administrator.*

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

**Subpart T—Louisiana**

1. In § 52.970 paragraph (c) is amended by adding a new paragraph (8) as follows:

**§ 52.970 Identification of plan.**

* * * * *

(c) * * *

(8) Minor changes and administrative revisions to regulations 2.0, 3.0, 4.0, 5.0. 6.0, 7.0, 8.0, 9.0, 10.0, 11.0, 12.0, 13.0, 14.0, 15.0, 16.0, and 17.0 of the Louisiana SIP were submitted by the Governor on December 9, 1977.

2. Subpart T is amended by revising § 52.976 to read as follows:

**§ 52.976 Review of new sources and modification.**

(a) Section 6.7 of Regulation 6.0 is disapproved since it could conflict with the preconstruction requirements for the prevention of significant deterioration (PSD) of air quality.

(b) Section 6.9 of Regulation 6.0 is disapproved since it could conflict with the preconstruction requirements for the prevention of significant deteroration (PSD) of air quality and the Administrator's Interpretative on Rule of December 21, 1976.

**§ 52.982 [Reserved]**

3. Section 52.982 is revoked and reserved.

4. Subpart T is amended by adding § 52.988 to read as follows:

**§ 52.988 Rules and regulations.**

(a) The requirements of § 51.22 of this chapter are not met since the definitions of "particulate matter" and "suspended particulate matter", as provided in Sections 4.47 and 4.72 respectively, could in some circumstances make applicable emission limitations of the Louisiana Air Control Commission unenforceable. Therefore, Section 4.47 and 4.72 are disapproved.

(b) The following definition of particulate matter applies to Regulations 9.0 and 27.0: "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by the high volume method prescribed in Appendix B of Part 50, Title 40 of the Code of Federal Regulations.

(c) The following definition of particulate matter applies to Regulations 19.0, 20.0, 21.0, 23.0, and 28.0: "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by Method 5, or an equivalent or alternative method, of Appendix A, Part 60, Title 40 of the Code of Federal Regulations.

[FR Doc. 79-9231 Filed 3-27-79; 8:45 am]

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[6560-01-M]

[FRL 1080-6]

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

### California Plan Revision: South Coast Air Quality Management District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, take no action on changes to the South Coast Air Quality Management District (AQMD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: April 27, 1979.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105, Attn: Douglas Grano, (415) 556-2938.

SUPPLEMENTARY INFORMATION: On September 27, 1978 EPA published a Notice of Proposed Rulemaking for revisions to the South Coast AQMD's rules submitted on June 22 and July 13, 1978 by the California Air Resources Board for inclusion in the California SIP.

A listing of the rules submitted and being considered in this FEDERAL REGISTER notice was included in the September 27, 1978 Notice of Proposed Rulemaking. The rules listed were revised to correct deficiencies, to add clarity and to make needed additions. All of the rule revisions were evaluated as to their consistency with the Clean Air Act, 40 CFR Part 51 and EPA policy.

The Notice of Proposed Rulemaking provided for a 30-day comment period. No comments were received during the public comment period.

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions.

It is the purpose of this Notice to approve the rules listed in the Notice of Proposed Rulemaking, and to incorporate them into the California SIP, with the exception of those rules noted below.

No action is being taken on Rule 301, *Permit Fees*, and Rule 303, *Hearing Board Fees*, submitted July 13, 1978, because they have been superseded by rules submitted January 2, 1979 by the State of California. Action will be taken on the more recent revisions.

No action is being taken on Rule 442, *Usage of Solvents*, because a clerical error in the July 13, 1978 submittal makes this rule unenforceable. This rule will be acted upon when the rule is revised and resubmitted.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

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

Dated: March 20, 1979.

DOUGLAS M. COSTLE,
*Administrator.*

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

**Subpart F—California**

1. Section 52.220 is amended by adding paragraphs (c)(44)(v) and (c)(45)(ii) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(44) * * *

(v) South Coast Air Quality Management District.

(A) Rules 102, 501.1, and 503.

* * * * *

(45) * * *

(ii) South Coast AQMD.

(A) Rules 302, 461, 465, 1102, and 1113.

* * * * *

[FR Doc. 79-9383 Filed 3-27-79; 8:45 am]

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[6820-26-M]

**Title 41—Public Contracts and Property Management**

**CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS**

**SUBCHAPTER B—ARCHIVES AND RECORDS**

**Appendix—Temporary Regulations**

[FPMR Temp. Reg. B-3]

**PART 101-11—RECORDS MANAGEMENT**

**Declassification of and Public Access to National Security Information**

AGENCY: National Archives and Records Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This temporary regulation amends General Services Administration regulations relating to the processing of requests for mandatory review of security classified information in the legal and physical custody of the National Archives and Records Service (NARS). Executive Order 12065, National Security Information, requires that Federal agencies establish a mandatory review procedure to handle requests to declassify and release security classified information. This temporary regulation ensures that requests for mandatory review of security classified information in NARS legal and physical custody will be processed in accordance with the requirements of Executive Order 12065.

DATES: Effective date: March 28, 1979. Expiration date: December 1, 1979. Comments due: May 29, 1979.

ADDRESS: Address comments to General Services Administration (NAA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT:

Adrienne C. Thomas, Director, Planning and Analysis Division, Office of the Executive Director, National Archives and Records Service, General Services Administration (NAA), Washington, DC 20408, 202-523-3214.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044. On December 1, 1978, Executive Order 12065 and its implementing directive, Information Security Oversight Directive Number 1, superseded Executive Order 11652, Classification and Declassification of National Security Information and Material, and its implementing directive, National Security Council Directive Governing the Classification, Downgrading, Declassification and Safeguarding of National Security Information. In order for NARS to continue its declassification program under this new authority, it is necessary that these regulations become effective in advance of the receipt of public comments. NARS will consider all comments received during the 60-day comment period before issuing final regulations implementing Executive Order 12065.

This temporary regulation establishes revised rules for the processing of mandatory review requests by NARS.

With the exception of information originated by the White House, by defunct agencies, or for which NARS has applicable declassification guidelines, Executive Order 12065 requires that mandatory review requests for information accessioned into the National Archives shall be forwarded to the responsible agency for review, coordination, and direct response to the requester.

Under Executive Order 11652, NARS coordinated requests for all classified information accessioned into the National Archives or donated to the Presidential libraries and responded directly to the requester.

Agencies which have reviewed requests for declassification forwarded by NARS and determined that only portions of the information may be released must provide NARS with: (1) Instructions for deleting from documents to be released the information with must remain classified and (2) the reason for denying the release of the information. NARS will then be able to respond directly to subsequent requests for the same information and avoid the necessity of contacting agencies concerning mandatory review requests for information which had previously been declassified.

NARS must be informed when an agency determines that information forwarded to it by NARS for declassification is the primary declassification responsibility of another agency. This information will enable NARS to send similar information to the appropriate agency for review.

NARS will bill persons requesting mandatory review for copies of documents which an agency received from NARS, declassified, and furnished to the requester. NARS will forward the bill to the requester after receiving notification from the responsible agency of its declassification determinations.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is listed in the appendix at the end of Subchapter B to read as follows:

FEDERAL PROPERTY MANAGEMENT REGULATIONS

[Temporary Regulation B-3]

TO: Heads of Federal agencies.

SUBJECT: Declassification of and public access to national security information.

1. *Purpose.* This temporary regulation contains revised procedures relating to the processing of requests for mandatory review of security classified information in the legal and physical custody of the National Archives and Records Service (NARS).

2. *Effective date.* This regulation is effective upon publication in the Federal Register (March 28, 1979).

3. *Expiration date.* This regulation expires December 1, 1979, unless sooner revised or superseded. Prior to that date, this regulation will be codified in the permanent regulations of GSA appearing in Title 41 CFR, Public Contracts and Property Management.

4. *Applicability.* The provisions of this regulation apply to all executive agencies.

5. *Background.* Executive Order 12065, National Security Information, which became effective on December 1, 1978, requires revisions in the mandatory review procedures established by NARS to handle requests to declassify and release security classified information.

6. *Effect on other directives.* Section 101-11.3a, Declassification of and Public Access to National Security Information, is revised as follows:

a. *§ 101-11.320 General provisions.* Declassification of and public access to national security information and material (hereafter referred to as "classified information" or collectively termed "information") is governed by Executive Order 12065 of June 28, 1978 (43 FR 28949, July 3, 1978), and by the Information Security Oversight Office Directive No. 1 of October 2, 1978 (43 FR 46280, October 5, 1978).

b. *§ 101-11.321 Public requests for mandatory review of classified information under E.O. 12065.*

(1) Members of the public wishing to request mandatory review of classified information which has been accessioned into the National Archives of the United States or which has been donated to the Government and is in the custody of a Presidential library administered by the National Archives and Records Service (NARS) should (1) identify the record or information desired and (2) apply in writing to the appropriate NARS depository listed in 41 CFR 105-61.5101.

(2) Information originated or received by an agency of the United States Government is subject to mandatory review from the date of its creation. Information originated by the President, by the White House staff, by committees or commissions appointed by the President, or by others acting on behalf of the President, hereafter referred to as "White House information," is subject to mandatory review after it becomes 10 years old. All requests must reasonably describe the information sought. When practicable, a request shall include the name of the originator and recipient of the information, as well as its date, subject, and file designation. If the information sought cannot be identified from the description provided or if the information sought is so voluminous that processing it would interfere with NARS capacity to serve all requesters on an equitable basis, the requester will be notified that, unless additional information is provided or the scope of the request is narrowed, no further action will be taken. The requested information or any reasonable segregable portion thereof that no longer requires protection under Executive Order 12065 shall be declassified and released unless withholding is otherwise warranted under applicable law.

c. *§ 101-11.322 Mandatory review of classified U.S. Government originated information.*

(1) *§ 101-11.322-1 NARS action.*

(a) *Information less than 20 years old.* NARS will promptly acknowledge receipt of a request for mandatory review of classified U.S. Government originated information and within 20 calendar days of receipt of the request will forward it, with copies of the documents containing the requested information, to the agency which originated the information or to the agency which the Archivist determines has primary subject matter interest. NARS will inform the requester of all such referrals.

(b) *Information more than 20 years old.* NARS will acknowledge receipt of a request for mandatory review of classified U.S. Government originated information which NARS may declassify using systematic review guidelines and within 60 calendar days of receipt of the request will act upon it and notify the requester of the action taken. Information which NARS may not declassify using the systematic review guidelines will be promptly forwarded, with copies of documents containing the requested information, to the responsible agency. NARS will inform the requester of all such referrals.

(2) *§ 101-11.322-2 Agency action.* Upon receipt of a request for mandatory review of classified U.S. Government originated information forwarded by NARS, the originating or responsible agency shall:

(a) Review the information; coordinate the review of the information with all other agencies having primary subject matter interest; and determine whether the information may be wholly or partially declassified or must continue to be exempt from declassification.

(b) Notify the requester and NARS of the determination. If the request is denied in whole or in part, the agency must also furnish:

(i) To the requester and NARS, a brief statement of the reasons the requested information cannot be declassified;

(ii) To NARS, a copy of each document released only in part marked to indicate the portions which remain classified; and

(iii) To the requester, a statement of the right to appeal within 60 calendar days, the procedures for taking such an action; and the name, title, and address of the appeal authority.

(c) If applicable, notify NARS of the agency to which it forwarded requests determined to be the primary responsibility of another agency.

d. *§ 101-11.323 Mandatory review of foreign government information provided to the United States in confidence.*

(1) *§ 101-11.323-1 NARS action.*

(a) *Information less than 30 years old.* NARS will promptly acknowledge receipt of a request for mandatory review of foreign government information provided to the United States. Within 20 calendar days of receipt of the request NARS will forward the request, together with copies of the documents containing the requested information, to the agency which initially received or classified the information. If unable to identify the agency, NARS will forward the request to the agency which has primary subject matter interest. NARS will inform the requester of all such referrals.

(b) *Information more than 30 years old.* NARS will acknowledge receipt of a request for mandatory review of foreign government information which NARS may declassify using systematic review guidelines, and within 60 calendar days of receipt of the request will act upon it and notify the requester of the action taken. Requests for information which NARS may not declassify using the systematic review guidelines will be promptly forwarded, with copies of the documents containing the requested information, to the responsible agency. NARS will notify the requester of all such referrals.

(2) *§ 101-11.323-2 Agency action.* Upon receipt of a request forwarded by NARS for review of foreign government information, the agency shall:

(a) Review the information and coordinate its further review with all other agencies having primary subject matter interest. In those cases where available agency policy or guidelines do not apply, the agency may consult

through appropriate channels with the foreign originator;

(b) Notify the requester and NARS of the determination made. If the request is denied in whole or in part, the agency must also furnish the information cited in § 101-11.322-2(b) above; and, if applicable,

(c) Notify NARS of the agency to which it forwarded requests determined to be the primary responsibility of another agency.

e. *§ 101-11.324 Information originated by a defunct agency or received by a defunct agency from a foreign government.*

(1) *§ 101-11.324-1 NARS action.* NARS is responsible for declassification of all information in the custody of NARS originated by an agency which has ceased to exist and whose functions have not been transferred to another agency and of all foreign government information originally received or classified by such an agency. NARS will promptly acknowledge receipt of requests for such information, review the information using systematic review guidelines, and, when necessary, consult with all agencies having primary subject matter interest. NARS will act upon the request within 60 calendar days of its receipt and inform the requester of the action taken. If the request is denied in whole or in part, the Assistant Archivist for the National Archives will furnish the requester a brief statement of the reasons for denial and a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States, National Archives and Records Service (ND), Washington, DC 20408. Upon receipt of an appeal, the Deputy Archivist will, within 30 days:

(a) Review the previous decision made to deny information over which NARS has classification jurisdiction; and, as necessary,

(b) Consult with the appellate authorities in agencies having primary subject matter interest in the information previously denied; and

(c) Notify the requester of the final determination and make available to the requester information that has been declassified as a result of the appeal.

To ensure that NARS will be able to respond promptly to appeals of mandatory review decisions, the head of each agency shall be requested to provide NARS with the current name, title, and address of that agency's designated appellate authority.

(2) *§ 101-11.324-2 Agency action.* Upon receipt of a request forwarded by NARS for consultation regarding the declassification of foreign government information originally received or classified by a defunct agency, the agency with primary subject matter interest shall:

(a) Advise the Archivist whether the information should be declassified in whole or in part or should continue to be exempt from declassification; and

(b) Return the request to NARS along with a brief statement of the reasons any requested information should not be declassified and a copy of each document released only in part marked to indicate those portions which remain classified.

(f) *§ 101-11.325 Mandatory review of classified White House originated information more than 10 and less than 20 years old and foreign government information more than 10 and less than 30 years old received or classified by the White House.*

(1) *NARS action.*

(a) NARS will promptly acknowledge receipt of a request for mandatory review of classified White House originated information more than 10 years old and less than 20 years old and foreign government information more than 10 and less than 30 years old received or classified in the White House.

(b) NARS will review the requested information, determine which agencies have primary subject matter interest, forward to those agencies copies of material containing the requested information, and request their recommendations regarding declassification.

(c) NARS will review the recommendations returned by the agencies and make its declassification determination.

(d) If the request is denied in whole or in part, NARS will furnish the requester:

(i) A brief statement of the reasons the requested information cannot be declassified;

(ii) Access to those portions of documents that are releasable only in part; and

(iii) A notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States, National Archives and Records Service (ND), Washington, DC 20408.

(e) *NARS appellate process.* Upon receipt of an appeal, the Deputy Archivist will, within 30 calendar days:

(i) Review the previous decision made to deny information;

(ii) Consult with the appellate authorities in agencies having primary subject matter interest in the information previously denied;

(iii) Notify the requester of the determination and make available to the requester information which has been declassified as a result of the appeal;

(iv) Notify the requester of the right to appeal denials of access to the Director, Information Security Oversight Office (mailing address: General Services Administration (AT), Washington, DC 20405).

(2) *Agency action.* Upon receipt of a request forwarded by NARS for consultation regarding declassification of White House originated information more than 10 years old and less than 20 years old and foreign government information more than 10 years old and less than 30 years old received or classified in the White House, the agency with primary subject matter interest shall:

(a) Advise the Archivist whether the information should be declassified in whole or in part or should continue to be exempt from declassification; and

(b) Return the request to NARS along with a brief statement of the reasons any requested information should not be declassified and a copy of each document which should be released only in part marked to indicate those portions which remain classified.

g. *§ 101-11.326 Mandatory review of classified White House originated information more than 20 years old and foreign government information received or classified in the White House more than 30 years old.*

(1) *NARS action.*

(a) NARS will promptly acknowledge the receipt of a request for mandatory review of classified White House originated information more than 20 years old and foreign government information received or classified in the White House more than 30 years old, and will act upon that request within 60 calendar days.

(b) NARS will review the information using applicable systematic review guidelines and will make available to the requester information declassified using those guidelines.

(c) Information which cannot be declassified by NARS using systematic review guidelines will be forwarded to the agencies with primary subject matter interest and further processed in accordance with section 101-11.325(1) (b) through (e) and (2) above.

(2) *Agency action.* Upon receipt of a request forwarded by NARS for consultation regarding declassification of White House originated information more than 20 years old and foreign government information more than 30 years old received or classified in the White House, the agency with primary subject matter interest shall:

(a) Advise the Archivist whether the information should be declassified in whole or in part or should continue to be exempt from declassification; and

(b) Return the request to NARS along with a brief statement of the reasons any requested information should not be declassified and a copy of each document which should be released only in part marked to indicate those portions which remain classified.

h. *§ 101-11.327 Mandatory review of classified White House information more than 10 years old in the custody of other agencies.* Agencies having custody of classified White House information more than 10 years old shall forward requests for mandatory review of such information to the Office of National Archives, (mailing address: General Services Administration (NN), Washington, DC 20408) together with copies of documents containing the requested information and the agency's recommendations regarding declassification. NARS will make a declassification determination on such requests after consulting with agencies with primary subject matter interest, and will reply to the requester. If the request is denied in whole or in part, the requester may appeal within 60 calendar days to the Deputy Archivist of the United States, (mailing address: General Services Administration (ND), Washington, DC 20408). Appeals are processed according to the procedures listed in 101-11.325(1)(e).

i. *§ 101-11.328 Access by historical researchers and former Presidential appointees.* Access to classified information may be granted to persons who are engaged in historical research proj>ects or who previously occupied policy-making positions to which they were appointed by the President. Persons desiring permission to examine material under this special historical researcher/Presidential appointees access program should contact NARS at least 4 months in advance of the date they desire access to the materials to permit time for the responsible agencies to process the request for access. NARS will inform requesters of the agencies to which they will have to apply for permission to examine classified information and, if necessary, will provide requesters with the information and forms to apply for permission from the Archivist of the United States to examine classified information originated by the White House or classified information in the custody of the National Archives which was originated by a defunct agency. Researchers may examine such records only after the responsible agencies have authorized access.

j. *§ 101-11.329 Fees.* NARS will charge requesters for copies of declassified documents according to the fees listed in 41 CFR 105-61.5206. These fees will apply to:

(1) Copies furnished to researchers directly by NARS; and

(2) Copies which an agency received from NARS and furnished to a requester.

PAUL E. GOULDING,
*Acting Administrator of General Services.*

MARCH 16, 1979.

[FR Doc. 79-9285 Filed 3-27-79; 8:45 am]

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[6820-27-M]

## CHAPTER 105—GENERAL SERVICES ADMINISTRATION

[ADM 7900.2 CHGE 12]

## PART 105-61—PUBLIC USE OF RECORDS, DONATED HISTORICAL MATERIALS, AND FACILITIES IN THE NATIONAL ARCHIVES AND RECORDS SERVICE

### Public Use of Archives and FRC Records and Public Use of Donated Historical Materials

AGENCY: National Archives and Records Service (NARS), GSA.

ACTION: Final rule.

SUMMARY: This rule revises regulations relating to the processing of requests for mandatory review of security classified information in the legal and physical custody of NARS to reflect the requirements of Executive Order 12065, National Security Information.

DATES: Effective date: March 28, 1979. Comments due: On or before May 29, 1979.

ADDRESS: Address comments to General Services Administration (NAA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT:

Adrienne C. Thomas, Director, Planning and Analysis Division, Office of the Executive Director, National Archives and Records Service, General Services Administration (NAA), Washington, DC 20408, 202-523-3214.

SUPPLEMENTARY INFORMATION: On December 1, 1978, Executive Order 12065 and its implementing directive, information Security Oversight Office Directive Number 1, superseded Executive Order 11652, Classification and Declassification of National Security Information and Material, and its implementing directive, National Security Council Directive Governing the Classification, Downgrading, Declassification, and Safeguarding of National Security Information. In order for NARS to continue its declassification program under this authority, it is necessary that these regulations become effective in advance of the receipt of public comments. GSA procedures require a proposed rule with a 60-day comment period before issuing this type of final rule. This exemption to GSA procedures implementing Executive Order 12044, Improving Government Regulations, is authorized by James B. Rhoads, Archivist of the United States. However, NARS will consider all comments received during the 60-day comment period and, if necessary, propose revisions to these regulations.

NARS will bill persons requesting mandatory review for copies of documents which an agency received from NARS, declassified, and furnished to the requester. NARS will forward the bill to the requester after receiving notification from the responsible agency of its declassification determinations.

The table of contents for Part 105-61 is amended by revising three entries, adding seven entries, and deleting three entries, as follows:

Sec.
105-61.104-1 Freedom of Information Act requests.
105-61.104-2 Declassification responsibility.
105-61.104-3 Public requests for mandatory review of classified information under Executive Order 12065.
105-61.104-4 Mandatory review of classified U.S. Government originated information.
105-61.104-5 Mandatory review of foreign government information provided to the United States in confidence.
105-61.104-6 Information originated by a defunct agency or received by a defunct agency from a foreign government.
105-61.104-7 Mandatory review of classified White House originated information more than 10 and less than 20 years old and foreign government information more than 10 and less than 30 years old received or classified by the White House.
105-61.104-8 Mandatory review of classified White House orignated information more than 20 years old and foreign government information received or classified by the White House more than 30 years old.
105-61.104-9 Access by historical researchers and former Presidential appointees.
105-61.104-10 Fees for copies of documents declassified through mandatory review procedures.
105-61.203—105-61.203-2 [Deleted]

### Subpart 105-61.1—Public Use of Archives and FRC Records

1. Sections 105-61.103-1 (a) and (c) are revised to read as follows:

**§ 105-61.103-1 Archives.**

(a) *Restrictions.* The use of archives is subject to the restrictions prescribed by statute or Executive order or by the restrictions specified in writing in accordance with 44 U.S.C. 2104 by the agency from which the records were

transferred. The restrictions are published in the "Guide to the National Archives of the United States," which is hereby incorporated by reference, and supplemented by restriction statements approved by the Archivist of the United States and set forth in § 105-61.202 and Subpart 105-61.53. The Guide is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The Guide may also be consulted at the NARS research facilities set forth in § 105-61.5101 and the GSA Business Service Center reading rooms set forth in § 105-60.303. NARS makes available any reasonably segregable portion of a record after the restricted portion has been deleted.

* * * * *

(c) *Denials and appeals.* Denials under the Freedom of Information Act of access to archives are made by the appropriate director of a Federal records center or a Presidential library or by the Assistant Archivist for the National Archives, who, within 10 workdays, shall notify the requester of the reasons for denial and of the procedures for appeal. A requester may appeal a denial by writing to the Deputy Archivist of the United States (mailing address: General Services Administration (ND), Washington, DC 20408). The Deputy Archivist shall consult with the agency specifying the restriction, when appropriate, and make a determination within 20 workdays after the date of receipt of the appeal. If an extension is required, the Deputy Archivist shall notify the requester within 20 workdays from receipt of the request. Time extensions shall not exceed 10 workdays in the aggregate: Either solely in the initial stage or solely in the appellate stage, or divided between them. If the determination is adverse in whole or in part, the Deputy Archivist shall notify the requester of the right to judicial review. Denials and appeals of denials of information under the Freedom of Information Act exemption 552(b)(1), National security information, are processed in accordance with the provisions of § 105-61.104-1.

2. Section 105-61.103-3 is revised to read as follows:

**§ 105-61.103-3 Records of defunct agencies.**

Access to archives and FRC records received from agencies which have ceased to exist without a successor in function are handled in accordance with §§ 105-61.103-1 and 105-61.104-6.

3. Section 105-61.104 is revised to read as follows:

**§ 105-61.104 Access to national security information.**

Public access to national security information and material, hereinafter referred to as "classified information" or collectively termed "information," is governed by Executive Order 12065 of June 28, 1978 (43 FR 28949, July 3, 1978), the implementing Information Security Oversight Office Directive Number 1 of October 2, 1978 (43 FR 46280, October 5, 1978), and the Freedom of Information Act (5 U.S.C. 552).

**§ 105-61.104-1**

**Freedom of Information Act requests.**

(a) *Requests for access to national security information under the Freedom of Information Act.* Requests for access to national security information under the Freedom of Information Act are processed in accordance with the provisions of § 105-61.103-1(b). Time limits for responses to Freedom of Information Act requests for national security information are those provided in the act rather than the longer time limits provided for responses to mandatory review requests specified by Executive Order 12065.

(b) *Denials and appeals.* Denials under the Freedom of Information Act of access to archives are made by designated officials of the originating or responsible agency. Appeals of denials must be made in writing to the appropriate authority in the agency having declassification responsibility for the denied information as indicated in § 105-61.104-2.

**§ 105-61.104-2 Declassification responsibility.**

(a) *Classified U.S. Government originated information less than 20 years old and foreign government information less than 30 years old.* Declassification of U.S. Government originated information less than 20 years old and foreign government information (which was provided in confidence) less than 30 years old is the responsibility of (1) the agency that classified the information or originally received the information from a foreign originator or (2) the agency with primary subject matter interest. NARS may make a declassification determination on these records only when the responsible agency has specifically authorized this action.

(b) *Classified U.S. Government originated information more than 20 years old and foreign government information more than 30 years old.* Systematic reviews of U.S. Government originaterd information more than 20 years old and foreign government information (which was provided in confidence) more than 30 years old which have been accessioned by NARS are the responsibility of NARS. NARS shall declassify this information unless the head of the responsible agency determines personally and in writing that the information must remain classified and notifies the Archivist of the United States of this determination.

(c) *White House information.* Declassification of information more than 10 years old which was originated by the President, by the White House staff, by committees or commissions appointed by the President, or by others acting on the President's behalf (hereinafter referred to as "White House information") is the responsibility of NARS. NARS makes these determinations after consulting with the agencies that have primary subject matter interest in the information.

(d) *Defunct agency information.* Declassification of information originated by or received from a foreign originator by an agency which has ceased to exist and whose functions were not transferred to another agency is the responsibility of NARS. NARS makes these determinations after consulting with the agencies having primary subject matter interest.

**§ 105-61.104-3 Public requests for mandatory review of classified information under Executive Order 12065.**

(a) Members of the public wishing to request mandatory review of classified information which has been accessioned into the National Archives of the United States or which has been donated to the Government and is in the custody of a Presidential library administered by the National Archives and Records Service (NARS) should identify the record or information desired and apply in writing to the appropriate NARS depository listed in § 105-61.5101.

(b) Information originated or received by an agency of the United States Government is subject to mandatory review from the date of its creation. Information originated by the President, by the White House staff, by committees or commissions appointed by the President, or by others acting on behalf of the President, is subject to mandatory review after it becomes 10 years old. All requests must reasonably describe the information sought. When practicable, a request shall include the name of the originator and recipient of the information, as well as its date, subject, and file designation. If the information sought cannot be indentified from the description provided or if the information sought is so voluminous that processing it would interfere with NARS' capacity to serve all requesters on an equitable basis, NARS shall notify the requester that, unless additional information is provided or the scope of the request is narrowed, no further action

will be taken. NARS shall declassify and release the requested information or any reasonably segregable portion thereof that no longer requires protection under Executive Order 12065 unless withholding is otherwise warranted under applicable law.

**§ 105-61.104-4 Mandatory review of classified U.S. Government originated information.**

(a) *NARS action*—(1) *Information less than 20 years old.* NARS shall promptly acknowledge receipt of a request for mandatory review of classfied U.S. Government originated information and within 20 calendar days of receipt of the request shall forward it, with copies of the documents containing the requested information, to the agency which originated the information or the agency which the Archivist determines has primary subject matter interest. NARS shall inform the requester of all such referrals.

(2) *Information more than 20 years old.* NARS shall acknowledge receipt of a request for mandatory review of classified U.S. Government originated information which NARS may declassify using systematic review guidelines and within 60 days of receipt of the request shall act upon it and notify the requester of the action taken. Information which NARS may not declassify using the systematic review guidelines shall be promptly forwarded, with copies of documents containing the requested information, to the responsible agency. NARS shall inform the requester of all such referrals.

(b) *Agency action.* Upon receipt of a request for mandatory review of classified U.S. Government originated information forwarded by NARS, the originating or responsible agency shall:

(1) Review the information; coordinate the review of the information with all other agencies having primary subject matter interest; and determine whether the information may be wholly or partially declassified or must continue to be exempt from declassification.

(2) Notify the requester and NARS of the determination. If the request is denied in whole or in part, the agency must also furnish:

(i) To the requester and NARS, a brief statement of the reasons the requested information cannot be declassified;

(ii) To NARS, a copy of each document released only in part, marked to indicate the portions which remain classified; and

(iii) To the requester, a statement of the right to appeal within 60 calendar days; the procedures for taking such action; and the name, title, and address of the appeal authority.

(3) If applicable, notify NARS of the agency to which it forwarded requests determined to be the primary responsibility of another agency.

**§ 105-61.104-5 Mandatory review of foreign government information provided to the United States in confidence.**

(a) *NARS action.*—(1) *Information less than 30 years old.* NARS shall promptly acknowledge receipt of a request for mandatory review of foreign government information provided to the United States in confidence. Within 20 calendar days of receipt of the request, NARS shall forward the request, with copies of the documents containing the requested information, to the agency which initially received or classified the information. If unable to indentify that agency, NARS shall forward the request to the agency which has primary subject matter interest. NARS shall inform the requester of all such referrals.

(2) *Information more than 30 years old.* NARS shall acknowledge receipt of a request for mandatory review of foreign government information which NARS may declassify using systematic review guidelines and within 60 calendar days of receipt of the request shall act upon it and notify the requester of the action taken. Requests for information which NARS may not declassify using the systematic review guidelines shall be promptly forwarded, with copies of the documents containing the requested information, to the responsible agency. NARS shall notify the requester of all such referrals.

(b) *Agency action.* Upon receipt of a request forwarded by NARS for review of foreign government information, the agency shall:

(1) Review the information and coordinate its further review with all other agencies having primary subject matter interest. If agency policy or guidelines do not cover a particular situation, the agency may consult through appropriate channels with the foreign orginator;

(2) Notify the requester and NARS of the determination. If the request is denied in whole or in part, the agency must also furnish the information cited in § 105-61.104-4(b)(2); and

(3) If applicable, notify NARS of the agency to which it forwarded requests determined to be the primary responsibility of another agency.

**§ 105-61.104-6 Information originated by a defunct agency or received by a defunct agency from a foreign government.**

(a) *NARS action.* NARS is responsible for declassification of all information in the custody of NARS originated by an agency which has ceased to exist and whose functions have not been transferred to another agency and of all foreign government information originally received or classified by such an agency. NARS shall promptly acknowledge receipt of requests for such information, review the information using systematic review guidelines, and, when necessary, consult with all agencies having primary subject matter interest. NARS shall act upon the request within 60 calendar days of its receipt and inform the requester of the action taken. If the request is denied in whole or in part, the Assistant Archivist for the National Archives shall furnish the requester a brief statement of the reasons for denial and a notice of the right to appeal the determination within 60 days to the Deputy Archivist of the United States (mailing address: General Services Administration (ND), Washington, DC 20408). Upon receipt of an appeal, the Deputy Archivist shall, within 30 calendar days:

(1) Review the decision to deny information over which NARS has classification jurisdiction;

(2) As necessary, consult with the appellate authorities in agencies having primary subject matter interest in the information denied; and

(3) Notify the requester of the final determination and make available to the requester information that has been declassified as a result of the appeal. To ensure that NARS will be able to respond promptly to appeals of mandatory review decisions, the head of each agency will be requested to provide NARS with the current name, title, and address of that agency's designated appellate authority.

(b) *Agency action.* Upon receipt of a request forwarded by NARS for consultation regarding the declassification of foreign government information originally received or classified by a defunct agency, the agency with primary subject matter interest shall:

(1) Advise the Archivist of the United States whether the information should be declassified in whole or in part or should continue to be exempt from declassification; and

(2) Return the request to NARS with a brief statement of the reasons any requested information should not be declassified and a copy of each document released only in part, marked to indicate those portions which remain classified.

**§ 105-61.104-7 Mandatory review of classified White House originated information more than 10 and less than 20 years old and foreign government information more than 10 and less than 30 years old received or classified by the White House.**

(a) *NARS action.* (1) NARS shall promptly acknowledge receipt of a request for mandatory review of classified White House originated informa-

tion more than 10 years old and less than 20 years old and foreign government information more than 10 and less than 30 years old received or classified by the White House and shall act upon that request within 60 calendar days.

(2) NARS shall review the requested information, determine which agencies have primary subject matter interest, forward to those agencies copies of material containing the requested information, and request their recommendations regarding declassification.

(3) NARS shall review the recommendations returned by the agencies and make its declassification determination.

(4) If the request is denied in whole or in part, NARS shall furnish the requester:

(i) A brief statement of the reasons the requested information cannot be declassified;

(ii) Access to the portions of documents that are releasable only in part; and

(iii) A notice of the right to appeal the determination within 60 days to the Deputy Archivist of the United States (mailing address: General Services Administration (ND), Washington, D.C. 20408).

(5) Upon receipt of an appeal, the Deputy Archivist shall, within 30 calendar days:

(i) Review the decision to deny information;

(ii) Consult with the appellate authorities in agencies having primary subject matter interest in the information denied;

(iii) Notify the requester of the determination and make available to the requester information which has been declassified as a result of the appeal; and

(iv) Notify the requester of the right to further appeal denials of access to the Director, Information Security Oversight Office (mailing address: General Services Administration (AT), Washington, D.C. 20405).

(b) *Agency action.* Upon receipt of a request forwarded by NARS for consultation regarding declassification of White House originated information more than 10 years old and less than 20 years old and foreign government information more than 10 years old and less than 30 years old received or classified in the White House, the agency with primary subject matter interest shall:

(1) Advise the Archivist of the United States whether the information should be declassified in whole or in part or should continue to be exempt from declassification; and

(2) Return the request to NARS with a brief statement of the reasons any requested information should not be declassified and a copy of each document which should be released only in part, marked to indicate the protions which remain classified.

**§ 105-61.104-8 Mandatory review of classified White House originated information more than 20 years old and foreign government information received or classified by the White House more than 30 years old.**

(a) *NARS action.* (1) NARS shall promptly acknowledge the receipt of a request for mandatory review of classified White House originated information more than 20 years old and foreign government information received or classified by the White House more than 30 years old and shall act upon that request within 60 days.

(2) NARS shall review the information using applicable systematic review guidelines and shall make available to the requester information declassified using those guidelines.

(3) Information which cannot be declassified by NARS using systematic review guidelines shall be forwarded to the agencies with primary subject matter interest and further processed in accordance with § 105-61.104-7(a) (2) through (5) and (b).

(b) *Agency action.* Upon receipt of a request forwarded by NARS for consultation regarding declassification of White House originated information more than 20 years old and foreign government information more than 30 years old received or classified in the White House, the agency with primary subject matter interest shall:

(1) Advise the Archivist of the United States whether the information should be declassified in whole or in part or should continue to be exempt from declassification; and

(2) Return the request to NARS with a brief statement of the reasons any requested information should not be declassified and a copy of each document which should be released only in part, marked to indicate the portions which should remain classified.

**§ 105-61.104-9 Access by historical researchers and former Presidential appointees.**

(a) Access to classified information may be granted to persons who are engaged in historical research projects or who previously occupied policymaking positions to which they were appointed by the President. Persons desiring permission to examine material under this special historical researcher/Presidential appointees access program should contact NARS at least 4 months before they desire access to the materials to permit time for the responsible agencies to process the requests for access. NARS shall inform requesters of the agencies to which they will have to apply for permission to examine classified information and shall provide requesters with the information and forms to apply for permission from the Archivist of the United States to examine classified information originated by the White House or classified information in the custody of the National Archives which was originated by a defunct agency. Researchers may examine these records only after the responsible agencies have authorized access.

(b) To guard against the possibility of unauthorized access to restricted records, a director may issue instructions supplementing the research room rules provided in § 105-61.102.

**§ 105-61.104-10 Fees for copies of documents declassified through mandatory review procedures.**

NARS will charge requesters for copies of declassifed documents according to the fees listed in § 105-61.5206. These fees apply to:

(a) Copies furnished to researchers directly by NARS; and

(b) Copies which an agency received from NARS and furnished to a requester.

### Subpart 105-61.2—Public Use of Donated Historical Materials

1. Section 105-61.201 is revised to read as follows:

**§ 105-61.201 General.**

The use of donated historical materials, as defined in § 105-61.001-4, is governed by the provisions of Subpart 105-61.1.

2. Section 105-61.203 is deleted.

**§ 105-61.203 [Deleted]**

**§ 105-61.203-1 [Deleted]**

**§ 105-61.203-2 [Deleted]**

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 41 CFR 105-61.000-2)

Dated: March 16, 1979.

PAUL E. GOULDING,
*Acting Administrator of General Services.*

[FR Doc. 79-9312 Filed 3-27-79; 8:45 am]

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[4110-02-M]

## Title 45—Public Welfare

## CHAPTER I—OFFICE OF EDUCATION; DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## PART 186—INDIAN ELEMENTARY AND SECONDARY SCHOOL ASSISTANCE ACT

### Interpretation

AGENCY: Office of Education, HEW.

ACTION: Notice of interpretation.

SUMMARY: This notice explains to Indian tribes and tribal organizations that operate schools for the children of their tribes under a Pub. L. 93-638 contract how to apply for fiscal year 1979 assistance as a local educational agency (LEA) under Part A of the Indian Education Act.

DATE: This notice is expected to take effect 45 days after it is transmitted to Congress. This notice will be transmitted to Congress several days before it is published in the FEDERAL REGISTER. The effective date is changed by statute if Congress disapproves the provisions of the notice or takes certain adjournments. If you want to know the effective date of this notice, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT:

Mr. Hakim Khan, Office of Indian Education, Division of Local Educational Agency Assistance, U.S. Office of Education, 400 Maryland Avenue, SW., Room 2167, Washington, D.C. 20202. Telephone: (202) 245-9159.

SUPPLEMENTARY INFORMATION: This notice explains to Indian tribes and organizations that operate schools under a Pub. L. 93-638 contract, and that wish to apply under Part A of the Indian Education Act for fiscal year 1979 assistance for those schools, which provisions of the Part A regulations apply to them.

For the reasons set forth below, the Commissioner has determined that applicants eligible for assistance under Part A of the Indian Education Act by reason of section 1146 of the Education Amendments of 1978 are not required to comply with the Part A regulations at 45 CFR 186.13-186.17 and the parenthetical reference to consultation with the parent committee and the Indian community in 45 CFR 186.18, relating to the content of applications and, in particular, prescribing procedures for the development, operation, and evaluation of projects. In addition, the Commissioner has determined that the regulations in 45 CFR 186.23 and 186.24 limiting the making of payments to grantees do not apply to these applicants. The Commissioner will approve applications that comply with the remaining provisions of 45 CFR 186.1-186.30.

Section 1146 of the Education Amendments of 1978 (Pub. L. 95-561, enacted November 1, 1978) took effect on October 1, 1978. That section provides that certain Indian tribes and tribal organizations are considered to be local educational agencies (LEAs) for purposes of section 303(a) of the Indian Elementary and Secondary School Assistance Act. That statute is also known as Part A of the Indian Education Act, and as Title III of Pub. L. 81-874. In the rest of this notice it is referred to as "the Act".

Under section 1146 of the new law, an Indian tribe or an organization which is controlled or sanctioned by an Indian tribal government is considered an LEA under section 303(a) of the Act if it operates a school for the children of that tribe and that school meets either of two requirements. First, the school qualifies if it provides an educational program that meets the standards to be established by the Bureau of Indian Affairs (BIA) under section 1121 of Pub. L. 95-561. Since those standards will not be established before the February 15, 1979 closing date for submitting applications for fiscal year 1979 under the Act (see 43 FR 57979, December 11, 1978), a school will not be able to qualify on the basis of those standards for a fiscal year 1979 grant. Second, a school qualifies if it is operated by the tribe or tribal organization under a contract with the BIA in accordance with Pub. L. 93-638, the Indian Self-Determination and Education Assistance Act.

In order to receive funds as an LEA under the Act, those tribes and organizations which operate qualifying schools need to know which provisions of the Part A regulations apply to them. Neither section 1146 of Pub. L. 95-561 nor its legislative history provides clear guidance on this matter.

Section 1146 provides, in its entirety, as follows:

> Notwithstanding any other provision of law, any Indian tribe or organization which is controlled or sanctioned by an Indian tribal government and which operates any school for the children of that tribe shall be deemed to be a local educational agency for purposes of section 303(a) of the Indian Elementary and Secondary School Assistance Act if each such school, as determined by the Commissioner, operated by that tribe or organization provides its students an educational program which meets the standards established under section 1121 for the basic education of Indian children, or is a school operated under contract by that tribe or organization in accordance with the provisions of the Indian Self-Determination and Education Assistance Act.

This section was passed, in virtually identical form, by the House of Representatives as section 1145 of H.R. 15. The accompanying report of the Committee on Education and Labor states that:

> This amendment provides that Indian-controlled schools under contract with the Bureau of Indian (*sic*) alternative schools are granted status as a local educational agency for the purpose of receiving Part A entitlement payments under section 303(a) of the Act. These schools shall remain eligible to compete for program monies under the 10 percent set-aside currently in the Act. Due to the increased number of alternative and contract schools in the past five years and problems which some schools have had in the awarding of competitive grants from their tribes, it was determined that the needs of the alternative and contract schools would best be served by including them as eligible participants under both programs for Part A. (H.R. Rep. No. 1137, 95th Cong., 2d Sess. 126 (1978))

The Senate adopted a version identical to that passed by the House, as part of a floor amendment sponsored by Senators Abourezk and Bartlett, both of whom are members of the Senate Select Committee on Indian Affairs. A section-by-section analysis submitted by Senators Abourezk and Bartlett states that:

> Section 536 [enacted as 1146] qualifies contract and alternative schools for the entitlement program funded under the Indian Education Act as well as the 10 percent set aside competitive program. (124 Cong. Rec. S13885, (daily ed. August 21, 1978))

Because section 1146 of Pub. L. 95-561 refers only to section 303(a), and because the legislative history of that section does not compel a contrary result, it is the Commissioner's view that the Congress did not intend to apply to applicants operating Pub. L. 93-638 contract schools all the provisions that apply to LEAs seeking assistance under the Act. In addition, the substantial differences between those applicants and LEAs suggest that some statutory provisions relating to LEAs would be inappropriate if applied to those applicants.

Therefore, with respect to the content of applications, the Commissioner has determined that the Congress meant to apply to applicants operating Pub. L. 93-638 contract schools those provisions of the Act that apply to applications generally, but not provisions that are limited by their terms to applications from LEAs.

Accordingly, the provisions of section 305(b) of the Act, relating in large part to the involvement of parents, teachers, and students in the development, operation and evaluation of projects, do not apply to applicants operating Pub. L. 93-638 contract schools. The Commissioner strongly encourages these applicants to involve parents, teachers, students, and other members of the affected communities in the operation and evaluation of Part A projects. However, these applicants need not comply with the provisions of section 305(b) or the regulations that implement those provisions (45 CFR 186.13-186.17 and the parenthetical language on consultation in section 186.18).

In addition, the Commissioner has determined that the provisions of section 306(b) of the Act do not apply to applicants operating Pub. L. 93-638 contract schools. Those provisions set out certain restrictions on payments to

grantees that are designed to deal with the financial relationship of an LEA to the State in which it is located. Because Pub. L. 93-638 contract schools have a very different relationship to States, the provisions of section 306(b) are not appropriate to those schools. Accordingly, the Commissioner will not apply 45 CFR 186.23 and 186.24, which implement section 306(b), to grantees that operate those schools.

(20 U.S.C. 241aa-241ff; section 1146 of Pub. L. 95-561)

Dated: March 20, 1979.

(Catalog of Federal Domestic Assistance Number 13.534, Indian Education—Part A)

ERNEST L. BOYER,
*U.S. Commissioner of Education.*

[FR Doc. 79-9273 Filed 3-27-79; 8:45 am]

[6730-01-M]

## Title 46—Shipping

## CHAPTER IV—FEDERAL MARITIME COMMISSION

[General Orders 13 and 38; Docket No. 78-30]

## PART 531—FILING OF FREIGHT AND PASSENGER RATES, FARES, AND CHARGES IN THE DOMESTIC OFFSHORE TRADE, PUBLICATION AND POSTING

## PART 536—FILING OF TARIFFS BY COMMON CARRIERS BY WATER IN THE FOREIGN COMMERCE OF THE UNITED STATES AND BY CONFERENCES OF SUCH CARRIERS

### Time Limit for Filing of Overcharge Claims; Stay of Final Rule

AGENCY: Federal Maritime Commission.

ACTION: Stay of final rule.

SUMMARY: The Commission's final rules in this proceeding were published February 6, 1979 (44 FR 7144). The effective date was subsequently deferred to April 1, 1979 (44 FR 11547). The Commission has now determined to stay the effective date of these rules pending further order of the Commission. The stay is designed to allow the Commission time to complete its consideration of various petitions for reconsideration.

DATES: Effective date stayed pending further order of the Commission.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: None.

By the Commission.

FRANCIS C. HURNEY,
*Secretary.*

[FR Doc. 79-9376 Filed 3-27-79; 8:45 am]

[6712-01-M]

## Title 47—Telecommunication

## CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 79-174]

## PART 0—COMMISSION ORGANIZATION

### Delegations of Authority to the Chief, Common Carrier Bureau and to the Telecommunications Committee

AGENCY: Federal Communications Commission.

ACTION: Final order.

SUMMARY: FCC rules amended to make explicit the existing practice of referring routine facilities applications involving expenditures in excess of $10 million to the Telecommunications Committee. Authority to approve consolidations, acquisitions and control involving $10 million or less and authority to designate for hearing facility applications which do not involve novel questions of fact, law or policy delegated to Chief, Common Carrier Bureau. Authority to issue notices of inquiry, notices of proposed rulemaking and reports or orders in rulemaking and inquiry proceedings expressly reserved to the Commission.

EFFECTIVE DATE: April 2, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Larry A. Blosser, Common Carrier Bureau (202) 632-4890.

SUPPLEMENTARY INFORMATION:

Adopted: March 20, 1979.

Released: March 22, 1979.

*Order.* In the matter of amendment of part 0 of the Commission's rules with respect to delegations of authority to the Chief, Common Carrier Bureau and to the Telecommunications Committee.

1. The Commission has reviewed the delegations of authority to the Chief, Common Carrier Bureau, and to the Telecommunications Committee, and has concluded that the public interest would be served by revision of §§ 0.215 and 0.291 of the rules to more clearly reflect the existing practice with respect to applications for common carrier facility authorizations, by elimination of the recitation of specific delegations contained in other sections (0.292, 0.302, 0.303, 0.308), and by addition to § 0.291 of an express exception relating to investigatory and rulemaking proceedings. Matters which do not involve novel questions of fact, law or policy and precedent will be disposed of at staff level. It further appears desirable to revise existing § 0.291 to permit the Chief, Common Carrier Bureau to act upon applications filed under section 221(a) of the Communications Act of 1934, as amended, where the proposed expenditure does not exceed $10 million, and to designate for hearing those applications for radio facilities filed pursuant to Parts 21, 23 and 25 of the rules in those instances where novel questions of fact, law or policy are not presented.

2. Authority for the adoption of this Order is contained in Section 5(d) of the Communications Act of 1934, as amended. Since it relates to internal Commission management, practices, and procedure, and since the early implementation of these changes will expedite the transaction of public business, compliance with the notice and effective date provisions of the Administrative Procedure Act, 5 U.S.C. 553, is not required.

3. *Accordingly, it is ordered,* That §§ 0.292, 0.302, 0.303 and 0.308 of the Commission's rules are deleted, effective April 2, 1979.

4. *It is further ordered,* That §§ 0.304, 0.307, and 0.309 of the Commission's rules are renumbered §§ 0.301, 0.302 and 0.303, respectively, effective April 2, 1979.

5. *It is further ordered,* That §§ 0.215 and 0.291 of the Commission's rules are amended in the manner set forth in the Appendix, effective April 2, 1979.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303.))

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
*Secretary.*

APPENDIX

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 0.215 is revised to read as follows:

**§ 0.215 Telecommunications Committee.**

A Telecommunications Committee, composed of three Commissioners, designated as such by the Commission, or a majority thereof, will act, except as otherwise ordered by the Commission, upon all applications or requests (except requests for special temporary authorization covered by § 0.291) sub-

mitted under Sections 214 or 319 of the Communications Act of 1934, as amended, by communications common carriers, where the estimated cost of construction (or value of radio facilities where an assignment or transfer of facilities is involved) is in excess of $10 million.

2. Section 0.291 is revised to read as follows:

**§ 0.291 Authority delegated.**

The Chief, Common Carrier Bureau, is hereby delegated authority to perform all functions of the Bureau, described in § 0.91, subject to the following exceptions and limitations.

(a) *Authority concerning applications.* (1) The Chief, Common Carrier Bureau shall not have authority to act on any formal or informal radio applications or Section 214 applications for common carrier services (including all marine and aeronautical applications) which are in hearing status or where the estimated cost of construction (or value of radio facilities where an assignment or transfer of facilities is involved) is in excess of $10 million or the annual rental is in excess of $2 million. (The only exception to these monetary limitations will be special temporary authorizations in the event of extraordinary circumstances requiring the immediate restoration or institution of public service.) (2) The Chief, Common Carrier Bureau shall not have authority to act on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.

(b) *Authority concerning sections 219 and 220 of the Act.* The Chief, Common Carrier Bureau shall not have authority to promulgate regulations or orders pursuant to section 219 or section 220 of the Communications Act of 1934, as amended, except that the Chief, Common Carrier Bureau shall have authority to approve depreciation charges to operating expenses on an interim basis subject to commission prescription prior to the end of January of the year following that in which interim approval is given.

(c) *Authority concerning section 221(a) of the Act.* (1) The Chief, Common Carrier Bureau shall not have authority to determine whether hearings shall be held on applications filed under section 221(a) of the Communications Act of 1934, as amended, where a request has been made by a telephone company, an association of telephone companies, a State Commission or local government authority. (2) The Chief, Common Carrier Bureau shall not have authority to act upon applications filed under Section 221(a) of the Communications Act of 1934, as amended, where the proposed expenditure for consolidation, acquisition or control is in excess of $10 million. (3) The Chief, Common Carrier Bureau shall not have authority to act upon any application, petition or request under section 221(a) of the Communications Act of 1934, as amended, which presents novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.

(d) *Authority concerning tariff regulations.* The Chief, Common Carrier Bureau shall not have authority to determine whether a tariff shall be suspended. However, the Chief, Common Carrier Bureau may issue orders requiring the issuing carrier to defer the effective date of a tariff filing made on less than 90 days public notice so as to provide for a maximum total of 90 days public notice regardless of whether petitions opposing the tariff filing have been filed.

(e) *Authority concerning non-common carrier satellite systems.* The Chief, Common Carrier Bureau shall not have authority to determine whether a construction permit shall be granted for a non-common carrier satellite system, or any part thereof, where the construction costs are in excess of $10 million.

(f) *Authority to designate for hearing.* The Chief, Common Carrier Bureau shall not have authority to designate for hearing any formal complaints or any applications except: (1) applications for radio facilities filed pursuant to Parts 21, 23 and 25 of this chapter which are mutually exclusive and (2) applications for facilities where the issues presented relate solely to whether the applicant has complied with outstanding precedents and guidelines.

(g) *Authority concerning forfeitures.* The Chief, Common Carrier Bureau shall not have authority to impose, reduce or cancel forfeitures pursuant to section 203 or section 510 of the Communications Act of 1934, as amended, in amounts of $10,000 or more.

(h) *Authority concerning applications for review.* The Chief, Common Carrier Bureau shall not have authority to act upon any applications for review of actions taken by the Chief, Common Carrier Bureau, pursuant to any delegated authority.

(i) *Authority concerning rulemaking and investigatory proceedings.* The Chief, Common Carrier Bureau shall not have authority to issue notices of proposed rulemaking, notices of inquiry or to issue reports or orders arising from either of the foregoing.

**§ 0.292 [Deleted]**

3. Section 0.292 is deleted.

**§ 0.302 [Deleted]**

4. Section 0.302 is deleted.

**§ 0.303 [Deleted]**

5. Section 0.303 is deleted.

**§ 0.304 [Deleted and renumbered § 0.301]**

6. Section 0.304 is deleted and renumbered 0.301.

**§ 0.307 [Deleted and renumbered § 0.302]**

7. Section 0.307 is deleted and renumbered 0.302.

**§ 0.308 [Deleted]**

8. Section 0.308 is deleted.

**§ 0.309 [Deleted and renumbered § 0.303]**

9. Section 0.309 is deleted and renumbered 0.303.

[FR Doc. 79-9337 Filed 3-27-79; 8:45 am]

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**[6712-01-M]**

[Docket No. 21089; RM-2760, FCC 79-162]

## PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

### Implementing an Inter-Governmental Maritime Consultative Organization's resolution Pertaining to the Safety of Life at Sea Convention, and; Petition for continued use of A3 emission in the Maritime Service

AGENCY: Federal Communications Commission.

ACTION: Final order.

SUMMARY: Amendment of the rules to provide for the carriage of radiotelephone installations on compulsorily fitted radiotelegraph vessels as recommended by Intergovernmental Maritime Consultative Organization. Rules additionally are amended to permit continued carriage of double sideband equipment on voluntarily fitted vessels as an adjunct to the Marine VHF distress system.

EFFECTIVE DATE: January 1, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Robert C. McIntyre, Private Radio Bureau, (202 632-7197).

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Part 83 to implement an Inter-Governmental Maritime Consultative Organization's resolution pertaining to the Safety of Life at Sea Convention, and; petition for continued use of A3 emission in the Maritime Service; Report and order (proceeding terminated).

Adopted: March 15, 1979.

Released: March 23, 1979.

By the Commission: Chairman Ferris abstaining from voting.

1. On February 4, 1977, we released a Notice of Proposed Rule Making (NPRM) in this Docket [1] proposing to amend Part 83 of the rules to implement an Inter-Governmental Maritime Consultative Organization's (IMCO) [2] Resolution pertaining to the Safety of Life at Sea Convention. The Notice also responded to a Petition for Rule Making filed by the Queen City Yacht Club [3] in a related matter concerning the continued use of double sideband (DSB) A3 emission [4] on 2182 kHz for distress and safety purposes. At the same time two associated Orders were released: (1) allowing the use of A3 emissions on an interim basis [5] and (2) denying the Queen City petition in part.[6]

THE PROPOSAL

2. A detailed description and text of the IMCO Resolution A.335 were appended to the Notice. The Resolution recommends that member states of the organization "put into effect as soon as possible the provisions of these recommendations." IMCO intended to strengthen the effectiveness of certain provisions of Chapter IV of the International Convention for the Safety of Life at Sea (Safety Convention) by adopting the following recommendations detailed in the resolution:

(i) Increases the number of radiotelephone operators required on ships between 500 and 1600 gross tons equipped with radiotelephony only (Regulation 7(a));

(ii) Provides data to describe the minimum normal range of main and reserve transmitter used with self supporting antenna (Regulation 9(g));

(iii) Includes in the radiotelegraph installation facilities for radiotelephony transmission and reception on the radiotelephony distress frequency 2182 kHz (Regulation 9);

(iv) Extends the provisions concerning the minimum range of radiotelephone transmitters to new vessels of 300-500 gross tons and to all vessels 500-1600 gross tons (Regulation 15(c)).

The Commission stated in the Notice that it thought implementation of these recommendations, not mandatorily required by treaty,[7] would improve maritime safety and serve the public interest, convenience and necessity.

3. The Commission agreed to consider that part of the Queen City Yacht Club petition which requested that use of double sideband (A3 emission) be continued "for safety calls on 2182 kHz at any time if communications cannot first be established on VHF Channel 16." In previous action we had established [8] a mandatory date of January 1, 1977, for conversion of ship stations operating in the medium frequency (MF) band to the single sideband modes of emission.[9] The Commission agreed to reconsider continuation of DSB in conjunction with implementation of the IMCO Resolution, particularly Recommendation (a) (iii) of A. 335, which provides for inclusion in radiotelegraph installations facilities for radiotelephone communications on the international distress frequency 2182 kHz.

COMMENTS

4. The time for filing comments and reply comments has passed. We have received twenty comments [10] on the proposed rules from equipment manufacturers, maritime organizations, vessel owners and vessel operators concerned with recreational, as well as commercial craft.

5. Comments received were supportive of the Commission's proposals with regard to a(i), a(ii) and a(iv) of IMCO Resolution A.335 which pertain, respectively, to carriage of radiotelephone operators on ships between 500 and 1600 gross rated tons, minimum normal range of the main and reserve radiotelegraph installations, and the extension of the provisions concerning the minimum normal range of radiotelephone transmitters. No objections were raised to reducing the peak envelope power limit of stations operated by holders of a third class radiotelephone permit, from 1500 to 1000 watts. With regard to a(iii) of the IMCO Resolution, the majority of respondents supported implementation of this proposal; comments received of a technical nature, however, have resulted in modifications to the proposed rules concerning certain aspects of radiotelephone installations.

6. Comments concerning the portion of our proposal related to the Queen City petition, which requests continued use of DSB for distress and safety purposes, were more contentious. Several commenters opposed any extension of the use of double sideband on 2182 kHz and recommended, further, that the Commission should provide for the implementation of a safety system on the MF international distress, safety and calling frequency (2182 kHz) which would use only A3J emissions. The use of single sideband emissions in a national safety system is the subject of a separate Commis-

[1] Docket 21089; Notice of Proposed Rule Making, adopted January 26, 1977, (42 FR 8674, February 9, 1977).

[2] The Inter-Governmental Maritime Consultative Organization (IMCO) is a specialized agency of the United Nations concerned solely with maritime affairs. The organization's main objective is to facilitate cooperation among governments on technical matters affecting the safety of life at sea. IMCO through its Assembly approves all recommendations prepared by the organization. The Assembly during its ninth session on November 12, 1975, adopted Resolution A.335, "Recommendations Related to Chapter IV of the International Convention for the Safety of Life at Sea (Safety Convention) which is concerned with radiotelegraphy and radiotelephony requirements for compulsorily equipped vessels.

[3] RM-2760, Queen City Yacht Club, Petition for Rule Making, filed September 20, 1976.

[4] Double sideband (A3) signals are comprised of a full carrier and two sidebands (upper and lower). One-half of the power is in the carrier and one-half of the power is divided between the two sidebands when fully modulated. This type of emission is employed on the international distress safety and calling frequency rather than more efficient single sideband emissions because of the number of double sideband emergency equipments in use and the simplicity of the DSB system compared to single sideband.

[5] Order, adopted January 26, 1977, FCC 77-68, 42 FR 8694.

[6] Order, adopted January 26, 1977, FCC 77-67.

[7] Resolutions are not part of the Safety Convention to which the United States is signatory. IMCO, in the interest of safety, however, has requested all administrations to implement recommendations contained in its resolutions. It is noted that none of the recommendations contained in the subject resolution are contrary to the requirements set forth in SOLAS (1960) or the 1974 Safety Convention which has been ratified by the Senate.

[8] Docket 18307, First Report and Order, Adopted June 10, 1970, FCC 70-608, 35 FR 10212.

[9] Single sideband emissions include:

*Full carrier (A3H).* The carrier is radiated at one half to one quarter of the (peak envelope) power in the sideband. This mode provides compatibility with DSB systems.

*Reduced carrier (A3A).* The carrier is radiated at one fortieth (1/40) of the (peak envelope) power in the sideband. This mode is more efficient in the use of power than the A3H mode. The A3A mode is used where the carrier provides receiver frequency control and line amplifier gain control functions.

*Suppressed carrier (A3J).* The carrier is radiated at one ten thousandth (1/10,000) of the (peak envelope) power in the sideband. This is the most efficient SSB mode in the utilization of power.

[10] The following comments were received in response to the Notice of Proposed Rule Making in Docket No. 21089: Offshore Marine Electronics Association (OMEA), E. Miller, Queen City Yacht Club (Queen City), The Interclub Association of Washington (Interclub), Southern California Boating Safety Association (SCBSA), R. L. Nelson, C. D. Cummins, Konel Corporation (Konel), Roche Harbor Yacht Club (Roche Harbor), ITT Mackay Marine (ITT), Northern California Marine Radio Council (NCMRC), Communications Associates, Inc. (CAI), Central Committee on Telecommunications of the American Petroleum Institute (API), Southern California Marine Radio Council (SCMRC), American Institute of Merchant Shipping (AIMS), National Marine Electronics Association (NMEA), Swinomish Yacht Club (SYC), V. Johnson, N. Collins, American Telephone and Telegraph Company (ATT). Reply Comments were received from Northern Pacific Marine Radio Council (NPMRC) and Northern California Marine Radio Council (NCMRC).

sion action [11] and is not being considered within the scope of this proceeding. This report will focus on the merits of extending the use of A3 emissions for distress and safety purposes only, as requested in the Queen City petition, taking into account the pertinent aspects of the proceeding in Docket 78-208.

### Use of DSB by Compulsorily Fitted Vessels

7. The proposed rules provide for the continued use of A3 emission on the frequency 2182 kHz for compulsorily fitted radiotelegraph vessels to satisfy the requirements of a(iii) of IMCO Resolution A.335. Of the comments received only Konel, SCMRC and CAI oppose the extension of the cut off date for the use of class A3 emissions in the MF band for all vessels. NCMRC objected to the extension of time permitting use of this emission on voluntarily equipped vessels and those compulsorily fitted vessels subject to Part III of Title III of the Communications Act.

8. The present maritime distress system is operationally prescribed by the Inter-Governmental Maritime Consultative Organization's Safety of Life at Sea Convention of 1960 and explicitly defined in the technical standards set out in the international Radio Regulations. The United States is signatory to these IMCO and ITU treaties, which have been ratified by Congress and are therefore legally binding on US citizenry. The Safety Convention requires that ships equipped with radiotelephone stations comply with the following regulations of Chapter IV:

15(b) The transmitter shall be capable of transmitting on the radiotelephone distress frequency and on at least one other frequency in the bands between 1,605 kc/s and 2,850 kc/s, *using the class of emission assigned by the Radio Regulations for these frequencies* (emphasis provided). In normal operation the transmitter shall have a depth of modulation of at least 70 per cent at peak intensity.

15(f) The receiver required by paragraph (a) of this Regulation shall be capable of receiving the radiotelephone distress frequency and at least one other frequency available for maritime radiotelephone stations in the bands between 1,605 kc/s and 2,850 kc/s, *using the class of emission assigned by the Radio Regulations for these frequencies* (emphasis provided). In addition the receiver shall permit the reception of such other frequencies, using the class of emission assigned by the Radio Regulations, as are used for the transmission by radiotelephony of meterological messages and such other communications relating to the safety of navigation as may be considered necessary by the Administration. The receiver shall have sufficient sensitivity to produce signals by means of a loudspeaker when the receiver input is as low as 50 microvolts.

9. The international Radio Regulations, article 28, Subsection 19(a), 1976, require that all ship stations equipped with radiotelephone apparatus in the 1605-2800 kHz band be able to transmit class A3 or A3H emissions on 2182 kH3 and be able to receive class A3 and A3H emissions on this same frequency. Therefore, the Commission's proposal concerning radiotelegraph vessels subject to the Safety Convention is fully consistent with international regulations. Konel, SCMRC and CAI in their comments fail to weigh sufficiently the fact that compulsorily fitted vessels voyaging worldwide participate in a distress, safety and calling system which must be internationally compatible if it is to be viable. For this reason, and those previously stated in the Notice, radiotelephone installations, which may include existing A3 installations, are required effective January 1, 1980, on compulsorily fitted radiotelegraph vessels subject to the Safety Convention.

10. NCMRC recommends that no extension of time be granted to vessels compulsorily fitted under Part III of Title III of the Act. In this matter we believe our proposed rules have not been clearly understood. Our proposal in this matter modified the rules to incorporate previous Commission actions [12] implementing SSB and increasing the output power of the transmitter consistent with paragraph a(iv) of the IMCO Resolution. The instant rulemaking does not propose to permit DSB to be used in lieu of SSB emissions. However, an existing licensee may retain installed DSB equipment as an adjunct to his compulsorily fitted radiotelephone equipment. The attached rules include the emission designators (A3H and A3J) adopted in the Commission action providing for SSB [13] on 2182 kHz and the power limits proposed in the instant proceeding.

### Use of DSB by Voluntarily Fitted Vessels

11. The Queen City petition requested that existing licensees of DSB equipment be permitted to continue its use for distress and safety purposes only in the event that communications cannot be established using the VHF maritime mobile system. The Commission agreed that the Queen City petition had merit in this regard, and in paragraphs 11 and 12 of the Notice gave its rational for extending the use of DSB emissions on 2182 kHz. Stated briefly these reasons were (1) the international Radio Regulations provide for indefinite use of A3 emissions on 2182 kHz; (2) foreign flag vessels and coast stations are equipped to receive A3 emissions on 2182 kHz; (3) most of the maritime emergency equipment in use employs A3 emissions. The majority of comments received were supportive of the Commission's proposal; however, Konel, SCMRC, CAI, NCMRC and NMEA were opposed.

12. Konel and SCMRC object to the proposal on the basis that harmful effects will accrue to the maritime mobile SSB implementation program which the Commission initiated in 1967.[14] Konel states that the instant proposal would blunt "the imperative to convert to SSB." However, since this Notice was adopted, the Commission has released rules [15] providing for a national SSB system using A3J emissions, as Konel advocated in its comments. For this reason, we must conclude that this matter is now moot.

13. NCMRC states that the most serious shortcoming of the Commission's proposal is in the area of small vessel DSB equipment reliability, and that "In general, the only assurance that the operator of a smaller vessel normally has that the radio equipment is functioning properly is by its performance in day-to-day operation under relatively familiar conditions." The Commission recognizes the merits in this statement with regard to the older DSB equipment. Our proposal did not address testing, and this may have in part precipitated NCMRC's comments on DSB equipment reliability. Several inquiries from the general public, including comments from Konel, ITT, NMEA and CAI, were received concerning the legality of testing the equipment. Our present rules, while discouraging two way communications during tests, permit ship stations to test equipment on 2182 kHz with other ship stations and coast stations, except those operated by the U.S. Coast Guard, for the purpose of obtaining signal reports. In addition to the test capability currently provided in our rules, we are modifying our proposal to permit the brief testing of this equipment on 2182 kHz with ship or coast stations to assure compatibility with the SSB (A3J) system. This added test capability should permit the small vessel operator to determine more readily that his or her equipment is functioning properly. We be-

[11] Docket 78-208; Notice of Proposed Rule Making; adopted July 12, 1978, FCC 78-487, Docket 78-208; Report and Order, adopted March 15, 1979, FCC 79-162.

[12] Docket 18307, *op. cit.*

[13] Docket 78-208, *op. cit.*

[14] Docket No. 17295, Report and Order, released July 25, 1968, FCC 68-740, 33 FR 10849.

Docket No. 18307, First Report and Order, released June 16, 1970, FCC 70-608, 35 FR 10212.

Docket No. 18632, Report and Order, released October 26, 1971, FCC 71-1044, 36 FR 20949.

Docket No. 18633, First Report and Order, released June 28, 1971; FCC 71-663, 36 FR 12502.

[15] Docket 78-208, *Op. cit.*

lieve that such over-the-air testing can be used as a substitute for the normal day-to-day operation considered so necessary by NCRMC.

14. SCMRC in its comments points out that because of the Commission's previous action [16] to require all ship stations to convert to SSB on January 1, 1977, maintenance of older DSB equipment may be difficult to obtain and parts may not be available to make repairs. We are not overly concerned with the problem of maintenance, because any such difficulty encountered by the user will serve to encourage the fitting of SSB equipment which, as stated in paragraph 14 of the Notice, is consistent with the Commission's long term goals for the maritime mobile service.

15. CAI has recommended that, in the event the Commission sees fit to grant an extension of time for the use of A3 emissions, multichannel equipment be modified to provide for transmission only on 2182 kHz. While we understand the intent of CAI's comment, our proposal only permits operation on 2182 kHz and communications on other frequencies would be in violation of the Commission's rules. In the maritime mobile service we have generally relied on the operator to comply with our rules. Further, we are not certain of the technical problems which would be encountered in modifying equipment to eliminate all frequencies except 2182 kHz if such a regulation were adopted. Should abuses of the nature envisioned by CAI occur, the Commission will take appropriate action at that time to assure compliance with our rules.

16. NMEA states that our proposal to extend the use of DSB will damage the Commission's and its own credibility with the public, since NMEA devoted considerable effort to educating the public with regard to the Commission's SSB program and the 1 January 1977, cut off date for DSB. In this regard, we sincerely appreciate NMEA's concern and efforts to educate the maritime community with regard to the Commission's proceedings. However, our reasons for modifying the SSB program to permit the continued carriage of existing DSB equipment for distress and safety purposes are clearly enunciated in the Notice and supported by a majority of respondents. It is our opinion that the safety benefits to be derived by the modification of our program far outweigh the concerns expressed by NMEA. Consequently, we consider it in the public interest to permit the continued use of DSB for the purpose proposed.

17. Queen City, Interclub, SCBSA, SYC, Mr. Nelson, Roche Harbor, Mr. C. D. Cummins and Mr. E. Miller in their comments requested the Commission to provide for the use of another medium frequency channel in addition to 2182 kHz for safety communications. NPMRC and NCMRC filed reply comments objecting to the use of A3 on other frequencies in the MF band. We expect that vessels which repeatly sail in areas that require use of MF propagation characteristics to assure good communications are presently fitted with SSB equipment. The majority of vessels equipped to operate in the medium frequency have SSB capability and we are reluctant to provide for use of DSB at the expense of SSB. No valid data indicating a need for additional channels has been submitted; we agree with the reply comments filed and are not convinced that an additional MF channel should be made available to users of DSB emissions.

THE RADIOTELEPHONE INSTALLATION

18. Several commenters including ITT, API and AIMS addressed the specific rules we proposed concerning the radiotelephone installation required on compulsorily fitted vessels and we will address these matters in the following paragraphs.

19. The proposed rule, § 83.445(e), concerning the requirement for connection of the double sideband radiotelephone installation to a vessel reserve power supply was commented on by ITT, API and AIMS. ITT indicates that to operate existing radiotelephone installations from the radiotelegraph reserve power supply would require the addition of many ampere-hours capacity to the radiocommunications reserve supply. API and AIMS stated that the proposed rules are ambiguous since they do not define whether the supply referred to is the ship's reserve power supply or its radiocommunications reserve supply. The Commission's proposed rules refer to the radiocommunications reserve supply defined in § 83.444 of our rules. We did not anticipate costly expansion of the ampere-hour capacity of the existing reserve supply which ITT has indicated would be necessary. It is our intent to permit existing DSB equipment to be utilized with minimum modification to the installation. In light of the ITT comment, we are of the opinion that this end can be best achieved by deleting § 83.445(e) of the proposed rules.

20. The Commission proposed (§ 83.445(b)) that the receiver used be capable of reception of A3H or A3 class of emission. ITT points out that the ITU frequency tolerance for class A3 emission on 2182 kHz is ± 655 Hz for survival craft stations and ± 436 Hz for ship stations. Further, ITT notes that A3 signals become unintelligible using an SSB receiver when the carrier frequency is removed by more than 350 Hz. For this reason, and the specific requirements of IMCO and ITU previously discussed in paragraph 8 of this Report the Commission is modifying the proposed rules to specify that the receiver shall be capable of A3 and A3H for compulsorily fitted vessels subject to the SOLAS Convention.

21. ITT requests that the Commission clarify § 83.445(a) (1) and (3), which concern, respectively, the duty cycle of the transmitter and the requirement for a visual indication that the transmitter is operating. Section 83.445(a)(1) as proposed is intended to ensure that the transmitting device, which is generally used for voice communications, has sufficient power handling capability to permit the sending of a continuous tone for a period of up to one minute. It does not relate to the on-off period of the radiotelephone two tone alarm signal, which is discussed in Subpart J of Part 83 of the Commission's rules. Our rules (§ 83.235)(c)) establish the asbolute priority of the distress call over all messages and require other stations capable of causing interference with distress traffic to cease transmissions. Since the vessel in distress has priority on the use of the channel, we see no reason to limit the period between distress calls and are of the opinion that § 83.445(a)(1) should not be changed. The visual indication required to show that the transmitter is supplying power to the antenna must be activated by a portion of the transmitter output power. A light operating from the transmitter push-to-talk switch, as suggested by ITT, is not adequate. This requirement is the same as the present Commission's rules governing radiotelephone transmitters subject to Part II of Title III of the Communications Act and the Safety Convention.

22. API and AIMS submitted comments concerning the omnidirectional property of the antenna required for the radiotelephone installation. The proposed rules require that the antenna "be nondirectional." The respondents correctly point out that a truly nondirectional antenna cannot be realized in practice and recommend that the wording be modified to indicate that the antenna be as nondirectional "as practicable." The Commission agrees with the wording recommended by AIMS for the reasons stated above and § 83.445(c) is modified accordingly.

23. API and AIMS further note that our proposed modification to § 83.106(a), requiring A3H, A3A, and A3J on 2182 kHz and two other frequencies in the band 1605—3500 kHz, creates problems for vessels fitted with preprogrammed equipment. Programmable cards are used to control the receiver; a separate card is used

[16] Docket 18307, Op. Ct.

for each separate frequency and class of emmission. The equipment would require 9 cards to comply with the proposed rule. It is pointed out that, in the commenter's opinion, this requirement is excessive and unnecessary to satisfy the Commission's objective to provide an integrated radiotelegraph/radiotelephone distress communication system in accordance with IMCO's Resolution A.335. The Commission has considered this section of the rules in a recent proceeding[17] providing for SSB on the frequency 2182 kHz. We believe that § 83.106(a) as adopted in the Report and Order in Docket 78-208 satisfies the concerns expressed by API and AIMS. The transmitter is required to transmit A3J on 2182 kHz, A3A and A3J on at least two other frequencies in the 1605-3500 MHz band. Ship stations are, additionally, authorized to transmit using emission A3H for communications with foreign coast stations and with vessels of foreign registry. Section 83.106(a) is modified to reflect these changes.

24. The proposed rules (§ 83.445(d)) require that the radiotelephone installation shall be provided with a device to permit rapid changeover from transmission to reception. ITT in its comments seeks clarification of the Commission's intent with regard to these rules. The device referred to is a push-to-talk switch, and, where practicable, is intended to be located in the microphone or on the telephone handset. A voice operated relay (VOX) may also be used to satisfy this requirement but it is not mandatory that this method be used to effect rapid changes between transmitting and receiving equipment.

25. AIMS and API request that we permit the radiotelephone installation to be located in the chart room because they do not consider it is necessary that the equipment be mounted on the bridge or in the radiotelegraph operating room. The 1974 Safety Convention, Regulation 7, specifically requires that the radiotelephone watches be maintained in the place to be determined by the administration concerned. We have in the proposed rules provided latitude to permit loudspeakers to be installed in the room from which the vessel is normally steered and in the radiotelegraph room to allow the radio operator to stand the required continuous watch during the hours he is on duty. API and AIMS have not supported their comments with factual information showing why installation in a chart room would not degrade the efficiency of the required radio watch. Therefore the rules as proposed in the Notice are adopted.

26. AIMS and API provided comments concerning the Commission's requirement that the equipment be adequately protected from excessive voltages and currents to prevent damage to any component which is used in the equipment. API states that it is not possible to completely protect every component in all cases. However, API does not describe specific instances for our consideration. AIMS states that the rules should be modified to provide protection to the equipment itself rather than the components used in the equipment. The rules proposed in the Notice (83.445(h)) require that the equipment be "adequately protected," which is construed to mean that the equipment or components used therein, when subject to power variations normally experienced in ship power supplies, will not be damaged. Protection of any component in cases which fall outside of what can normally be expected is not required. Further, we see little to be gained by replacing the word "component" with "equipment" as suggested by AIMS since protection of the equipment implies protection of individual components. Therefore, we are adopting the rules as proposed.

27. The radiotelephone installation which we are proposing to make mandatory on radiotelegraph equipped ships is supplemental to the 500 kHz radiotelegraph safety system presently used on such vessels. Since this is a supplementary safety system, we proposed (§ 83.445) that a malfunction of the radiotelephone equipment should not cause the ship to be delayed in port if "repair is not practicable." AIMS states that this wording is highly subjective and suggests in its place the phrase "adequate repairs are not readily available." We consider AIMS comment to be a difference without a distinction, and the rule as proposed is adopted.

### Operational Considerations

28. AIMS in its comments draws attention to the inconsistency between § 83.484(a), 83.106(a) and 83.517(a), which define technical specifications for MF radiotelephone transmitters carried on various classes of vessels and, in particular, the channel capacity requirments. The subject rule sections pertain to vessels which have dissimilar operational needs and the authority for these regulations are derived from different national and international statutes. The changes in this rulemaking are consequential to previous Commission proceedings implementing SSB[18] and §§ 83.106, 83.484 and 83.517 have been further considered by the Commission in General Docket 78-208. The appended rules are modified to take this action into account. In other respects the rules are adopted as proposed.

29. The rules set out in the Notice did not address testing of the radiotelephone two tone alarm signal generator. ITT in its comments recommends that the Commission require periodic checks of the radiotelephone installation using an artificial antenna. The Commission agrees with this recommendation and § 83.445 is modified to require a weekly check of the radiotelephone alarm signal generator on frequencies other than the radiotelephone distress frequency using a suitable artificial antenna.

30. AIMS notes in its comments that the 1974 Safety Convention, which has yet to be signed by a sufficient number of administrations permitting it to come into force, will require a continuous radio frequency watch using a radiotelephone distress frequency watch receiver using a loudspeaker, a filtered loudspeaker or a radiotelephone auto alarm. AIMS and ITT advocate permitting the use of a receiver capable of responding to the two tone alarm signal (auto alarm) to meet the radiotelephone watch requirement. Existing Commission rules require an aural watch on the distress frequency and do not permit the use of automatic devices. There are many aspects of the proposal put forth by AIMS and ITT which require further examination, including safety considerations and technical specifications governing the design of such a receiver. These matters have not been discussed in this proceeding and further, there is mounting concern internationally regarding the effectiveness of the filtered loudspeaker feature in these receivers. For these reasons, the Commission feels it is premature to include regulations providing for use of radiotelephone watch receivers in this proceeding. We are aware, however, that use of such a receiver on vessels plying waters further than 200 miles from shore may offer advantages with regard to the safety of navigation. The broad scope of this subject is sufficient to warrant a separate rulemaking and we are considering initiating such action in this matter.

31. Regarding questions on matters covered in this document contact Robert McIntyre, telephone (202) 632-7197.

32. Accordingly, *it is ordered*, That pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, the Commission's rules are amended, as set forth in the attached Appendix, effective January 1, 1980.

33. *It is further ordered*, That this proceeding is terminated.

[17] Docket 78-208, *op. cit.*

[18] Dockets No. 17295, 18307, 18632 and 18633, *op. cit.*

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
*Secretary.*

APPENDIX

## PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 83.106(a) is amended to read as follows:

**§ 83.106 Required frequencies for radiotelephony.**

(a) Each ship radiotelephone station licensed to operate in the band 1605 to 3500 kHz shall be able to receive and transmit the emission A3J [1] on the carrier frequency 2182 kHz. Ship stations are, additionally, authorized to receive and transmit using emission A3H for communications with foreign coast stations and with vessels of foreign registry. If the station is used for other than safety communications, it shall be capable also of receiving and transmitting the emission A3A and A3J on at least two other frequencies in that band. For ship stations on vessels operating (1) exclusively on the Mississippi River and its connecting waterways, and (2) also on high frequency bands above 3500 kHz, such stations may be equipped with only one, instead of two, other frequencies within the band 1605-3500 kHz in addition to the frequency 2182 kHz. Additionally, use of A3 emissions are permitted for distress and safety purposes on 2182 kHz for portable survival craft equipment having the capability to operate on 500 and 8364 kHz and for transmitters authorized for use prior to January 1, 1972, in accordance with applicable rules of this part.

* * * * *

2. Section 83.132(a)(2)(i) is amended to read as follows:

**§ 83.132 Authorized classes of emission.**

(a) * * *

(2) Stations using radiotelephony:

(i) For frequencies below 23 MHz designated in § 83.351(a): 2182 kHz A3J [1], A3H [2], A3 [3].

[1] Capability for A3J emission 2182 kHz shall be completed on or before April 30, 1979.

[1] Ship stations are, additionally, authorized to receive and transmit using emission A3H for communication with foreign coast stations and with vessels of foreign registry.

[2] The transition from emission A3H to emission A3J shall be completed on or before April 30, 1979.

[3] A3: A3 emission permitted pursuant to § 83.139 and for portable survival craft equipment having the capability to operate on 500 and 8364 kHz.

* * * * *

3. Section 83.139(c) and (c)(3) are amended and a new (c)(4) is added to read as follows:

**§ 83.139 Acceptability of transmitters for licensing.**

* * * * *

(c) DSB transmitters, except for portable survival craft equipment, operating in the band 2000-2850 kHz will not be authorized in new ship stations. DSB transmitters authorized for use prior to January 1, 1972, may continue to be used by the same licensee for testing, distress and safety purposes on the frequency 2182 kHz subject to the following:

* * * * *

(3) Stations aboard vessels registered in the State of Alaska, or documented vessels with a home port in Alaska, which employ a DSB transmitter under a ship station license which expired during the period January 1, 1971 to January 1, 1973, may be renewed for use by the licensee on 2182 kHz for distress and safety purposes if an application for renewal of the ship station license is submitted; *And provided further,* That the license has not been:

(i) Cancelled at the request of the licensee; or

(ii) Revoked by action of the Commission.

(4) DSB transmitters, other than survival craft equipment, in use after March 1, 1979, shall be clearly and indelibly marked as follows to indicate the purpose for which it may be used: "Distress and Safety Use Only." In some cases due to different frequency tolerance requirements DSB equipment may not provide satisfactory communications with coast and ship stations equipped to operate in the SSB mode.

* * * * *

4. Section 83.155 is amended by revising paragraph (d) to read as follows:

**§ 83.155 Operator(s) required by Title III of Communications Act of 1934.**

* * * * *

(d) Each cargo ship of the United States which, in accordance with Part II of Title III of the Communications Act, is equipped with a radiotelephone station shall for distress and safety purposes carry at least one qualified operator. Where the power of the station does not exceed 250 watts carrier power for A3 emission, or 1000 watts peak envelope power for A3A, A3H and A3J emissions, such operator shall hold a radiotelephone third-class operator permit or higher class of operator authorization. Where the power of the station exceeds 250 watts carrier power for A3 emission, or 1000 watts peak envelope power for A3A, A3H and A3J emissions such operator shall, as a minimum, hold a radiotelephone second-class operator license.

All other frequencies A3, A3A, A3H or A3J as specified in § 83.351(a) and (b).

* * * * *

5. In § 83.156, paragraph (b) is amended to read as follows:

**§ 83.156 Operator(s) required by the Safety Convention.**

* * * * *

(b) Each cargo ship of the United States which, in accordance with the Safety Convention, is equipped with a radiotelephone station, shall for distress and safety purposes carry the following number and class of radiotelephone operators:

(1) On ships of 300 tons gross tonnage and upward but less than 500 tons gross tonnage, at least one operator;

(2) On ships of 500 tons gross tonnage and upward but less than 1600 tons gross tonnage one radiotelephone operator exclusively employed for duties related to radiotelephony or two radiotelephone operators when one is not exclusively employed for duties related to radiotelephony.

(3) Where the power of the station does not exceed 250 watts carrier power for A3 emission, or 1000 watts peak envelope power for A3A, A3H and A3J emissions such operator shall hold a radiotelephone third-class operator permit or higher class of operator authorization. Where the power of the station exceeds 250 watts carrier power for A3 emission or 1000 watts peak envelope power for A3A, A3H and A3J emissions such operator shall, as a minimum, hold a radiotelephone second-class operator license.

6. Section 83.202(a) is amended to read as follows:

**§ 83.202 Watch required on vessels subject to the Communications Act.**

(a) Each ship of the United States which is equipped with a radiotelegraph station for compliance with Part II of Title III of the Communications Act shall, while being navigated in the open sea outside of a harbor or port, keep a continuous and efficient watch on 500 kHz by means of radio officers. In lieu thereof, on a cargo ship equipped with a radiotelegraph auto alarm in proper operating condition, an efficient watch on 500 kHz shall be maintained by means of a radio officer for at least 8 hours per day in the aggregate, i.e., for at least one-third of each day or portion of

each day that the vessel is navigated in the open sea outside of a harbor or port. Ships equipped with a radiotelegraph station shall also maintain a continuous watch when in the open sea outside a harbor or port on the radiotelephone distress frequency 2182 kHz from the principal radio operating position or the room from which the vessel is normally steered.

* * * * *

7. Section 83.203(a) is amended to read as follows:

**§ 83.203 Watch required on vessels subject only to the Safety Convention.**

(a) Each ship of the United States which is equipped with a radiotelegraph station for compliance with the Safety Convention, but which is not fitted with a radiotelegraph auto alarm in proper operating condition, shall while at sea keep a continuous and efficient watch on 500 kHz by means of radio officers. Ships equipped with a radiotelegraph station shall also maintain a continuous watch when in the open sea outside a harbor or port on the radiotelephone distress frequency 2182 kHz from the principal operating position or the room from which the vessel is normally steered. If fitted with a radiotelegraph auto alarm in proper operating condition, the 500 kHz watch shall be kept while at sea as follows:

(1) Each cargo ship, and each passenger ship carrying or certificated to carry 250 passengers or less, or more than 250 passengers but engaged on a voyage of less than 16 hours duration between two consecutive ports, at least 8 hours watch a day;

(2) Each passenger ship carrying or certificated to carry more than 250 passengers and engaged on a voyage exceeding 16 hours duration between two consecutive ports, at least 16 hours watch a day.

* * * * *

8. Section 83.351(c)(2) is amended and a new paragraph (d) added to read as follows:

**§ 83.351 Frequencies available.**

* * * * *

(c)(2) Transmitters, except portable survival craft equipment, employing A3 emission which were authorized (see Section 83.139(c)) prior to January 1, 1972, may continue to be used by the same licensee on the frequency 2182 kHz for testing, distress and safety purposes when the ship station is equipped for use of F3 emission on frequencies in the band 156-162 MHz.

* * * * *

(d) Ship stations in international waters or waters controlled by foreign countries may communicate with ship and coast stations operating under authority granted by other administrations using A3H emissions in the band 1605-4000 kHz until January 1, 1982.

9. In § 83.365, paragraph (a)(4) is amended to read as follows:

**§ 83.365 Procedure in testing.**

(a) * * *

(4) Testing of transmitters shall, insofar as practicable, be confined to working frequencies without two way communications. However, 2182 kHz and 156.8 MHz may be used to contact other ship or coast stations when signal reports are necessary. Short tests, by vessels which continue to rely upon the use of DSB equipment for distress and safety purposes, are permitted on 2182 kHz to evaluate the compatibility of that equipment with an SSB emission A3J system. U.S. Coast Guard stations may be contacted on 2182 kHz for test purposes only when tests are being conducted during inspections by Commisson representatives or when qualified radio technicians are installing equipment or correcting deficiencies in the station radiotelephone equipment. In these cases the test shall be identified as "FCC" or "technical" and logged accordingly.

* * * * *

10. The title of Subpart R is changed as follows:

## Subpart R—Radiotelegraph Stations Provided for Compliance With Part II of Title III of the Communications Act or the Radio Provisions of the Safety Convention

11. In § 83.442 the heading and text are amended to read as follows:

**§ 83.442 Radio station.**

The station required to be provided on a radiotelegraph equipped ship by reason of the provisions of Part II of Title III of the Communications Act, or on a U.S. ship by reason of the Safety Convention, shall comply in an efficient manner with the provisions of this subpart in addition to all other applicable requirements of this part. The station comprises a main and a reserve radiotelegraph installation, electrically separate and electrically independent of each other (except as otherwise provided in paragraph (b) of § 83.443), a radiotelephone installation [4] and such other equipment as may be necessary for the proper use and operation of these installations.

[4] Effective January 1, 1980, radiotelephone installations are required.

12. In § 83.443 the heading and paragraphs (a) and (b) are amended, and a new paragraph (c) is added to read as follows:

**§ 83.443 Radio installations.**

(a) The main radiotelegraph installation includes a main transmitter, a main receiver, a main power supply, and a main antenna system.

(b) The reserve radiotelegraph installation includes a reserve transmitter, a reserve receiver, a reserve power supply, emergency electric lights, and reserve antenna system: *Provided, however,* That:

* * * * *

(c) The radiotelephone installation includes a radiotelephone transmitter, a radiotelephone receiver and an appropriate antenna system.

13. A new § 83.445 is added to read as follows:

**§ 83.445 Requirements of radiotelephone installation.**

All radiotelephone installations in radiotelegraph equipped vessels shall comply with the following conditions in addition to all other requirements.

(a) The radiotelephone transmitter shall be capable of effective transmission of A3 or A3H emission on 2182 kHz and shall be capable of transmitting clearly perceptible signals from ship to ship during daytime, under normal conditions and circumstances over a minimum normal range of 150 nautical miles when used with an antenna system in accordance with paragraph (c) of this section. The transmitter shall:

(1) Have a duty cycle which allows for effective transmission of the international radiotelephone alarm signal.

(2) Be capable of delivering not less than 25 watts carrier power for A3 emission or 60 watts peak power for A3H emission into an artificial antenna consisting of 10 ohms resistance and 200 picofarads capacitance of 50 ohms nominal impedance to demonstrate compliance with the 150 nautical mile range requirement.

(3) Be equipped with a device which will provide visual indication whenever the transmitter is supplying power to the antenna.

(4) Be equipped with a device capable of generating the international two-tone alarm pursuant to § 83.142 and type approved by the Commission for such use.

(b) The radiotelephone receiver shall be capable of efficiently receiving A3 and A3H when connected to the antenna system specified in paragraph (c) of this section and shall be preset and capable of accurate and convenient selection of 2182 kHz. The receiver shall additionally:

(1) Have sufficient sensitivity to provide an audio output of 50 milliwatts to a loudspeaker when the input is as low as 50 microvolts. The 50 microvolt input signal shall be modulated 30 percent at 400 Hertz and provide at least a 6 dB signal-to-noise ration when measured in the rated audio bandwidth.

(2) Be equipped with one or more loudspeakers capable of being effectively used to maintain a watch on 2182 kHz at the principal operating position or in the room from which the vessel is normally steered.

(c) The antenna system shall be as nondirectional and efficient as is practicable for the transmission and reception of radio ground waves over seawater. The installation and construction of the required antenna shall be such as to ensure, insofar as is practicable, proper operation in time of emergency. If the required antenna is suspended between masts or other supports subject to whipping, an approved device (safety link) shall be installed which under heavy stress will operate to greatly reduce such stress without breakage of the antenna, the halyards, or any other supporting elements.

(d) The radiotelephone installation shall be provided with a device for permitting changeover from transmission to reception and vice versa without manual switching.

(e) An artificial antenna shall be provided to permit weekly checks, without causing interference, of the automatic device for generating the radiotelephone alarm signal on frequencies other than the radiotelephone distress frequency.

(f) The radiotelephone installation shall be located in the radiotelegraph operating room or in the room from which the ship is normally steered.

(g) Demonstration of the equipment comprising the radiotelephone installation may be required to show compliance with applicable regulations whenever in the judgment of the Commission this is deemed necessary.

(h) Equipment used in the radiotelephone installation shall be adequately protected by means of suitable devices from excessive currents and voltages which cause damage to any component thereof.

(i) The radiotelephone installation should be maintained in an efficient condition however, malfunction of this equipment shall not be considered as making the vessel unseaworthy or as a reason for delaying the ship in ports where repair is not practicable.

14. In § 83.484, paragraph (d)(2) is amended to read as follows:

**§ 83.484 Radiotelephone transmitter.**

* * * * *

(d) * * *

(2) The transmitter has been demonstrated, or is of a type which has been demonstrated, to the satisfaction of the Commission as capable, with normal operating voltages applied, of delivering not less than 60 watts peak envelope power for A3H and A3J [1] emissions on each of the frequencies 2182 and 2638 kHz into either an artificial antenna consisting of a series network of 10 Ohms effective resistance and 200 picofarads capacitance or an artificial antenna of 50 Ohms nominal impedance; *Provided, however,* That an individual demonstration of the power output capability of the transmitter, with the radiotelephone installation normally installed on board ship, may be required whenever in the judgment of the Commission this is deemed necessary.

* * * * *

15. In § 83.517 paragraphs (a) and (c)(2) are amended to read as follows:

**§ 83.517 Medium frequency transmitter.**

(a) The transmitter shall have a peak envelope output power of at least 60 watts for A3H and A3J [1] emissions on 2182 kHz, in accordance with § 83.351, and at least one ship-to-shore working frequency within the band 1605 to 2850 kHz enabling communication with a public coast station serving the region in which the vessel is navigated.

* * * * * *

(c) * * *

(2) The transmitter has been demonstrated, or is of a type which has been demonstrated, to the satisfaction of the Commission as capable, with normal operating voltages applied, of delivering not less than 60 watts peak envelope power for A3H and A3J emissions on each of the frequencies 2182 and 2638 kHz into either an artificial antenna consisting of a series network of 10 Ohms effective resistance and 200 picofarads capacitance or an artificial antenna of 50 Ohms nominal impedance. An individual demonstration of the power output capability of the transmitter, with the radiotelephone installation normally installed on board ship, may be required whenever in the judgment of the Commission this is deemed necessary.

[FR Doc. 79-9348 Filed 3-27-79; 8:45 am]

[1] Capability for A3J emission on 2182 kHz shall be completed on or before April 30, 1979.

[1505-01-M]

## Title 50—Wildlife and Fisheries

## CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

## PART 611—FOREIGN FISHING

### Reports and Recordkeeping

*Correction*

In FR Doc. 79-7772, appearing at page 15726 in the issue of Thursday, March 15, 1979, the effective date was inadvertently omitted. The effective day should be "Effective March 13, 1979."

[3510-22-M]

## PART 653—ATLANTIC HERRING FISHERY

### Emergency Regulations

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Emergency regulations and request for comments.

SUMMARY: These emergency regulations implement an amendment to the fishery management plan for Atlantic herring which changes statistical procedures. The purpose of this amendment is to conserve migrating Gulf of Maine herring while giving fishermen a better opportunity to harvest the optimum yield in the Georges Bank and South area.

DATES: Effective date: March 23, 1979. Comments are invited until >May 23, 1979.

ADDRESS: Send comments to Dr. Robert W. Hanks, Acting Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; Telephone (617) 281-3600.

FOR FURTHER INFORMATION CONTACT:

Same address as above.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Herring Fishery of the Northwest Atlantic (FMP), prepared by the New England Fishery Management Council, was approved December 11, 1978, by the Assistant Administrator for Fisheries. On December 28, 1978, the FMP was implemented through emergency regulations and published in the FEDERAL REGISTER (43 FR 60474). Those regulations took effect December 28, 1978, for a period of 45

days. The emergency regulations were extended until March 19, 1979 (44 FR 7711). Final regulations were promulgated March 19, 1979 (44 FR 17186, March 21, 1979).

Two separate stocks of herring from U.S. waters, the Gulf of Maine stock and the Georges Bank stock, are managed by the FMP. A primary objective of the FMP is to prevent excess removal from the depressed Gulf of Maine stock. The 1978–79 quota for the Gulf of Maine was set at 8,000 mt, less than half the average annual harvest for that area since 1972. To offset the decreased harvest from the Gulf of Maine and to stimulate greater fishing effort on the Georges Bank stock, the FMP provided a 10,000 mt annual quota for the Georges Bank and South area, 2,500 mt in the winter/spring (December 1–June 30) season and 7,500 mt in the summer/fall (July 1–November 30) season. The winter/spring quota is low, to protect the Gulf of Maine stock present during those months.

Some of the Gulf of Maine herring migrate south of the Gulf and overwinter east of 71°50′ W. longitude, but no tagged Gulf of Maine herring have been recaptured west of the line (see Figure 1). Therefore, there is no evidence that harvesting herring from west of 71°50′ W. longitude will have a significant impact on the critical Gulf of Maine stock.

The New England Fishery Management Council voted unanimously at its regular meeting, November 29, 1978, to adopt an amendment to the FMP to allow all herring caught west of 71°50′ W. longitude to be counted against the summer/fall Georges Bank and South area quota regardless of when caught.

The amendment is intended to give fishermen a better opportunity to harvest the optimum yield in the Georges Bank and South area. Because the fishermen are encouraged to concentrate their fishery in the area west of 71°50′ (a longitude which roughly intersects the boundary between Connecticut and Rhode Island), the Gulf of Maine stock which seasonally moves south of Cape Cod will not be subjected to heavy fishing pressure outside of the Gulf of Maine. At the same time, the Georges Bank stock will be adequately harvested. This amendment does not change any numbers. The total annual adult herring quota for the Georges Bank and South area will remain at 10,000 mt; the only change is that herring caught west of 71°50′ W. longitude from December 1 through June 30 will be counted against the 7,500 mt summer/fall quota.

The winter/spring fishing season is more than half over. This amendment is being implemented by emergency regulations to provide fishermen the opportunity to harvest the optimum yield under the current quota. The closure of the Gulf of Maine to herring fishing on March 15, 1979, has increased fishing effort in the Georges Bank and South area, which increases the probability that the winter/spring quota soon will be reached. This measure also provides the incentive for fishermen to conserve the critical Gulf of Maine stock by concentrating their fishery west of 71°50′.

The amendment has been reviewed, and was approved March 12, 1979, under a delegation of authority from the Secretary of Commerce to the Assistant Administrator for Fisheries, NOAA.

The FMP is amended as follows:

1. The following paragraph is added to the end of Section 3.2.3.2.: Herring tagging studies indicate that stock overlapping in the Georges Bank and South area is significant during the winter/fall fishery primarily east of 71°50′ W. longitude. The relatively low allowable catch for that area and period will provide further protection to the Gulf of Maine spawning stock. The stock overlapping is believed to be less significant west of that line. Therefore, all herring caught west of 71°50′ W. longitude shall be counted against the summer/fall (July 1–November 30) 5Z/SA6 quota, regardless of when caught.

2. The second paragraph of Section 3.2.3.4. is amended to read: The TALFF for herring in the Georges Bank and South area for the fishing year 1978/79 has been determined to be zero (Block K in Figure 3.2.). It should be noted that all herring caught west of 71°50′ W. longitude will be counted against the relatively large summer/fall quota for this area, thereby increasing the likelihood that the entire quota for this area and period will be completely harvested. This is consistent with the New England Fishery Management Council's intent to secure a maximum rate fo stock recovery in 1978/79 (Block G in Figure 3.2.), given that the expected domestic catch for herring in the area is to be accommodated within the OY (Block F in Figure 3.2.).

The final environmental impact statement for the FMP for Atlantic herring was filed with the Environmental Protection Agency on September 18, 1978.

The Assistant Administrator finds and determines that, based on the above, an emergency exists in the fishery. Consequently, these regulations are promulgated as emergency regulations according to Section 305 (e)(2) of the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*

These regulations have been issued in response to an emergency and are, therefore, exempt from the provisions of E. O. 12044. Comments on these regulations are invited until May 23, 1979.

Signed at Washington, D.C. this the 23d day of March 1979.

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

WINFRED H. MEIBOHM,
*Executive Director, National Marine Fisheries Service.*

Amend 50 CFR 653.21(b) by adding a new paragraph (3) as follows:

**§ 653.21 Seasonal catch quotes.**

* * * * *

(b) * * *

* * * * *

(3) All herring caught west of 71°50′ W. longitude will be counted against the quota in § 653.21(b)(1), no matter when they are caught.

[3510-22-C]

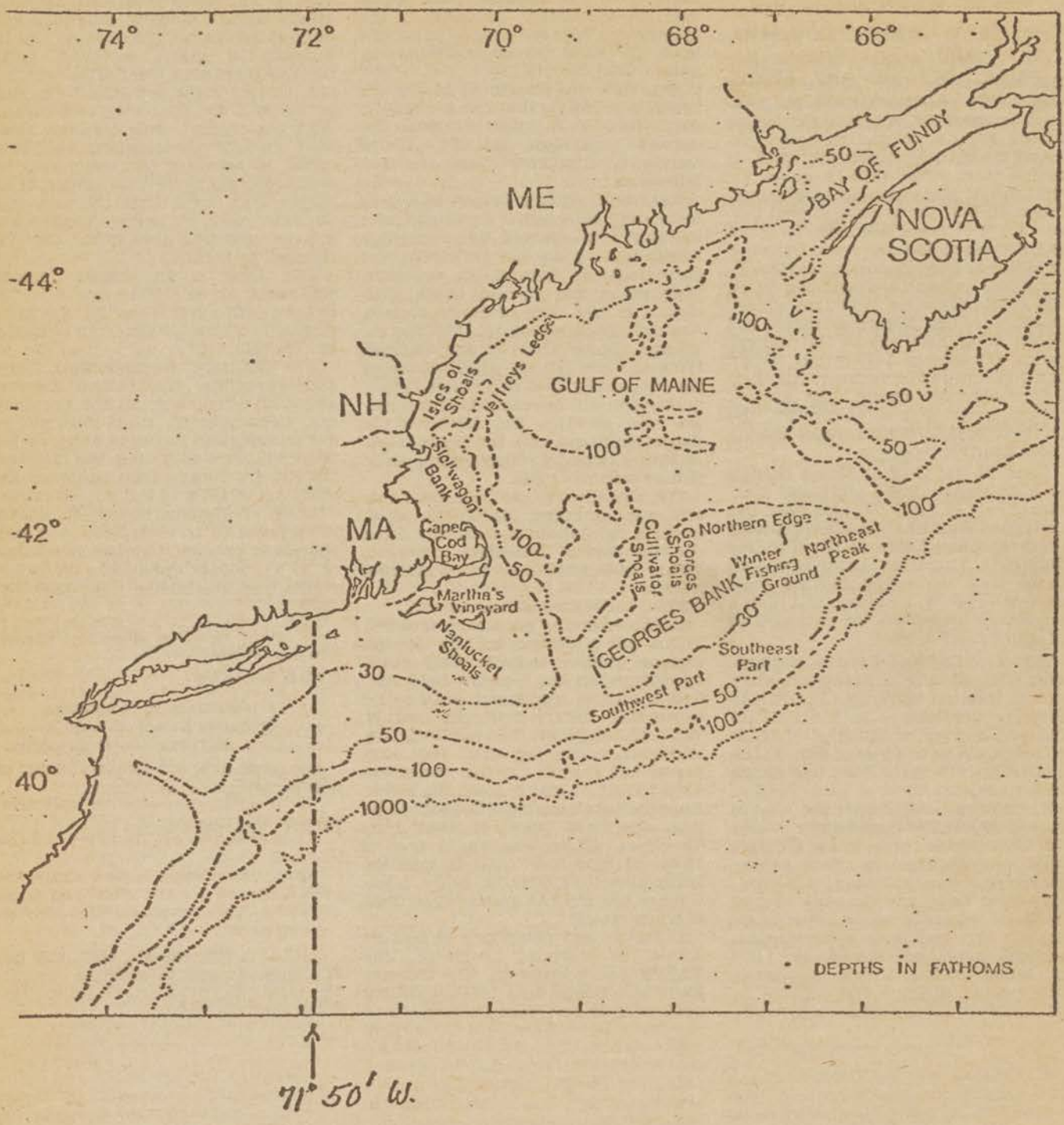



Figure 1

[FR Doc. 79-9404 Filed 3-27-79; 8:45 am]

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 671—TANNER CRAB OFF ALASKA

## Early Closure of Portion of Registration Area J (Westward) to Fishing by U.S. Vessels

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

ACTION: Final regulation.

SUMMARY: The Director, Alaska Region, (Regional Director), National Marine Fisheries Service (NMFS) issues a final regulation (Field Order) applicable to fishing by vessels of the United States in the Alaska Tanner crab fishery, in accordance with the fishery management plan for Tanner Crab Off Alaska (FMP), and the regulations implementing this FMP (50 CFR 671.27(b)) (see 43 FR 57149). This Field Order closes the portion of the Kodiak District of Registration Area J (Westward) from 150°30′ W. longitude to 156°20′13″ W. longitude (Kilokak Rocks) to fishing for Tanner crab by vessels of the United States effective beginning at 12:00 noon Alaska Standard Time (AST) on March 26, 1979, rather than on April 30, 1979, as currently provided in 50 CFR 671.26(f)(3)(i). This closure remains in effect until January 1, 1980. Public comments are invited until May 25, 1979.

EFFECTIVE DATE: 12:00 noon, Alaska Standard Time (AST), March 26, 1979. Public comments are invited until May 25, 1979.

ADDRESS: Comments may be sent to: Harry L. Rietze, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, Telephone (907) 586-7221.

FOR FURTHER INFORMATION: Contact Mr. Rietze at the above address.

SUPPLEMENTARY INFORMATION: The FMP (see 43 FR 21170) provides for in-season adjustments to season and area openings and closures. The FMP's implementing regulations at 50 CFR Part 671 (43 FR 57149) specify in § 671.27(b) that these decisions shall be made by the Regional Director in accordance with the criteria set out in that section. On October 20, 1978, the Assistant Administrator of Fisheries, NOAA, with the approval of the Administrator, NOAA, delegated to the Regional Director authority to promulgate Field Orders making in-season adjustments.

The FMP has set the Optimum Yield for Tanner crab in the Kodiak District at 35 million pounds (15,876 mt) for the current season, based on preseason abundance estimates and historic harvest levels. Using the overall fishing effort last season as a guide, it was anticipated that the effort this season would be similarly dispersed throughout the Kodiak District and that the OY would be reached approximately the end of April, 1979. Accordingly, 50 CFR 671.26(f)(3)(i) of the FMP's implementing regulations established a closing date for the Tanner crab fishery in the Kodiak District of April 30, 1979.

However, it has become apparent that the overall fishing effort in the Kodiak District for this season is considerably greater than the effort during previous years. Over 200 vessels have already recorded 670 landings, which is a 37 percent increase over the number of landings for the entire 1977/78 season. The total number of pot lifts per week this season is 50,000 compared to only 18,000 lifts per week during the 1977/78 season.

Further, this total effort is not uniformly distributed over the Kodiak District. It is concentrated in the area between 150°30′ W. longitude and 156°20′13″ W. longitude, which does not contain the entire Optimum Yield. A sampling of the commercial fishery within this area of greater fleet concentration shows that the Catch Per Unit Effort (CPUE) is less than last season's—42 crabs per pot this season compared to 65 crabs per pot in 1977/78. This indicates that the stocks in that portion of the Kodiak District are being overfished.

It is expected that the overall fishing effort and fleet distribution will remain the same and that by March 26 the catch in that portion of the Kodiak District between 150°30′W. longitude and 156°20′13″W. longitude will reach 30 million pounds. The Regional Director has determined that overfishing of the Tanner crab stocks in this part of the Kodiak District would occur if more than 30 million pounds are harvested there. Therefore, in order to prevent overfishing of Tanner crab stocks in that area, the Regional Director has determined, in accordance with 50 CFR 671.26(b), and following consultation with the Commissioner, Alaska Department of Fish and Game, that an emergency exists and that the portion of the Kodiak District west of 150°30′W. longitude and east of 156°20′13″W. longitude will be closed to Tanner crab fishing at 12 noon AST on March 26, 1979.

The rest of the Kodiak District, which is not affected by this closure and remains open until April 30 or earlier closure by a subsequent field order, consists of "fringe" areas in which stocks have been subjected to little or no effort and harvest this season. Leaving these areas open will provide the opportunity to achieve, without overfishing of any stocks, the Optimum Yield for Tanner Crab in the entire Kodiak District.

The Regional Director further finds that, in order to protect the resource, public comment prior to issuance of this Field Order is impracticable and contrary to the public interest. However, public comments on the necessity for, and extent, of this closure will be received by the Regional Director for a period of 60 days after the effective date of the Field Order. (Address: Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802). During this 60-day period, the data and information from which this decision is based will be available for inspection during business hours at the NMFS, Alaska Regional Office, Federal Building, Room 453, 709 West 9th Street, Juneau, Alaska.

If comments are received during the 60-day period the Regional Director shall, if appropriate, reconsider the necessity for the closure and, as soon as practicable after that reconsideration, publish in the FEDERAL REGISTER either:

(A) A notice of continued effectiveness of this closure; or

(B) A notice to modify or rescind the closure.

An environmental impact statement was prepared for the FMP and is on file with the Environmental Protection Agency.

Signed in Washington, D.C., this the 23rd day of March, 1979.

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

WINFRED H. MEIBOHM,
*Executive Director,*
*National Marine Fisheries Service.*

In accordance with 50 CFR 671.27(b), 50 CFR 671.26(f)(3)(i) is amended to read:

§ 671.26 (f)(3)(i) [Amended]

* * * * *

(i) In the Kodiak District from January 5 through April 30 only, with the following exceptions:

(A) In that portion of the Kodiak District between 156°20'13"W. longitude (Kilokak Rocks) to 157°27'W. longitude (Cape Kumlik) Tanner crab may be taken from January 5 through May 15 only; and

(B) In that portion of the Kodiak District between 150°30'W. longitude and 156°20'13"W. longitude (Kilokak Rocks) Tanner crab may be taken from January 5 through 12:00 noon (AST), March 26 only.

[FR Doc. 79-9324 Filed 3-27-79; 8:45 am]

# proposed rules

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.

[3410-02-M]

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[7 CFR Part 991]

### HOPS OF DOMESTIC PRODUCTION

### Proposed Salable Quantity and Allotment Percentage for the 1979-80 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish the quantity of hops that may be freely marketed from the 1979 crop, the action is taken under the marketing order for domestic hops to promote orderly marketing conditions.

DATE: Comments due April 12, 1979.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written materials should be submitted, and they shall be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-4722.

SUPPLEMENTARY INFORMATION: The proposed salable quantity and allotment percentage would be established in accordance with the provisions of Marketing Order No. 991, as amended (7 CFR Part 991), regulating the handling of hops of domestic production, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposal was recommended by the Hop Administrative Committee.

The proposed salable quantity and allotment percentage for the ensuing marketing year are based upon a recommendation of the Committee made at its meeting January 16, 1979, and the following estimates for the marketing year beginning August 1, 1979.

(1) Total domestic consumption of 39,000,000 pounds of hops;

(2) Minus imports of 12,000,000 pounds of hops to result in domestic consumption of U.S. hops of 27,000,000 pounds;

(3) Plus total exports of 27,000,000 pounds of hops to equal 54,000,000 pounds total usage of U.S. hops;

(4) Plus 3,000,000 pounds to adjust for weight loss for hops processed into pellets and extract;

(5) Plus an adjustment of 6,233,500 pounds to provide for adequate supplies should some producer allotments not be fully produced.

Under the proposal, the salable quantity for the 1979-80 marketing year would be 63,233,500 pounds.

The proposed salable percentage of 105 percent is computed by subtracting from this salable quantity 1,000,000 pounds for additional allotment bases for hops of the Fuggle variety pursuant to §§ 991.38(b) and 991.138(c) and dividing the remainder by 59,270,000 pounds, the total of all allotment bases less the 1,000,000 pounds additional allotment bases for Fuggle variety hops.

The proposal is as follows:

**§ 991.217 Allotment percentage and salable quantity for hops during the marketing year beginning August 1, 1979.**

The allotment percentage during the marketing year beginning August 1, 1979, shall be 105 percent, and the salable quantity shall be 63,233,500 pounds.

Dated: March 23, 1979.

CHARLES R. BRADER,
*Acting Director,*
*Fruit and Vegetable Division.*

[FR Doc. 79-9309 Filed 3-27-79; 8:45 am]

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[7590-01-M]

## NUCLEAR REGULATORY COMMISSION

[10 CFR Part 50]

### DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

### Fracture Toughness Requirements for Nuclear Power Reactors

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering amending its regulations specifying fracture toughness and material surveillance program requirements for nuclear reactor to permit greater flexibility in meeting certain of these requirements and to simplify others by substituting references to National Standards that have already been incorporated by reference into the NRC's Regulations.

DATES: Comment period expires May 14, 1979.

ADDRESSES: Written comments should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT:

Dr. P. N. Randall, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-443-5997.

SUPPLEMENTARY INFORMATION: In applying Appendix G, "Fracture Toughness Requirements," and Appendix H, "Reactor Vessel Material Surveillance Program Requirements," to current licensing actions, the NRC has concluded that certain requirements described below are unnecessarily restrictive and may be deleted without causing any undue risk to the public health and safety. Any associated safety concerns can be satisfied by requiring compliance with pertinent parts of the ASME Boiler and Pressure Vessel Code (the ASME Code). The proposed amendments are intended to respond, in part, to past requests for exemptions from Appendices G and H and to staff determinations that such exemptions were required and were justified in all respects. The proposed amendments would reduce significantly the number of exemptions to Appendices G and H that are expected to be required in the future.

In Appendix G to 10 CFR Part 50, paragraph IV.A.4 contains requirements for the material toughness of bolts that are very similar to present ASME Code requirements. Paragraph IV.A.4. would be deleted and Paragraph IV.A.3 would be revised to add language requiring compliance with the pertinent ASME Code requirements for bolts. As an additional revision of paragraph IV.A.3, the requirements for piping, pumps and valves would be clarified by referencing a different paragraph in the ASME Code than is presently referenced. This newly referenced paragraph contains the specific fracture toughness requirements for those components.

In Appendix H to CFR Part 50, paragraph II.C.2 would be revised in two respects. The prohibition against at-

tachment of surveillance capsules to the vessel wall would be deleted because, for some vessel designs, the advantages of attachment to the wall (fewer problems in achieving the desired lead factor and the structural integrity of the capsule holder) outweigh the disadvantage of concern for vessel integrity. Language is added to require that, if capsule holders are attached to the vessel wall, the attachments must meet ASME Code requirements for construction and inspection of permanent structural attachments to reactor vessels.

The fixed limits on lead factor (the ratio of neutron flux at the capsule to the maximum flux at the vessel inner wall) of greater than one but less than three would be deleted. Enforcement of the present requirement would require modification of certain designs that have satisfactorily met all surveillance and structural requirements in service. Safety concerns are satisfied by retention of the general requirement on lead factor.

The Commission's Office of Standards Development has prepared a value/impact statement for the proposed amendment, which provides additional technical details and justification. This statement is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. Single copies of the value/impact statement may be obtained by request addressed to the Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: P. N. Randall.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 53 title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 50 is contemplated. All interested persons who wish to submit written comments or suggestions in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by May 14, 1979. Copies of comments received may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

1. Appendix G to 10 CFR Part 50 is amended by deleting paragraph IV.A.4. and revising paragraph IV.A.3. to read as follows:

3. Materials for piping, pumps, and valves, and materials for bolting and other fasteners, shall meet the requirements of the ASME Code, paragraphs NB-2332 and NB-2333, respectively.

2. Appendix H to 10 CFR Part 50 is amended by revising paragraph II.C.2. to read as follows:

2. Surveillance specimen capsules shall be located near the inside vessel wall in the beltline region, so that the specimen irradiation history duplicates to the extent practicable, within the physical constraints of the system, the neutron spectrum, temperature history, and maximum neutron fluence experienced by the reactor vessel inner surface. If the capsule holders are attached to the vessel wall or to the vessel cladding, construction and inservice inspection of the attachments and attachment welds shall be done according to the requirements for permanent structural attachments to reactor vessels given in the ASME Code[2] Sections III and XI. The design and location of the capsules shall permit insertion of replacement capsules. Accelerated irradiation capsules may be used in addition to the required number of surveillance capsules specified in section II.C.3.

* * * * *

(Secs. 103, 104, 2611, Pub. Law 83-703; 68 Stat. 936, 937, 948; Sec. 201, Pub. Law 93-438, 88 Stat. 1242; (42 U.S.C. 2133, 2134, 2201(i), 5841).)

Dated at Washington, D.C. this 21st day of March 1979.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
*Secretary of the Commission.*

[FR Doc. 79-9195 Filed 3-27-79; 8:45 am]

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[6210-01-M]

## FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

[Reg. E; Docket No. R-0212]

### ELECTRONIC FUND TRANSFERS

### Disclosure of Consumers' Liability for Unauthorized Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: Section 909 of the Electronic Fund Transfer Act, which relates to a consumer's liability for unauthorized transfers, became effective on February 8, 1979. The Board is publishing for comment two proposals that relate to disclosing the consumer's liability for unauthorized use of an access device. Proposal A would require financial institutions to give consumers certain disclosures regarding their potential liability. Proposal B would make compliance with the disclosure requirement a precondition to the institution's imposing any liability on the consumer.

DATE: Comments must be received on or before April 30, 1979.

[2]Defined in Paragraph II.A. of Appendix G to 10 CFR Part 50.

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted should refer to docket number R-0212.

FOR FURTHER INFORMATION CONTACT:

Regarding the regulation: Dolores S. Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-2412). Regarding the economic impact analysis: Frederick J. Schroeder, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-2584).

SUPPLEMENTARY INFORMATION: (1) The Board has adopted regulations published in the Rules section of this issue to implement Sections 909 and 911 of the Electronic Fund Transfer Act, the two sections that became effective on February 8, 1979. Under those regulations, some consumers will receive notice of their potential liability for unauthorized transfers before May 1980, but the vast majority of users of EFT devices will not learn of their liability until after the remainder of the Act and regulation go into effect. The Board believes that all consumers should be informed of their potential liability and of the need for prompt reporting. Consumers should be aware that unless they report the loss or theft of an access device within two days of learning of the loss or theft, their liability may increase from $50 to $500. Similarly, they need to know that they must report an unauthorized transfer appearing on a periodic statement within 60 days; and that if they fail to report it, their liability for later transfers could be unlimited.

The Board is publishing two proposals for public comment. Proposal A would require financial institutions to disclose to consumers who now hold EFT access devices (as well as consumers who apply for access devices prior to May 1980): (1) what their liability for unauthorized transfers would be; (2) how to report the loss of theft of the access device; and (3) the institution's business days. These disclosures would have to be made by August 1, 1979, as to all accounts now in existence or established between now and July 31, 1979. After August 1, 1979, and before May 1980, institutions would be required to make the disclosures before the first electronic fund transfer is made on an account.

The Board's Proposal B would make delivery of these interim disclosures a precondition to imposing liability. (Section 909(b) of the Act will make delivery of the disclosures a precondi-

tion of imposing liability after May 1980.)

Under either proposal, if a financial institution assumes all risk and imposes no liability on a consumer for unauthorized transfers, then the institution would not be required to provide disclosures.

(2) Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of the regulations that the Board issues to implement the Act. The following economic analysis accompanies proposed §§ 205.4(e) and 205.5(a) of the regulation, which are designed to implement, in part, section 909 of the Act.[1]

Two proposals are offered for comment. Proposal A requires that financial institutions make liability disclosures before August 1, 1979, to holders of all accounts that can be accessed by an electronic fund transfer (EFT) access device unless they impose no liability on a consumer for unauthorized transfers. Proposal A does not change the consumer's liability limits as set forth in § 205.5(b). Proposal B, on the other hand, in effect allows a financial institution to choose whether or not to make interim liability disclosures to consumers, given that consumers can be held liable only if the institution makes the disclosures.

Interim liability disclosures under both Proposals A and B would provide consumers with information that might improve their ability to plan financial activities and might encourage them to exercise greater care in the use of EFT access devices and accounts. Greater consumer care may benefit financial institutions by reducing unauthorized use of EFT systems. Another potential benefit to institutions is greater consumer acceptance of EFT stemming from increased certainty about the liability rules applicable to unauthorized transfers.

Proposal A would force financial institutions to incur disclosure costs if they impose liability for unauthorized use. Costs for disclosure statement drafting, legal advice, printing, and distribution may be high, even if the Regulation E model disclosure clauses are used. The proximity of the August 1, 1979, disclosure deadline may impose additional costs. Financial institutions, particularly those that issue periodic statements in a cycle less frequent than monthly, may have to make special disclosure mailings to account holders. Special mailings to holders of inactive accounts would be required in any case. Costs associated with the disclosure program would be passed on to consumers to some degree.

Proposal B would permit financial institutions to choose optimal disclosure programs after weighing the expected costs and benefits associated with making the interim liability disclosures to all or some of their account holders. A more efficient allocation of resources would result with no loss of consumer protection relative to the liability provisions established by the Act. The provision conditioning consumer liability on whether interim disclosures were made would protect consumers not covered by other disclosure provisions of the Act and would guarantee that a consumer would not be held liable for any loss from unauthorized use unless disclosures were made.

It is not apparent whether small financial institutions are likely to be placed at a cost disadvantage relative to larger institutions under either Proposal A or B. Proposal B, however, would allow institutions more flexibility to adapt to the ultimate disclosure requirement mandated by the Act for May 1980, so that small institutions would be better able to schedule the relatively larger fixed-cost expenditures associated with their disclosure programs. It is also not apparent whether low-income consumers would be affected differently from higher-income consumers under the different proposals.

The Board solicits comments and information on the possible costs, benefits, and significance of the effects discussed above.

(3) Pursuant to the authority granted in Pub. L. 95-630, Title XX, section 904 (November 10, 1978), 92 Stat. 3730 (15 U.S.C. 1693b) the Board proposes to amend Regulation E, 12 CFR Part 205, as follows:

PROPOSAL A

The Board proposes to add a new paragraph (e) to § 205.4 as follows:

**§ 205.4 Issuance of Access Devices.**

* * * * *

(e) *Interim disclosure of consumer's liability.* (1) For any account accessibly be an access device, the financial institution shall disclose to the consumer, in a written statement that the consumer may retain, the following terms in readily understandable language:

(i) The consumer's liability under § 205.5, or under other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized transfers.

(ii) The telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(iii) The financial institution's business days, as determined under § 205.2(d).

(2) The disclosures set forth in paragraph (e)(1) of this section shall be made before August 1, 1979, for any account accessible by an access device and in existence on February 8, 1979, or established after February 8, 1979. For any such account established on or after August 1, 1979, and before May 10, 1980, these disclosures shall be made the first electronic fund transfer is made involving the consumer's account.

(3) The disclosure set forth in paragaph (e)(1) of this section need not be made by any financial institution that imposes upon the consumer no liability for unauthorized transfers.

PROPOSAL B

1. The Board proposes to add a new paragraph (e) to § 205.4 as set forth under Proposal A.

2. The Board proposes, in addition, to amend § 205.5(a) to read as follows:

**§ 205.5 Liability of Consumer for Unauthorized Transfers.**

(a) *General rule.* A consumer is liable, within the limitations described in paragraph (b) of this section, for unauthorized electronic fund transfers involving the consumer's account only if:

(1) the access device used for such transfers is an accepted access device;

(2) the financial institution has provided a means (such as by signature, photograph, fingerprint, or electronic or mechanical confirmation) to identify the consumer to whom the access device was issued; and

(3) the financial institution discloses to the consumer, in accordance with the requirements of § 205.4(e), the terms specified in § 205.4(e)(1).

* * * * *

By order of the Board of Governors, March 21, 1979.

GRIFFITH L. GARWOOD,
*Deputy Secretary of the Board.*

[FR Doc. 79-9262 Filed 3-27-79; 8:45 am]

[1] The analysis must consider the costs and benefits of the proposed regulation to suppliers and users of EFT services, the effects of the proposed regulation of competition in the provision of eletronic fund transfer services among large and small financial institutions, and the effects of the proposed regulation on the availability of EFT services to different classes of consumers, particularly low-income consumers. The analysis presented here is to be read in conjunction with the economic impact analysis that accompanied the Board's Regulation E, published in the Rules section of this issue.

[6355-01-M]

## CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1306]

### UNVENTED GAS-FIRED SPACE HEATERS

#### Withdrawal of Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Commission withdraws its proposed ban of unvented gas-fired space heaters published on February 14, 1978. Recent information indicates that a standard to adequately protect the public from the hazard of carbon monoxide poisoning associated with these products is feasible. Therefore, the Commission believes it is not necessary to ban these products. The Commission also advices that its staff is preparing for Commission review and possible proposal a draft proposed standard that incorporates an oxygen-depletion detection and control device to help reduce the possibility of carbon monoxide poisoning associated with unvented gas-fired space heaters.

DATE: The withdrawal of the proposed ban is effective on, March 28, 1979.

ADDRESS: Copies of the staff briefing package and related materials are available at the Office of the Secretary, 3rd floor, 1111 18th Street, N.W., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: George P. Anikis, Office of Program Managment, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6453.

#### Background

On November 29, 1978, the Commission proposed to withdraw its proposed ban of unvented gas-fired space heaters (43 FR 55772). The proposed ban was published in the Federal Register on February 14, 1978 (43 FR 6235) after the Commission had preliminarily determined that unvented gas-fired space heaters present an unreasonable risk of injury to the public because of the hazard of carbon monoxide (CO) poisoning associated with these products. In addition, from the information available at that time, the Commission concluded that no feasible standard under the Consumer Product Safety Act (CPSA) could adequately protect the public from the unreasonable risk. Therefore, in accordance with section 8 of the CPSA (15 U.S.C. 2057), the Commission proposed that unvented gas-fired space heaters be declared banned hazardous products.

During the comment period on the proposed ban, the Commission was advised that mandatory standards adopted by several foreign countries require that unvented gas-fired space heaters incorporate a sensing and control device that does not directly measure the presence of carbon monoxide but is designed to detect the depletion of oxygen in the living space and shut off the flow of gas to the heater before carbon monoxide can build up and create a hazardous atmosphere. Such a device, known as an oxygen-depletion sensor (ODS), had not to the Commission's knowledge ever been adopted for use on unvented gas-fired space heaters produced by American manufacturers. In addition, a voluntary standard of the American National Standards Institute (ANSI) has optional provisions for an ODS on heaters certified under that standard.

Another device, known as a temperature-limiting device (TLD) which is purported to help avoid a hazardous buildup of carbon monoxide in the living space by shutting off the gas supply to the heater when a room temperature of 100°F is reached, was also called to the Commission's attention.

The National Bureau of Standards was requested to test both of these devices to help determine their effectiveness in reducing the hazard of carbon monoxide poisoning in unvented gas-fired space heaters. The results of the National Bureau of Standards evaluation of the ODS show that the device repeatedly operated satisfactorily to shut down unvented gas-fired space heaters when the room oxygen content was depleted to between 18.2 and 20.3 percent. Carbon monoxide concentrations at these levels of oxygen depletion ranged from 7 to 90 parts per million (ppm) with a mean concentration of 37 ppm. Deliberate changes to the heater air shutter and blockage of the ODS air ports to simulate burner and sensor maladjustment and abnormal conditions did not significantly affect the operation of the ODS. In addition, the ODS operated satisfactorily when used with a variety of representative fuel gases used in the United States including propane, butane and natural gases.

NBS investigations of the TLD indicated that the device appeared to be inadequate to address the carbon monoxide hazard under a variety of limited ventilation and heat loss conditions. It was shown that high concentrations of carbon monoxide could exist at various levels of oxygen depletion in ventilated rooms and at temperatures below the shutoff point of the TLD. (Copies of these NBS reports are available through the Office of the Secretary.)

Upon review of the test results, the Commission concluded that a feasible consumer product safety standard for unvented gas-fired heaters could be implemented under the CPSA. Such a standard could incorporate an ODS device to detect, indirectly, a hazardous atmosphere resulting from carbon monoxide emissions and to shut off the gas supply to the heater. Since it appeared to the Commission that a feasible standard could adequately protect the public from the hazards of carbon monoxide poisoning associated with unvented gas-fired space heaters, the Commission decided in accordance with section 9(a)(1)(B) of the CPSA to propose withdrawal of the proposed ban.

In its proposal to withdraw the proposed ban, the Commission stated its belief that the oxygen-depletion sensor for optional use by manufacturers described in the ANSI Z21.11.2 voluntary industry standard, *Gas-Fired Room Heaters, Vol. II—Unvented Room Heaters*, would be adequate for the task of reducing carbon monoxide poisoning associated with these products. Therefore, the Commission directed its staff to prepare for Commission review a draft proposed standard that would incorporate appropriate sections of the ANSI standards dealing with oxygen-depletion systems for unvented gas-fired space heaters. The Commission directed its staff to prepare for Commission review at the same time, additional information on health and economic matters, on a precise definition of oxygen depletion sensor and a discussion of labeling.

In order to receive and evaluate comments on the proposal to withdraw, the Commission extended from November 29, 1978 to April 2, 1979, the period in which it must either publish a final banning rule or withdraw the proposal to ban.

#### Response to Comments

Of the five comments received on the proposal to withdraw the proposed ban, none opposed withdrawal. In addition, since the proposed withdrawal also announced that the Commission intends to take further action on unvented gas-fired space heaters, several of the commenters also suggested directions that future Commission action could take in this matter. Although these suggestions will be briefly discussed here, the Commission believes it would be premature to evaluate and discuss them in detail at this time. Rather, these suggestions will be analyzed in the context of any future action the Commission considers as to unvented gas-fired space heaters.

1. Lawrence G. Spielvogel, Inc., a consulting engineering firm, states that withdrawal of the ban is acceptable to them as long as "infrared heat-

ers or infrared radiant heaters" are included in the withdrawal. The Commission advises that the withdrawal applies to the unvented gas-fired space heaters defined in the proposed ban, including radiant room heaters. Infrared heaters were excluded from the proposed ban because they are generally used for heating outdoor spaces or for indoor non-consumer environments.

2. The American Rental Association agrees with withdrawal and notes, as a matter of future interest, that it would favor the use of a sensing and control device on newly-manufactured unvented gas-fired space heaters only. This commenter's attention is called to section 9(d)(1) of the Consumer Product Safety Act (15 U.S.C. 2058(d)(1)) which provides that a standard is applicable only to products manufactured after the effective date of a standard. Therefore, any standard on unvented gas-fired space heaters proposed by the Commission would apply only to products manufactured after the stated effective date.

3. The Corporate Attorney for the Coleman Company agrees with the decision not to ban unvented gas-fired space heaters, but is opposed to any standard that would require oxygen-depletion sensors. He believes such devices sense only reduced levels of oxygen or excessive levels of carbon dioxide, and, therefore, he believes that what is really needed is a low-cost carbon monoxide sensing device.

Since this comment is addressed to a proposal for a standard that the Commission staff is working on and the Commission has yet to consider, and since the purpose of this document is to withdraw the proposed ban, the Commission believes it is premature to now discuss the various issues related to oxygen-depletion sensors and carbon monoxide sensors. However, this comment will be evaluated by the staff and the Commission in considering possible further action concerning unvented gas-fired space heaters.

4. A comment on the proposed withdrawal by the secretariat of the American National Standards Committee Z21 (ANSI) which deals with the voluntary unvented room heater standard (Z21.11.2) was sent to the Commission's Executive Director. The secretariat advised that the Subcommittee on Standards for Unvented Gas-Fired Heating Appliances would consider proposed revisions to the voluntary standards to require the use (now optional) of ODS on unvented room heaters and deletion of the provision requiring a temperature limiting device. The secretariat suggested that CPSC may wish to take this effort into account when considering the need for a mandatory standard for ODS systems.

The Commission is aware that the staff has been following the process whereby ANSI may conclude that an oxygen-depletion sensor should be a required part of the voluntary standard, and that the voluntary standard's present requirement for a temperature limiting device would be eliminated. A review of the progress made by ANSI in this matter will be included in staff briefing materials for future Commission decisions concerning unvented gas-fired space heaters.

5. The National LP Gas Association agrees that the proposed ban should be withdrawn in order that unvented gas-fired space heaters may be available to the public. In addition, the Association believes that the Commission should terminate any further involvement with unvented gas-fired space heaters, and permit industry to institute appropriate changes as it finds them necessary, including possible incorporation of an ODS as a mandated part of the voluntary standard for unvented gas-fired space heaters.

As indicated in response to the previous comment, these and any other views of industry groups on unvented gas-fired space heaters will be reviewed in the context of considering further Commission action in this matter.

### Conclusion

Having considered the information referred to indicating that a feasible consumer product safety standard could adequately protect the public from any unreasonable risk of injury from carbon monoxide poisoning associated with unvented gas-fired space heaters, and having considered the comments received in response to its proposal to withdraw the proposed ban, the Commission determines that a consumer product safety rule banning these products is not reasonably necessary to eliminate or reduce the risk. Therefore, in accordance with section 9(a)(1)(B) of the CPSA (15 U.S.C. 2058(a)(1)(B)) the Commission withdraws its proposal of February 14, 1978 (43 FR 6253) to declare that unvented gas-fired space heaters are banned hazardous products.

*Effective date:* Section 4 of the Administrative Procedure Act (APA), 5 U.S.C. 553, requires that the effective date of a rule shall be not less than 30 days after it is published, unless this period is shortened for good cause found and published by the agency. In this case, delaying the effective date of withdrawal for 30 days or any other period beyond publication would have no substantive effect since the withdrawal applies to a proposed rule rather than a final rule which would have had an impact. Since no useful purpose would be served by such delay, the Commission finds for good cause that the effective date of the withdrawal be the date of its publication in the Federal Register.

Accordingly, pursuant to 5 U.S.C. 553(d)(3), the effective date of the Commission's withdrawal of its proposed consumer product safety rule concerning unvented gas-fired space heaters is March 28, 1979.

(Sections 8, 9; 96 Stat. 1215-1217, as amended, 90 Stat. 506; 15 U.S.C. 2057, 2058.)

Dated: March 23, 1979.

Sadye E. Dunn,
*Secretary, Consumer Product Safety Commission.*

[FR Doc. 79-9327 Filed 3-27-79; 8:45 am]

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[6450-01-M]

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[18 CFR Parts 1a, 1b]

[Docket No. RM78-15]

### RULES RELATING TO INVESTIGATIONS

### Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing revised regulations relating to investigations as a result of comments on its interim regulations which have been in effect since June 14, 1978 (43 FR 27174, June 21, 1978). The interim regulations had been adopted to state clearly the Commission's policy and procedures for investigations conducted under the statutes it administers. The revisions are proposed based on the comments received and experiences of the Commission under the interim regulations and also because of new powers granted the Commission under the Natural Gas Policy Act of 1978, the Public Utility Regulatory Policies Act and the Outer Continental Shelf Lands Act Amendments of 1978.

DATE: Written comments due by April 16, 1979.

ADDRESS: All filings should reference Docket No. RM78-15 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Charles J. Friedman, Office of Enforcement, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426, (202) 275-0303.

SUPPLEMENTARY INFORMATION:

PART I

This Order denies the Petition of Certain Electric Utilities for Amendment of Commission's Regulations with Respect to Form 423, filed October 15, 1976,[1] to amend the collection and dissemination procedures established from Form 423. The Petitioners offered two alternative proposals:[2] Proposal A would modify the information to be reported on Form 423 by:

1. "Requiring that the average cost of fossil fuels delivered to a plant be reported instead of the actual price of each delivery," and

2. "Eliminating the reporting of information with respect to the identity of the fuel supplier and the date of contract expiration."

Proposal B would allow for the collection of the same information presently reported, but limit the distribution of Form 423 by:

1. Treating information furnished as confidential and restricting availability of the forms "to the staff members of (the) Commission and to other federal agencies upon written request of the head of the agency," and

2. Making public only a summary of information on each form "reporting the average cost of fuel delivered to a plant instead of the actual price of each delivery and eliminating information with respect to the fuel supplier and the date of contract expiration."

The Petitioners contended that such restrictions were necessary because the existing Form 423 reporting system placed "* * * the reporting utilities at a decided disadvantage in negotiations for available fuel supplies," and may have "set the stage for anti-competitive behavior."[3]

BACKGROUND

This is not the first time that the Commission has reviewed the issues involved in the collection and dissemination of Form 423 data. Many of the same contentions were made when the original Form 423 reporting system was initiated in Docket No. R-432[4] and again when the Form was altered to collect additional information in Docket No. R-432(a).[5] At that time, the Commission decided that the benefits of such a reporting system clearly outweighed its potential harm. The Commission's reasoning and procedures in Docket No. R-432 were upheld. *Alabama Power Company* v. *FPC, 511 F.2d 383 (D.C. Cir. 1974).*

The Commission decided to examine the issues once again in this proceeding because the Petitioners declared that Form 423 reporting had, in fact, caused injury to utilities and their customers. Petitioners also contended that since 1973, in a series of cases argued under the Freedom of Information Act,[6] the courts had altered the evidentiary standards needed to show that the reporting of information should be restricted to avoid undue injury to the respondent. Since the Petitioners' allegations were related to antitrust matters the Commission paid particular attention, as suggested by the Court in *Alabama Power,* to the comments of the Federal Trade Commission (FTC) and the Justice Department (Justice), the agencies having principal responsibility for interpreting the Nation's antitrust policies.

Prior to issuance of the Notice of Proposed Rulemaking, FTC and Justice both recommended that this Commission limit dissemination of Form 423 information in order to lessen the likelihood of anticompetitive effects. The initial views of the FTC were presented by letter dated May 27, 1977. In this letter, reproduced as APPENDIX C to the Notice of Proposed Rulemaking, the Chairman of the FTC observed that "prompt disclosure of Form 423 data creates the risk of anti-competitive behavior." He went on to suggest that this Commission adopt a variant of Petitioners' Proposal B: all Form 423 information would continue to be collected but it would be made available only to Federeal agencies and the state regulatory commissions, and then only upon written request. Initially, the general public's access to the data would be limited to a summary, showing a "utility's average cost of fuel." The FTC recommended that the detailed data be made public after a delay of perhaps two years since it would lose its "competitive significance" by that time.

The Justice Department concurred in these recommendations. By letter dated July 19, 1977, reproduced as APPENDIX D to the Notice of Proposed Rulemaking, the Acting Assistant Attorney General of the Antitrust Division indicated that Justice shared the "FTC's concern that the public dissemination could have harmful anticompetitive effects" and therefore urged this Commission to adopt the FTC's proposal.

PROCEEDINGS IN THE DOCKET

In issuing its Notice of Proposed Rulemaking on August 15, 1977, 42 FR 51609, the Commission gave considerable weight to these initial FTC and Justice recommendations. It proposed to continue collecting the Form 423 data but to withhold the detailed data from the public for one year. During this one year period, it proposed to issue a monthly summary showing the average cost of fuel delivered to the plants of each reporting utility. The summary would not identify individual fuel suppliers nor would it show expiration dates of particular contracts. During the one year period, access to the detailed data would be limited to the Commission and its Staff and to other Federal and state agencies upon written request by the head of the agency.

Due to a delay in publication of the Notice of Proposed Rulemaking in the FEDERAL REGISTER, the Secretary extended the time for filing comments to October 28, 1977, by Notice of Further Extension of Time issued October 14, 1977, 42 FR 56756. Comments on the Petition and the Proposed Rulemaking were received from the Petitioners, fifteen investor-owned utilities, six publicly owned utilities, one public power association, three fuel companies, ten nongovernment consumer or public interest groups, two state consumer agencies, fourteen state regulatory bodies, two regulatory associations, one Governor, one state legislative body, four Federal agencies, four U.S. Senators, four cities, and eight private individuals, corporations or trade associations.

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[1] This proceeding was commenced before the FPC. By the joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC. The term "Commission," when used in context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC. The twelve original petitioners were: New England Power Co., Alabama Power Co., Carolina Power & Light Co., Consumers Power Co., Duke Power Co., Jersey Central Power & Light Co., Metropolitan Edison Co., Pennsylvania Electric Co., Rochester Gas & Electric Corp., South Carolina Electric & Gas Co., Utah Power & Light Co., and Wisconsin Electric Power Co. Four additional utilities who subsequently joined in the petition are: Georgia Power Co., Gulf Power Co., Indianapolis Power & Light Co., Mississippi Power Co.

[2] Petition, pp. 1 and 2.

[3] Petition, pp. 5 and 12.

[4] Order No. 453 issued June 7, 1972, in Docket No. R-432, 47 FPC 1469, 37 FR 11860. See also Order Denying Application for Rehearing issued August 3, 1972, 48 FPC 217 (National Coal Association); Order Denying Petition for Amendment of the Commission's Regulations with Respect to Form No. 423 issued March 2, 1973, 49 FPC 588 (group of utilities); and Order Denying Rehearing, issued April 16, 1973, 49 FPC 1010 (same Group of utilities). The latest Order issued was appealed, resulting in the *Alabama Power* decision, infra.

[5] Order No. 512 issued September 12, 1974, 52 FPC 745, 39 FR 34030. See also Order Denying Motion to Stay Reporting with Respect to Coal in Accordance with Instruction (6) on New Form 423 issued December 13, 1974, 52 FPC 1803 (Ohio Edison Company).

[6] *National Parks and Conservation Association* v. *Morton,* 498 F.2d 765 (D.C. Cir. 1974); *Continental Oil Company* v. *FPC,* 519 F.2d 31 (5th Cir. 1975), cert. denied sub. nom. *Superior Oil Company* v. *FPC,* 425 U.S. 971 (1976); *Pennzoil Co.* v. *FPC,* 534 F.2d 627 (5th Cir. 1976); *Union Oil Co. of California* v. *FPC,* 542 F.2d 1036 (9th Cir. 1976); *National Parks and Conservation Association* v. *Kleppe,* 547 F.2d 673 (D.C. Cir. 1976). See also *Superior Oil Company* v. *FERC,* 563 F.2d 191 (5th Cir. 1977).

Upon review of the comments received, Staff decided that certain specific questions needed clarification for a more complete understanding of the issues involved. By Notice issued February 1, 1978, 43 FR 5524, the Secretary scheduled a public conference on March 9, 1978, to discuss these specific questions. At the conference, presided over by the Commission's Chief Trial Counsel, oral comments were made by fourteen persons representing the Petitioners, state and Federal agencies, industry and private individuals, followed by questioning from Commission Staff. In addition to oral comments, written comments were accepted through April 10, 1978 (Transcript at 174). Comments received in response to the Notice of Conference included comments from two investor-owned utilities, two state consumer agencies, one non-government consumer organization and one coal company, which had not submitted comments earlier.

RESPONSES

All 17 investor-owned electric utilities commenting, in addition to the 16 petitioner utilities, supported restricting the availability of Form 423 data. Several expressed the view that the one year delay in availability proposed by the Commission should be lengthened. Of the six publicly-owned systems that provided comments, four expressed support for restriction of price data availability, one opposed such restriction, and one expressed no objection to delayed release of the data so long as the data are collected. However, the American Public Power Association recommended that there be no restriction on availability of the data.

Generally, the 19 state agencies or offices commenting were opposed to restrictions of data availability to the public. Some of the regulatory bodies expressed a principal concern for continued state access to the complete data set. Several expressed the view that public access facilitated intervention by consumer groups, which enhanced the effectiveness of their own regulatory efforts. The National Association of Regulatory Utility Commissioners expressed a similar view. The 11 responding consumer interest groups were also opposed to restriction of data availability; several indicated that their data needs for monitoring utility fuel buying practices could not be satisfied by the average price data proposed to be made available. Three coal companies and a coal consultant indicated that the Form 423 data were highly useful in maintaining a current awareness of the coal market. The small firms stated that they find the specific price data useful in making competitive bids, while the larger firm was willing to forego price data in order to continue to have available the general pattern of coal quality and supply discernible from the Form 423 data. The Office of Consumer Affairs, United States Department of Health, Education and Welfare (HEW), opposed restricting data availability because it considers that anti-competitive effects in the coal market were highly unlikely and price information was generally helpful to the consumer.

Comments from industrial firms and consultants stated that they regard the price data as valuable in showing the trends of fuel supply and prices and that the detailed information is both important and unavailable to them from other sources. One industrial group reported that the detailed data had been useful in monitoring utility use of natural gas as a boiler fuel in relation to the supply and cost of natural gas for industrial purposes.

Two publishing organizations which regularly report the Form 423 price data contended that the availability of the data provided benefits to industry and the public which outweighed any possible harm from anticompetitive effects.

In supplementary statements filed after the Public Conference, both Justice and the FTC reversed their earlier positions and recommended continuing to make all of the data collected on Form 423 available to the public without delay. Citing studies which had become available since its July 1977 letter, Justice indicated that the potential for anticompetitive behavior was "substantially less than previously thought." The FTC indicated that after further analysis of the coal market and a review of the comments filed, it had reached the conclusion that the "antitrust risks" were "not sufficient to require or justify modification of the FERC's current policy of promptly publishing all Form 423 data."

ISSUES RAISED

The Petitioners contend that a series of cases decided under the Freedom of Information Act (cited in Footnote [1], page 4, supra), required us to consider whether unrestricted public disclosure would be likely to result in injury to the disclosing parties. If this is found to be the case, the Commission must then consider alternatives to full disclosure, which would mitigate the harm of full disclosure while at the same time satisfying the public's need for information.

In fact, a more comprehensive procedure was prescribed by the Court in *Pennzoil* to be used in determining the balance between the benefit to the public interest and the harm to those supplying the data resulting from its disclosure. We are required to consider:

A. Whether disclosure will significantly aid us in fulfilling our mandates;

B. The harm to those supplying the data *and* the harm to the public in general; and,

C. The alternatives to full disclosure that will provide the public with adequate knowledge to participate fully in our proceedings and other useful information, but at the same time protect the interests of those supplying the data.

Each of these three requirements has been met in this Docket. The consideration of these three questions is discussed in some detail below.[7]

A. *Will disclosure significantly aid the Commision in fulfilling its functions?*

The first consideration is viewed in broad terms, including within its purview our responsibility for assuring that rates for electric power wholesale sales under the Commission's jurisdiction are just and reasonable,[8] and including also the responsibilities under the Federal Power Act formerly exercised by the FPC, and now by the Department of Energy, for promoting conservation of resoruces[9] and providing a wide range of electric power information to the Congress and the public.[10] The latter function aids effective participation in electric regulatory matters and supports the formulation of electric power policies. Form 423 was initiated at a time when it was becoming clear that the Nation would experience increasing energy supply difficulties. Its basic intent was to provide visibility for the Commission and the public of the trends of electric power fuel supply patterns and costs. This information was needed by the Commission to evaulate potential electric power fuel supply problems, to determine fuel alternatives available to power plants and the costs of fuel switching and to monitor the interfuel competition between electricity and natural gas. Various statistical compilations of the reported data have been prepared and published on a regular basis. See, for instance, the Monthly Report on Fuel Cost and Quality. These compilations represent the primary output of the Form 423 reporting system and are apparently widely used by government and industry as reliable indicators of utility fuel purchase patterns, variations, between short and long term contract fuel

[7] In *Union Oil*, the use of rulemaking was upheld in this type of proceeding so long as the record contains sufficient factual data, however informally presented, to provide substantial evidentiary support for the action taken.

[8] Federal Power Act, Sections 205, 206

[9] Federal Power Act, Section 202(a).

[10] Federal Power Act, Sections 311, 312.

prices, and differentials in useage and price of fuels of varying qualities.[11]

The Form 423 reporting system was not designed to serve as a compliance system auditing utility fuel cost accounting, nor as a mechanism for establishing the prudence of specific utility fuel acquisition decisions. In the experience of this Commission, such investigations require far more information than is provided by the Form 423 reports. Nevertheless, the orginal utility reports do contain information on each fuel delivery and, together with the statistical summaries, can be used as a starting point for conducting a fuel audit.[12] The remarks of the Pennsylvania Public Utility Commission on this point are illustrative:[13]

"There are currently before (the Pennsylvania PUC) complaints against the major electric utilities under its jurisdiction alleging that contracts for fuel procurement were not enforced as to agreed price and Btu content. The structure of Form No. 423 currently permits review on a contract-by-contract basis of statistical information on price and Btu content as well as identification of contract type and mine location."

It also appears that availability of the utility Form 423 reports as filed has aided the intervention of consumer groups before various regulatory bodies.[14]

The Office of Consumer Affairs, U.S. Department of Health, Education and Welfare contended that "many abuses of automatic fuel adjustment clause mechanisms and other fuel buying practices would go undetected if consumer groups were not able to investigate and challenge them" since a number of "state commissions are understaffed." [15]

The Environmental Defense Fund describes the usefulness of Form 423 in the following way: [16]

"Every time a choice is made by a utility or an official body regarding which kind or what grade of fuel to use, not only must the environmental costs be considered, but also the economic costs, namely price. Environmental and citizen groups must know what is economically feasible when presenting their recommendations regarding these choices to boards and government agencies * * *.

* * * Since 1973, EDF has participated in several electric utility rate hearings to present the case for peakload pricing * * *. The price data for fuels reported on Form 423, unavailable otherwise, has been an invaluable aid in our economic analysis * * *."

We note that Congress recently has expressed its belief that consumer intervention is helpful to regulatory bodies at both the federal and state levels. The Public Utilities Regulatory Policies Act of 1978 provides for grants to state offices of consumer services. The same law also establishes an FERC Office of Public Participation.

Interventions at the state level can be directly helpful to us. Generally, the same fuel is used to generate electricity for both retail and wholesale sales.[17] If a state commission finds that a utility's fuel pruchases have been imprudent, that finding is of considerable interest to us. It provides a signal to us to take a very careful look at the utility's fuel costs before passing on the justness and reasonableness of its wholesale rates.

The assistance to state level intervention provided by Form 423 data can be of direct benefit to us in monitoring captive coal costs. Clearly, intervenors in state proceedings can be more effective with access to a complete and timely body of data on fuel costs. The complete Form 423 data set is particularly useful for this purpose because it allows comparison of the prices paid for captive coal with the prices paid for comparable non-captive coal by a particular utility or by neighboring utilities. We note that the significance of captive coal operations is increasing.[18]

Form 423 has also been used in other regulatory forums. The Petrochemical Energy Group (PEG), an organization of petro-chemical producers, indicated that data available from Form 423 has been of considerable use to them in interventions before the Economic Regulatory Administration (ERA) with respect to the allocation of liquid-based synthetic natural gas (SNG). The group stated: [19]

"Thanks to the invaluable assistance of the supplier data contained on Form No. 423, PEG has often assisted proper allocation decisions and enforcement efforts by identifying violations, developing factual data and presenting arguments in agency proceedings. The Form No. 423 data enables interested groups to make the following determinations: whether gas is being supplied for the generation of electricity at the same time that SNG is being produced; whether gas is being supplied for low priority gas utility boilers with alternative fuel capability while high priority users with no alternate fuel capability are being curtailed; whether users are properly bearing the costs of the expensive SNG; and whether the cost to the ultimate consumer of SNG is comparable to the cost of other available fuels."

In summary, the evidence developed in this rulemaking proceeding indicates that availability of the Form 423 reports as filed can significantly assist the regulatory processes of State and other Federal agencies, as well as those of this Commission. It is also apparent that the detailed information present in the reports as filed, such as the origin of the fuel shipments and cost of individual deliveries, permits independent non-government analyses of fuel supply patterns and trends which can usefully supplement government studies.

We conclude, therefore, that continued availability of the data as filed assists this Commission in discharging its broad responsibilities for just and reasonable wholesale rates and in fulfilling the requirements of the Federal Power Act for supplying significant electric power information to the Congress and the public.

B. *What is the harm to those supplying the data and what is the harm to the public in general?*

In *Alabama Power*, the Court indicated that the utilities which sought to limit public disclosure of Form 423 had to show evidence of *actual* harm resulting from the reporting require-

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[11] The information has been used by the Economic Regulatory Administration, Department of Energy, to determine coal prices and availability for the Coal Conversion Program; by the Environmental Protection Administration to track quantities and quality of electric utility fossil fuel purchases to assess environmental impacts; by the Bureau of Labor Statistics, Department of Labor, to calibrate its Industrial Commodity Price Index; by the Corps of Engineers, Department of the Army, to survey utility coal flow patterns for lock and dam planning, by the U.S. Geological Survey, Department of the Interior, in its update of coal reserve estimates; by the Department of Commerce in its econometric models of income distribution; by the Council on Wage and Price Stability in its study of price formation in the coal industry; by the Department of Justice and the Federal Trade Commission in their analyses of market concentration in the coal industry.

The data are abstracted and published in various forms in a number of trade publications serving the electric utility industry, the coal and oil industries and industrial energy users.

[12] Letter from Office of Consumers' Utility Counsel, State of Georgia, March 6, 1978, p.9, and statement of Alvin Garber, representing the Office of Peoples' Counsel of Maryland at Public Conference, March 9, 1978, transcript p.143.

[13] Statement of Pennsylvania Public Utility Commission for Public Conference, Docket RM 77-2, filed February 27, 1978.

[14] See for example: Consumer's Council of Ohio, comments filed October 17, 1977; Environmental Action Foundation, comments dated September 13, 1977; Colorado Public Interest Research Group letter of September 29, 1977; Public Interest Research Group letter of September 14, 1977; Utility Consumer Action Group comments of September 28, 1977.

[15] Prepared statement of I. Curtis Jernigan, Jr., Director of Economic Policy and Planning, Office of Consumer Affairs, March 9, 1978.

[16] Environmental Defense Fund Letter, October 14, 1977.

[17] One exception would be unit sales designated for a specific wholesale customer.

[18] A staff study indicates that by 1985, U.S. electric utilities will be supplying 18.8 percent of their total coal needs from captive sources. In 1974, captive coal accounted for only 9.0 percent of total coal deliveries to U.S. utilities. See *Electric Utilities Captive Coal Operations*, Staff Report by the Bureau of Power, June 1977.

[19] Testimony of the Petrochemical Energy Group, March 9, 1978.

ments at that time. [20] In this proceeding, the Petitioners have argued that a new standard has been developed materially changing the evidentiary standards that are relevant to their petition. In particular, they argue that this "likely to harm" standard:

> "does not require a showing of actual injury (though such showing has been made here, as discussed infra). Rather, it requires a showing that disclosure would *likely* result in competitive injury." [21]

We believe that the issue of what is the appropriate evidentiary standard is moot in this proceeding because the Petitioners have not presented evidence which would satisfy either standard. [22]

1. The "Likely to Harm" Standard. It is the contention of Petitioners that the Present Form 423 reporting system "may set the stage for anti-competitive behavior by suppliers." It appears that this allegation is likely to be true only under certain conditions: (1) the utilities are generally purchasing fuel in oligopolistic markets; (2) the information is released with sufficient timeliness so that it can be used to coordinate actions among fuel suppliers; (3) the information being released provides a complete description of the transaction.

A detailed analysis as to whether these conditions currently prevail is presented in PART II of this order. We conclude, based on this analysis, that coal markets are workably competitive and that the current Form 423 reporting system is not likely to contribute to anticompetitive behavior by coal suppliers. We also conclude that the two month delay in availability of Form 423 data makes it unlikely that the data could serve to maintain price coordination in any spot fuel market.

2. The "Actual Injury" Standard. The evidence offered by the Petitioners in support of their contention that disclosure of Form 423 data has already led to anticompetitive conduct by fuel suppliers is not convincing. The petitioners cite a letter filed by the South Carolina Public Service Authority (SCPSA), which states that soon after SCPSA began filing Form 423's, "coal suppliers with which we had lower cost contracts immediately began to pressure us for higher prices." [23] The Petitioners also draw attention to a similar statement made by the American Electric Power Company (AEP). In comments filed September 30, 1977, AEP asserted that public availability of Form 423 data "has altered to the disadvantage of the AEP system and its customers the bargaining position of the utility vis-a-vis coal producers." AEP also pointed out that it had been "confronted by fuel suppliers using data which they boasted was taken" from the Commission public records. [24]

These comments do not prove the existence of anti-competitive behavior. SCPSA's suppliers may have "pressured" and AEP's suppliers may have "boasted," but that in itself does not prove that either set of suppliers actually succeeded in obtaining higher prices. Assume, for the sake of argument that the Petitioners could show that AEP and SCPSA's fuel suppliers succeeded in charging prices higher than the prices that would have prevailed if the suppliers had not had access to Form 423 data. This still would not necessarily prove anti-competitive behavior. A shift towards higher prices might reflect oligopolistic coordination (the Petitioners contention), but such a shift would also be consistent with the operation of a competitive market in which the quality of price data available to sellers had suddenly improved. In such a market it would not be unreasonable to expect a seller to demand a higher price if he learned from Form 423 data that he had been offering his coal at less than the going market price. While it is true that this would injure buyers in that they would have to pay higher prices for coal, it is incorrect to characterize this improvement in the bargaining position of sellers as anti-competitive.

In fact, under certain circumstances, an improvement in sellers' bargaining power resulting from disclosure of Form 423 data would be pro-competitive. This point was made by Dr. Zellner, economic consultant for the Petitioners. Citing the specific case of a market in which "the supply side is competitive and the demand side is oligopolistic," (commonly described as an oligopsony market) Dr. Zellner observed that, "an improvement in the bargaining position of suppliers can be expected to move the price/quantity solution closer to the competitive one." Dr. Zellner also noted that the "effect of Form 423 disclosure" can be characterized as "pro- or anti-competitive" only "insofar as it can be predicted to move this price/quantity solution closer to or further away from that which would be achieved in a competitive market." [25] Essentially the same position was taken by the Federal Trade Commission (FTC). The FTC stated that:

> "An increase in the bargaining power of an individual coal producer would not necessarily be anti-competitive. If the Form No. 423 data were used to facilitate price fixing or conscious parallelism, such a situation would clearly be anti-competitive. The improvement in the bargaining position of an individual fuel supplier would not be anti-comptetive unless the fuel supplier thereby obtained some measure of monopoly power." [26]

In summary, there are two problems with the evidence presented by the Petitioners. First, it cannot be determined from the evidence presented whether fuel suppliers actually succeeded in obtaining higher prices because they had access to Form 423. Fuel suppliers may have "pressured" for higher prices, but that does not prove that they actually received higher prices. Second, even if the evidence were clear that the Form 423 data improved the bargaining position of certain sellers so that they were able to charge higher prices than they could have in the absence of the data that, in itself, does not prove anti-competitive conduct. If the "actual injury" standard is to make any sense in an antitrust context, it must be shown that the injury (i.e., the higher price) was the direct result of anti-competitive behavior on the part of fuel suppliers. It is the Commission's conclusion, based on a review of the record, that neither the Petitioners nor anyone else made such a showing.

C. *What alternatives to full disclosure exist (if any) that will provide the public with adequate knowledge to participate fully in the Commission's proceedings and other useful information, but at the same time protect the interests of those supplying the data?*

The Notice of Proposed Rulemaking observed that the average fuel purchase price data by utility and plant, which are published monthly, provide a basic means for public monitoring of

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[20] The Court noted that, "The utilities remain free to present a new petition for amendment of regulation 141.61 accompanied by factual representations sufficient to fill the gaps that have been identified in their earlier submissions," (511 F.2d. 393). The Court also observed that, "the utilities were not prepared to give any specifics whatever as to the existence of an injury." (511 F.2d. 391).

[21] Response to Request for Conference and Supplemental Comments of Sixteen Company Electric Utility Groups, October 28, 1977, p. 2. (hereinafter *Response to request*).

[22] The record shows that the Petitioners believed that they had succeeded in making an adequate showing under *both* standards. On October 28, 1977, they stated that, "Public Disclosure Of Form 423 Has Caused And Is Likely To Further Cause, Substantial Harm to Utilities and Their Customers.", (*Response to Request* p.3). In their most recent brief, filed one month after the public conference, they asserted that *"Unrestricted public disclosure of Form 423 has caused and will likely further cause, substantial harm to utilities and their customers through higher fuel prices."* (Supplemental Comments of Electric Utility Group, April 10, 1978, p. 1.)

[23] Letter from Mr. William C. Mescher, President, South Carolina Public Service Authority, September 19, 1977, p. 1.

[24] Views and comments of the American Electric Power System, September 30, 1977, p. 4.

[25] Response to questions posed by FERC staff in Notice of Public Conference Issued February 1, 1978, in Docket No. RM77-2, March 9, 1978, p. 10.

[26] 1978 FTC Letter, p. 12.

utility fuel expenses, allowing comparisons between utilities and over time. It was thought that such data would provide for reasonable public oversight of utility fuel purchasing operations. However, evidence has been presented that instances of possible fuel purchasing imprudence are more visible in the individual fuel delivery data, where correlations of specific fuel grade, source and price can be made.

For example, in comments made at the public conference, the representative of the Office of Consumer Affairs, HEW, stated:

"The substantial benefits which result from public participation in electric utility rate proceedings have been recognized by both the federal government and state utility commissioners. . . . The information in Form 423 is necessary for analysis of many of the issues. . . An average price which includes old contracts, new contracts, and spot purchases would be almost useless in analyzing fuel prices. An average price cannot be used to investigate whether a utility is paying too much for captive coal, paying more than necessary for spot coal purchases, or engaging in other inefficient purchasing policies."[27]

The State of New Jersey[28] and Amax Coal Company[29] have presented specific examples of why detailed data are required for use in rate hearings and environmental hearings. The California Public Utilities Commission sheds more light on this subject:[30]

"The summary reveals nothing about *when* particular contracts were negotiated, and this feature alone renders comparison between listings of different utilities' costs uninformative. . . The purpose of a state commission's inquiry into the fuel cost of a regulated utility is not to determine whether the company has done a good or bad job as a bargain seeker. It is the much more precise goal of deciding whether a utility has paid an *unreasonably* high price for some or all of its fuel. That question can be answered only by detailed analysis and comparison of specific fuel supply contracts. For members of the general public to take an active role in such an inquiry requires that such persons have access to detailed contract information in order to judge when objection is warranted."

It appears, then, that certain public uses of the Form 423 data require the detailed information available only on the as-filed forms. We are unable to conceive of any means of satisfying these public uses while at the same time withholding the data alleged by the Petitioners to be damaging. In fact, the focus of public interest is on the very price data Petitioners wish to conceal, and this recognition leads to the conclusion that there is no alternative to full disclosure which can provide the public with equivalent information.

[27] Prepared Statement of I. Curtis Jernigan, Jr., pp. 38, 39, 46.

[28] Comments Submitted by the Division of Rate Counsel, Department of the Public Advocate, State of New Jersey, March 8, 1978

[29] Comments dated March 7, 1978, Part I, page 2; See also Memorandum of John W. Wilson, March 8, 1978, pages 8-11.

[30] Additional Comments dated March 7, 1978, page 3. See also the letter from the Georgia Consumers' Utility Counsel, March 6, 1978, pages 9-10.

### Concluding Observations

This case has presented some special difficulties for the Commission. During the proceeding it was apparent that there are strongly held beliefs on both sides of the issue, supported by various theories, but a scarcity of evidence to demonstrate convincingly the correctness of the beliefs. Our decision is based on the available evidence, on analyses submitted by various groups and on our own independent evaluations. However, it necessarily relies importantly on the absence of an adequate showing that harms alleged to result from various actions do in fact occur, or are likely to occur.

We noted particularly that a large number of utilities apparently are convinced that they can purchase fuel more economically if knowledge of their detailed transactions is withheld from the fuel industry for a considerable period of time. This belief was not restricted to investor owned utilities. Although the American Public Power Association supported full disclosure, four out of six of the individually-responding publicly owned utilities also favored limiting disclosure. However, despite the belief, we could not find evidence that disclosure has had a significant adverse effect on utility fuel expenses, or would be likely to.

Our problem in assessing the effects of data availability is perhaps best illustrated by the reversal of the recommendations of the Federal Trade Commission and the Department of Justice. Both agencies, prior to the issuance of the Notice of Proposed Rulemaking, recommended to the Commission that it restrict disclosure, to minimize the likelihood of anti-competitive behavior. Following the Commission's proposal to limit disclosure, the two agencies advised the Commission that their views had changed and that they now favor continued full disclosure. We have no objection to the shift in position of the agencies and, in fact, very much appreciate their continued analysis and counsel. But the change in recommendations by the two agencies in charge of monitoring competitive conditions in the economy certainly shows that the issue is not easy to resolve.

We note that most of the evidence and comments filed in the proceeding concerned coal markets, even though expenditues for oil constituted almost 40 percent of total utility fuel purchases in 1977. Apart from expressions of concern by two utilities that Form 423 data may have increased their fuel oil costs,[31] no specific information was presented relating to the oil market. No attempt was made to restrict the scope of the proceeding to coal markets. In fact, the Notice of Public Conference asked for evidence and comments on the Petitioners' allegations with respect to all fuel markets. However, neither the Petitioners nor any intervenor brought forth information on oil markets.[32] While our finding that the current Form 423 reporting has not "set the stage for anti-competitive behavior", nor is likely to in the future, is based specifically on our analysis of coal markets, the general absence of evidence of harm in any fuel market is the most important single consideration in our decision.

Finally, we note that the public interest is generally served by the open availability of information concerning matters which directly affect the public, a principle widely recognized in statutes concerning the operations of public agencies. With some 78 percent of electric generation being dependent upon coal, oil or gass fuels in 1977, at a total fuel cost of $22.5 billion, the topic of utility fuel supply is clearly a legitimate matter for public interest and scrutiny. In view of both the general desirability of information availability and the present concerns regarding the efficiency of utility fuel procurement, we believe a convincing showing of harm would be needed to justify limiting access to the data.

*The Commission Finds:*

1. The notice and opportunity to participate in this rulemaking proceeding with respect to the matters presently pending before this Commission through the submission, in writing, and presentation at a public conference held on March 9, 1978, of data, views, comments and suggestions in the manner described above, are consistent and in accordance with the procedural requirements prescribed by 5 U.S.C. 553.

2. The use of Form 423 data by public intervenors offers significant assistance and benefit to this Commission in fulfilling its functions under the Federal Power Act.

3. There is no known alternative to full disclosure of Form 423 data which can provide equivalent information to public intervenors, and to the public in general.

4. Evidence has not been presented showing that electric utilities have ac-

[31] Comments of the Consolidated Edison Company, October 12, 1977 and comments of Pacific Gas and Electric Company, October 17, 1977.

[32] The Petitioners alleged in their final set of comments that "With respect to fuel oil broad market analyses are not available." *Supplemental Comments Of Electric Utility Group*, April 10, 1978, p. 3.

tually been injured by anti-competitive behavior resulting from or facilitated by the disclosure of Form 423 data.

5. Evidence has not been presented showing that the continuation of the present Form 423 disclosure procedure is likely to lead to anti-competitive behavior in any utility fuel market. The plausibility of this allegation would have to be based on a showing that fuel suppliers currently possess or are likely to acquire some significant degree of market power.

6. Based on our analysis of coal markets, we conclude that the regional short and long term markets are workably competitive and are likely to remain so in the future.[33]

7. No showing has been made on the record that oil suppliers currently possess or are likely to acquire a significant degree of market power in the oil markets of concern to utilities.

8. The two month lag in the release of Form 423 data makes it unlikely that the data could be used to maintain a noncompetitive price structure in any spot fuel market.

9. It is unlikely that the limited long term contract information available from Form 423 could be used to maintain a tacit or explicit price coordination agreement by producers in long term coal markets.

*The Commission*, acting pursuant to authority granted by the Federal Power Act, as amended, particularly Sections 301, 304, 307, 308, 309, and 311 thereof (49 Stat. 854, 855–856, 856–857, 858, 858–859; 16 U.S.C. 825, 825c, 825f, 825g, 825h, 825j) *orders:*

(A) The petition of certain electric utilities for amendment of the Commission's Regulations with respect to Form No. 423 filed October 15, 1976, is hereby denied.

(B) Effective upon issuance of this order, the proposed rulemaking in Docket No. RM77-2, is terminated.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
*Secretary.*

PART II—MARKET CONDITIONS AND DATA REQUIREMENTS NEEDED TO SUPPORT PRICE COORDINATION BY FUEL SUPPLIERS

The Petitioners in Docket No. RM77-2 contend that the present Form 423 reporting system, "may set the stage for anticompetitive behavior by suppliers." This allegation is likely to be true only under certain conditions: (1) that the utilities are generally purchasing fuel in oligopolistic markets; (2) that the information is released with sufficient timeliness so that it can be used to coordinate actions among fuel suppliers; and (3) that the information being released provides a complete description of the transaction. In this part of the Order, we examine the evidence as to whether these conditions currently prevail.

MARKET STRUCTURE—THEORY

Frederic Scherer, in analyzing the impact of information on market performance, makes the following observation:

"It might seem paradoxical that there could be anything harmful about information dissemination activities, which at first glance appear only to perfect the market. However, perfect information is unambiguously beneficial only in the context of purely competitive markets. When the market is oligopolistic, it may impair rather than invigorate rivalry." [1]

In an oligopolistic market,[2] information may "impair rather than invigorate rivalry" by serving as a basis for the maintenance of a tacitly or explicitly collusive price structure. It is generally agreed among economists that the potential for collusive behavior exists in virtually every oligopolistic market. Collusion, as both Justice and the FTC noted, can take many different forms.[3] At one extreme it may involve an explicit price fixing agreement with regular communication among sellers regarding the appropriate price level and share of total market sales that each seller will be allowed the capture.[4] Or, at the other end of the spectrum, it may involve a loose and more subtle form of pricing coordination known as "conscious parallelism." [5]

Fortunately, sellers participating in a collusive agreement always have an incentive to cheat on that agreement. The incentive, of course, is the opportunity to earn higher profits. A seller who is able to cut prices to buyers without having this price shading detected by other sellers will be able to capture a larger share of the market's total sales and thereby earn higher profits. The existence of this phenomenon was explicitly recognized by the court in *Alabana Power:* "In markets characterized by few sellers, secret shading of announced prices may provide the only form of price competition." (511 F.2d at 389). The court went on to note that, "publicizing transaction prices will chill price competition by foreclosing any opportunity for a seller to lower his price without fear of detection and retaliation. The chilling effect flows from publicity itself and does not depend on who collects or disseminates the information." (551 F.2 at 389). The paradox, then, is that within a concentrated market the free flow of detailed information about individual transactions may serve to stabilize the operation of a collusive agreement.

In contrast, within a less concentrated market, the disclosure of detailed price information is likely to have a pro-competitive impact. As the number of sellers increases and the share of total sales supplied by an individual seller decreases, sellers are more likely to compete rather than collude.[6] In a competitive environment

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[33] The Department of Justice concurs with this conclusion. In a letter dated March 9, 1978, the Assistant Attorney General, Antitrust Division, advised the Commission that "Further analysis has convinced us that the structure at the coal industry indicates a market conducive to healthy competition" (at 2). The letter went to conclude that, "the market conditions which might give rise to concern over the public availability of disaggregated price information are not present, and taking into account the position of a number of nongovernmental utility monitoring groups that the continued availability of this data is helpful in discharging their responsibilities, the Department now believes that any balancing of interests should now be struck in favor of continued public access to this informaiton. Therefore, the Department of Justice recommends that the Commission continue its present policy of making the date collected via Form 423 accessible to the public" (at 4-5).

[1] Frederic Scherer, *Industrial Market Structure and Economic Performance*, Chicago Rand McNally & Company, 1970, p. 449. Dr. Scherer, currently Professor of Economics at Northwestern University, was formerly Director of the Bureau of Economics at the Federal Trade Commission.

[2] An oligopolistic market is a "market in which sellers are sufficiently few in number so that each believes his economic fortunes are perceptibly influenced by the market action of other individual firms and that those firms are in turn affected significantly by his own actions." (Scherer, p. 10.)

[3] Letter from John Shenefield, Assistant Attorney General, Antitrust Division to the Secretary (FERC), March 9, 1978, p. 1 (hereinafter the *1978 Justice Department Letter*) and a letter from Carol M. Thomas, Secretary, Federal Trade Commission to the Secretary (FERC), April 4, 1978, p. 2 (hereinafter the *1978 FTC Letter*).

[4] A careful analysis of factors which facilitated formal or explicit agreements among competitors in cases initiated by the Justice Department between January 1963, and December 1972, under Section 1 of the Sherman Act can be found in George Hay and Daniel Kelley, "An Empirical Survey of Price Fixing Conspiracies," *Journal of Law and Economics*, Volume 17, No. 1, April 1974, pp. 13-38.

[5] This term is used to describe a situation in which sellers in a oligopoly market have come to realize that price cutting will probably induce counteractions from rivals that in the end will leave all sellers worse off. In order to avoid this competition each seller exercises restraint in the hope that other sellers will act in a similar fashion. If sellers generally observe this "understanding," then prices will tend to stabilize above competitive levels.

[6] This occurs for a variety of reasons. First, as the number of sellers increases, each seller is more likely to believe that a unilateral price cut will have a less noticeable impact on the sales of other sellers. Second, as the number of sellers increases,

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information will tend to make the market operate more efficiently. This means, in effect, that prices will be distributed within a narrower range. The widespread dissemination of price information reduces the likelihood that in any given transaction a seller will mistakenly sell at too low a price or that a buyer will needlessly pay too high a price.[7]

There was general agreement by the Justice Department, the Federal Trade Commission and the Office of Consumer Affairs (HEW), that the Petitioners' allegation required the implicit assumption of an oligopolistic market.[8] It is noteworthy that even the Petitioners acknowledged this point, though in a somewhat indirect fashion. For example, the Petitioners thought it important to draw our attention to a comment of Professor William Baxter (Stanford Law School) in which he observed that "to the extent that the exchange of data among competitors in a concentrated industry is to be tolerated, it should be tolerated only as to data which is aggregated to a fairly high level and which is not too contemporaneous." [9] Unfortunately, the Petitioners did not seem to see any significance in the fact that the Baxter recommendation was limited to a "concentrated industry" nor did they find it useful to bring to the Commission's attention another sentence in the preceding paragraph of the same article in which Baxter emphasized that the principal danger of information exchange was that it would facilitate "oligopolistic interdependence." In another communication (Supplement to Petition, January 17, 1977), the Petitioners supplied the Commission with a copy of the stipulations agreed to by the Department of Justice, the General Electric Company and Westinghouse Electric Corporation on December 10, 1976, which modified the 1962 decree prohibiting certain price-fixing practices in connection with the sales of large steam turbines. The main thrust of the stipulations is to prohibit the exchange of price and related information between these two manufacturers. The Petitioners suggested that these stipulations were very relevant to our deliberations in this proceeding. We reviewed the stipulations; their relevance was not obvious to us. The heavy electrical equipment industry is a tight oligopoly with a long and well-documented history of collusive behavior.[10] We did not see evidence which indicated similar characteristics for the coal industry, which was the subject of most of the record developed by the Petitioner's and other parties. In fact, we did not see any similarity between the two industries apart from the fact that electric utilities are the principal customers for both industries.

### Evidence on Market Structure and Other Factors

The plausibility, then, of the Petitioner's allegation rests in part on an analysis of the structure of coal markets. The Petitioners did not present any studies of market structure. It was their contention that a "full-blown market analysis is not required to determine the need to limit public disclosure." [11] Nevertheless, they did agree that such studies would be relevant for our deliberations.[12] Since the Petitioners did not present evidence on market structure, we relied on several studies of the coal industry that become available during the last year.

The two studies that were cited most frequently by participants in this proceeding were: *The State of Competition In The Coal Industry* issued by the General Accounting Office on December 30, 1977 (hereinafter the "GAO Report") and *Coal Price Formation* (1977) prepared by Charles River Associates, Incorporated, for the Electric Power Research Institute (hereinafter the "Charles River report"). A third study, *Competition In The Coal Industry* prepared by the Justice Department (hereinafter the "Justice Department report") was initially described to us in summary form.[13] The full report became available in May 1978, and generally confirmed the findings of the GAO and Charles River reports.[14]

There is general agreement in all three reports that electric utilities purchase coal in regional markets.[15] The reports do disagree, however, on the number of regional markets and the boundaries of these markets. The Justice Department report identifies four regional markets—the Appalachian, Midwest, Northern Plains and Southwest markets. In contrast, the GAO and Charles River studies identify only three regional markets. The difference is attributable to the fact that the GAO and Charles Rivers reports combine the Midwest and Northern Plains markets in a single market (designated the Central Western market in the GAO report and the Midwest market in the Charles River Report.

Among the various dimensions of market structure that affect the potential for collusion, seller concentration generally receives the most attention.[16] While the level of seller concentration is not the sole determinant of the degree of competition in a market, it is accepted in the economics literature that the likelihood of sellers colluding the raise prices above competitive levels increases, other things being equal, as the degree of seller

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there is a higher probability that at least one seller will have a different cost structure and therefore a different notation as to what constitutes the most advantageous price. Finally, collusion will simply become difficult as more and more sellers have to agree to a common price level.

[7] See the *1978 FTC Letter*, p. 11.

[8] 1978 Justice Department Letter, p. 1, 1978 FTC Letter, p. 9, and Prepared Statement of I. Curtis Jernigan, Jr., Director of Economic Policy and Planning Office of Consumer Affairs, March 9, 1978, p. 7.

[9] William Baxter, Review of Richard Posner's "Antitrust Law: An Economic Perspective." *The Bell Journal of Economics*, Autumn 1977, p. 615 quoted in *Response to Request*, p. 7, footnote 1.

[10] See Ralph G. M. Sultan, *Pricing in the Electrical Oligopoly*, Volumes I and II, Cambridge, Massachusetts: Harvard University Press, 1974 and Clarence C. Walton and Frederick W. Cleveland, Jr., *Corporations on Trial: The Electric Cases*, Belmont, California: Wadsworth Publishing Company, Inc., 1964

[11] Response to Request, p.8.

[12] Transcript, p.23.

[13] The 1978 Justice Department Letter, p.2-3.

[14] Citing nine earlier studies, the Justice Department observed that "the coal industry seems recently to have been the object of more studies of competition than any other industry in our economy." (Justice Department report, p.83, ff.166). Most of these studies have been reported widely in the industry and trade press. Therefore, given the nature of the Petitioners' allegations it is rather surprising that both their chief counsel and their economic witness were completely unaware of the existence of such studies. Transcript, p.22-23.

[15] The FTC raised the possibility that some transactions might take place in subregional markets, but observed that "it is noteworthy that the petitioners have not been able to identify any such situations." (1978 FTC Letter p.6.) The FTC also noted that within the general category of bituminous coal a particular type of coal, such as low sulfur high Btu coal, might constitute a distinct submarket. This further segmentation would be justified only if utilities had limited ability to substitute between high and low quality coal. We do not believe this to be the case. It is clear that no buyer will pay more for higher quality coal than the incremental cost of using lower quality coal. The Justice Department has reported that "Recent estimates based on engineering data suggest that, at least for quality as measured by Btu and ash content, these incremental costs are low." (Justice Department report, p.40.) Another factor which enhances the purchasing flexibility of utilities is blending. By blending different kinds of coal, utilities can achieve almost any quality level they want. Finally, distinctions between low-sulfur "compliance" and high-sulfur "non-compliance" coal may disappear with implementation of the 1977 Clean Air Amendment Act's requirement that utilities install sulfur-removing scrubbers on all new plants regardless of the type of coal burned in them.

[16] Other factors which may affect the ability of sellers to maintain prices above competitive levels are: barriers to entry; similarity of competitors; degree of buyer concentration; opportunities for communication; and nature of the product and the dominant mode of transaction.

concentration increases. The explanation for this phenomenon is that it is easier to coordinate pricing decisions, either tacitly or explicitly, in markets that contain a small number of sellers, each with a significant market share.[17] The key question, then, is: at what level of concentration does an oligopolistic market become susceptible to anticompetitive practices? In a recently published analysis of various energy markets, Professor Markham of Harvard University concludes that "there is a consensus among economists, antitrust law scholars, and public policy makers that a four-firm concentration ratio of 50 percent or less is a cut-off below which it cannot reasonably be inferred that market power is significant, or that tacit collusion among firms is a likelihood."[18] Professor Markham's view is shared by the Justice Department: "Virtually all economists agree, however, that when sellers are numerous and diverse, collusion becomes more difficult and is less likely to be effective if four-firm concentration is below 50 percent."[19]

Using the 50 percent standard, we looked at two types of concentration ratios, one which measured the percentage of total production accounted for by the four leading firms and the other which measured the percentage of uncommitted non-Federal reserves owned or controlled by the leading four firms. The first ratio provides a rough measure of the potential for collusion in spot sales.[20] The second ratio provides evidence regarding the potential for collusion in the market for sales under long-term contracts.

THE MARKET FOR SHORT TERM SALES

The evidence on concentration ratios in current sales is mixed. In the Appalachian market, both the Justice Department and the GAO reported that in 1974 the four leading producers accounted for 22.3 percent of the region's total coal production.[21] Based on this evidence, the Justice Department concluded that "This market appears to offer little potential for competitive problems."[22]

In the remaining regional markets, concentration ratios are higher. Using 1974 data, the Justice Department calculated a four firm production concentration ratio of 56.1 percent in the Midwest market and 37.7 percent in the Northern Plains market. As was noted earlier, GAO combines these two smaller markets into a single larger market designated the Central Western market. For this market the 1974 four firm production concentration ratio was found to be 44.3 percent. There is reason to believe that the technique used by GAO for delineating market boundaries may tend to overstate market size.[23] Therefore, we are inclined to accept the Justice Department's delineation of the Midwest and Northern Plains market as more accurately reflecting the realities of the market place as they existed in 1974. It should be noted, however, that the 56.1 percent concentration ratio probably overstates the potential for oligopolistic coordination in the Midwest market. According of Justice, in recent years, "the most important feature of competition" in the Midwest market was the "severe competition pressure from producers in the Northern Rockies basin."[24] The presence of this competition from suppliers outside the market would reduce the likelihood that Midwestern producers could successfully engage in tacit or explicit price coordination.

Concentration in the southwest market, based on current production was somewhat higher. According to the Justice Department, in 1974 the four leading producers accounted for 64.1 percent of the Southwest's total coal production. There are two factors which offset the anti-competitive potential of this relatively higher level of production concentration. First, most coal produced in this region is sold under long term rather than spot contracts.[25] Therefore, even if seller concentration is high in the short term sales market, it is of less importance given the small volume of coal that is sold under spot contracts. Second, and more importantly, of all the regional markets, the level of buyer concentration is highest in the Southwest market. In 1976, four utilities consumed 83.6 percent of the total amount of coal produced in the Southwest market for sale to electric utilities.[26][27] It has been shown empirically that a high level of buyer concentration often serves as a countervailing force against a high level of seller concentration.[28] Large buyers are able to "play off sellers against each other and thereby impose a sort of competition which will resemble that which exists when no buyer or seller has market power." (footnote omitted)[29] Thus, even though seller concentration in production is relatively high in the Southwest, the existence of an even higher level of buyer concentration greatly reduces the potential for oligopolistic coordination.

In summary, the potential for collusive behavior in spot sales appears to be very small. Evidence on concentration levels in the Appalachian and Northern Plains markets suggests that there is very little potential for anticompetitive behavior in either of these markets. The Midwest market exhibits a higher concentration ratio. However, the simple four firm concentration

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[17] It should be emphasized that the fact that a utility regularly purchases coal from only two or three sellers does not prove that the relevant market for that utility is highly concentrated. As the Office of Consumer Affairs pointed out, it is not "inconsistent with the existence of a completely competitive market to see relatively stable buyer-seller relationships" and that to determine the extent of the relevant market it is necessary "to look at the alternative such as how many equivalent sellers were available in that market area" and not how many were transacting business with the buyer at a particular moment in time. (Transcript at p.111.)

[18] Jesse E. Markham, Anthony P. Hourihan, Francis L. Sterling, *Horizontal Divestiture and the Petroleum Industry*, Cambridge, Massachusetts: Ballinger Publishing Company, Inc., 1977, p.5.

[19] Justice Department report, p.55.

[20] It is a less than perfect measure since, for most fuel suppliers, some portion of current production is dedicated to existing long term contracts and is therefore not available for spot sales. However, if spot prices are favorable most coal producers have the capability of increasing production by mining existing seams more intensively or opening up previously uneconomic seams and thus being able to supply new spot contracts in addition to existing long term contracts. In addition, there is evidence that coal producers do not always honor existing long-term contracts. In 1974, when spot prices moved significantly above prices on long term contracts many coal suppliers reneged on their long term contracts and shifted their output to the spot market. See *Report to the FTC on the Use of Automatic Fuel adjustment Clauses and the Fuel Procurement Practices of Investor-Owned Electric Utilities*, Bureau of Economics and Bureau of Competition, May 1977, p. 135-136 and Justice Department report, p. 42.

[21] We gave less weight to the concentration ratios presented in in the Charles River report because they are based on 1970 data.

[22] Justice Department report, p. 64.

[23] The GAO report uses a technique developed by Elzinga and Hogarty for delineating the geographic market. (See Kenneth Elzinga and Thomas Hogarty, "The Problem of Geographic Market Delineation in Antimerger Suits, *The Antitrust Bulletin*, Spring, 1973, p. 45-82). In general, an area is considered to be a separate geographic market if it receives few imports and makes few exports of the product in question. The "few exports" condition may overstate size of the market. This occurs because it pushes the markets proposed boundaries "far enough beyond the exporting 'core' area to include the destinations of much of the core's exports." As a result, the "few exports" criterion may fail "to capture the power of a monopolist (or oligopolist) in an exporting region to charge non-competitively high prices to customers in that region." (Justice Department report, p. 46.)

[24] Justice Department Report, p. 65.

[25] Justice Department Report, p. A-28.

[26] Justice Department Report, p. 79.

[27] Sales to Electric utilities accounted for approximately three-fourths of coal production in the Southwest market in 1975.

[28] See S. Lustgarten, "The Impact of Buyer Concentration in Manufacturing Industries," *Review of Economics and Statistics*, Vol. 57, p. 125 and R. McGuokin and H. Chen, "Interactions Between Buyer and Seller Concentration and Industry Price-Cost Margins," *Industrial Organization Review*, Vol 4, p. 123.

[29] Justice Department Report, p. 78.

ratio in production overstates the potential for oligopolistic coordination. The ability of Midwestern producers to maintain prices above competitive levels is effectively constrained by the availability of coal imports from the Northern Rockies. The highest concentration ratio in current production is found in the Southwest market. Here the four leading producers accounted for 64.1 percent of production. This high level of seller concentration is offset, however, by an even higher level of buyer concentration. Therefore, we conclude that it is unlikely that producers in the Southwest market have sufficient market power to maintain spot prices above competitive levels.

### Form 423 Data Dissemination and Short Term Sales

We conclude, therefore, that coal producers generally do not have market power that would allow them, either individually or as a group, to maintain spot prices above competitive levels. But, even if the conclusion is incorrect, it would still be necessary under the "likely to harm" standard to show that the public availability of Form 423 data is a significant factor contributing to the ability of coal producers to maintain a non-competitive price structure in spot sales. Neither the Petitioners nor anyone else was able to make such a showing.

The Petitioner's inability to produce such evidence is understandable if one takes a closer look at how Form 423 data is disseminated. Under the present reporting system, the information relating to a particular purchase, whether it is spot or long term, is generally not made public until at least two months after the transaction has occurred. Given the volatility of the spot market, it is hard to imagine how the release of information which is two months out of date will enable coal producers to maintain a price floor for spot sales in different regional markets.

### The Market for Long Term Sales

Sales under long term contracts represent a somewhat different case. Here it is helpful to examine concentration ratios based on uncommitted non-Federal reserves. This requires some explanation. It will be recalled that a concentration ratio is a useful statistic only to the extent that it measures the likelihood that sellers, either individually or collectively, will be able to raise prices above competitive levels. In general, the ability of sellers to influence prices in future transactions will depend critically on how much of the commodity or product they can bring to market. In the case of coal sales under long term contracts, current production levels are not very useful for making this determination. A firm "may account for a large share of current deliveries yet have little or no ability to market coal in the future" if it has "contractually committed or extracted the bulk of its reserves." [30] The potential for collusion in long term contracts depends on the level of concentration that exists in uncommitted reserves. Since the resumption of coal leasing on Federal lands is not likely for several years, the present potential for anticompetitive behavior is best assessed by examining concentration levels in uncommitted non-Federal reserves.

Once again, the level of concentration varies considerably across regions. The 1974 four firm concentration ratios in uncommitted non-Federal reserves were as follows: 19.3 percent in the Appalachian market; 25.6 percent in the Midwest market; 46.9 percent in the Northern Plains market; and 66.3 percent in the Southwest market. An analysis based solely on seller concentration ratios would indicate a substantial potential for anticompetitive behavior in the Southwest market. Therefore, it is important to take note of the Justice Department's conclusion that "the prospects for non-competitive activity are not as serious as suggested by simple concentration rations" and that "there is no apparent reason to expect more competition problems in the coal market of the Southwest than in the nation's other workably competitive industries." [31]

The Justice Department points to several factors that have to be considered in addition to the level of seller concentration. First, as was noted earlier, the level of buyer concentration is very high in the Southwest market. The exercise of countervailing power by strong buyers will in most instances effectively thwart attempts by sellers to collude on prices. This applies to the market for long term purchases as well as in the market for spot purchases. A second consideration is the large size and relative infrequency of coal supply contracts in the Southwest market. The Justice Department states that this factor, by itself, would make "successful collusion quite difficult." [32] The Department's explanation is worth quoting at some length:

> Foregoing a contract with a utility pursuant to a cartel allocation scheme would mean giving up a substantial portion of the potential market. Some cartel members would be required to wait for a long period before their "turn" for a contract came around. They might well fear that the cartel would dissolve before their turn arrived thus putting them in the position of having subsidized their fellow conspirators' monopoly gain without a corresponding monopoly gain for themselves. [33]

We believe that these considerations would apply even more strongly to the informal collusive agreements that are the stated concern of the Petitioners.

A third consideration which militates against anticompetitive conduct in the Southwest market is the fact that the Justice Department will have considerable influence over future Federal leasing policy. Section 15 of the Federal Coal Leasing Amendments Act requires the Justice Department to advise the Secretary of Interior as to "whether the issuance, renewal or readjustment of any coal lease would create or maintain a situation inconsistent with the antitrust laws." It is likely that coal producers, cognizant of the Justice Department's new role, will be very hesitant to undertake any activities that give any appearance of being anticompetitive.

It has been argued that the Form 423 reporting system may help to maintain a collusive agreement in the market for long term sales by serving as a policing mechanism. We find this argument unconvincing. For example, it would be very easy for a coal producer to cheat on a collusive agreement by initially charging a higher collusive price, but then lowering the price in later years by giving the buyer very favorable terms in the escalator clause of the contract. By doing so, the producer could capture a contract that he otherwise would not have obtained and his "price shading" would probably go undetected by his fellow conspirators for a least a year or two since the details of escalator clauses are not reported on Form 423. In a recent study, the MITRE Corporation listed some nineteen different provisions that have come into widespread use in long term contracts signed by electric utilities. [34] Any one of these provisions could have a significant impact on price depending on the provision. Yet, the Form 423 reporting system, as it is presently constituted, provides no information on any of these provisions. It therefore does not appear to us that the public availability of Form 423 data would be a significant factor contributing to the ability of coal producers to maintain a non-competitive price structure in the maket for long term sales.

[FR Doc. 79-9545 Filed 3-27-79; 8:45 am]

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[30] Justice Department Report, p. 56.
[31] Ibid., p. 69 and p. A-49.
[32] Ibid., p. A-48.
[33] Ibid., p. A-48.

[34] MITRE Corporation, Analysis of Steam Coal Sales and Purchases, April, 1975, p. 85. (Report prepared for Office of Coal, Federal Energy Administration.)

[4210-01-M]

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

[24 CFR Part 203]

[Docket No. R-79-636]

### MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

### Mortgagee Eligibility—Federal Reserve Members, Other Institutions

AGENCY: Department of Housing and Urban Development/Office of the Secretary.

ACTION: Notice of Transmittal of Proposed Rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) days of continuous session of Congress prior to such rule's publication for comment in the FEDERAL REGISTER. This Notice lists and summarizes for public information a rule which the Secretary is submitting to Congress for such review.

FOR FURTHER INFORMATION CONTACT:

Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrent with issuance of this Notice, the Secretary is forwarding to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, the proposed rule listed below.

24 CFR PART 203, PROPOSED RULE—FEDERAL RESERVE MEMBERS, OTHER INSTITUTIONS

This proposed rule amends 24 CFR 203.2, which deals with categories of lending institutions eligible for approval by HUD as mortgagees. The amendment adds credit unions chartered by the National Credit Union Administration to the list of eligible lending institutions. This action would make it possible for credit unions to finance mortgages insured under the National Housing Act.

(Sec. 7(o), Department of HUD Act (42 U.S.C. 3535(d)).)

Issued at Washington, D.C., March 21, 1979.

PATRICIA ROBERTS HARRIS,
*Secretary, Department of Housing and Urban Development.*

[FR Doc. 79-9289, Filed 3-27-79; 8:45 am]

[4210-01-M]

[24 CFR Part 868]

[Docket No. R-79-637]

### MODERNIZATION PROGRAM, PHA-OWNED PROJECTS

AGENCY: Housing and Urban Development/Office of the Secretary.

ACTION: Notice of Transmittal of Proposed Rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rules's publication for comment in the Federal Register. This Notice lists and summarizes for public information a rule which the Secretary is submitting to Congress for such review.

FOR FURTHER INFORMATION CONTACT:

Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the rulemaking described below:

PART 868, SUBPART A—MODERNIZATION OF PUBLIC HOUSING RENTAL PROJECTS, AND SUBPART B—MODERNIZATION OF PUBLIC HOUSING HOMEOWNERSHIP OPPORTUNITIES PROJECTS

This proposed rule would amend 24 CFR Part 868, Modernization Program-PHA-Owned Projects, to expand the scope of the public housing modernization program to include homeownership projects assisted under the Low-Income Housing Homeownership Opportunities Program (Turnkey III) and the Mutual Help Homeownership Opportunities Program (Indian Housing). The amendments clarify requirements for eligibility of both participants and work items, and also set forth the rights and obligations of the homebuyer family.

(Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o), Section 324 of the Housing and Urban Development Amendments of 1978).

Issued at Washington, D.C., March 21, 1979.

PATRICIA ROBERTS HARRIS,
*Secretary, Department of Housing and Urban Development.*

[FR Doc. 79-9290 Filed 3-27-79; 8:45 am]

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[3710-08-M]

## DEPARTMENT OF DEFENSE

### Department of the Army

[32 CFR Part 505]

[Army Reg. 340-21]

### PERSONAL PRIVACY AND RIGHTS OF INDIVIDUALS REGARDING THEIR PERSONAL RECORDS

### Proposed Rule

AGENCY: Department of Defense, Department of the Army.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Army proposes to amend its rule (Army Regulation 340-21) which implements the Privacy Act of 1974 by withdrawing from consideration requests from individuals to amend criminal investigation records of the U.S. Army Criminal Investigation Command. These records are contained in systems of records which have been exempted from the amendment provisions of the Act.

DATES: Comments must be received on or before April 27, 1979.

ADDRESS: Send comments to: Mr. Guy B. Oldaker, HQDA, The Adjutant General Center, Washington, DC 20314.

FOR FURTHER INFORMATION CONTACT:

Guy B. Oldaker, (202) 693-0973.

SUPPLEMENTARY INFORMATION: Department of the Army policy and procedures implementing the Privacy Act of 1974 were adopted in the FEDERAL REGISTER of November 28, 1975 (40 FR 55551) and are contained in 32 CFR Part 505.

It is proposed to amend §§ 505.2 (h) and (i) to withdraw from consideration under the Privacy Act, requests from individuals to amend criminal investigation records of the US Army Criminal Investigation Command. These records are contained in systems of records identified as A0501.08e, Informant Register; A0508.11a, Criminal Investigation and Crime Laboratory Files; A0508.11b, Criminal Information Reports and Cross Index Card Files; and A0508.25a, Index to Criminal Investigative Case Files which, pursuant to Section 552a(j)(2), Title 5, U.S.C., have been exempted from the amendment provisions of the Privacy Act (*see* 32 CFR 505.9(b)).

While the effect of this proposed amendment is to deny requesters amendment rights as well as agency appellate procedures and other remedial provisions of subsection (d) of the Privacy Act, procedures set forth in Chapter 4, Army Regulation (AR) 195-

2 provide that requests to amend investigative reports of the US Army Criminal Investigation Command will be considered under this regulation by the Commander, US Army Criminal Investigation Command. Action by the Commander, US Army Criminal Investigation Command on such requests will constitute final action on behalf of the Secretary of the Army under AR 195-2. Thus, these viable procedures afford individuals a right to seek amendment of exempt investigatory records pertaining to them and, at the same time, insure that the agency maintains only such information about an individual as is relevant and necessary to accomplish a purpose required to be accomplished by statute or by executive order of the President.

This amendment is proposed pursuant to 5 U.S.C. 552a(f).

H. E. LOFDAHL,
*Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.*

MARCH 22, 1979.

In § 505.2, the following paragraphs are revised to read as follows:

1. In paragraph (h), *Procedure for requesting amendment of records,* delete information and substitute the following:

* * * * *

(h) Upon request an individual (or his authorized representative) may have a record pertaining to him amended by correction, addition, deletion or otherwise, regardless of whether it is part of a system of records, if such record is not accurate, relevant, timely, or complete. Such requests will be processed in accordance with this rule, irrespective of whether the Privacy Act is cited, except for those records specified in paragraph (h) (3) and (4) of this section.

* * * * *

2. In paragraph (h)(3), add the following sentence:

(h) * * *

(3) * * * Requests for amendment of judgmental matters should be processed under applicable existing procedures (e.g., Army Regulation 623-105 for officer evaluation report appeals).

* * * * *

3. Paragraph (h)(4), add new paragraph as follows:

(h) * * *

(4) US Army Criminal Investigation Command (USACIDC) reports of investigation are exempt from amendment provisions of the Privacy Act. Requests for amendment of criminal investigation reports that fall within the scope of Chapter 4 of AR 195-2 will not be considered under the provisions of AR 340-21. The action of the Commander, USACIDC pursuant to Chapter 4 will constitute final action on behalf of the Secretary of the Army with respect to AR 195-2.

* * * * *

4. Paragraph (i), Processing of requests for amendment of records.

In paragraph (i)(1), delete entry and substitute the following:

* * * * *

(i) * * *

(1) The custodian of a record who initially receives a request for amendment pursuant to paragraph (h) of this section will:

* * * * *

5. In paragraph (i)(5), insert after the third sentence the following:

* * * * *

(i) * * *

(5) * * * This does not apply to criminal investigation reports on which the Commander, US Army Criminal Investigation Command takes final action (see paragraph (h)(4) of this section). If the Board determines not to amend the records, it will take the action specified in paragraph (i)(3)(i) of this sentence, and inform the individual in writing—

* * * * *

[FR Doc. 79-9308 Filed 3-27-79; 8:45 am]

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[6560-01-M]

## ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 62]

[FRL 1083-5]

### APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

LOUISIANA PLAN FOR CONTROLLING SULFURIC ACID MIST; ARKANSAS NEGATIVE DECLARATION—FLUORIDE EMISSIONS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes approval, with certain exceptions, of Louisiana's plan for controlling sulfuric acid mist emissions from existing sulfuric acid production facilities. Louisiana's plan was submitted in response to the publication of emission control guidelines by the Administrator under section 111(d) of the Clean Air Act. The plan satisfies, in part, EPA's requirement for adoption and submittal of a plan to control sulfuric acid mist.

DATES: Interested persons are invited to comment on this proposed rulemaking. Comments must be received on or before April 27, 1979, to be considered by EPA in the final approval/disapproval decision. Included is a negative declaration concerning phosphate fertilizer plants in Arkansas.

ADDRESSES: Written comments should be submitted to the address below: Environmental Protection Agency, Region 6, Air Program Branch, 1201 Elm Street, Dallas, Texas 75270. Copies of the State's submittal are available for inspection during normal business hours at the address above and at the following address: Environmental Protection Agency, Public Information Reference Unit, Room 2932, EPA Library, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Jerry Stubberfield, Air Program Branch, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270. (214) 767-2742.

SUPPLEMENTARY INFORMATION: On July 18, 1978, the Governor of Louisiana, after adequate notice and public hearing submitted the State's plan for controlling sulfuric acid mist from sulfuric acid production facilities. The plan was developed on the basis of the requirements of 40 CFR Part 60, Subpart B.

STANDARDS AND COMPLIANCE SCHEDULES

In § 60.24, a distinction is made between the requirements for health-related and welfare-related pollutants. For health-related pollutants, which sulfuric acid mist has been determined to be, emission standards shall be no less stringent than that specified in the Guideline (EPA 450/2-77-019), and the final compliance time shall be no later than that specified in the Guideline.

The emission standard for sulfuric acid mist is provided in § 24.7.2 of Regulation 24.0, Emission Standards for Sulfur Oxides. It applies to all designated facilities and is identical to that specified in the Guideline. The State's plan also contains compliance milestones similar to those in the Guideline, with identical elapsed time estimates. The plan provides for submittal of compliance schedules after submittal of the plan, and it contains statements that schedules will be developed in accordance with the requirements for public hearings and legally enforceable increments of progress. Regulation 24.0, as it applies to emission standards for sulfuric acid mist and other requirements of § 60.24, is considered approvable with two excep-

tions. The requirements of § 60.24(b), with respect to test methods and procedures, are not met, and the malfunction/upset provisions of § 24.9 of the regulation make the acid mist emission standard unenforceable. Section 24.9 is being proposed for disapproval in another action under Section 110 of the Act. Therefore, no action on § 24.9 will be taken in this rulemaking.

EMISSION INVENTORY

Section 60.25 requires that an emission inventory for all designated facilities be submitted as part of the plan, and that each inventory meet the specifications of Appendix D to Part 60. In addition, emissions shall be correlated with applicable emission standards and made available to the general public. In Louisiana's plan, emission data for nine facilities are provided. While the facility name, location, and annual emissions are provided, the inventories do not meet all of the specifications of Appendix D. Therefore, the State's plan does not meet the requirements of Section 60.25(a).

Under the requirements of Section 110 of the Clean Air Act, Sections 6.4 and 7.5 of the Louisiana Air Control Commission (LACC) regulations are intended to satisfy public disclosure requirements for emission data. These sections were disapproved by EPA on September 26, 1974 (39 FR 34536). Since these same sections are intended to satisfy disclosure requirements under Section 111(d) of the Act, the plan, with respect to § 60.25(c), is not considered approvable.

LEGAL AUTHORITY

The State identified the Louisiana Air Control Law as the authority for its plan to control sulfuric acid mist, and a copy was included in the submittal. That portion of the law, Section 2210, which concerns legal authority for making emission data available to the public, was disapproved by EPA on September 26, 1974 (39 FR 34536). Therefore the legal authority requirement under § 60.26(a), which concerns disclosure of emission data, is not met.

PLAN REVISIONS

Section 24.8 authorizes the LACC to grant variances to the provisions to Regulation 24.0. Such variances must be handled in accordance with the requirements of 40 CFR 60.28. Under these requirements, variances would be treated as plan revisions. Under paragraph (c) of § 60.28, a plan revision is not considered part of an applicable plan until it is approved by the Administrator. Approval of § 24.8 of Regulation 24.0 does not relieve the LACC of the responsibility of complying with the requirements of 40 CFR 60.28.

NEGATIVE DECLARATION

Whenever sources covered by a Guideline are not located in a State, the State is required to submit a certification to this fact. Included in this notice is a declaration from the Arkansas Department of Pollution Control and Ecology that there are no phosphate fertilizer plants in Arkansas which require control of fluoride emissions. Similar declarations have already been published in Part 62 for New Mexico and Oklahoma (43 FR 51393).

This action is taken under the authority of Section 111(d) of the Clean Air Act, as amended, 42 U.S.C. 7411(d).

Dated: February 20, 1979.

EARL KARI,
*Regional Administrator.*

It is proposed to amend Part 62 of Chapter 1, Title 40 of the Code of Federal Regulations by adding Subparts E and T as follows:

**Subpart E—Arkansas**

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

**§ 62.850 Identification of plan-Negative declaration.**

The State Department of Pollution Control and Ecology submitted a letter on November 9, 1977, certifying that there are no existing phosphate fertilizer plants in the State subject to Part 60, Subpart B of this chapter.

**Subpart T—Louisiana**

SULFURIC ACID MIST FROM EXISTING SULFURIC ACID PLANTS

**§ 62.4620 Identification of plan.**

(a) Title of plan: "Control of Sulfuric Acid Mist from Existing Surlfuric Acid Production Units."

(b) The plan was officially submitted on July 18, 1978.

(c) Identification of sources: The plan includes the following sulfuric acid plants:

(1) Agrico Chemical Company in St. James Parish.

(2) Allied Chemical Corporation in Ascension and Iberville Parishes.

(3) Beker Industries in St. Charles Parish.

(4) Cities Services Oil Company in Calcasieu Parish.

(5) E. I. DuPont De Nemours & Company, Inc. in Ascension Parish.

(6) Freeport Chemical Company in St. James Parish.

(7) Freeport Chemical Company in Plaquemines Parish.

(8) Olin Corporation in Caddo Parish.

(9) Stauffer Chemical Company in East Baton Rouge Parish.

**§ 62.4621 Emission standards and compliance schedules.**

(a) The requirements of § 60.24(b) of this chapter are not met since the test methods and procedures for determining compliance with the sulfuric acid mist emission standards are not specified.

(b) Emissions from sulfuric acid plants must be measured by the methods in Appendix A to Part 60, or by equivalent or alternative methods as defined in § 60.2(t) and (u) respectively.

**§ 62.4622 Emission inventories, source surveillance, reports.**

(a) The requirements of § 60.25(a) of this chapter are not met since the emission since the emission inventories do not provide information as specified in Appendix D to Part 60.

(b) The requirements of § 60.25(c) of this chapter are not met since the plan does not provide for the disclosure of emission data, as correlated with applicable emission standards, to the general public.

(c) *Regulation for Public Availability of Emission Data.* (1) Any person who cannot obtain emission data from the Agency responsible for making emission data available to the public, as specified in the applicable plan, concerning emissions from any source subject to emission limitations which are part of the approved plan may request that the appropriate Regional Administrator obtain and make public such data. Within 30 days after receipt of any such written request, the Regional Administrator shall require the owner or operator of any such source to submit information within 30 days on the nature and amounts of emissions from such source and any other information as may be deemed necessary by the Regional Administrator to determine whether such source is in compliance with applicable emission limitations or other control measures that are part of the applicable plan.

(2) Commencing after the initial notification by the Regional Administrator pursuant to paragraph (b)(1) of this section, the owner or operator of the source shall maintain records of the nature and amounts of emissions from such source and any other information as may be deemed necessary by the Regional Administrator to determine whether such source is in compliance with applicable emission limitations or other control measures that are part of the plan. The information recorded shall be summarized and reported to the Regional Administrator, on forms furnished by the Regional Administrator, and shall be submitted within 45 days after the end of the reporting period. Reporting periods are January 1-June 30 and July 1-December 31.

(3) Information recorded by the owner or operator and copies of this summarizing report submitted to the Regional Administrator shall be retained by the owner or operator for 2 years after the date on which the pertinent report is submitted.

(4) Emission data obtained from owners or operators of stationary sources will be correlated with applicable emission limitations and other control measures that are part of the applicable plan and will be available at the appropriate regional office and at other locations in the State designated by the Regional Administrator.

§ 62.4623 Legal authority.

(a) The requirements of § 60.26(a) of this chapter are not met since the plan does not provide adequate legal authority for the State to make emission data, as correlated with applicable emissions standards, available to the general public.

§§ 62.4624-62.4639 [Reserved]

[FR Doc. 79-9388 Filed 3-27-79; 8:45 am]

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[6560-01-M]

[40 CFR Part 65]

[FRL 1084-4]

DELAYED COMPLIANCE ORDERS

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a delayed compliance order issued by the State of Utah, through the Air Conservation Committee to Spanish Fork Foundry in Spanish Fork, Utah. The order requires Spanish Fork Foundry to complete construction and installation of new buildings and electric furnaces, discontinue use of existing furnaces and achieve compliance with Section 2.2.1 of the Air Conservation Regulations by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by this order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before April 27, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Ms. Christine Phillips, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, telephone (303) 837-2361.

SUPPLEMENTARY INFORMATION: Because this order has been issued to a major source of particulate matter emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Act. EPA may approve the order only if it satisfies the appropriate requirments of this subsection. EPA has preliminarily determined that the order complies with those requirements, but specifically requests public comment on those matters.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Utah SIP. Compliance with the proposed order will not exempt the foundry from complying with applicable requirements contained in any subsequent revisions to the SIP which are approved by EPA.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(Authority: 42 U.S.C. 7413, 7601.)

Dated: March 16, 1979.

ALAN MERSON,
*Regional Administrator,*
*Region VIII.*

Before the Utah State Air Conservation Committee.

In the matter of Spanish Fork Foundry; Order.

The following Order is issued this date pursuant to Section 113(d) of the Clean Air Act, as amended 42 USC Section 7401, et seq. in that Spanish Fork Foundry is not in compliance with Section 2.2.1 of the Utah Air Conservation Regulations. Public hearing on this order was conducted on January 4, 1979. After consideration of all relevant facts it is determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and,

*It is hereby ordered* that:

1. The Spanish Fork Foundry shall complete the following acts on or before the dates specified:

a. By July 1, 1979, complete construction and installation of new buildings and electric furnaces.

b. By July 1, 1979, discontinue use of existing furnaces.

2. The Foundry shall achieve compliance with Section 2.2.1 of the Air Conservation Regulations by July 1, 1979.

3. Pursuant to Section 113(d)(7), during the period in which this Order is in effect, the Foundry shall use the best practicable systems of emission reduction so as to minimize particulate emissions and to avoid any imminent and substantial endangerment to the health of persons and shall further comply with the requirements of the applicable implementation plan insofar as it is able to so comply.

4. The Foundry shall submit reports to the Committee within five (5) days of completion of dates detailed in paragraph 1 certifying compliance with the outlined schedule.

5. Nothing in this Order shall be construed so as to affect the Foundry's responsibility to comply with any other Federal, State or local regulations.

6. Spanish Fork Foundry has agreed to the above compliance schedule and conditions thereof and considers such schedule reasonable.

7. The Foundry is hereby notified that its failure to achieve final compliance by July 1, 1979, will result in a requirement to pay a noncompliance penalty under Section 120 of the Federal Clean Air Act.

Dated this 19th day of January, 1979.

By the Air Conservation Committee.

J. RALPH MACFARLANE,
*Chairman.*

[FR Doc. 79-9379 Filed 3-27-79; 8:45 am]

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[6560-01-M]

[40 CFR Part 65]

[FRL 1084-3; Delayed Compliance Order A-78-18]

DELAYED COMPLIANCE ORDERS

**Proposed Delayed Compliance Order for Great Salt Lake Minerals & Chemicals Corp., Ogden, Utah**

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an administrative order to Great Salt Lake Minerals and Chemicals Corporation. The order requires the Corporation to bring air emissions from its potash rotary dryer into compliance with certain regulations contained in the federally-approved Utah State Implementation Plan (SIP) for control of

air quality. Because the Corporation is unable to comply with these regulations at this time, the proposed Order would establish an expeditious schedule requiring a demonstration of final compliance by October 1, 1979. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the Order.

DATE: Written comments must be received on or before April 27, 1979. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESS: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Helen M. Knoll, Attorney-Advisor, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, telephone (303) 837-4812.

SUPPLEMENTARY INFORMATION: Great Salt Lake Minerals & Chemicals Corporation operates a plant in Ogden, Utah, which produces sodium sulfate and potassium sulfate. The proposed Order concerns emissions from the potash rotary dryer of the plant, which tests have shown to be out of compliance with 40 CFR 52.2330(c)(1). This regulation limits the emission of particulates as part of the federally-approved Utah State Implementation Plan. The order requires that final compliance with the Federal regulation be demonstrated by October 1, 1979. Great Salt Lake Minerals & Chemicals Corporation has consented to its terms and has agreed to meet the increments contained in the Order pending final compliance.

The proposed Order satisfies the applicable requirements of Section 113(d) of the Clean Air Act (the Act). These requirements are as follows:

(1) Notice to the public concerning the proposed Order;

(2) A schedule for compliance;

(3) Provisions for compliance with applicable interim requirements, including measures to avoid endangering the health of persons, the continuing use of such control devices as have already been installed or can reasonably be installed prior to final compliance, and compliance with the SIP insofar as possible pending final compliance; and

(4) Notice to Great Salt Lake Minerals & Chemicals Corporation that a failure to achieve final compliance by October 1, 1979, may subject the Corporation to penalties under Section 120(a) of the Act, unless an exemption pursuant to Section 120(a)(2) (B) or (C) applies.

If the Order is issued, compliance with its terms would preclude further EPA enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the Order as an amendment to 40 CFR Part 65.

(Authority: 42 U.S.C. 7413, 7601.)

Dated: March 16, 1979.

ALAN MERSON,
*Regional Administrator,*
*Region VIII.*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

In the matter of Great Salt Lake Minerals & Chemicals Corp., Ogden, Utah; Proceeding pursuant to Section 113(d)(1) of the Clean Air Act, as amended (42 U.S.C. 7413(d)).

The following Delayed Compliance Order is issued this date pursuant to Section 113(d)(1) of the Clean Air Act, as amended (42 U.S.C. 7413(d)(1)), (hereinafter referred to as the "Act").

1. In accordance with the terms of the Statement of Consent appended to this Order, Great Salt Lake Minerals & Chemicals Corporation (hereinafter the "Corporation") has admitted that its potash rotary dryer, as demonstrated by tests conducted on October 17 and 18, 1978, is operating in violation of 40 CFR 52.2330(c)(1), which establishes particulate emissions limitations as part of Utah's Federally-approved plan for the control of air quality. The Corporation has waived the receipt of a Notice of Violation under Section 113(a)(1) of the Act (42 U.S.C. 7413(a)(1)).

2. A conference was held regarding this Order on December 18, 1978, attended by representatives of the United States Environmental Protection Agency (hereinafter referred to as "EPA"), the Corporation, and Gulf Resources & Chemical Corporation.

3. After a thorough investigation of all relevant facts, including the seriousness of the violation and the Corporation's good faith efforts to comply, it has been determined that compliance in accordance with the schedule hereinafter set forth is reasonable and that compliance will be achieved as expeditiously as practicable.

4. Therefore, *it is hereby ordered* that the Corporation make improvements to reduce particulate emissions from the potash rotary dryer in accordance with the following schedule:

Submit final control plan and specifications for control devices; April 1, 1979.
Initiate on-site construction of control devices; June 1, 1979.
Complete on-site construction of control devices; August 1, 1979.
Submit acceptable report of valid and representative tests demonstrating compliance; October 1, 1979.

5. Within fifteen days after the deadline for each increment, the Corporation will certify to the Enforcement Division of EPA, Region VIII, whether or not the required increment has been met.

6. At least forty-five (45) days prior to the date of any emissions test to be conducted pursuant to this Order, the Corporation will give notice to EPA of the actual test date.

7. Pending achievement of compliance with this Order, the Corporation will use the best practicable system of emission reduction in accordance with Section 113(d)(7) of the Act, as amended (42 U.S.C. 7413(d)(7)). During this period the Corporation will comply with the requirements of the Utah implementation plan for the control of air quality insofar as it is able to do so. The Corporation will also avoid any imminent and substantial endangerment to the health of the persons by taking any measures determined to be necessary by the EPA Administrator.

8. The Corporation is hereby notified that failure to achieve compliance according to the schedule set forth hereinabove may result in the imposition of a noncompliance penalty pursuant to Section 113(b)(4) of the Act (42 U.S.C. 7413(b)(4)). In any event, a noncompliance penalty shall be imposed and become effective on July 1, 1979, pursuant to Section 120(a) of the Act (42 U.S.C. 7420(a)), if the Corporation does not achieve final compliance by that date, unless an exemption under Section 120(a)(2)(B) or (C) of the Act is applicable.

It is so ordered this 16th day of March, 1979.

ALAN MERSON,
*Regional Administrator,*
*Region VIII.*

STATEMENT OF CONSENT

Great Salt Lake Minerals & Chemicals Corporation acknowledges that the potash rotary dryer located at its facilities in Ogden, Utah, is operating in violation of 40 CFR 52.2330(c)(1), as demonstrated by tests conducted on October 17 and 18, 1978.

In addition, the Corporation has received this Order, believes it to be a reasonable means to attain compliance and agrees to comply with its terms.

Dated February 23, 1979.

PETER BEHRENS,
*for Great Salt Lake Minerals & Chemicals Corporation.*

[FR Doc. 79-9380 Filed 3-27-79; 8:45 am]

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[6560-01-M]

[40 CFR Part 65]

[FRL 1084-5]

## DELAYED COMPLIANCE ORDERS

### Proposed Approval of an Administrative Order Issued by Minnesota Pollution Control Agency to Wilson Foods Corp.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. Environmental Protection Agency proposes to approve an Administrative Order issued by the Minnesota Pollution Control Agency to Wilson Foods Corporation. The Order requires the company to bring air emissions from its boilers #1, 2, and 3 in Albert Lea, Minnesota, into compliance with certain regulations contained in the federally approved Minnesota State Implementation Plan (SIP) by May 15, 1979. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by U.S. Environmental Protection Agency before it becomes effective as a Delayed Compliance Order under the Clean Air Act (the Act). If approved by U.S. Environmental Protection Agency, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on U.S. Environmental Protection Agency's proposd approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before April 27, 1979.

ADDRESS: Comments should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. the State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Cynthia Colantoni, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2082.

SUPPLEMENTARY INFORMATION: Wilson Foods Corporation operates a meat packing plant at Albert Lea, Minnesota. The Order under consideration addressed emission from boilers #1, 2, and 3 at the facility, which are subject to Minnesota Regulation APC 4(c)(1) and (a)(2). The regulations limit the emissions of particulate matter and visible emissions, and are part of the federally approved Minnesota State Implementation Plan. The Order requires final compliance with the regulations by May 15, 1979, through installation of fabric filter (baghouse) equipment.

Because this Order has been issued to a major source of particulate matter emissions and visible emissions and permits a delay in compliance with the applicable regulations, it must be approved by U.S. Environmental Protecton Agency before it becomes effective as a Delayed Compliance Order under Section 113(d) of the Act. U.S. Environmental Protection Agency may approve the Order only if it satisfies the appropriate requirements of this subsection.

If the Order is approved by U.S. Environmental Protection Agency, source compliance with its terms would preclude Federal enforcement action under Section 113 of the Act against the source for violations the the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the Order would also constitute and addition to the Minnesota SIP.

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether U.S. Environmental Protection Agency may approve the Order. After the public comment period, the Administrator of U.S. Environmental Protection Agency will publish in the FEDERAL REGISTER the Agency's final action on the Order in 40 CFR Part 65.

(Authority: 42 U.S.C. 7413, 7601.)

Dated: March 8, 1979.

JOHN MCGUIRE,
*Regional Administrator,*
*Region V.*

STATE OF MINNESOTA, COUNTY OF RAMSEY

MINNESOTA POLLUTION CONTROL AGENCY

Air Quality Stipulation Agreement

In the matter of Wilson Foods Corporation, Albert Lea, Minnesota 56007.

A. RECITALS

1. *Parties.* The parties to this Stipulation Agreement are the Minnesota Pollution Control Agency, hereinafter referred to as the "Agency", and Wilson Foods Corporation, hereinafter referred to as the "Company".

2. *Company.* The Company is a Delaware corporation that operates meat packing facilities in Freeborn County, Minnesota.

3. *Agency Authority.* The Agency is charged with overall power and duties to administer and enforce all laws, including but not limited to, standards, regulations, and stipulation agreements relating to the prevention, control or abatement of air pollution in the State. This authority is specifically described in Minn. Stat. chs. 115 and 116 (1976).

4. *Regulations.* The Agency, after legal notice and hearing thereon, adopted and has filed in the Office of the Secretary of State air pollution control regulations that have the force and effect of law and general application throughout the State of Minnesota.

5. *Duty.* It is the duty of every person affected to comply with the provisions of the state air pollution control laws, as now in force or hereafter amended, and all regulations adopted by the Agency thereunder, and to do and perform all acts and things within such person's power required to effectuate, carry out, and accomplish the purposes of such laws and regulations.

6. *Chronology of Events.* At the Company's meat packing facilities in Albert Lea, Minnesota, the Company operates three gas/coal fired boilers (Nos. 1, 2 and 3) which have a total heat input of 225 million BTU per hours. The present boiler pollution abatement equipment consists of Zurn multiclone mechanical collectors, breeching, induced draft fan and a chimney. Said equipment was installed pursuant to a Stipulation Agreement between the Company and Agency dated August 20, 1974. As amended on March 18, 1976, the Agreement provided that the Company would achieve full compliance with Minn. Regs. APC-4 and APC-11 by July 31, 1976.

To this end, on January 9, 1975, the Agency issued Installation Permit No. 799-75-I-1 for the Zurn pollution abatement system. Condition No. 2 of the permit required that, in the event that said system failed to achieve emission reduction sufficient to comply with then existing Minn. Regs. APC-4 and APC-11, the Company would install and place into operation additional or modified pollution abatement equipment in order to achieve full compliance no later than nine (9) months after conducting the compliance emissions test.

Due to late equipment delivery and construction, testing of the boilers and abatement equipment could not be conducted until September 14 and 15, 1976. Test results, as submitted to the Agency, did not demonstrate compliance with Minn. Regs. APC-4 and APC-11. Consequently, the Company looked to its equipment supplier and contractor to take such steps as were necessary to improve the performance of the equipment so as to meet not only the supplier's compliance guarantee but also the above-referenced Condition No. 2 of the installation permit. Included within these steps was the potential utilization of a device which had been made available in the original system as a means of gaining fur-

ther emission reductions should this prove necessary.

Unfortunately, it was not until June 23, 1977, after numerous suggestions, theories and equipment adjustments that the Company was advised that its equipment supplier could not meet its guarantee. Since that time, the Company, through the employment of other experts, has both completed modifications to existing pollution control equipment to ensure that appropriate noise levels are not exceeded and made a decision to install additional pollution control abatement equipment of an advanced type to ensure compliance with Minn. Reg. APC-4, i.e., fabric collectors or their equivalent. The Agency was informed of this decision on December 12, 1977—a decision that represents a substantial investment both per se and in light of the pollution control expenditures already made.

During the period of new construction, the Company will continue to burn natural gas to the degree of its availability as it has done throughout the period from the execution of the Stipulation Agreement to the present. This operating decision has resulted for the majority of said period in no emissions of a kind envisioned by Minn. Regs. APC-4 and APC-11.

7. *Violations.*

a. The Agency finds that the Company, in the operation of its plant in Albert Lea, Minnesota, has violated and will, during the term of this stipulation agreement violate the following air pollution control regulations and statutes:

(1) Minn. Stat. § 116.081, subd. 1 which provides that it shall be unlawful for any person to construct, install or operate an emission facility until permits therefor have been granted by the Agency;

(2) Minn. Reg. APC-3(b)(1) which provides that no person shall operate any emission facility or control equipment without an operating permit therefor from the Agency;

(3) Minn. Reg. APC-4(c)(1) and (c)(2) which provide that existing indirect heating equipment shall not cause to be discharged into the atmosphere any gases which are in excess of 0.6 pounds of particulate per million BTU or exhibit greater than 20% opacity except that a maximum of 60% opacity shall be permissible for four minutes and 40% opacity for four additional minutes in any 60 minute period.

b. The Agency also finds that the Company has failed to comply with the terms and conditions of Installation Permit No. 799-75-I-1 and the Stipulation Agreement between the Agency and the Company entered into on August 20, 1974, and amended on March 18, 1976, in the following manner:

(1) The Company failed to install and place into operation additional or modified pollution abatement equipment to ensure compliance with Minn. Regs. APC-4 and APC-11 within nine (9) months after compliance emissions tests demonstrated that the Zurn multiclone collector system failed to achieve compliance with air quality standards, in violation of Condition No. 2 of Installation Permit No. 799-75-I-1.

(2) The Company has failed to achieve compliance with applicable air quality standards in violation of Section 1.(5) of the Amendment to Air Quality Stipulation Agreement, dated March 18, 1976.

c. Although the Company neither admits nor denies these unilateral findings of the Agency, it is desirous of resolving this matter without resorting to litigation as has already been demonstrated by its decision to install additional pollution abatement equipment independent of this document.

B. AGREEMENT

Now therefore, for the purposes of ensuring compliance by the Company with applicable air pollution control laws and regulations and settling the claims of the parties to this Stipulation Agreement, it is hereby agreed and stipulated as follows:

1. *Company.*

a. *Air Pollution Abatement Program for Boilers Nos. 1, 2 and 3* The Company shall purchase, install and place into operation fabric filter (baghouse) equipment in order to acheive compliance with all applicable air quality regulations in accordance with the following schedule:

| Item | Date |
|---|---|
| (i) Submit final engineering design to the Agency. | May 31, 1978. |
| (ii) Apply for installation permit from the agency for fabric filter (baghouse) equipment; commence construction. | October 1, 1978 (Already Completed). |
| (iii) Complete installation of fabric filter (baghouse) equipment. | April 1, 1979. |
| (iv) Conduct emission tests for demonstration of particulate and opacity compliance. | April 15, 1979. |
| (v) Submit final compliance test results to the Agency and apply for an operating permit from the Agency. | May 15, 1979. |
| (vi) Achieve compliance with Minn. Reg APC 4(c)(1) and (c)(2). | May 15, 1979. |

b. *Interim Pollution Abatement Activities.* The parties to this Stipulation Agreement recognize that the current pollution abatement equipment must be shut down to allow installation of the new pollution abatement equipment. In order to minimize air emissions, the Company shall use natural gas to the extent of its availability. When natural gas is unavailable, the Company shall use oil to the extent that it is available and able to be burned by the Company's existing equipment.

c. *Reporting.* The Company shall submit such quarterly progress reports as are designated in Agency Installation Permit No. 799-75-I-1.

d. *Past Violations.* The Company agrees to pay into the Treasury of the State of Minnesota twenty thousand dollars ($20,000) for its alleged past violations of air pollution statutes and regulations and of permit and stipulation agreement terms and conditions, as well as such violations as may occur before compliance with the terms of this Stipulation Agreement are achieved. Said amount shall be paid in four (4) quarterly payments of five thousand dollars ($5,000) with the first payment being due thirty (30) days following the execution of this Agreement by the last signatory. Any payments made pursuant to this paragraph shall not be considered a defense or set-off to any penalties which may be found to be applicable under section 120 of the Clean Air Act.

e. *Liquidated Damages.* The Company agrees to pay into the Treasury of the State of Minnesota, the sum of one hundred dollars ($100) for each day the Company is in violation of any of the dates contained in part B.1.a.

f. *Noncompliance Penalties.* The Company agrees that this Stipulation Agreement shall serve as notice to it that this Stipulation Agreement does not release the Company from assessemnt of noncompliance penalties as they may be applicable, pursuant to Section 120 of the Clean Air Act, in the event the Company fails to comply with all applicable air pollution control laws and regulations by the date specified by the U.S. Environmental Protection Agency, pursuant to Section 120 of the Clean Air Act.

2. *Agency.* a. In consideration of the Company's performance of the terms, covenants and agreements contained herein, the Agency agrees that for such period of time as the Company is in compliance with this Stipulation Agreement, it shall stand in lieu of administrative, legal and equitable remedies available to the Agency regarding the violations specified in part A.7. of this Stipulation Agreement which have occurred prior to the effective date of this Stipulation Agreement and such violations as may occur during the term of this Stipulation Agreement.

b. *Air Permits.* Upon compliance by the Company with applicable laws, regulations and standards of the Agency, and upon proper application by the Company, the Agency shall issue appropriate installation and operating permits with respect to the air pollution control equipment and emission facilities at the Company's Albert Lea, Minnesota, facility.

3. *General Conditions.* a. *Remedies of the Parties.* It is intended that the terms of this Stipulation Agreement shall be legally enforceable by either of the parties in a court of competent jurisdiction and each of the parties retains the right to assert any legal, equitable or administrative right of action or defense which may be available by law in order to implement or enforce the terms of this Stipulation Agreement.

b. *Liability and Obligation.* This Stipulation Agreement shall not release the Company from any liability or obligation imposed by Minnesota Statutes, regulations or local ordinances now in effect or which may hereinafter be adopted except as specifically set forth herein.

c. *Extensions of Time.* Unless prohibited by Federal law, the Agency shall grant extensions of the time schedules stated herein in the event the Company demonstrates good cause to the Agency for granting such extensions. Such extensions shall be commensurate with the delays involved.

d. *Agency Information.* The Company shall allow the Agency or any authorized member, employee or agent thereof, upon presentation of credentials, access at reasonable times to the Company's property and facilities to obtain such information and documentation as is authorized my Minn. Stat. § 116.091 (1976) which is relevant to making a determination that the Company is in compliance with the terms of this Stipulation Agreement.

e. *Informational Errors.* Neither the Agency nor the Company shall knowingly make any false statement, representation or certification regarding any record, report, plan or other document filed or required to be submitted to the Agency under the Stipulation Agreement. Any party hereto discovering such error in said reports, records, plans or other documents shall immediately report same to the other party.

f. *Prior Stipulation Agreement.* The Company and the Agency agree that the Stipu-

lation Agreement entered into between the Company and the Agency on August 20, 1974, as amended March 18, 1976, will terminate as of the effective date of this Stipulation Agreement.

g. *Effective Date.* This Stipulation Agreement shall be effective upon the date it is executed by the last signatory hereto.

h. *Successors.* This Stipulation Agreement shall be binding upon the Company, its successors and assigns, and upon the Agency its successors and assigns.

i. *Emergency Powers.* Nothing in this Stipulation Agreement shall prevent the Agency from exercising emergency power pursuant to Minn. Stat. § 116.11 (1976) in the event conditions warranting such action should arise.

j. *Amendments.* This agreement may be amended in writing at any time by the agreement of the parties.

WILSON FOODS CORPORATION, STATE OF MINNESOTA POLLUTION CONTROL AGENCY.

Dated: January 23, 1979.

JOSEPH F. GRINNELL,
*Chairman.*

SANDRA S. GARDEBRING,
*Executive Director.*

Dated: November 16, 1978.

RICHARD T. BERG,
*Executive Vice President.*

[FR Doc. 79-9381 Filed 3-27-79; 8:45 am]

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[6560-01-M]

[40 CFR Part 65]

[FRL 1085-3; Delayed Compliance Order Docket De 79-154]

## DELAYED COMPLIANCE ORDERS

**Proposed Approval of an Administrative Order Issued by the State of Washington Department of Ecology to Louisiana Pacific Corp.**

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the State of Washington Department of Ecology to the Louisiana Pacific Corporation. The order requires the company to bring air emissions from its sawmill in Ione, Washington into compliance with certain regulations contained in the federally approved Washington State Implementation Plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before April 27, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth D. Brooks, Environmental Protection Agency, M/S 513, 1200 Sixth Avenue, Seattle, Washington 98101, telephone (206) 442-1387.

SUPPLEMENTARY INFORMATION: Louisiana Pacific Corporation operates a sawmill in Ione, Washington. The order under consideration addresses emissions from the wigwam burner at the facility, which are subject to Washington Administrative Code (WAC) 18-04-040. The regulation limits the emissions of particulate matter, and is part of the federally approved Washington State Implementation Plan. The order requires final compliance with the regulation by July 1, 1979 through installation of a new conveyer, a new dome and automatic top damper, repair of existing equipment and relocation of a shavings cyclone. The source has consented to the terms of the order. Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA proposes to approve the order because it satisfies the appropriate requirements of this subsection.

If the order is approved EPA, source compliance with its terms would preclude Federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Washington SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(AUTHORITY: 42 U.S.C. 7413, 7601).

Dated: March 16, 1979.

DONALD P. DUBOIS,
*Regional Administrator,*
*Region 10.*

In the matter of the compliance by Louisiana-Pacific Corporation with Chapter 70.94 RCW and the rules and regulations of the Department of Ecology.

To: MR. VARL MCAVOY, MANAGER,
*Louisiana-Pacific Corporation,*
*P.O. Box 257,*
*Ione, WA 99139.*

Louisiana-Pacific Corporation operates a sawmill operation in Ione, Washington. Emissions from their wigwam burner do not comply with the provisions of the Washington State Air Quality Implementation Plan (S.I.P.).

The Department of Ecology has reviewed plans and schedules submitted by Louisiana-Pacific Corporation for the control of visible emissions from their wigwam burner operation by the installation of a new conveyor, a new dome and automatic top damper, repair of existing equipment, and relocation of shavings cyclone.

In accordance with the provisions of 173-400-150 WAC and as provided in Section 113(d) of the Federal Clean Air Act, as amended, and after public notice, the Department of Ecology makes the following findings and issues the following order:

FINDINGS

1. The present wigwam burner is unable to comply with emission standards, Washington Administrative Code (WAC) 18-04-040, recodified as 173-400-040 (part of S.I.P.).

2. The proposed equipment is the best practicable and will provide for continuous compliance, WAC 18-04-040, recodified as 173-400-040.

3. The proposed schedule is as expeditious as practicable.

4. The proposed interim requirements are reasonable and practicable. The methods of control will provide the best practicable system for emission reduction and will prevent imminent and substantial endangerment to the health of persons.

ORDER

Therefore, it is ordered that the methods and equipment as described in submitted plans, specifications, schedules, and other correspondence be installed according to the following instructions:

1. Complete engineering and begin construction by April 13, 1979.

2. Repair damage to shell and clean out doors.

3. Replace 20-food section of conveyor.

4. Relocate shavings cyclone to better mix fuel.

5. Reposition of conveyor to dump fuel in center of burner.

6. Replace top with new dome and automatic top damper.

7. Repair or replace all damaged grates and air pots on underfire air system.

8. Wigwam burner in compliance by July 1, 1979.

Louisiana-Pacific Corporation shall comply with the following interim requirements to reduce present emissions:

1. Maintain and operate wigwam burner with recognized good practice. This includes weekly clean out and repair of any damaged overfire or underfire air blowers.

2. No open burning will be allowed at mill site.

3. All precautions should be taken to reduce fugitive dust emissions. This includes, but is not limited to:

a. Proper disposition of ash from burner.

b. Reduced traffic speed at sawmill and in log yard.

c. Road pallative should be used under extreme dry conditions.

Louisiana-Pacific Corporation shall comply with the following reporting requirements:

1. No later than five (5) working days after the completion of each step in the schedule, the Department of Ecology, Eastern Regional Office, will be notified in writing by Louisiana-Pacific Corporation.

2. All notifications or reports will be submitted to: Department of Ecology, Eastern Regional Office, E. 103 Indiana Avenue, Spokane, WA 99207, Attention: Mr. Carl J. Nuechterlein.

3. Interim monitoring is not required.

Louisiana-Pacific Corporation is hereby notified that failure to achieve final compliance by July 1, 1979, may result in a requirement to pay noncompliance penalties as provided for in RCW 70.94.431 and as stated in Section 120 of the Federal Clean Air Act.

Nothing in this order is to be construed in any way as to prevent enforcement and/or abatement action for any violation of any applicable law, rule or regulation.

Dated at Olympia, Washington, this 15th day of February, 1979.

BRUCE A. CAMERON,
*Assistant Director, Department of Ecology, State of Washington.*

[FR Doc. 79-9393 Filed 3-27-79; 8:45 am]

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[6560-01-M]

[40 CFR Part 180]

[FRL 1083-1; PP 6E1767/P107]

## TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

### Proposed Tolerance for the Chemical Linuron

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for residues of the herbicide linuron on asparagus at 3 parts per million (ppm). The proposal was submitted by the Interregional Research Project No. 4. This amendment to the regulations would establish a maximum permissible level for residues of linuron on asparagus.

DATE: Comments must be received on or before April 27, 1979.

ADDRESS COMMENT TO: Mrs. Patricia Critchlow, Registration Division (TS-767), Office of Pesticide Programs, EPA, East Tower, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow at the above address (202/755-4851).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of California, Illinois, Indiana, and Michigan, has submitted a pesticide petition (PP 6E1767) to the EPA. This petition requests that the Administrator propose that 40 CFR 180.184 be amended by increasing the established tolerance for residues of the herbicide linuron (3 - (3,4 - dichlorophenyl) - 1 - methoxy - 1methylurea) in or on the raw agricultural commodity asparagus from 0.25 ppm to 3 ppm.

The data submitted in the petition and all other relevant material have been evaluated. The toxicology data considered in support of the proposed tolerance of 3 ppm in or on asparagus were a two-year rat feeding study with a no-observable-effect level (NOEL) of 125 ppm (exhibiting no oncogenic effects), a two-year dog feeding study with an NOEL of 25 ppm, a three-generation rat reproduction study with an NOEL of 125 ppm, and a rabbit teratology study with an NOEL of 125 ppm (3.7 milligrams (mg)/kilogram (kg) of body weight (bw)/day).

Data lacking from the petition include an oncogenic study in a second mammalian species, an additional teratology study using a higher exposure level, and mutagenicity studies. E.I. du Pont de Nemours & Co., Inc., indicated that results of the teratology study will be submitted to the Agency in 1979 and that the second oncogenicity study will be initiated in March 1979. Mutagenicity assays are, however, generally deferred until Agency requirements are finalized. The acceptable daily intake (ADI) for linuron has been calculated to be 0.0063 mg/kg bw/day based on the NOEL of the two-year dog feeding study using a 100-fold safety factor. Thus, for a 60-kg human, the maximum permissible intake (MPI) for this chemical is calculated to be 0.375 mg/day. Since asparagus normally constitutes less than 0.2 percent of the daily human diet, the requested tolerance will increase the theoretical maximal residue contribution (TMRC) by less than 2 percent.

The nature of the residue is adequately understood, and an adequate analytical method (spectrophotometric analysis) is available for enforcement purposes. Tolerances have been established for residues of linuron on a variety of raw agricultural commodities at levels ranging from 0.25 ppm to 1 ppm, including a tolerance of 0.25 ppm on asparagus. There is no expectation of secondary residues in meat, milk, poultry, or eggs as delineated in 40 CFR 180.6(a)(3) resulting from this use. No actions are currently pending against continued registration of the herbicide, nor are any other considerations involved in establishing the proposed tolerance.

The pesticide is considered useful for the purpose for which a tolerance is being sought, and it is concluded that the tolerance of 3 ppm for residues of linuron on asparagus established by amending 40 CFR 180.184 will protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request on or before April 27, 1979, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP6E1767/P107". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in Room 315, East Tower, from 8:30 a.m. to 4 p.m. Monday through Friday.

(Section 408(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(e)])

Dated: March 20, 1979.

DOUGLAS D. CAMPT,
*Acting Director, Registration Division.*

It is proposed that Part 180, Subpart C, § 180.184 be revised by editorially reformatting the section into an alphabetized columnar listing to include asparagus at 3 ppm, as follows:

**§ 180.184 Linuron; tolerances for residues.**

Tolerances are established for resideues of the herbicide linuron (3-(3, 4-dichlorophenyl) - 1 - methoxy - 1 - methylurea) in or on the following raw agricultural commodities:

| Commodity: | *Parts per million* |
|---|---|
| Asparagus | 3 |
| Barley, forage | 0.5 |
| Barley, grain | 0.25 |
| Barley, hay | 0.5 |
| Barley, straw | 0.5 |

| Commodity: | Parts per million |
|---|---|
| Carrots | 1 |
| Cattle, fat | 1 |
| Cattle, mbyp | 1 |
| Cattle, meat | 1 |
| Celery | 0.5 |
| Corn, field, fodder | 1 |
| Corn, field, forage | 1 |
| Corn, fresh (inc. sweet K+CWHR) | 0.25 |
| Corn, grain (inc. pop) | 0.25 |
| Corn, pop, fodder | 1 |
| Corn, pop, forage | 1 |
| Corn, sweet, fodder | 1 |
| Corn, sweet, forage | 1 |
| Cottonseed | 0.25 |
| Goats, fat | 1 |
| Goats, mbyp | 1 |
| Goats, meat | 1 |
| Hogs, fat | 1 |
| Hogs, mbyp | 1 |
| Hogs, meat | 1 |
| Horses, fat | 1 |
| Horses, mbyp | 1 |
| Horses, meat | 1 |
| Oats, forage | 0.5 |
| Oats, grain | 0.25 |
| Oats, hay | 0.5 |
| Oats, straw | 0.5 |
| Parsnips (with or without tops) | 0.5 |
| Parsnips, tops | 0.5 |
| Potatoes | 1 |
| Rye, forage | 0.5 |
| Rye, grain | 0.25 |
| Rye, hay | 0.5 |
| Rye, straw | 0.5 |
| Sheep, fat | 1 |
| Sheep, mbyp | 1 |
| Sheep, meat | 1 |
| Sorguhm, fodder | 1 |
| Sorghum, forage | 1 |
| Sorghum, grain (milo) | 0.25 |
| Soybeans (dry or succulent) | 1 |
| Soybeans, forage | 1 |
| Soybeans, hay | 1 |
| Wheat, forage | 0.5 |
| Wheat, grain | 0.25 |
| Wheat, hay | 0.5 |
| Wheat, straw | 0.5 |

[FR Doc. 79-9385 Filed 3-27-79; 8:45 am]

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[4110-86-M]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Public Health Service

### Center for Disease Control

### [42 CFR Part 71]

### FOREIGN QUARANTINE

### Disinsection of Aircraft

AGENCY: Center for Disease Control, PHS, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed revision will provide for disinsection of an aircraft if it arrives from an area that is infected with insect-borne communicable diseases and is suspected of harboring insects of public health importance. The procedures for disinsecting aircraft will be revised to require that aircraft be disinsected by airline personnel immediately after the plane lands and all passengers and crew deplane. The cargo compartment will be disinsected before the discharge of mail, baggage, and cargo. Three insecticidal formulations may be used.

DATES: Written comments must be received on or before April 27, 1979. Proposed effective date: 60 days after publication of the final rule in the FEDERAL REGISTER.

ADDRESS: Inquiries may be addressed, and data, views, and arguments may be submitted in writing, in duplicate, to the Director, Quarantine Division, Bureau of Epidemiology, Center for Disease Control, Atlanta, Georgia 30333. All relevant material received within the comment period will be considered. Comments received will be available for public inspection at the Center for Disease Control, 1600 Clifton, Road, NE., Room 4067, Atlanta, Georgia, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph F. Giordano, Director, Quarantine Division, Bureau of Epidemiology, Center for Disease Control, PHS, HEW, Atlanta, Ga. 30333, telephone 404-329-3674, or FTS: 236-3674.

SUPPLEMENTARY INFORMATION: Aircraft are disinsected for the purpose of preventing the introduction into the United States of insect-transmitted communicable diseases such as yellow fever, dengue fever, malaria, plague, and the encephalitides. Current procedures provide for disinsection of all planes departing from or landing at any foreign port in the zone between 35° north and 35° south latitude if coming to a port under the control of the United States located in this same zone. The only exceptions are that (1) all planes arriving from Africa must be routinely disinsected, and (2) all planes arriving from Japan are exempt from being disinsected. Disinsection is performed on board the aircraft, with passengers and crew aboard, either while the aircraft is on the ground prior to takeoff or aloft no later than 30 minutes prior to landing in the United States.

The insecticidal formulations containing pyrethrin (which is extracted from a plant) currently used to disinsect aircraft cause undue discomfort to many passengers and, in some cases, place those exposed at risk of developing acute allergic (anaphylactic) reaction. Because of the discomfort the insecticidal aerosol causes passengers, airline personnel minimize the dosage in spraying; therefore, the efficacy of the entire procedure is questionable.

The proposed revision will provide for disinsection of an aircraft if it arrives from an area that is infected with insect-borne communicable diseases and is suspected of harboring insects of public health importance. The procedures for disinsecting aircraft will be revised to require that aircraft be disinsected by airline personnel immediately after the place lands and all passengers and crew deplane. The cargo compartment will be disinsected before the discharge of mail, baggage, and cargo. The regulation will prescribe the insecticidal formulas which may be used. The determinations as to the permissible formulations are based upon recommendations made by the World Health Organization. In addition, manufacturers must comply with U.S. Environmental Protection Agency's registration and labeling requirements. The list of permissible formulations may be revised from time to time in accordance with subsequent recommendations and requirements.

On January 30, 1976, a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (41 FR 4600) to revise § 71.102 of 42 CFR Part 71. In view of the passage of time and additional changes in procedures, this NPRM is withdrawn.

It is, therefore, proposed to revise § 71.102 in Part 71 of Title 42, Code of Federal Regulations, as set forth below.

Dated: March 21, 1979.

JULIUS B. RICHMOND,
*Assistant Secretary for Health.*

Approved: March 22, 1979.

JOSEPH A. CALIFANO, Jr.,
*Secretary.*

**§ 71.102 Disinsection of aircraft.**

(a) The Director, Center for Disease Control, may require disinsection of an aircraft if it has left a foreign area that is infected with insect-borne communicable disease and is suspected of harboring flying insects of public health importance.

(b) Disinsection shall be accomplished by airline personnel after the plane lands and immediately after all passengers and crew deplane. The cargo compartment shall be disinsected before the discharge of mail, baggage, and cargo.

(c) The insecticides used shall be either (1) Insecticide Aerosol G-1707, or (2) Insecticide Aerosol Resmethrin—2%, or (3) Insecticide Aerosol d-Phenothrin—2%. The formulas for these insecticides are set forth below. Personnel shall disinsect aircraft in accordance with the instructions contained in the labeling accompanying the particular insecticide.

FORMULA FOR INSECTICIDE AEROSOL G-1707

| Component | By weight (percent) |
|---|---|
| Active Ingredients: | |
| Pyrethrum extract (20 percent pyrethrins) | 2.25 |
| Tropital (R) Synergist[1] | 2.70 |
| Petroleum Distillate[2] | 10.05 |
| Inert Ingredients | 85.00 |
| | 100.00 |

FORMULA FOR INSECTICIDE AEROSOL RESMETHRIN-2

| Component | By weight (percent) |
|---|---|
| Active Ingredients: | |
| *(5-Benzyl-3-furyl) methyl 2, 2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate | 2.00 |
| Inert Ingredients | 98.00 |
| | 100.00 |

*Cis/trans ratio: max. 11% (±) cis. and min. 89% (±) trans.

FORMULA FOR INSECTICIDE AEROSOL d-PHENOTHRIN-2

| Component | By weight (percent) |
|---|---|
| Active Ingredients: | |
| 3-phenoxybenzyl d-cis and trans* 2, 2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate | 2.00 |
| Inert Ingredients | 98.00 |
| | 100.00 |

*Cis/trans isomer ratio: max. 25% (±) cis and min. 75% (±) trans.

[1]Piperonal bis [2-(2-butoxyethoxy) ethyl] acetal and related compounds.

[2]Deodorized kerosene: shall conform to requirements of Federal Specification VV-K-220, June 1963, as amended, Standardization Division, General Services Administration, Washington, D.C., Kerosene, water-white deordorized (for use in insecticide). (Available at U.S. Government Printing Office.)

[FR Doc. 79-9396 filed 3-27-79; 8:45 am]

[4310-84-M]

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[43 CFR Part 3400]

### FEDERAL COAL MANAGEMENT PROGRAM

### Public Hearings on Proposed Coal Management Rulemaking

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcing Public hearings.

SUMMARY: The Bureau of Land Management announces public hearings on it's proposed coal management rulemaking which was published on December 15, 1978 at 43 FR 58776. A clarification document was also published on February 21, 1979 at 44 FR 10518. Formal hearings will be conducted during April and May 1979 at four locations in the United States which are: Denver, Colorado; Salt Lake City, Utah; Billings, Montana; and Washington, D.C. Oral testimony and submissions of written comments will be received at the hearings.

DATES: Hearings will be held on April 30, May 1, May 2, and May 4, 1979.

ADDRESSES: The locations of the public hearings are shown on the attached list below. Additional information regarding the hearings is also available from the listed Bureau of Land Mangement (BLM) Offices.

FOR FURTHER INFORMATION CONTACT:

Robert C. Bruce (202) 343-8735.

SUPPLEMENTARY INFORMATION: Hearings will be one-day sessions only and will be held from 1:00 pm-5:00 pm at each location. Oral testimony from each witness at the hearings will be restricted to 10 minutes maximum length in lieu of written comments or in addition to any written comments submitted by each witness. The 10 minute time limitation will be strictly enforced. The complete text of prepared testimony may be filed with the presiding officer at the hearing.

Written requests to testify orally at the hearings should be received by the appropriate Bureau of Land Management Office indicated on the attached list prior to the close of business five calendar days prior to the scheduled hearing date. Requests should identify the organization represented and should be signed by the prospective witness. The deadline date is necessary so that a witness list can be made available in each appropriate BLM Office on the day before the public hearing.

Speakers will be heard, if present, in their established order on the witness list. After the last listed witness has been heard the presiding officer will consider the request of any other person present and wishing to testify. Only one witness will be allowed to present the viewpoints of a single organization. However, any witness will be permitted to give germane testimony if offered as the views or opinions of a private citizen.

Written and oral comments on the proposed rulemaking will receive equal consideration in preparation of the final rulemaking scheduled for publication in June 1979.

ARNOLD E. PETTY,
*Acting Associate Director,*
*Bureau of Land Management.*

*Date, Location of Hearing and BLM State Office Contact*

April 30, 1979, Wyer Aditorium, Denver Public Library, 1357 Broadway, Denver, Colorado; BLM State Office, Colorado State Bank Bldg., 1600 Broadway, Denver, Colorado 80202.

May 1, 1979, Salt Palace, Room 128, 100 South West Temple, Salt Lake City, Utah; BLM State Office, University Club Bldg., 136 East South Temple, Salt Lake City, Utah 84111.

May 2, 1979, Library Building, Room 152, Eastern Montana College, Billings, Montana; BLM State Office, Granite Tower, 222 N. 32nd Street, P.O. Box 30157, Billings, Montana 59107.

May 4, 1979, Main Auditorium, Main Interior Building, 18th and C Streets, NW, Washington, D.C.; BLM, Office of Coal Mgmt., 18th and C Streets, NW, Washington, D.C. 20240.

[FR Doc. 79-9403 Filed 3-27-79; 8:45 am]

[6730-01-M]

## FEDERAL MARITIME COMMISSION

[46 CFR Ch. IV]

[Docket No. 79-18]

### EXEMPTIONS FROM PROVISIONS OF THE SHIPPPING ACT, 1916, AND THE INTERCOASTAL SHIPPING ACT, 1933

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Maritime Commission requests comments from interested parties on activities that might be exempted under section 35 of the Shipping Act, 1916 (46 U.S.C 833a). The purpose of this inquiry is to assist the Commission in identifying those aspects of its regulation which may be minimized or eliminated without substantial impairment of the Commission's effectiveness in fulfilling its statutory responsibilities.

DATES: Comments on or before May 28, 1979.

ADDRESSES: Comments to: Secretary, Federal Maritime Commission, Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is charged with the responsibility of administering the Shipping Act, 1916 (46

U.S.C. 801 *et. seq.*) and the Intercoastal Shipping Act, 1933 (46 U.S.C. 843 *et. seq.*).[1] These statutes provide that carriers engaged in common carriage in the foreign commerce and the domestic offshore commerce[2] of the United States and certain other persons[3] are subject to the Commission's regulation. The FMC's primary functions involve the regulation of agreements between persons subject to the Shipping Act and the regulation of rates and practices applicable to transportation services performed by persons subject to the Commission's jurisdiciton.

### Subjects Qualifying for Section 35 Exemption

Section 35[4] of the Shipping Act, 1916 permits the Commission to exempt certain activities from regulation. The legislative intent of section 35 was to permit exemptions only in those instances where regulation is serving no substantive purpose.

The Commission has recently reviewed its regulatory activities for the purpose of identifying types of ocean transportation industry conduct within the scope of section 35 which may warrant at least a partial exemption from present statutory requirements.

Examples of regulatory activity where section 35 exemptions might be considered:

—"Husbanding" arrangements for the procurement of pilotage, tug hire, dock and pier facilities, and to obtain bunkers and stores for the vessels of another party.

—Container and chassis and related equipment interchange agreements, and agreements relating to the repair or management of containers, chassis and related equipment.

—Nondiscriminatory, nonexclusive and non-preferential leases or real terminal property (except dock, berth, apron, or pier space) where all users are charged equal terms based upon prevailing tariff charges.

—Terminal leases or arrangements solely involving facilities located in foreign countries.

—Tariff matter covering the movement of cargo between foreign countries either transshipped from one water carrier to another in U.S. ports or transported overland.

—Tariff matter covering noncargo handling charges by independent terminal operators (*e.g.*, lighting, gangway placement, line handling, etc.).

Public comment is invited as to the feasibility and desirability of exempting these as well as other similar activities from current Commission requirements. These suggestions should concern *general types* of agreements or activities, and should not discuss specific, individual agreements or operations. All comments should articulate the reason(s) why suggested exemptions will not contravene the regulatory requirements of the shipping statutes.

### Other Suggested Subjects for Exemption

In addition to comments on these examples and other proposals, suggestions are solicited as to any other areas of regulation which might warrant consideration for exemption for failure to serve a useful regulatory purpose. As noted above, the Commission does not currently have the authority to exempt activities which serve a substantive purpose or which are essential to the regulatory objectives of the statutes it administers. The Commission, however, to function as an efficient and effective regulator must identify such areas and make appropriate legislative recommendations to Congress to possibly expand the scope of section 35. Comment on proposals of this nature is also invited.

Comments should be directed in writing to the Secretary, Federal Maritime Commission, Washington, D.C. 20573. An original and fifteen copies of each comment should be received by the Commission on or before May 28, 1979.

By the Commission, March 22, 1979.

Francis C. Hurney,
*Secretary.*

[FR Doc. 79-9377 Filed 3-27-79; 8:45 am]

[1] The FMC also administers portions of the Merchant Marine Acts of 1920 and 1936, the Safety of Life At Sea Act, the Federal Water Pollution Control Act, the Trans-Alaska Pipeline Authorization Act and the Outer Continental Shelf Lands Act.

[2] Domestic offshore commerce means that trade carried by common carriers by water operating: (1) between the United States and its territories, possessions, and Puerto Rico; (2) between or within those territories, possessions, and Puerto Rico; (3) between the continental United States and Hawaii and Alaska; and (4) between, but not within, Hawaii and Alaska.

[3] Sections 1 of the Shipping Act (46 U.S.C. § 801) defines those persons, other than common carriers, subject to its provisions, as anyone, "carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water."

[4] Section 35 reads in pertinent part: The Federal Maritime Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of such persons from any requirement of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, where it finds that such exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commerce.

[4310-55-M]

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[50 CFR Part 23]

### ENDANGERED SPECIES CONVENTION

**Public Debriefing by Members of the U.S. Delegation to the Second Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora**

AGENCY: U.S. Fish and Wildlife Service.

ACTION: Public meeting to report on actions taken at the Second Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

SUMMARY: This notice announces a public meeting which will be held to report to the public on actions taken by the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Endangered Species Convention) at their second meeting in San Jose, Costa Rica from March 19 through 30, 1979.

The Service is responsible for developing, after consultation with the interested public, the States, and other government and non-government organizations, the U.S. position on agenda items to be considered at the Second Meeting of the Conference of the Parties to the Endangered Species Convention.

After a series of six public consultations and numerous intra-governmental meetings, U.S. positions were developed. The final U.S. determinations on a review of native species to be considered by the Parties was published in the Federal Register on February 14, 1979 (see Vol. 44, No. 32, Pages 9690-9697.) A draft position paper outlining the proposed U.S. position on all other items on the agenda was distributed to the public at a meeting at the Interior Department on March 8, 1979.

After the Endangered Species Convention meeting in Costa Rica ends, the U.S. delegation to the meeting will return to Washington and report on the actions taken by Parties to the Convention.

DATE: The meeting will be held on April 4, 1979 from 1:00 p.m. to 3:15 p.m.

ADDRESS: The meeting will be held in Room 7000-B of the Main Interior Building, 18th & C Streets N.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Further information on the meeting can be obtained by calling the Management Operations Branch, Federal

Wildlife Permit Office at (703) 235-2418.

LYNN A. GREENWALT,
*Director, Fish and Wildlife Service.*

MARCH 23, 1979.

[FR Doc. 79-9287 Filed 3-27-79; 8:45 am]

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[3510-12-M]

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[50 CFR Part 651]

### NEW ENGLAND FISHERY MANAGEMENT COUNCIL

### Public Hearing

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Public Hearing Notice on the Fishery Management Plan for Atlantic Groundfish (haddock, cod, and yellowtail flounder).

SUMMARY: The New England Fishery Management Council announces a series of public hearings for the consideration of amendments to the Fishery Management Plan for Atlantic Groundfish.

DATES: Public hearings will be held on April 12 and April 16, 1979.

ADDRESSES: The locations and times of the hearings are listed below in the Supplementary Information.

FOR FURTHER INFORMATION CONTACT

G. Paul Draheim, Deputy Executive Director, New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Massachusetts 01960, 617-535-5450.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council recognizes that the best scientific information available indicates that the appropriate optimum yields for cod, haddock, and yellowtail flounder are:

Cod—Gulf of Maine—12,000 metric tons (mt)

Cod—Georges Bank and South—35,000 mt

Haddock—All Areas—32,500 mt

Yellowtail Flounder—All Areas—10,000 mt

Therefore, the Council amends the current optimum yields of the Fishery Management Plan for Atlantic Groundfish by the appropriate amounts for the final quarter of the 1978-79 fishing year as follows:

| Species | Area | Increase over current OY's (percent) | Amount increase over current OY's (mt) |
|---|---|---|---|
| Cod | Gulf of Maine | 24 | 2,800 |
| Cod | Georges Bank and South | 25.6 | 8,960 |
| Haddock | Gulf of Maine | 20.5 | 1,998 |
| Haddock | Georges Bank and South | 27.5 | 6,256 |
| Yellowtail Flounder | West of 69°W | 20.5 | 1,025 |
| Yellowtail Flounder | East of 69°W | 32.9 | 1,645 |

These changes, if implemented, would change the optimum yield for the 1978-79 fishing year as follows:

| Species | Area | Current OY's (mt) | Amended OY's (mt) |
|---|---|---|---|
| Cod | Gulf of Maine | 8,500 | 11,380 |
| Cod | Georges Bank and South | 26,000 | 34,960 |
| Haddock | All areas | 20,000 | 28,254 |
| Yellowtail Flounder | All areas | 8,100 | 10,770 |

A portion of these public hearings 7:30 to 8:30 p.m., will be devoted to the acceptance of public comment with respect to an amendment to the plan increasing optimum yield for the fishing year October 1, 1978-September 30, 1979. This portion of the public meeting is to be conducted by the Council in cooperation with the National Marine Fisheries Service.

The proposed amendment is that vessels which fish for groundfish in more than one area are entitled only to a catch limitation for one area. This limitation shall be the highest of the applicable catch limitations for the areas in which the vessel has fished.

The public hearings will be held:

April 12, 1979, at the Holiday Inn, Downtown, 88 Spring Street, Portland, Maine 04111; 7:30 p.m.-10:00 p.m.

April 16, 1979, at the Holiday Inn, Junction of Routes 1 and 128, Peabody, Massachusetts 01960; 7:30 p.m.-10:00 p.m.

Dated: March 23, 1979.

WINFRED H. MEIBOHM,
*Executive Director, National Marine Fisheries Service.*

[FR Doc. 79-9326 Filed 3-27-79; 8:45 am]

# notices

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.

[3410-02-M]

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### MEAT PRICING TASK FORCE

### Meeting

Pursuant to the provisions of section 10(a)(2) or the Federal Advisory Committee Act (Pub. L. 92-463), the following meetings are hereby announced for the Meat Pricing Task Force.

The purpose of the Meat Pricing Task Force is:

1. To provide advice and factual information to the Secretary of Agriculture as to constructive improvements in meat marketing, including meat pricing and price reporting;

2. To provide advice and factual information to the Secretary of Agriculture so that he may determine USDA response to proposed legislation regarding meat marketing; and

3. To provide advice and factual information to the Secretary of Agriculture so that he may determine whether USDA should seek legislation relative to current methods of meat marketing.

Membership of this Task Force will consist of representatives of every segment of the industry and a representative of the public sector.

There will be five meetings of the Task Force. All meetings are open to the public. Public participation is described for each meeting listed below:

1. April 17, 1979, 10:00 a.m., Room 218A, Administration Building, USDA, 14th and Independence Avenue, S.W., Washington, D.C. 20250, Phone: (202) 447-7051.

This meeting is an organizational meeting. Written statements by the public will be accepted at this meeting. Oral participation by the public will be deferred as noted below for subsequent meetings.

2. April 23, 1979, 9:00 a.m., The Winnebago Room, The Omaha Hilton Hotel, 1616 Dodge Street, Omaha, Nebraska, Hotel Phone: (402) 346-7600.

This meeting will consist primarily of an oral hearing where all interested persons are invited to present information and comments concerning the matters being considered by the Task Force. If warranted, the oral hearing and Task Force meeting may be continued on April 24, 1979, at the same time and same location as stated above for April 23.

3. April 26, 1979, 9:00 a.m., Texas A&M University Research and Extension Center—Auditorium, 6500 Amarillo Boulevard West, Amarillo, Texas, Center Phone: (806) 359-5401.

This meeting will consist primarily of an oral hearing where all interested persons are invited to present information and comments concerning the matters being considered by the Task Force. If warranted, the oral hearing and Task Force meeting may be continued on April 27, 1979, at the same time and same location as stated above for April 26.

4. May 10, 1979, 10:00 a.m., Room 218A, Administration Building, USDA, 14th and Independence Avenue, S.W., Washington, D.C. 20250, Phone: (202) 447-7051.

This meeting will consist primarily of an oral hearing where all interested persons are invited to present information and comments concerning the matters being considered by the Task Force.

5. May, 11, 1979, 8:30 a.m. Room 218A, Administration Building, USDA, 14th and Independence Avenue, S.W., Washington, D.C. 20250, Phone: (202) 447-7051.

This meeting as well as all of the other meetings will be open to the public. However, there will be no public participation invited at the May 11 meeting.

In addition to oral statements from the public at the hearings, the Task Force solicits written statements from any interested person. Please address such statements only to the matters relevant to the purpose of the Task Force, as stated above. All written statements should be directed to Chas B. Jennings, Deputy Administrator, Packers and Stockyards, AMS, U.S. Department of Agriculture, Room 3039S, Washington, D.C. 20250, and must be postmarked no later than May 5, 1979.

A detailed agenda for the Task Force meetings in Omaha, Nebraska, Amarillo, Texas, and Washington, D.C. (May 10 meeting only) may be obtained from the office of Chas B. Jennings at the address above any time after April 17, 1979.

Written transcripts will be made of all Task Force meetings where public participation is invited. All transcripts, written statements and minutes, as well as the final report of the Task Force, will be made available for public inspection at the Office of the Deputy Administrator, Packers and Stockyards, AMS, during regular business hours.

Dated: March 22, 1979.

CHAS B. JENNINGS,
*Deputy Administrator.*

[FR Doc. 79-9232 filed 3-27-79; 8:45 am]

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[3410-01-M]

### Office of the Secretary

### SECTION 22 IMPORT FEES

### Determination of Quarterly Import Fees on Sugar

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to determine on a quarterly basis the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15 and 957.15) under the authority of Section 22 of the Agricultural Adjustment Act of 1933, as amended. This notice announces those determinations for the second calendar quarter of 1979.

EFFECTIVE DATE: April 1, 1979.

FOR FURTHER INFORMATION CONTACT:

William F. Doering, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250 (202-447-67230).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 4631, dated December 28, 1978, Headnote 4 of Part 3 of the TSUS was amended to provide that quarterly adjusted fees shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15 and 957.15). Paragraph (c)(ii) of Headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the daily spot (world) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee and Sugar Exchange or, if such quotations are not being reported, by the International Sugar Or-

ganization), expressed in United States cents per pound, Caribbean ports, in bulk, adjusted to a United States delivered basis by adding the applicable duty and 0.90 cents per pound to cover attributed costs for freight, insurance, stevedoring, financing, weighing and sampling, is less than 15.0 cents per pound. However, whenever the average of the daily spot price quotations for 10 consecutive market days within any calendar quarter, adjusted to a United States delivered basis, plus the fee then in effect: (1) exceeds 16.0 cents, the fee then in effect shall be decreased by one cent; or (2) is less than 14.0 cents, the fee then in effect shall be increased by one cent. Paragraph (c)(i) further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus .52 cents per pound. The fee, in any event, may not be greater than 50 per centum of the average of such daily spot price quotations.

The average of the daily spot (world) price quotations for raw sugar for the applicable period prior to the second calendar quarter of 1979 has been calculated to be 8.53 cents per pound. This results in a fee of 2.76 cents per pound for item 956.15 [15.0 cents—(8.53 cents average spot price + 2.81 cents duty+.90 cents attributed costs) = 2.76 cents]. Accordingly, the fee for items 956.05 and 957.15 for the second calendar quarter of 1979 is 3.28 cents per pound.

Headnote 4(c) requires the Secretary of Agriculture to determine and announce the amount of the quarterly fees no later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary is also required to certify the amount of such fees to the Secretary of the Treasury and file notice thereof with the FEDERAL REGISTER prior to the beginning of the calendar quarter during which the fees shall be applicable. This notice is therefore being issued in order to comply with the requirements of Headnote 4(c).

NOTICE

Notice is hereby given that, in accordance with the requirements of Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the quarterly adjusted fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the second calendar quarter of 1979 shall be as follows:

| Item | Fee |
|---|---|
| 956.05 | 3.28 cents per lb. |
| 956.15 | 2.76 cents per lb. |
| 957.15 | 3.28 cents per lb. |

The amounts of such fees have been certified to the Secretary of the Treasury in accordance with paragraph (c)(iii) of Headnote 4.

Signed at Washington, D.C. on March 23, 1979.

BOB BERGLAND,
*Secretary of Agriculture.*

[FR Doc. 79-9374 Filed 3-27-79; 8:45 am]

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[6320-01-M]

## CIVIL AERONAUTICS BOARD

[Order 79-3-127]

### DALLAS/FORT WORTH-OKLAHOMA CITY

**Show Cause Proceeding**

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-3-127, The Dallas/Ft. Worth-Oklahoma City Show Cause Proceeding.

SUMMARY: The Board is making final the tentative findings of Order 78-12-94 and awarding Dallas/Ft. Worth-Oklahoma City authority to Texas International Airlines, Inc. (Docket 32954). The Board is also proposing to grant Dallas/Ft. Worth-Oklahoma City to Ozark Air Lines (Docket 35104) and any other fit, willing and able applicant the fitness of which can be established by officially noticeable material. The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board making final the tentative findings and conclusions or to the issuance of the proposed authority shall file, and serve upon all applicant carriers, no later than April 23, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 35104 with the Dockets Section, Civil Aeronautics Board, Washington, D.C., 20428. Copies should be served on: American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Frontier Airlines, Inc., National Airlines, Inc., Ozark Air Lines, Inc., Texas International Airlines, Inc., Trans World Airlines, Inc., the Governor of Oklahoma, the Governor of Texas, the Mayor of Oklahoma City, Oklahoma, the Mayor of Dallas, Texas, and the Mayor of Forth Worth, Texas.

FOR FURTHER INFORMATION CONTACT:

Charles Stohr, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5348.

The complete text of Order 79-3-127 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-3-127 to the Distribution Section, Civil Aeronautics Board, Washington, D.C., 20428.

By the Civil Aeronautics Board: March 21, 1979.

PHYLLIS T. KAYLOR,
*Secretary.*

[FR Doc. 79-9333 Filed 3-27-79; 8:45 am]

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[6320-01-M]

[Order 79-3-141; Docket 35107]

### HAWAII COMMON FARES INVESTIGATION

**Order of Investigation**

AGENCY: Civil Aeronautics Board.

ACTION: Order of Investigation, Order 79-3-141, *Hawaii Common Fares Investigation*, Docket 35107.

SUMMARY: The Board is instituting an evidentiary investigation to be set for hearing before an administrative law judge of the Board to consider whether the common fare condition of these currently authorized to provide Mainland-Hawaii authority either by certificate or exemption, and the agreements and tariffs relating thereto, are in the public interest and should be continued; and if so, whether this condition should be made applicable to future awards of Hawaii authority.

SUPPLEMENTARY INFORMATION: The complete text of Order 79-3-141 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79-3-141 to that address.

By the Civil Aeronautics Board: March 21, 1979.

PHYLLIS T. KAYLOR,
*Secretary.*

[FR Doc. 79-9332 Filed 3-27-79; 8:45 am]

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[3510-24-M]

## DEPARTMENT OF COMMERCE

**Economic Development Administration**

### TWELVE PRODUCING FIRMS

**Petitions for Determinations of Eligibility To Apply for Trade Adjustment Assistance**

Petitions have been accepted for filing from twelve firms: (1) Frank Saltz & Sons, Inc., 347 Chestnut Street, Passaic, New Jersey 07055, a

producer of men's suits and sportcoats (accepted March 8, 1979); (2) Wilson-Tek Corporation, 949 East National Avenue, P.O. Box 278, Brazil, Indiana 47834, a producer of plastic pipe making machinery and equipment (accepted March 9, 1979); (3) Revere Sportswear Company, 1349 North Milwaukee Avenue, Chicago, Illinois 60622, a producer of women's skirts, pants, jackets and blouses (accepted March 12, 1979); (4) Menser Industries, Inc., 2110 North Michigan Street, Plymouth, Indiana 46563, a producer of blankets, sleeping bags, mitts, quilting and potholders (accepted March 12, 1979); (5) Parlane Sportswear Company, Inc., 70 Harrison Avenue, Boston, Massachusetts 02111, a producer of women's sportswear, including suits, skirts, pants, shorts, tops and dresses (accepted March 15, 1979); (6) Plesco Products, Inc., 207 Main Street, P.O. Box 15, Worcester, Massachusetts 01613, a producer of disposable shoe covers and headwear (accepted March 16, 1979); (7) Acoustic Fiber Sound Systems, Inc., 8050 Castleway Drive, P.O. Box 50829, Indianapolis, Indiana 46250, a producer of speakers and accessories for CB and auto radios (accepted March 16, 1979); (8) Bobbie Ellen, Inc., 575 Eighth Avenue, New York, New York 10018, a producer of coats and jackets for women and men (accepted March 20, 1979); (9) Peerless Umbrella Company, Inc., 6 West 32nd Street, New York, New York 10001, a producer of umbrellas (accepted March 20, 1979); (10) Cayey Industries, Inc., Industrial Avenue, P.O. Box 1127, Cayey, Puerto Rico 00633, a producer of men's and women's sweaters (accepted March 21, 1979); (11) Wayne Floral Company, Inc., P.O. Box 6, Newark, New York 14513, a producer of cut flowers and potted plants (accepted March 21, 1979); and (12) Winlit Fashions, Inc., 250 West 39th Street, New York, New York 10018, a producer of women's coats and jackets (accepted March 21, 1979).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

JACK W. OSBURN, Jr.,
*Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.*

[FR Doc. 79-9293 Filed 3-27-79; 8:45 am]

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[3510-25-M]

**Industry and Trade Administration**

**ELECTRONIC INSTRUMENTATION TECHNICAL ADVISORY COMMITTEE**

**Closed Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Electronic Instrumentation Technical Advisory Committee will be held on Tuesday, April 17, 1979, at 9:30 a.m. in Room 6802, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973. On October 7, 1975, October 21, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Section 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) world-wide availability and actual utlization of production technology, (C) licensing procedures which may affect the level of export controls applicable to electronic instrumentation, including technical data or other information related thereto, and (D) exports to the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and stategic criteria related thereto.

Written statement may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

For further information, contact Mrs. Margaret Cornejo, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-2583.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Electronic Instrumentation Technical Advisory Committee and of any subcommittees thereof was published in the FEDERAL REGISTER on December 27, 1978 (43 FR 60328).

Dated: March 23, 1979.

LAWRENCE J. BRADY,
*Acting Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.*

[FR Doc. 79-9351 Filed 3-27-79; 8:45 am]

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[3910-01-M]

**DEPARTMENT OF DEFENSE**

**Department of the Air Force**

**USAF SCIENTIFIC ADVISORY BOARD**

**Meeting**

MARCH 22, 1979.

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group will hold meetings on April 12, 1979 from 8:30 a.m. to 5:00 p.m. and April 13, 1979 from 8:30 a.m. to 12:00 p.m. at Hanscom Air Force Base, Massachusetts in the Command Management Center, Building 1606.

The Group will receive classified briefings and hold classified discussions on selected Air Force Command, Control and Communications Programs. The meetings concern matters listed in Section 552b(c) of Title 5, U.S.C., specifically subparagrph (1) thereof and accordingly, the meetings will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat (202) 697-8404.

CAROL M. ROSE,
*Air Force Federal Register Liaison Officer.*

[FR Doc. 79-9264 Filed 3-27-79; 8:45 am]

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[3710-08-M]

**Department of the Army**

**U.S. ARMY MEDICAL RESEARCH AND DEVELOPMENT ADVISORY PANEL AD HOC STUDY GROUP ON MEDICAL ENTOMOLOGY**

**Partially Closed Meeting**

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

Name of committee: United States Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Medical Entomology.

Date of meeting: April 12 and 13, 1979.

Place: Room 3092, Walter Reed Army Institute of Research.

Time: 1300 hours.

Proposed agenda: This meeting will be open to the public on April 12, 1979, from 1300 to 1345 hours to discuss the scientific research program of the Medical Entomology Branch, Walter Reed Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 5526(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 12, 1979 from 1345 hours to adjournment, and on April 13, 1979 from 0830 to 1200 hours for the review, discussion and evaluation of individual programs and projects conducted by the U.S. Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Howard Noyes, Associate Director, Walter Reed Army Institute of Research, Building 40, Room 1111, Walter Reed Army Medical Center, Washington, D.C. 20012 (202/576-3061) will furnish summary minutes, roster of Committee members, and substantive program information.

By authority of the Secretary of the Army.

ROME D. SMYTH,
*Colonel, U.S. Army, Director, Administrative Management, TAGCEN.*

[FR Doc. 79-9543 Filed 3-27-79; 8:45 am]

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[3810-70-M]

**Office of the Secretary**

**DEFENSE SCIENCE BOARD TASK FORCE ON HIGH ENERGY LASERS**

**Change in Meeting Date**

The meeting date for the Defense Science Board Task Force on High Energy Lasers scheduled for a closed session on April 6-7, 1979 in Washington, D.C., published in the FEDERAL REGISTER on March 19, 1979 (44 FR 16470, FR Doc. 79-8208) has been changed to April 5-6, 1979. All other aspects of the original notice remain the same.

H. E. LOFDAHL,
*Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.*

MARCH 23, 1979.

[FR Doc. 79-9397 Filed 3-27-79; 8:45 am]

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[6450-01-M]

**DEPARTMENT OF ENERGY**

**Bonneville Power Administration**

[DOE/EIS-0030-F]

**PROPOSED FISCAL YEAR 1980 PROGRAM**

**Availability of Final Environmental Impact Statement**

Notice is hereby given that a Final Environmental Impact Statement, DOE/EIS-0030-F, Bonneville Power Administration (BPA), Proposed Fiscal Year 1980 Program (March 1979) has been issued pursuant to the Department of Energy's (DOE) implementation of the National Environmental Policy Act of 1969. The statement was prepared to assess the anticipated environmental impacts that may be associated with the construction and maintenance programs proposed by BPA for FY 1980. The draft of this statement was issued in September 1978.

Copies of the final Environmental Impact Statement are available for public inspection at designated Federal depositories (for locations, contact the Environmental Manager, BPA, P.O. Box 3621, Portland, Oregon 97208) and at DOE public document rooms located at:

Library, FOI—Public Reading Room GA152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C.

BPA, Washington, D.C. Office, Federal Building, Room 3352, 12th & Pennsylvania Avenue NW., Washington, D.C.

Library, BPA Headquarters, 1002 NE. Holladay Street, Portland, Oregon

And in the following BPA Area and District Offices:

Eugene District Office, U.S. Federal Building, East 211 7th Street, Room 206, Eugene, Oregon

Idaho Falls District Office, 531 Lomax Street, Idaho Falls, Idaho

Kalispell District Office, Highway 2 (East of Kalispell), Kalispell, Mont.

Portland Area Office, 919 NE. 19th Avenue, Room 210, Portland, Oregon

Seattle Area Office, 415 First Avenue North, Room 250, Seattle, Wash.

Spokane Area Office, U.S. Court House, Room 561, W. 920 Riverside Avenue, Spokane, Wash.

Walla Walla Area Office, West 101 Poplar, Walla Walla, Wash.

Wenatchee District Office, U.S. Federal Building, Room 314, 301 Yakima Street, Wenatchee, Wash.

Copies of this document have also been furnished to those who commented on the draft statement.

Single copies are available for distribution by contacting the Environmental Manager, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, or the BPA Area and District Office mentioned above.

Dated at Portland, Oregon, this 23d day of February 1979.

STERLING MUNRO,
*Administrator.*

[FR Doc. 79-9352 Filed 3-27-79; 8:45 am]

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[6450-01-M]

**Federal Energy Regulatory Commission**

[Docket No. ER79-249]

**THE CLEVELAND ELECTRIC ILLUMINATING CO., ET AL.**

**Proposed Amendment to Interconnection Agreement**

MARCH 23, 1979.

Take notice that on March 7, 1979 the CAPCO Group filed Amendment No. 4 dated as of January 1, 1979, to the CAPCO Basic Operating Agreement dated as of January 1, 1975, as amended, which is filed with the Commission under the following Rate Schedule designations:

| | Rate Schedule |
|---|---|
| The Cleveland Electric Illuminating Company. | FERC No. 13 |
| Duquesne Light Company | FERC No. 14 |
| Ohio Edison Company | FERC No. 120 |
| Pennsylvania Power Company | FERC No. 29 |
| The Toledo Edison Company | FERC No. 26 |

Amendment No. 4 extends the term of the CAPCO Basic Operating Agreement which currently expires March 1, 1979, to the earlier of March 1, 1980 or execution of a CAPCO Generating Capacity Agreement now being formulated according to the CAPCO Group.

Amendment No. 4 also increases the Demand Charge under the System Capacity and Energy Schedule from

$3.25 to $3.75 per kilowatt per month, according to the CAPCO Group.

No new facilities will be installed nor will existing facilities be modified in connection with the proposed Amendment according to the CAPCO Group. It is requested that Amendment No. 4 become effective January 1, 1979.

Any person desiring to be heard or to make any protest with reference to the subject matter of this Notice should on or before April 6, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The documents referred to herein are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 79-9271 Filed 3-27-79; 8:45 am]

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[6450-01-M]

[Docket No. TC79-17]

**CITIES SERVICE GAS CO.**

**Notice of Tariff Filing**

MARCH 19, 1979.

Take notice that on March 16, 1979, Cities Service Gas Company (Respondent), Post Office Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. TC79-17 a tariff sheet as part of its FERC Gas Tariff to provide on an interim basis a plan for the delivery of natural gas for essential agricultural and high-priority uses in accordance with section 401 of the Natural Gas Policy Act of 1978 and part 281 of the Regulations thereunder, all as more fully set forth in said sheet which is on file with the Commission and open to public inspection.

The tariff sheet tendered by Respondent adds a new Section 9, entitled Interim Adjustments, to the General Terms and Conditions of Respondent's FERC Gas Tariff, Original Volume No. 1. The filed tariff sheet provides that adjustments to the respondent's priority of service shall be granted to the extent necessary to supply the essential agricultural uses and high-priority uses of direct sale customers and indirect sale customers as provided for in Part 281, Subpart A, Subchapter I, Chapter 1 of Title 18 of the Code of Federal Regulations. The tariff sheet further provides that volumes delivered under any such adjustment shall be reduced proportionately if such adjustments would otherwise result in the reduction of deliveries of natural gas:

(a) To a direct sale customer, local distribution company or interstate pipeline customer to any level which would cause a direct or indirect supply deficiency for service to essential agriculture or high-priority uses; for

(b) Which the Company determines is reasonably necessary for injection into storage by the Company or by any of its customers except to the extent the Federal Energy Regulatory Commission, upon complaint, determines that such storage is not reasonably necessary to serve high-priority uses or essential agricultural uses.

In accordance with the finding and determination by the Commission in the order issued March 6, 1979, in Docket No. RM79-13 (44 FR 13464, March 12, 1979), that good cause exists for waiver of the 30-day notice required by section 4 of the Natural Gas Act and section 154.22 of the Regulations thereunder, the tendered tariff sheets shall be accepted for filing to be effective April 1, 1979, without further order of the Commission unless suspended on or before March 31, 1979, in accordance with section 4 of the Natural Gas Act.

Any person desiring to be heard or make any protests with reference to said tariff sheets should on or before March 26, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No requests for extension of this time will be entertained. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 79-9314 Filed 3-27-79; 8:45 am]

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[6450-01-M]

**IDAHO POWER CO.**

[Project No. 2258]

**Notice of Application for Surrender of License**

MARCH 19, 1979.

Take notice that an application for surrender of license for the constructed American Falls Project No. 2258 was filed on November 21, 1977, by Idaho Power Company (Applicant) pursuant to Article 37 of the project license. Project No. 2258 is located on the Snake River in Power County, Idaho, near the City of American Falls. Correspondence concerning the application should be sent to: Mr. Paul Jauregui, General Counsel, Idaho Power Company, 1220 Idaho Street, P.O. Box 70, Boise, Idaho 83701.

Article 37 of the license for Project No. 2258—issued March 31, 1975—requires the Applicant to surrender its license when the project becomes inoperative because of the construction or operation of the new American Falls Project No. 2736. Project No. 2258 ceased operation on September 10, 1977, and Applicant has removed the forebay dam and the generating units. Applicant intends to demolish the eastshore powerhouse.

Anyone desiring to be heard or to make protest about this application should file a protest or a petition to intervene with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure (Rules), 18 CFR § 1.10 or § 1.8 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before April 24, 1979. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 79-9315 Filed 3-27-79; 8:45 am]

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[6450-01-M]

[Docket No. TC79-18]

**INTER-CITY MINNESOTA PIPELINES LTD., INC.**

**Notice of Tariff Filing**

MARCH 23, 1979.

Take notice that on March 16, 1979, Inter-City Minnesota Pipelines Ltd., Inc. (Respondent), 1500 Richardson Building, One Lombard Place, Winnipeg, Manitoba, R3B 2A4 Canada, filed in Docket No. TC79-18 tariff sheets as part of its FERC Gas Tariff to provide an interim plan for the delivery of natural gas for essential agricultural and high priority uses in accordance with section 401 of the Natural Gas Policy Act of 1978 and part 281 of the Regu-

lations thereunder, all as more fully set forth in the tariff sheets, which are on file with the Commission and open to public inspection.

The tariff sheets tendered by Respondent provide that notwithstanding the priorities of section 19.3 of its gas tariff, any local distribution company or direct customer may request an adjustment to permit relief from curtailment to satisfy deficiencies for essential agricultural uses and for high priority uses. The terms "essential agricultural use" and "high priorty use" are defined as set out at 18 CFR 281.103(a).

The filed tariff sheets also provide that supply deficiences shall be calculated as set out at 18 CFR 281.106. Requests for adjustments shall be accompanied by the statements required by § 281.109(a).

Under the terms of the proposed tariff sheets, direct sale customers requesting relief from curtailment for high-priority or essential agricultural uses will receive amounts of gas that do not exceed the lesser of the direct supply deficiency or the direct supply obligation as calculated pursuant to 18 CFR §§ 281.106(b) and 281.107. Local companies will receive relief from curtailment for their essential agricultural use customers and high priority use customers in an amount that "does not exceed the lesser of the sum of the indirect supply obligations with respect to such customers (determined under 18 CFR § 281.106(c) and 18 CFR § 281.107), respectively."

Supply deficiencies of customers who purchase gas from pipelines other than Respondent's are to be attributed as required by 18 CFR § 281.106(e). The tariff sheets would require buyers to give prompt notice of any decrease in supply deficiency and at any time Respondent could require a customer to recalculate its supply deficiency. In addition Respondent would be under no obligation to provide relief if information in its own records conflicted with information provided in a request for waiver of curtailment.

Section 19.5(d) of the tariff sheets tendered states that

> [n]otwithstanding the provisions of Section 19.5(b) above, volumes delivered under a request for waiver of curtailment shall be adjusted, in an equitable manner, if such adjustment would otherwise result in the reduction of deliveries of natural gas for uses specified in 18 CFR § 281.108(b).

In accordance with the finding and determination by the Commission in the order issued March 6, 1979, in Docket No. RM79-13 (44 FR 13464, March 12, 1979), that good cause exists for waiver of the 30-day notice required by section 4 of the Natural Gas Act and section 154.22 of the Regulations thereunder, the tendered tariff sheets shall be accepted for filing to be effective April 1, 1979, without further order of the Commission unless suspended on or before March 31, 1979, in accordance with section 4 of the Natural Gas Act.

Any person desiring to be heard or make any protest with reference to said tariff sheets should on or before March 28, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No request for extension of this time will be entertained. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 79-9288 Filed 3-27-79; 8:45 am]

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[6450-01-M]

[Docket No. CP79-189]

**MICHIGAN WISCONSIN PIPE LINE CO. AND TRUNKLINE GAS CO.**

**Notice of Application**

MARCH 20, 1979.

Take notice that on February 22, 1979, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), One Woodward Avenue, Detroit, Michigan 48226, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, (Applicants) filed in Docket No. CP79-189 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of up to 6,000 Mcf of natural gas per day, all as more fully set forth in the application on file with the Commission and open to the public inspection.

It is indicated that Applicants propose to exchange gas pursuant to an agreement dated November 14, 1978, between the two companies, which agreement provides that Michigan Wisconsin would deliver to Stingray Pipeline Company (Stingray) for the account of Trunkline daily quantities of gas, up to a maximum of 6,000 Mcf, at an existing connection in West Cameron Block 269, offshore Louisiana, and that Trunkline would redeliver equivalent quantities of exchange gas to High Island Offshore System (HIOS) for the account of Michigan Wisconsin at a proposed connection in High Island Block A-332, or the point of connection between HIOS's facilities and Stingray's facilities on jointly owned Stingray and HIOS facilities in High Island Block A-330, offshore Texas. Applicants indicate that any imbalances in deliveries would be corrected as soon as possible. It is stated that no charge would be made and no new facilities would be required to provide for the proposed exchange.

Any person desiring to be heard or to make any protest with reference to said application should be on or before April 10, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission in its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 79-9316 Filed 3-27-79; 8:45 am]

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[6450-01-M]

[Docket No. ER79-245]

**OHIO POWER CO.**

**Notice of Filing**

MARCH 19, 1979.

Take notice that American Electric Power Service Corporation (AEP) on

March 12, 1979 tendered for filing on behalf of its affiliate, Ohio Power Company (Ohio), Modification No. 9 dated November 15, 1978 to the Interconnection Agreement dated December 1, 1963 between Ohio and Columbus & Southern Ohio Electric Company (Columbus), designated Ohio's Rate Schedule FERC No. 32.

AEP states that this Modification No. 9 provides that, for the purpose of conserving energy resources during extended fuel shortages Ohio or Columbus may arrange to obtain Conservation Energy from the other. AEP further states that when supplied the charge for Conservation Energy generated on the supplying party's will be 110% of the out-of-pocket replacement cost of generating the energy, plus 5.00 mills per kilowatt-hour. AEP indicates that the new Modification No. 9 also provides for a transmission service charge of 1.7 mills per kilowatt-hour for deliveries of Conservation Energy from systems interconnected with Ohio or Columbus.

AEP states that because the current uncertainty of fuel supplies and the possibility that transactions will be required immediately under the proposed Modification No. 9, the parties have requested that the Commission waive its notice requirements and that the proposed Schedule become effective as soon as possible.

Copies of this filing were served upon Columbus & Southern Ohio Electric Company and the Public Utilities Commission of Ohio, according to AEP.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 6, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 79-9317 Filed 3-27-79; 8:45 am]

[6450-01-M]

[Project No. 2570]

## OHIO POWER CO.

### Notice of Application for Amendment of License

MARCH 19, 1979.

Take notice that on December 12, 1978, the Ohio Power Company filed an application under the Federal Power Act, 16 U.S.C. §§ 791a-825r, for amendment of the license for the Racine Project, FERC No. 2570, located on the Ohio River in Meigs County, Ohio, and Jackson County, West Virginia, at the U.S. Corps of Engineers' Racine Locks and Dam. Correspondence should be addressed to Mr. A. Joseph Dowd, Senior Vice President and General Counsel, American Electric Power Service Corporation, Two Broadway, New York, N.Y. 10004, and to Mr. Charles A. Heller, Jr., Executive Vice President, Ohio Power Company, 301 Cleveland Ave. SW., Canton, Ohio 44702.

The Applicant requests that the time for completion of construction of the project, and the time by which a revised Exhibit S (report on the effect of the project on fish and wildlife), each be extended two years. This would result in new deadlines for completion of construction of November 30, 1981, and for filling of a revised Exhibit S of December 31, 1983.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before April 27, 1979. The Commission's address is: 825 N. Capitol Street NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 79-9318 Filed 3-27-79; 8:45 am]

[6450-01-M]

[Docket No. TC79-13]

## PANHANDLE EASTERN PIPE LINE CO.

### Notice of Tariff Filing

MARCH 19, 1979.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle), 3000 Bissonnet Avenue, P.O. Box 1642, Houston, Texas 77001, on March 15, 1979, tendered for filing Fourth Revised Interim Original Sheet 42-A to its FERC Gas Tariff, Original Volume No. 1 pursuant to Part 281, Subpart A, Subchapter I, Chapter I of Title 18, Code of Federal Regulations, promulgated by the Commission's Interim Curtailment Rule issued on March 6, 1979, in Docket No. RM79-13 to implement section 401 of the Natural Gas Policy Act. This filing which Panhandle proposes to put into effect during the period starting on April 1, 1979, until October 31, 1979, prescribes that curtailments pursuant to Section 16.3 of Panhandle's FERC Gas Tariff shall be subject to adjustment to the extent necessary to supply certified essential agricultural uses or high priority uses.

The pertinent part of Panhandle's proposed interim tariff sheet tendered for filing herein is as follows:

> During the period April 1, 1979, through October 31, 1979, curtailments pursuant to Section 16.3 shall be subject to adjustment pursuant to the provisions of Part 281, Subpart A, Subchapter I, Chapter I of Title 18, Code of Federal Regulations, to the extent necessary to supply the certified essential agricultural uses or high priority uses.

The tariff sheet tendered by Panhandle adopt and incorporate by reference the regulations set forth in 18 CFR 281.101 through 281.111 to provide that Panhandle's plan for the curtailment of deliveries, to the maximum extent practicable, does not cause curtailment of deliveries of natural gas for essential agricultural and high-priority uses.

In accordance with the finding and determination by the Commission in the order issued March 6, 1979, in Docket No. RM79-13 (44 FR 13464, March 12, 1979), that good cause exists for waiver of the 30-day notice required by section 4 of the Natural Gas Act and section 154.22 of the Regulations thereunder, the tendered tariff sheet shall be accepted for filing to be effective April 1, 1979, without further order of the Commission unless suspended on or before March 31, 1979, in accordance with section 4 of the Natural Gas Act.

Any person desiring to be heard or make any protests with reference to said tariff sheet should on or before March 26, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to

intervene or a protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No requests for extension of this time will be entertained. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 79-9319 Filed 3-27-79; 8:45 am]

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[6450-01-M]

**RATON NATURAL GAS CO.**

[Docket No. RP78-84 (PGA79-1)]

**Notice of Changes in Rates**

MARCH 19, 1979.

Take notice that Raton Natural Gas Company (Raton), on March 6, 1979, tendered for filing proposed changes in its FPC Gas Tariff, Volume No. 1, consisting of Nineteenth Revised Sheet No. 3a. The change in rates is for jurisdictional gas service. The proposed effective date is April 1, 1979.

Raton states that the instant notice of change in rates is occasioned solely by increase in the cost of gas purchased from Colorado Interstate Gas Company (CIG). The tracking of CIG Gas Cost Increase results in increased rate from $1.75 to $1.78 per Mcf of Demand and from 148.56¢ to 175.47¢ per Mcf of Commodity. The annual revenue increase, by reason of the tracking, amounts to $284,298.

Raton states that copies of this filing were served on its jurisdictional customer and the Public Service Commission of New Mexico.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 29, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 79-9320 Filed 3-27-79; 8:45 am]

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[6450-01-M]

[Docket No. CP79-202]

**TEXAS GAS TRANSMISSION CORP.**

**Notice of Application**

MARCH 19, 1979.

Take notice that on March 6, 1979, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP79-202 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of approximately 7.94 miles of 8-inch pipeline, together with appurtenant facilities, extending from the "A" Platform located in Block 296, Ship Shoal Area, South Addition, offshore Louisiana, to an interconnection in Block 320, Eugene Island, South Addition, offshore Louisiana, with the 30-inch pipeline jointly owned by Texas Gas, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and Texas Eastern Transmission Corporation, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Texas Gas states it is currently negotiating with Texas Gas Exploration Corporation (Exploration), Chevron U.S.A., Inc. (Chevron), and Samedan Oil Corporation (Samedan) for the purchase of their natural gas reserves located in Block 296. It is stated that if Texas Gas is not able to purchase 100 percent of Block 296 reserves, it would sell an undivided interest in the pipeline to be constructed based on the actual cost of construction to the party or parties which purchase the remainder of such reserves. Texas Gas estimates that proved and probable gas reserves in Block 296 are approximately 20,000,000 Mcf. Texas Gas anticipates that the initial rate of delivery from such gas reserves would be 20,000 Mcf based upon information furnished to Texas Gas by the producers. Texas Gas states that upon execution of the respective gas purchase contracts, each producer would obtain appropriate authorization as may be required to sell the reserves located in Block 296.

Texas Gas asserts that the total estimated cost of the proposed facilities is $3,477,000, which would be financed by funds on hand.

Texas Gas indicates that the additional gas supplies from Block 296, should they be made available to Texas Gas's system promptly, would help alleviate the gas supply shortages on its system.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 10, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 79-9321 Filed 3-27-79; 8:45 am]

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[6450-01-M]

[Docket No. TC79-12]

**TRUNKLINE GAS CO.**

**Notice of Tariff Filing**

MARCH 19, 1979.

Take notice that on March 15, 1979, Trunkline Gas Company (Respondent), P.O. Box 1642, Houston, Texas 77001, pursuant to section 401 of the Natural Gas Policy Act of 1978 and Part 281 of the Regulations thereunder filed in Docket No. TC79-12 a tariff sheet as part of its FERC Gas

Tariff to provide on an interim basis a plan for the delivery of natural gas for essential agricultural and high-priority uses, all as more fully set forth in said sheet which is on file with the Commission and open to public inspection.

The tariff sheet tendered by Respondent would amend Section 17.6 of its FERC Gas Tariff, Original Volume No. 1, to add subsection c which states that during the period April 1, 1979 through October 31, 1979, curtailments shall be subject to the provisions of Part 281, Subpart A, Subchapter I, Chapter 1 of Title 18, Code of Federal Regulations, to the extent necessary to supply the certified essential agricultural uses or high-priority uses.

In accordance with the finding and determination by the Commission in the order issued March 6, 1979, in Docket No. RM79-13 (44 FR 13464, March 12, 1979), that good cause exists for waiver of the 30-day notice required by section 4 of the Natural Gas Act and section 154.22 of the Regulations thereunder, the tendered tariff sheet shall be accepted for filing to be effective April 1, 1979, without further order of the Commission unless suspended on or before March 31, 1979, in accordance with section 4 of the Natural Gas Act.

Any person desiring to be heard or make any protest with reference to said tariff sheet should on or before March 26, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No requests for extension of this time will be entertained. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 79-9322 Filed 3-27-79; 8:45 am]

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[6450-01-M]

[Docket No. CP79-192]

**UNITED GAS PIPE LINE CO.**

**Notice of Application**

MARCH 20, 1979.

Take notice that on February 23, 1979, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP79-192 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of an additional 2,000 horsepower compressor facility at its existing Sterlington Compressor Station in Ouachita Parish, Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that on cold winter days, heating load on Applicant's Sterlington-Sarepta 18-inch line exceeds the supply on that line requiring additional gas to be moved into the line from Sterlington. The application further states that presently during these periods the existing horsepower at Applicant's Sterlington Compressor Station is being fully utilized in order to distribute low pressure gas in the Monroe area to Applicant's customers in that area. On warm winter days and during spring and summer the supply of gas on this line exceeds the demand and the flow is reversed toward Sterlington, it is stated. It is further stated that this additional low pressure gas must be compressed at the Sterlington Compressor Station in order to deliver such gas to Applicant's pipeline customers at Perryville, and that at present, the additional gas cannot be delivered to these pipeline customers because of a lack of compression at Sterlington. Applicant states that it has purchased, or has outstanding offers to purchase, additional volumes of gas in the Greenwood-Waskom Field, Caddo Parish, Louisiana, Rodessa Field, Caddo Parish, Louisiana and from the Hico-Knowles Field, Lincoln Parish, Louisiana, (estimated to be 25,000 Mcf of natural gas per day) which gas would flow into the Sterlington-Sarepta 18-inch line. This low pressure gas, would also require compression before it can be delivered into the high pressure pipelines of Applicant's customers at the discharge side of the Sterlington Compressor Station, it is asserted.

It is stated that the initial cost for installation of two-1,000 horsepower packaged compressor units is estimated to be $512,240. Applicant proposes to lease the units at a monthly rental rate of $9,850 with an option to purchase. Applicant states that the purchase price of said units is $577,302.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 10, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10) All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 79-9323 Filed 3-27-79; 8:45 am]

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[6450-01-M]

**Office of Assistant Secretary for International Affairs**

**PROPOSED SUBSEQUENT ARRANGEMENT**

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada.

The subsequent arrangements to be carried out under the above mentioned agreement involves the following sales:

Contract S-EU-548, 100 mg of Thorium-230, 99.86% enriched, to Transurane-Institut, West Germany, for preparation of sources for Messbauer spectroscopy of Pa-231 and irradiation of the sources in order to obtain Thorium-231.

Contract S-EU-565, 10 mg of Thorium-230, 80-90% enriched, to Energieonderzoek Centrum Nederland, the Netherlands, for mass spectrometric isotope dilution analysis.

Contract S-CA-271, 1 mg of Thorium-230, 99.86% enriched to the Royal Ontario Museum, Canada, for isotope dilution analysis for uranium and thorium in geological materials by solid mass spectrometry.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than April 12, 1979.

For the Department of Energy.

Dated: March 21, 1979.

HAROLD D. BENGELSDORF,
*Director for Nuclear Affairs International Programs.*

[FR Doc. 79-9281 Filed 3-27-79; 8:45 am]

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[6450-01-M]

## NATIONAL PETROLEUM COUNCIL, TASK GROUPS OF THE COMMITTEE ON MATERIALS AND MANPOWER REQUIREMENTS

### Meetings

Noticer is hereby given that a task group of the Committee on Materials and Manpower Requirements will meet in March and April 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Materials and Manpower Requirements will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task group scheduling meetings is the Regulatory Impact Task Group. The time, location and agenda of the task group meetings follows:

The second meeting of the Regulatory Impact Task Group will be on Friday, March 30, 1979, starting at 9:00 a.m. in Conference Room 2626, on the 26th floor of the Tenneco Building, 1010 Milam Street, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of information needed for the completion of assignments.
3. Discussion of sources of information required by the Regulatory Impact Task Group.
4. Discussion of any other matters pertinent to the overall assignment of the Regulatory Impact Task Group.

The third meeting of the Regulatory Impact Task Group will be on Monday, April 9, 1979, starting at 9:00 a.m. in Conference Room 2626, on the 26th floor of the Tenneco Building, 1010 Milam Street, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Finalization of method for collecting the information needed for the completion of assignments.
3. Finalization of list of sources of information required by the Regulatory Impact Task Group.
4. Discussion of any other matters pertinent to the overall assignment of the Regulatory Impact Task Group.

The meetings are open to the public. The chairman of the task group is empowered to conduct the meetings in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements should inform James R. Hemphill, Office of Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 22, 1979.

GEORGE S. MCISAAC,
*Assistant Secretary for Resource Applications.*

MARCH 22, 1979.

[FR Doc. 79-9353 Filed 3-27-79; 8:45 am]

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[1505-01-M]

## ENVIRONMENTAL PROTECTION AGENCY

[OTS-050003; FRL 1069-1]

## TOXIC SUBSTANCES CONTROL ACT PREMANUFACTURE TESTING OF NEW CHEMICAL SUBSTANCES

### Guidance for Premanufacture Testing: Discussion of Policy Issues, Alternative Approaches, and Test Methods

*Correction*

In FR Doc. 79-6561, appearing at page 16240 in the issue for Friday, March 16, 1979, the comments deadline is June 14, 1979 which is (90 days after publication)".

[6560-01-M]

[FRL 1083-2; OPP-50410]

## CIBA-GEIGY CORP. AND AMCHEM PRODUCTS, INC.

### Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 100-EUP-61. Ciba-Geigy Corp., Greensboro, North Carolina 27409. This experimental use permit allows the use of 800 pounds of the herbicide metolachlor in a tank mixture to evaluate control of weeds in sorghum. A total of 435 acres is involved; the program is authorized only in the States of Arizona, Arkansas, California, Colorado, Georgia, Kansas, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, South Dakota, and Texas. The experimental use permit is effective from April 6, 1979 to April 6, 1980. Temporary tolerances for residues of the active ingredient in or on sorghum forage and fodder, sorghum grain, eggs, milk, fat and meat by-products of cattle, goats, hogs, horses, poultry and sheep have been established. (PM-23, Room: E-351, telephone: 202/755-1397)

No. 264-EUP-56. Amchem Products, Inc., Ambler, Pennsylvania 19002. This experimental use permit allows the use of 500 pounds of the plant regulator ethephon on carrots to evaluate its ability to increase yield of processing carrots and allow earlier harvest of fresh market carrots. A total of 720 acres is involved; the program is authorized only in the States of California, Michigan, Minnesota, Texas, Washington, and Wisconsin. The experimental use permit is effective from March 7, 1979 to March 7, 1980. A temporary tolerance for residues of the active ingredient in or on carrots has been established. (PM-25, Room: E-301, telephone: 202/755-2196)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).)

Dated: March 20, 1979.

DOUGLAS D. CAMPT,
*Acting Director,*
*Registration Division.*

[FR Doc. 79-9386 Filed 3-27-79; 8:45 am]

[6560-01-M]

[FRL 1084-2; OPP-50411]

## CIBA-GEIGY CORP. AND MONSANTO CO.

### Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 100-EUP-62. Ciba-Geigy Corp., Greensboro, North Carolina 27409. This experimental use permit allows the use of a mixture of approximately 113.22 pounds of the herbicide metolachlor with approximately 56.44 pounds of the herbicide propazine on sorghum grain to evaluate control of weeds. A total of 50 acres is involved; the program is authorized only in the States of Arkansas, Colorado, Kansas, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, and Texas. The experimental use permit is effective from March 8, 1979 to April 6, 1980. Temporary tolerances for residues of the active ingredient on sorghum grain, eggs, milk, and meat, fat and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep have been established. A permanent tolerance for residues of the active ingredient in or on sorghum grain has been established (40 CFR 180.243). (PM-23, Room: E-351, Telephone: 202/755-1397)

No. 524-EUP-48. Monsanto Co., St. Louis, Missouri 63166. This experimental use permit allows the use of 2,800 pounds of the herbicide alachlor in a tank mixture with 2,800 pounds of atrazine on corn to evaluate aerial control of weeds. A total of 960 acres is involved; the program is authorized only in the States of Colorado, Kansas, Missouri, and Nebraska. The experimental use permit is effective from April 1, 1979 to July 1, 1979. Permanent tolerances for residues of the active ingredients in or on corn have been established (40 CFR 180.249 and 180.220). (PM-25, Room: E-301, Telephone: 202/755-2196)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136))

Dated: March 21, 1979.

DOUGLAS D. CAMPT,
*Acting Director,*
*Registration Division.*

[FR Doc. 79-9382 Filed 3-27-79; 8:45 am]

[6560-01-M]

[[FRL 1083-3; OPP-50408]

## FISONS, INC. ET AL.

### Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 10065-EUP-12. Fisons, Inc., Bedfords, Massachusetts 01730. This experimental use permit allows the use of 1,740 pounds of the herbicide ethofumesate on red beets to evaluate control of weeds. A total of 580 acres is involved; the program is authorized only in the States of California, New York, Oregon, Texas, Washington, and Wisconsin. The experimental use permit is effective from February 23, 1979 to July 30, 1980. A temporary tolerance for residues of the active ingredient in or on red beets has been established. (PM-23, Room: E-351, Telephone: 202/755-1397)

No. 100-EUP-42. Ciba-Geigy Corp., Greensboro, North Carolina 27409. This experimental use permit allows the use of 2,000 pounds of the growth regulator ethanedial dioxime on oranges as a citrus abscission agent. A total of 2,000 acres is involved; the program is authorized only in the State of Florida. The experimental use permit is effective from March 1, 1979 to March 1, 1980. A temporary tolerance for residues of the active ingredient in or on oranges has been established. (PM-25, Room: E-301, Telephone: 202/755-2196)

No. 524-EUP-45. Monsanto Co., St. Louis, Missouri 63166. This experimental use permit allows the use of 862.5 pounds of the plant growth regulator sodium salt of glyphosate on sugarcane to evaluate hastened ripening and increased sucrose levels in sugarcane. A total of 1,150 acres is involved; the program is authorized only in the States of Florida, Hawaii, Louisiana, and Texas. The experimental use permit is effective from March 5, 1979 to March 5, 1981. A temporary tolerance for residues of the active ingredient in or on sugarcane has been established. A temporary food/feed additive regulation for residues of the active ingredient in sugarcane molasses has also been established. (PM-25, Room: E-301, Telephone: 202/755-2196)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136))

Dated: March 20, 1979.

DOUGLAS D. CAMPT,
*Acting Director,*
*Registration Division.*

[FR Doc. 79-9387 Filed 3-27-79; 8:45 am]

[6560-01-M]

[FRL 1082-8; pp 8G2019/T193]

## PESTICIDE PROGRAMS

### Metolachlor: Extension of Temporary Tolerances

The Environmental Protection Agency (EPA) established temporary tolerances for combined residues of the herbicide metolachlor (2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl) acetamide) and its metabolites 2-([2-ethyl-6-methylphenyl]amino) propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the raw agricultural commodities sorghum forage and fodder at 1 part per million (ppm); sorghum grain at 0.3 ppm; and in eggs, milk, and the meat, fat, and meat by-products of cattle, goats, hogs, horses, poultry, and sheep at 0.02 ppm. These tolerances were established in response to a pesticide petition (pp 8G2019) submitted by Ciba-Geigy Corp., Agricultural Div., PO Box 11422, Greensboro, NC 27409. These temporary tolerances will expire April 6, 1979.

Ciba-Geigy Corp. requested a one-year extension of these temporary tolerances both to permit continued testing to obtain additional data to permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 100-EUP-61 that has been extended under the Fed-

eral Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

The scientific date reported and all other relevant material were evaluated, and it was determined that an extension of the temporary tolerances would protect the public health. Therefore, the temporary tolerances have been extended on condition that the pesticide is used in accordance with the experimental use permit with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Ciba-Geigy Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administratin.

These temporary tolerances expire April 6, 1980. Residues not in excess of 1 ppm remaining in or on sorghum fodder and forage; 0.3 ppm remaining in or on sorghum grain; and 0.02 ppm remaining in eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep after the expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Ms. Willa Garner, Product Manager 23, Registration Division (TS-767), Office of Pesticide Programs, 401 M Street, SW, Washington, DC 20460 (202/755-1397).

(Section 408(j) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(j)])

Dated: March 20, 1979.

DOUGLAS D. CAMPT,
*Acting Director,*
*Registration Division.*

[FR Doc. 79-9384 Filed 3-27-79; 8:45 am]

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[6560-01-M]

[FRL 1085-4]

**SCIENCE ADVISORY BOARD, WATER QUALITY CRITERIA SUBCOMMITTEE**

**Open Meeting**

Under Pub. L. 92-463, notice is hereby given that a meeting of the Water Quality Criteria Subcommittee of the Science Advisory Board will be held on April 17 and 18, 1979, beginning at 9:00 a.m., in Conference Room 1112A, Crystal Mall, Building 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

This is the first meeting of the Water Quality Criteria Subcommittee. The Agenda includes presentations on the methodologies used for development of water quality criteria to protect aquatic life and human health and review of those methodologies; development of procedures for reviewing the criteria documents; preliminary consideration of the documents; and subcommittee organizational matters.

Paragraph 11 of the Settlement Agreement in Natural Resources Defense Council, et al. v. Train, 8 ERC 2120 (D. D. C. 1976), required EPA to publish water quality criteria for 65 specified pollutants by June 30, 1978. Subcommittee deliberations will be directed toward the 27 specified pollutants that appeared in the FEDERAL REGISTER, Part V, pages 15926-15981, March 15, 1979. Members of the public are invited to submit by April 11, 1979, a list of priorities and other information that they wish to offer on the pollutants listed in Part V that they consider most important for Subcommittee review. These submissions will be considered by the Subcommittee in reaching its decision on selection of documents for its attention. Opportunity will be provided for some discussion of these submissions. Submissions should be sent to Dr. J Frances Allen, Science Advisory Board (A-101C), U.S. Environmental Protection Agency, Washington, D.C. 20460.

The meeting is open to the Public. Because of limited seating capacity of the meeting room, all members of the public desiring to attend must preregister no later than April 12, 1979, and receive a confirmed reservation from Dr. J Frances Allen, Staff Officer, Water Quality Criteria Subcommittee, or Mrs. Joni Perry, 703-557-7720.

RICHARD M. DOWD,
*Staff Director,*
*Science Advisory Board.*

MARCH 23, 1979.

[FR Doc. 79-9378 Filed 3-27-79; 8:45 am]

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[6560-01-M]

[FRL 1083-7]

**SOLID WASTE DISPOSAL PRACTICES**

**Availability of Iron and Steel Industry Waste**

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of availability of draft report on iron and steel industry solid waste.

SUMMARY: EPA is today making available to the public a draft report entitled "Steel Industry Solid Waste Environmental and Resource Conservation Considerations" by Research Triangle Institute. The study includes a characterization of iron and steel industry and the solid waste generated by it, current and projected disposal practices, estimation of the cost impact of the Section 4004 Resource Conservation and Recovery Act (RCRA) criteria, and an assessment of alternate technologies and resource recovery practices applicable to the waste.

The report is in draft form and has not been approved by EPA. Copies of the study are available for public inspection at the EPA Public Information Reference Unit (library), Room 2404, 401 M Street SW., Washington, D.C. and at all EPA regional office libraries.

DATE: Public comments on the accuracy of the report are due April 27, 1979.

ADDRESS: All comments should be addressed to William Kline, Office of Solid Waste (WH-564), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

William Kline at the above address (202-755-9120).

Dated: March 21, 1979.

THOMAS C. JORLING,
*Assistant Administrator.*

[FR Doc. 79-9394 Filed 3-27-79; 8:45 am]

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[6560-01-M]

[FRL 1083-6]

**SOLID WASTE DISPOSAL PRACTICES**

**Availability of Mining Waste Cost Study**

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of availability of draft report on cost of compliance by the mining industry with Section 4004 RCRA criteria.

SUMMARY: EPA is today making available to the public a draft report entitled "A Study of the Cost Impact of the Resource Conservation and Recovery Act (RCRA) on the Disposal of Nonhazardous Wastes from Mining." The report includes an assessment of the disposal practices necessary to bring mining sites into compliance with Section 4004 Resource Conservation and Recovery Act (RCRA) criteria and provides a total cost estimate for the implementation of the practices. This study is a sequel to the "Study of Adverse Effects of Solid

Wastes from all Mining Activities on the Environment" by PEDCo Environmental, the availability of which was announced in the FEDERAL REGISTER on March 12.

The report is in draft form and has not been approved by EPA. Copies of the study are available for public inspection at the EPA Public Information Reference Unit (library), Room 2404, 401 M Street, S.W., Washington, D.C. and at all EPA regional office libraries.

DATE: Public comments on the accuracy of the report are due April 27, 1979.

ADDRESS: All comments should be addressed to Joanne Slaboch, Office of Solid Waste (WH-564), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Joanne Slaboch at the above address (202-755-9120).

Dated: March 21, 1979.

THOMAS C. JORLING,
*Assistant Administrator.*

[FR Doc. 79-9389 Filed 3-27-79; 8:45 am]

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[6560-01-M]

[FRL 1083-8]

SOLID WASTE DISPOSAL PRACTICES

Availability of Nonferrous Metal Industrial Waste

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of availability of draft report on nonferrous metal industry solid waste.

SUMMARY: EPA is today making available to the public a draft report entitled "Assessment of Solid Waste Management Problems and Practices in Nonferrous Smelters" by PEDCo Environmental. The study includes a characterization of the nonferrous metal industry and the solid waste generated by it, current and projected disposal practices, estimation of the cost impact of the Section 4004 Resource Conservation and Recovery Act (RCRA) criteria, and an assessment of alternate disposal and resource recovery practices applicable to the waste.

The report is in draft form and has not been approved by EPA. Copies of the study are available for public inspection at the EPA Public Information Reference Unit (library), Room 2402, 401 M Street, SW., Washington, D.C. and at all EPA regional office libraries.

DATE: Public comments on the accuracy of the report are due [30 days after publication]. Comments are requested particularly on the assumptions used regarding the number of disposal sites currently out of compliance with the Section 4004 criteria and the disposal practices required to ensure that a site complies with the Section 4004 criteria.

ADDRESS: All comments should be addressed to Jon R. Perry, Office of Solid Waste (WH-564), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Jon R. Perry at the above address (202-755-9120).

Dated: March 21, 1979.

THOMAS C. JORLING,
*Assistant Administrator.*

[FR Doc. 79-9392 Filed 3-27-79; 8:45 am]

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[6730-01-M]

## FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10423; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573 on or before April 9, 1979, in which this notice appears. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. 10250-1.

FILING PARTY: Edward Schmeltzer, Schmeltzer, Aptaker & Sheppard, 1900 Massachusetts Avenue, NW., Washington, D.C. 20036.

SUMMARY: Agreement No. 10250-1, consisting of six identical letters, is an agreement whereby Farrell Lines, Inc., Columbus Line, Associated Container Transportation (Australia) Ltd., The Australian National Line and Atlanttrafik Express Service (AES) are designated by Australian Meat and Livestock Corporation as its container lines and Refrigerated Express Lines Pty. Ltd. (REL) is designated the breakbulk conventional carrier to be available for the carrying of meat from Australian ports to the East and Gulf ports of the United States. Agreement No. 10250-1 amends and restates the basic agreement as follows: (1) A schedule of the maximum rates which apply to the carriage of meat is provided; (2) AES is designated to ship meat in containers from Wyndham to the United States and the previous maximum limitation on AES of 1200 TEU per year is no longer imposed; and (3) the previous minimum tonnage provisions for the carriage of meat by REL has been removed.

Dated: March 23, 1979.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
*Secretary.*

[FR Doc. 79-9275 Filed 3-27-79; 8:45 am]

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[1610-01-M]

## GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Notice of Receipt of Report Proposals

The following request for clearance of reports intended for use in collecting information from the public was accepted by the Regulatory Reports Review Staff, GAO, on March 21, 1979. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed OSM requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before April 16, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

DEPARTMENT OF THE INTERIOR

OFFICE OF SURFACE MINING

The Office of Surface Mining, Department of the Interior, requests clearance of new recordkeeping and reporting requirements contained in 30 CFR Parts 700, 707, 730, 731, 732, 733, 741, 742, 743, 745, 761, 764, 769, 771, 776, 778, 779, 780, 782, 783, 784, 785, 786, 788, 800, 805, 806, 807, 808, 816, 817, 822, 826, 840, 842, 843, and 845. The Office of Surface Mining has determined that such information is necessary to perform its responsibilities under the Surface Mining Control and Reclamation Act of 1977, 33 U.S.C. 1201 et seq., and must be collected, submitted or retained. On March 13, 1979, the OSM published these requirements, subject only to review by GAO to assure that a minimum burden is imposed in the manner in which such information is proposed to be obtained. The requirements contained in each part are as follows:

30 CFR PART 700

Section 700.12(b) provides any person, State, or local government an opportunity to file a petition to initiate rulemaking proceedings. OSM estimates 10 petitions will be filed each year and preparation of each petition will take one person hour, or ten person hours annually. Section 700.13 requires any person who intends to initiate a civil action in his own behalf shall give notice of intent to do so to the Secretary, the Director and the State regulatory authority 60 days prior to filing suit. OSM assumes 10 notices of intent will be sent per year, estimating 2 hours per notice, for a total of 20 hours annually.

30 CFR PART 707

Section 707.12 requires any person extracting coal incident to government financed highways or other construction to make available for inspection documents which show a description of the construction project. OSM estimates compliance burden to be 1 hour per operator with a total of 50-100 hours per year for 50-100 operators.

30 CFR PART 730

Section 730.12(b) requires States to notify the Director of the issuance of any injunction which prevents or prohibits the State from implementing a State program. Notification will be triggered by the issuance of an injunction. OSM assumes that 5 States will receive such an injunction and that their compliance burden will be 1 hour per state for a total of 5 hours per year.

30 CFR PART 731

Section 731.12(a) requires each State, in which there are or may be surface coal mining operations on nonfederal lands, to submit for OSM's approval a proposed program that demonstrates "capability" to assume exclusive jurisdication over the regulation of such operations. None of these requirements is annual: OSM expects that States will only be subject to these requirements once. Because it is difficult to estimate the compliance burden for each section of Part 731, we have calculated the total estimated person hours for the development and submission of a State program and included it here. Therefore, the estimated compliance burdens for §§ 731.12, 731.13, and 731.14 are combined in the person hours below. OSM estimates that a State would incur from 1 to 5 person years, or 2,080 to 10,400 person hours, to develop and submit a proposed program. The variability to the estimate is due to the State's variation in the size and number of mine operations and the respective levels of sophistication of the regulatory agencies which are peculiar to each state. Assuming 27 states submit a proposed program, it would total 56,160 to 280,800 hours. Section 731.13 permits States to request variations from the regulations of Part 731 in order to develop regulatory programs to fit the specific circumstances of each State. Section 731.14 enumerates the special types of information required to be included in a program submission.

30 CFR PART 732

Section 732.11(d) requires that, when missing parts of proposed State Programs are identified, the States must make appropriate additions and modifications for resubmission to the Regional Director. OSM estimates that 24 States will be required to make such resubmissions and they will need 360 hours per submission, for a total of 8,640 hours. Section 732.13(f) provides for resubmission of State programs within 60 days of official disapproval by the Secretary of a State's submission. OSM estimates that 8 States can be expected to re-submit portions of their State programs. OSM estimates 500 hours per resubmission, for a total of 4,000 hours. Section 732.14 provides for resubmission of a new State program. OSM estimates no more than 5 revised State programs will finally be disapproved and a new state program will have to be submitted. OSM estimates that a State will incur from 1 to 5 person years or 2,080 to 10,400 person hours to re-develop and resubmit a State program, for a total of 10,400 to 52,000 hours. OSM expects that these state changes and resubmissions will be required only once. Section 732.16 requires the Director to establish terms and conditions for a State program including reporting of information to the Office and providing the Office with books and records upon request. OSM estimates that 27 States will have to supply this information on a monthly basis and will need from 12 days to ½ year per State per year, for a total of 96 hours to 8,320 hours annually. Sections 732.17(b), (f) and (g) require States operating under an approved program to notify the Director in writing, of any significant events which affect the operation of a State program. As many as 10 States per year can be expected to provide notification and/or approval and will subsequently submit an amendment. OSM estimates 40 hours per State, for a total of 400 hours per year.

30 CFR PART 733

Section 733.12(a)(2) provides that any interested person may request the Director to evaluate a State program. The Director is responsible for investigating any allegations and determining within 60 days if an evaluation will be made and mail a written decision to the requester. OSM estimates 10 such requests per year and approximately 40 hours per request for a total of 400 person hours per year.

30 CFR PART 741

Section 741.11(a)(1) requires the regulatory authority to establish, in writing, a time schedule within which all surface mining operations on Federal lands, including those operating under existing approved mine plans, will comply with the permanent regulatory program performance standards. OSM estimates approximately 5 state regulatory authorities will prepare approximately 25 time-schedules. Each schedule will require an estimated 20 person hours. OSM estimates a total of 450 person hours per year to comply with this provision.

Sections 741.11(c)(1), 741.12(c) and 741.13(c) provide for the filing of a complete permit application before surface mining operations can be conducted on Federal lands. Section 741.11(c)(1) establishes the time limits for operators to file a complete application; § 741.12(c) specifies that the mining plan, which is part of the permit application, shall be filed with the Regional Director; and § 741.13(c) specifies the required contents of the application. OSM estimates that 144 permit applications will be filed the first year. A total of 720,000 person hours will be required the first year to complete the requirements under these provisions; thereafter, a total of 240,000 hours is estimated for the

second year and 75,000 hours for the third year.

Section 741.15(a)(1) provides that all permits will be issued for a period of five years provided that if the applicant demonstrates that a longer term is reasonably needed to obtain financing for the operation, the regulatory authority may grant a permit for a longer term. The Office believes it is necessary for the creditor to verify such terms in writing. OSM estimates a range of 5 to 10 operations will seek longer permit terms. The Office estimates that 1 person hour will be needed to prepare credit verification for a total of 5 to 10 person hours per year.

Section 741.15(b)(1) requires automatic termination of the permit if the operator has not commenced operations within three years, unless otherwise exempted by the regulatory authority. OSM estimates a range of two-three requests for exemptions per year. The Office estimates that one hour per request will be required for a total of two-three person hours per year.

Section 741.21(b) requires any operation of Federal lands to provide proof that any violations of other State or Federal laws or regulations have been, or are being, corrected or that the operator has a valid existing appeal prior to issuance of a permit. OSM estimates that 4-5 operations on Federal lands will have to supply this proof. The Office estimates that 1 hour per "proof showing" will be required for a total 4-5 person hours per year.

Section 741.23(c) requires operators to apply for permit revisions whenever they depart from the method of mining or reclamation approved in their original permit. OSM estimates 10 such permit revision applications and 100 person hours per revision, for a total of 1,100 person hours per year.

Section 741.24(b) requires the regulatory authority to give written approval of any transfer, assignment, or sale of the rights granted under the permit. OSM estimates five requests for approval per year on Federal lands at 5 hours per written approval, for a total of 5 person hours per year.

30 CFR PART 742

Section 741.11(a) provides for the release of liability for that portion of a Federal lease bond, required by 43 CFR 3504. After the effective date of surface mining regulations, leases issued under 43 CFR 3500 will not require performance bonding for reclamation. OSM estimates 100 requests for release of duplicate bonding requirements consisting of 1 hour per request and a total of 100 person hours per year.

Section 742.13(a) may require approximately 10 operators to secure a Federal lease protection bond, if they are unable to secure written consent of a permittee or lessee to enter and commence surface coal mining operations. OSM estimates ½ hour per application, for a total of 5 hours per year.

Section 742.18(c) provides for the Regional Director to request information from surface owners, to be taken into consideration when determining if a performance bond should be released. Approximately 5-10 surface owners will submit such information consisting of 2 hours per person, for a total of 10-20 hours per year.

Section 742.18(d) requires the surface lessee to provide the authorized officer with consent for release of the Federal lessee protection bond. The information is needed to verify the surface permittee's or lessee's concurrence that the surface coal mine operation has not caused, or has corrected, any damage to crops or tangible improvements on the surface. OSM estimates 10 consents per year and 1 hour per written consent, for a total of 10 hours per year.

30 CFR PART 743

Section 743.11(b) provides that the regulatory authority may have access to and copy any records and inspect any monitoring equipment or method of operations. OSM estimates approximately 4 inspections per year per operation on Federal lands for a total of 576 inspections (144 operations); at the rate of 2 person hours per inspection, the total is 1,152 person hours per year.

30 CFR PART 745

Section 745.11 (a) and (b) establishes procedures and information requirements for submitting applications for State-Federal cooperative agreements. OSM estimates 7 States will submit such agreements, which will require 600 hours per agreement, totalling 4,200 hours per year.

Section 745.15(a) enables the State to terminate its cooperative agreement by written request. OSM estimates 1 State may make such a request, which will take 8 hours. Section 745.16 allows for States to correct deficiencies causing a State-Federal cooperative agreement to be terminated. OSM estimates 1 State request per year which will take 100 hours.

30 CFR PART 761

Section 761.12(b)(2) requires state regulatory authorities, which are unable to determine whether a proposed operation is located within the boundaries of certain Federal land systems, to transmit a copy of the relevant portion of the permit application to the appropriate Federal, State or local government for clarification. OSM estimates 10 such notices at 4 person hours per notice, for a total of 40 person hours. Section 761.12(d) requires a state regulatory authority to require permit applicants to obtain necessary approvals of the authority for public roads within 100 feet of the outside right-of-way. OSM estimates 3 such public road determinations at 50 person hours per determination, for a total of 150 person hours. Section 761.12(e) requires permit applicants within 300 feet of an occupied dwelling to obtain a waiver of the owner of the dwelling. OSM estimates 5 incidents times 5 owners at 1 hour per waiver, for a total of 25 person hours per month nationwide. Section 761.12(f) requires regulatory authorities to make an "adverse effect" determination where mining might affect public parks or places included in the National Register of Historic Places. OSM estimates 10 such determinations per month at 20 person hours per determination, for a total of 200 person hours per month and 2,400 person hours annually.

30 CFR PART 764

All sections of Part 764, except §§ 764.13 (b), (c) and 764.21 and 25(b), are incorporated in the compliance estimates because each section is an interconnected part of the petition process.

Section 764.11 requires each State to establish a process consisting of the requirements of 30 CFR 764.13-764.25.

Sections 764.13 (b) and (c) require the petitioner to gather a minimum amount of data in order to compile a petition to have the State regulatory authority designate an area unsuitable for surface coal mining operations or to terminate such a designation. OSM has no way, at this time, of knowing how many petitions will result from this regulation. However, we estimate approximately 10 petitions and that preparation of a complete petition would probably take 20 hours for a total of 200 hours.

Section 764.15(a)(1) requires the regulatory authority to notify the petitioners whether or not the petition is complete.

Section 764.15(a)(2) requires the regulatory authority to determine whether any identified coal resources exist in the area covered by the petition. Section 764.15(a)(4) requires the regulatory authority to return to the petitioners, new petitions for areas which were previously and unsuccessfully proposed for designation unless the new petition presents new allegations of facts. Section 765.15(a)(5) requires the regulatory authority to return to the petitioner incomplete or frivolous petitions with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. Section

765.15(a)(6) requires the regulatory authority to notify the person who submits a petition of any application for a permit received which proposes to include any area covered by a petition. Section 764.15(b)(1) requires the regulatory authority to circulate copies of the petition to and request submissions of relevant information from other interested persons. Section 764.15(b)(2) requires the regulatory authority to notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement in the area, and in any official register of State notices. Section 764.15(c) provides that, until three days before the regulatory authority holds a hearing, any person may intervene in the proceedings by filing allegations of facts and supporting evidence. Section 764.15(d) requires the regulatory authority to compile and maintain a record (such information must be available to the public) consisting of all documents relating to the petition.

Section 764.17(a) requires the regulatory authority to hold a public fact-finding hearing in the area covered by the petition unless all the petitioners and interviewers agree that the hearing not be held. Section 764.17(b) requires the regulatory authority to give not less than 30 days' notice of the hearing to local, State and Federal agencies which may have an interest in the decision on the petition, the petitioner and intervenors, and any person with an ownership or other interest. Section 764.17(c) requires the regulatory authority to notify the general public of the hearing by weekly newspaper advertisement in the local area between 4 and 5 weeks before the scheduled date of the public hearing. Section 764.17(e) requires the regulatory authority, prior to designating any land areas unsuitable, to prepare a detailed statement using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of a designation on the environment, the economy and the supply of coal.

Section 764.19(b) requires the regulatory authority to issue a final written decision including a statement of reasons, within 60 days of completion of the public hearing or, if no public hearing is held, then within 12 months after receipt of the complete petition. The regulatory authority is required to send the decision by certified mail to the petitioner, every other party to the proceeding, and to the Regional Director for the region in which the State is located.

OSM has no way of knowing the number of petitions that will be generated under these regulations. However, we do estimate that a State regulatory authority will spend 300 hours per petition and that approximately 10 petitions will be generated for a total of 3,000 hours in gathering the information and complying with all the notice and recordkeeping requirements listed above, in addition to Section 764.13 (b) and (c) as described above.

Section 764.21 and 25(b) require each State to develop a data base and inventory system containing all relevant information concerning coal mine operations. OSM estimates that 26 States will develop such a system and that each State will spend, depending on the amount of mining in a State, from 200 to 40,000 hours per year, for a total of 5,200 to 1,040,000 hours a year for all States, in developing, maintaining, and updating the data base and inventory system including maintaining a map of areas designated unsuitable for mining.

30 CFR PART 769

Sections 769.11 and 13 provide for citizens to petition to have Federal lands designated unsuitable for mining. This parallels § 764.13 (b) and (c) for the petition process on private lands. OSM has no way, at this time, of knowing how many petitions will be prepared as a result of this regulation, but estimates 20 hours preparation time for each petition to designate Federal lands, and estimates 10 petitions for a total 200 hours.

30 CFR PART 771

Section 771.15(c) provides (1) that the State regulatory authority must issue an order once, requiring the permittee to comply with any additional requirements of an approved State program not contained in the Federal program for the State within 60 days or as determined by regulatory authority; and (2) that the permittee must be notified in writing, by the regulatory authority, of his right to an adjudicatory hearing with respect to such order. OSM estimates 10 State regulatory authorities will issue such orders and notices. total reporting time is estimated by OSM to be 4 hours per order and notice, for a total of 40 hours.

Section 771.21(a)(1) sets forth time tables for filing permit applications with the regulatory authority under an approved State regulatory program. OSM estimates 6,100 surface coal mining and reclamation operations will be subject to this requirement, approximately once every 5 years. Total reporting time is estimated by OSM to be 8 hours per operation for a total of 48,800 hours.

Section 771.21(b)(2) requires all permit applicants to renew their permits at least 120 days before the expiration of the permit involved, if the operator wishes to continue operations. OSM estimates approximately 5490 operators will be subject to this requirement, approximately once every 5 years. The reporting time is estimated to be 4 hours per renewal for a total of 21,960 hours.

Section 771.21(b)(3) establishes procedures for submission of applications for revision for the approximately 1525 coal mining and reclamation operations subject to this requirement. The reporting time is estimated by OMS to be 4 hours per operation or a total of 6,100 hours.

Section 771.23 sets forth the general requirements for the permit application format and content. OSM estimates 6,100 surface coal mining and reclamation operations will have to file applications, approximately once every 5 years. The reporting time is estimated to be 8 hours per operation, for a total of 48,800 hours.

30 CFR PART 776

Section 776.11 requires coal mine operators who intend to undertake coal exploration involving less than 250 tons to file written notice of intention to explore. OSM estimates 250 such notices; ten hours per notice and a total of 2,500 person hours. Section 776.12 requires coal mine operators who intend to undertake coal exploration involving more than 250 tons to obtain prior consent. OSM estimates 2000 operators will file for consent at 40 hours per application, for a total of 80,000 person hours. Section 776.14 requires regulatory authority to provide written approval or disapproval for approximately 10 requests to undertake coal exploration to remove over 250 tons of coal. OSM estimates 1½ hours per regulatory autority decision, for a total of 15 person hours annually.

30 CFR PART 778

Sections 778.13-778.21 require approximately 3800 surface mining operations to provide the regulatory authority with all relevant information regarding ownership and control of the property to be affected by the activities, their compliance status and history, and a copy of the advertisement that is to be published in a local newspaper of general circulation. OSM estimates 3800 surface mines will submit such information, at 20 hours per application, for a total of 76,000 person hours. This requirement will have to be met by all surface mines approximately once every 5 years.

30 CFR PART 779

Sections 779.13-17 require approximately 3800 surface mines to present a statement of the geology, hydrology, and water quality and quantity for all lands within and adjacent to the proposed mine plan area. OMS estimates

40 hours per statement and a total of 152,000 person hours.

Sections 779.11-12 require adequate descriptions of the existing pre-mining environmental resources within and around the proposed mine plan area. OSM estimates approximately 3800 surface mines will file at 20 hours per description, for a total of 76,000 person hours.

Section 779.18 requires approximately 3800 surface mines to file a statement of the climatological and air quality factors that are representative of the mine plan area if requested by the regulatory authority. OSM estimates approximately 8 hours per operation, for a total of 30,400 person hours. Section 779.19 requires all surface mines to submit a reclamation plan with data on the capability of the land with particular reference to vegetation cover. Approximately 8 hours each will be required for approximately 1900 plans, for a total of 15,200 person hours. Section 779.20 requires that mining operations will meet applicable performance standards and minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values. OSM estimates approximately 40 hours per study with 3800 mines and a total of 152,000 person hours.

Section 779.24 requires approximately 3800 mine operations to submit with their applications maps locating all boundaries, structures, roads, parks, cemeteries, etc. of the affected area. OSM estimates 24 hours per map, for a total of 91,200 person hours.

Section 779.25 requires approximately 3800 mine operations to submit maps and plans and cross sections to enable the regulatory authority to approve the minimum requirements for environmental resources. OSM estimates 40 hours per permit application, for a total of 152,000 hours.

Section 779.27 requires approximately 3800 mine operations to conduct pre-application investigations of the proposed mine area to determine if lands within the area may be prime farmlands. OSM estimates 2 hours per investigation, for a total of 7,600 person hours. All of these requirements will have to be met approximately once every 5 years.

30 CFR PART 780

Section 780.11 requires approximately 3800 applicants for a surface mining permit to include a description of the mining operations proposed to be conducted during the life of the mine within the proposed mine plan area. OSM estimates 8 hours per operation plan and 30,400 person hours annually.

Section 780.12 requires these 3800 mine operations to provide with their application, a description of each existing structure proposed to be used in the mining or reclamation operation and a compliance plan for structures proposed to be modified or constructed for use in the operation. OSM estimates 8 hours per plan, for a total of 30,400 person hours.

Section 780.13 requires these permit applicants to submit a blasting plan for the permit area explaining how the applicant intends to comply with sections 30 CFR 816.61-68. OSM estimates 4 hours per plan, for a total of 15,200 person hours.

Section 780.14 requires these permit applicants to submit maps and plans of the proposed mine plan and adjacent areas as identified in 30 CFR 784.14. OSM estimates 40 hours per mining permit for a total of 152,000 hours.

Section 780.15 requires permit applicants to submit an air pollution control plan that shall include an air quality monitoring program to provide data to evaluate the effectiveness of fugitive dust control practices, and a plan for fugitive dust control as required under 30 CFR 816.95. OSM estimates that 30 operators will be required to establish a monitoring program consisting of 2 hours per report and submit between 360-400 reports for a total of 720-800 hours. In addition, all 3800 applicants must submit a fugitive dust control program consisting of 8 hours per program and totalling 30,400 hours.

Section 780.16 requires permit applicants to include a plan of how operators will minimize disturbances and adverse impacts to fish, wildlife and related environmental values. Approximately 3,800 operators will be affected by this requirement. OSM estimates that each plan will require 16 hours to complete, for a total of 60,800 hours.

Section 780.18 requires that a reclamation plan be submitted as part of the permit requirements. Approximately 3800 surface coal operators will be affected by this section. OSM estimates that 16 hours will be required to complete each report, for a total of 60,800 hours.

Section 780.21 requires approximately 3800 surface coal mine operators to submit a reclamation plan containing narrative descriptions with supporting materials to assure the protection of the quality and quantity of water and the rights of present users of the water in the mine plan and adjacent areas. OSM estimates 8 hours to prepare each plan, for a total of 30,400 hours.

Section 780.23 requires the permit applicant to provide a detailed description of the post mining land use in the permit area. Approximately 3800 surface coal operators will be affected by this requirement. OSM estimates that 8 hours will be required to complete each plan for a total of 30,400 hours.

Section 780.25 requires the permit applicant to include in reclamation plans specific elements with maps and cross sections of all water-holding facilities subject to approval of the regulatory authority under Subchapter K. Approximately 3800 surface operators will be affected by this requirement and each operation will have 3 impoundments. OSM estimates that 35 hours will be required for each plan, with 3 impoundments per operation, for a total of 399,000 person hours.

Section 780.27 requires the approximately 190 coal mine operations, that may be within 500 feet of an underground mine, to file an application describing the measures to be used to comply with 30 CFR 816.79. OSM estimates 8 hours per application, for a total of 1620 person hours.

Section 780.29 requires the permit applicant to provide descriptions including maps and cross sections of diversions within the proposed permit area. Approximately 80 percent of the 3800 surface operators will be affected by this requirement. OSM estimates that 8 hours per plan will be required, for a total of 24,320 hours.

Section 780.31 requires permit applicants to describe measures to minimize or prevent adverse impacts to public parks of historic places. Approximately 3800 surface operators will be affected by this part. OSM estimates tha 4 hours per permit will be required, for a total of 15,200 hours.

Section 780.33 requires the permit applicant to describe, with appropriate maps and cross sections, ways by which public roads in the permit area will be protected. Approximately 80 percent of the 3800 surface operators will be affected. OSM estimates that 2 hours per plan will be required for a total of 6080 hours.

Section 780.35 requires the permit applicant to provide descriptions, maps, and cross sections of spoil disposal sites and disposal structures. Approximately 80 percent of the 3800 operators will be affected. OSM estimates that 24 hours per plan is required for a total of 72,960 hours.

Section 780.37 requires permit applicants to provide a plan with a description of each road, conveyor and rail system to be constructed, used or maintained within the mine plan area. Approximately 3800 operators will be affected by this requirement. OSM estimates that 30 hours per plan will be required for a total of 114,000 hours.

All of these requirements of Part 780 must be met by each surface mine operator approximately once every 5 years.

30 CFR PART 782

Sections 782.13-21 require approximately 2300 underground coal mine operators to provide the regulatory authority with all relevant information regarding ownership and control of the property to be affected, their compliance status and history and a copy of the advertisement that is to be published in a local newspaper of general circulation. OSM estimates 20 hours per applicant and 46,000 hours for all permit applications. This requirement must be met approximately once every 5 years.

30 CFR PART 783

Sections 783.11-.12 require approximately 2300 underground mine operators to present, with the permit application, adequate descriptions of the existing pre-mining environmental resources within and around the proposed mine plan area. OSM estimates 20 hours per permit, for a total of 18,400 hours.

Sections 783.13-.16 require approximately 2300 underground mine operators to submit a statement of the geology, hydrology, and water quality and quantity for all lands within and adjacent to the proposed mine plan area. OSM estimates 40 hours per plan, for a total of 92,000 hours.

Section 783.17 requires 2300 underground permit applicants to submit a plan identifying the alternative sources of water if contamination occurs. OSM estimates 4 hours per permit application, for a total of 9200 hours.

Section 783.18 requires approximately 2300 underground coal mine operators to provide a statement, if requested by the regulatory authority, of the climatological factors that are representative of the permit area. OSM estimates 1 hour per plan, for a total of 2300 hours.

Section 783.19 requires approximately 2300 underground coal mine operators to submit a reclamation plan containing data regrading the capability of the land, giving consideration to vegetation cover. OSM estimates 1 hour per plan for a total of 2300 hours.

Section 783.20 requires 2300 underground coal mine operators to submit a plan with their permit application to minimize the adverse affects on fish and wildlife. OSM estimates 20 hours per plan, for a total of 46,300 hours.

Section 783.21 requires 2300 underground coal mine operators to submit a plan for top-soil preservation areas and information pertaining to soil samples. OSM estimates 4 hours per plan, for a total of 9200 hours.

Section 783.22 requires the 2300 applicants for underground mining permits to describe the pre-mining land-use condition of the land within the proposed mine plan and adjacent areas. OSM estimates 8 hours per plan, for a total of 18,400 hours.

Sections 783. 24 and 25 require approximately 2300 underground coal mine operators to submit maps and supporting data, with the permit application, describing the affected land area. OSM estimates 40 hours per plan, for a total of 92,000 hours.

Section 783.27 requires 2300 underground coal mine operators to maintain records for an investigation by the regulatory authority as to whether the affected land is prime farmland. OSM estimates 2 hours per operator, for a total of 4600 hours.

OSM estimates that underground mine operators will have to meet these requirements of Part 783 approximately once every 5 years.

30 CFR PART 784

Section 784.11 requires approximately 2300 underground permit applicants to submit a description of all mining operations proposed during the life of the operation within the permit area. OSM estimates 8 hours per application, for a total of 18,400 hours.

Section 784.12 requires approximately 2300 operations to submit a description of each existing structure to be used in the operation. OSM estimates 8 hours per plan, for a total of 18,400 hours.

Section 784.13 requires approximately 2300 underground operations to submit a detailed plan specifying the reclamation of affected lands. OSM estimates 16 hours per reclamation plan, for a total of 36,800 hours.

Section 784.14 provides for the submission of annual reports of the quantity and quality of water measurements. OSM estimates 8 hours per report, assuming information is already available, for a total of 18,400 hours.

Section 784.15 requires approximately 2300 coal mine operations to provide a plan annually on the proposed post mine land uses. OSM estimates 2 hours per plan, for a total of 4600 hours.

Section 784.16 requires 2300 coal mine operations to submit, as part of reclamation plans, specific elements such as maps and cross-sections for each water-holding facility. OSM estimates 3 facilities per operation. Preparation time is estimated to be 35 hours per plan, for a total of 241,500 hours.

Section 784.17 requires approximately 2 percent of the 2300 underground operations to implement measures to minimize or eliminate adverse effects to public parks and historic places. This information is to be submitted with the permit application. OSM estimates 2 hours per permit, for a total of 92 hours.

Section 784.18 requires approximately 1840 underground operations to submit, with permit application, appropriate maps and cross sections, the measures to ensure public usage of public roads within 100 feet of mining areas. OSM estimates 2 hours per permit, for a total of 3,680 hours.

Section 784.19 requires approximately 2300 underground operations to submit appropriate maps and cross-section drawings of the proposed disposal methods and sites for placing underground development waste. OSM estimates approximately 8 hours per permit, for a total of 18,400 hours.

Section 784.20 requires approximately 2300 underground operations to conduct a survey to show whether structures which exist in or adjacent to the permit area could suffer damage from subsidence. OSM estimates 24 hour per survey, for a total of 55,200 hours.

Section 784.21 requires approximately 2300 underground operations to submit a fish and wildlife plan including maps, to minimize disturbances and adverse impacts to fish, wildlife and related environmental values and achieve enhancement where applicable. OSM estimates 16 hours per plan, for a total of 36,800 hours.

Section 784.22 requires approximately 2300 underground operations to submit plans, maps, and cross-sections showing the underground mining activities to be conducted, lands affected and changes in facilities and features to be caused by proposed operations. OSM estimates 16 hours per plan, based upon an average mine site of 60 acres, for a total of 92,000 hours.

Section 784.24 requires approximately 2300 underground operations to submit a plan containing a description of each road, conveyor, and rail system to be constructed within the mine area. OSM estimates 30 hours to complete and prepare the plan, totalling 69,000 hours.

Section 784.25 requires approximately 2300 underground operations to submit a plan describing the design, operation and maintenance of any coal processing waste disposal facility. OSM estimates 16 hours per plan, for a total of 36,800 hours.

Other than the requirements of Section 784.14, which must be met annually, all of these provisions of Part 784 must be satisfied by underground operators approximately once every 5 years.

30 CFR PART 785

Section 785.13 (e) and (f) require each operator who intends to conduct experimental practices to submit an application to the regulatory authority and the Director for approval. OSM estimates 500-600 operators will submit an application at 16 hours per

application, for a total of 8,000–9,600 person hours.

Section 785.13(g) requires that all experimental practices for which variances are sought shall be specifically identified through newspaper advertisements by the applicant and written notification by the regulatory authority. OSM estimates 500–600 applicants and 1 hour per advertisement, for a total of 500–600 hours.

Section 785.13(h) outlines the reguirements the application for experimental practices must meet before the Director may grant a permit. Approximately 600 operations will be affected at 48 hours per practice, for a total of 28,800 hours.

Section 785.14 requires the regulatory authority to issue a permit for mountain top removal. Approximately 50 operations will seek such a permit at 8 hours per operation, for a total of 400 person hours.

Section 785.15 requires approximately 1,100 operations to provide sufficient information on mining operations that will affect steep slopes. OSM estimates 8 hours per operation, for a total of 8,800 hours.

Section 785.16 applies to operations where the affected land is not to be reclaimed to the approximate original contour. Approximately 4 hours per operation will be required, for total of 1,760 hours.

Section 785.17(b)(1) requires a soil survey of all prime farmlands. Approximately 600 permit applications will be affected at 24 hours per permit and 400 permit applications at two hours per permit, for a total of 15,200 person hours.

Section 785.17(b) (2), (4), (6) and (8) require applicants to provide information concerning soil removal, stockpiling, stabilization, replacement and scientific studies showing that reclamation to equivalent or higher levels of yield are possible. Approximatley 1,000 permit applications will be on prime farmlands. OSM estimates approximately 16 hours per permit, for a total of 16,000 person hours.

Section 785.18(c) applies to operations who intend to conduct combined surface mining and underground mining activities and request a delay of reclamation. OSM estimates 5 percent of the 6,100 operations will conduct such activities at 4 hours per request, for a total of 1,220 person hours.

Section 785.19 requires an onsite investigation to determine that the proposed operations will not interrupt, discontinue, or preclude farming on alluvial valley floors. OSM estimates 20 percent of the western operations located west of the 100th meridian west longitude (approximately 250) will conduct such determinations. 300 hours per investigation will be required, for a total of 15,000 person hours.

Section 785.20 requires coal mine operators who intend to conduct auger mining to submit a permit application describing augering methods to be used. OSM estimates 1,100 operators will conduct this type of mining; 8 hours per operation will be required, for a total of 8,800 hours.

Section 785.21 requires coal mine operators who intend to utilized coal processing plants or support facilities not within a permit area of a specific mine to submit specific plans, including descriptions, maps and cross-sections of the construction, operation, maintenance and removal of the processing plants and associated support facilities. OSM estimates 50 percent of the 6,100 operations will be affected by this requirement, at 3 hours per application, for a total of 9,150 hours.

Section 785.22 requires operators to submit, with their permit application, information regarding in suit processing activities. OSM estimates 10 percent of the 6100 operations will involve such activities, at 8 hours per application for a total of 4,880 person hours.

These requirements of Part 785 must be met by affected operators approximately once every 5 years.

### 30 CFR PART 786

Section 786.11(a) requires approximately 6100 coal mine operators to place an advertisement of their permit applications in a local newspaper once a week for four weeks depicting precise boundaries of affected areas. OSM estimates 2 hours per advertisement, for a total of 12,200 hours.

Section 786.11 (b) and (c) requires the approximately 27 State regulatory authorities to notify various local government bodies, planning agencies, and sewage and water treatment authorities, of the operator's intention to surface mine a particular described tract of land. OSM estimates that these 27 states will spend approximately 452 hours per state on these notices.

Section 786.11(d) requires the approximately 6100 mining operations to submit copies of their permit applications to the recorder at the courthouse of the county where the mining is proposed to occur for public inspection. OSM estimates 1 hour per operation, for a total of 6100 hours.

Section 786.12–.13 requires any governmental unit which receives notice of the filings of a permit application to file comments to the State regulatory authority, any person adversely affected by the issuance of a permit to file objections to the application to the State regulatory authority, and that the regulatory authority file a copy of comments and objections for public inspection at the public office which the applicant filed a copy of his application. OSM estimates approximately 10 comments and/or objections will be filed at approximately 1 hour preparation time for a total of 10 hours.

Section 786.14 provides for the regulatory authority to conduct an informal conference to determine whether a permit should be issued for the 6100 coal mine operations. OSM estimates that 10 persons will submit written requests for conferences annually and the reporting burden will be 1 hour per request.

Section 786.17(b) requires the applicant to file a performance bond or an equivalent guarantee. OSM estimates approximately 6100 operations will file a performance bond and each performance bond will take 4 hours, for a total of 24,400 hours.

Section 786.17(c) requires an undetermined number of coal mine operations to prove to the satisfaction of the regulatory authority that the operation is not currently in violation of any law or prove that they are attempting to correct any violation, as the occasion arises. OSM estimates 4 hours per request and estimates 10 requests, for a total of 40 hours.

Section 786.19 sets forth the criteria by which a regulatory authority may approve or disapprove a permit application. Any of the 6100 mine operations may be required to comply. OSM estimates approximately 8 hours per application for a total of 48,800 hours.

Section 786.21(c) requires applicants to demonstrate that the use of existing structures by the permittee will comply with §701.11(c)(1)(ii). OSM estimates 8 hours per demonstration for all 6100 operators, for a total of 48,800 hours.

Section 786.23(c) requires that, in the event an informal conference is held, the regulatory authority shall submit a written report stating reasons for disapproval or approval. OSM estimates 2 hours per report and approximately 10 reports for a total of 20 hours.

Section 786.23(d) provides that, in the event no informal conference has been held, the regulatory authority shall submit a written report stating action on permit application OSM estimates 2 hours per report and approximately 10 reports for a total of 20 hours.

OSM estimates that all of these requirements of Part 786 will have to be met approximately once every 5 years.

### 30 CFR PART 788

Section 788.11 requires the regulatory authorities to review each permit issued and outstanding, no later than the middle of the permit term. OSM

estimates 16 hours per permit update for approximately 1220 operations to total 17,520 hours annually.

Section 788.12 requires coal mine operators to submit a permit revision, if a change from the original application constitutes a significant departure from the proposed method of mining or reclamation. OSM estimates 1220 operators will submit revisions at 8 hours per operation for a total of 9,760 hours annually.

Section 788.14 provides requirements for general renewals, applications, terms, and approval or denial of renewals. OSM estimates each application for renewal will require 16 hours for approval or denial and estimates 1525 applications totalling 24,400 hours. Sections 788.17-19 require approximately 10 percent of the 6100 mine operators or 610 to submit general requirements to obtain approval for assignments of rights and requirements for new permits. OSM estimates 8 hours per operation times 6100 permits to total 4880 hours annually.

30 CFR PART 800

Section 800.11 requires coal mine operators to file a bond with the regulatory authority prior to the issuance of a permit. OSM estimates 4 hours per bond for 1500 operations for a total of 6,000 person hours.

Section 800.12 requires approximately 6100 coal mines to file a certificate issued by an insurance company with the permit application. OSM estimates ½ hour per operation, for a total of 3050 hours. Both of these requirements will have to be met by mine operators approximately once every 5 years.

30 CFR PART 805

Section 805.14(b) requires the regulatory authority to adjust the bond when the affected acreage of land changes. OSM estimates 100 revisions per year and 16 hours per revision, for a total of 1600 hours.

30 CFR PART 806

806.11 sets forth the requirements for self-bonding. OSM estimates 600 operations; 16 hours per operation, for a total of 9600 person hours. Section 806.14 identifies the requirements of bonding of mining operations. Approximately 6100 coal mine operations must comply with these requirements. OSM estimates 1 hour per operation, for a total of 6,100 hours.

30 CFR PART 807

Section 807 requires that the permittee file a written request in order to get the bond, or a portion of it, released by the regulatory authority. This section also requires that a copy of an advertisement be placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the operation. Furthermore, the section requires letters to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities or water companies. Approximately 3% of the 6,100 operations may request bond release in any given year. OSM estimates 2½ hours per request, and annual burden of 6,575 person hours.

Section 807.11 (c) and (e) provide for the citizens or governmental units to file objection sand requests for hearings and informal conferences relative to proposed bond release which may effect 10 percent of the 6100 coal operations. The State regulatory authorities must schedule the hearings or conferences. OSM estimates 10 persons and/or governmental units, 27 States and 610 coal mine operations must comply with these requirements for a total of 647 respondents. OSM estimates burden to be 8 hours per request and hearing or conference for a total of 5,176 hours annually.

Section 807.11(f) provides for the regulatory authority to review and detail specific points which the applicant must have satisfied and provides for notification of the regulatory authority's decision. Approximately 40% of the 6,100 operations will request such a review, which will take 16 hours per review, for an annual compliance burden of 39,040 hours.

Section 807.11(g) provides for the filing of written objections to all or a portion of a bond release and also provides for a public hearing. Approximately 10% of the 6,100 operations will request such a review, which will take 4 hours per request for an annual compliance burden or 2,440 hours.

30 CFR PART 808

Section 808.13 provides the procedures for forfeiture of performance bonds. Approximately 2% of the 6,100 coal mining operations will be required to post a performance bond in any given year. OSM estimates 8 hours per operation, for a total of 976 hours per year.

30 CFR PART 816

Section 816.46(c)(4) requires documentation on theoretical detention time be included with the permit application. Approximately 3800 surface coal mine operations must submit this information. OSM estimates 16 hours per application for a total of 60,800 hours. Section 816.46(r) requires approximately 3800 surface coal mine operations to have the construction of each sedimentation pond supervised and certified by a registered professional engineer. OSM estimates 16 hours per operation for a total of 60,800 worker hours.

Section 816.46(t) requires approximately 3800 surface coal mine operations to examine ponds, quarterly, for structure weakness, erosion and other hazardous conditions and submit reports to the regulatory authority. OSM estimates 8 hours per report for a total 4 times per year, 121,600 hours annually.

Section 816.49(h) requires approximately 1000 surface coal mine operations to submit, annually certification and reporting of each dam or embankment. OSM estimates 16 hours per report, for a total 16,000 hours annually.

Section 816.52(a)(3) establishes provisions for ground water monitoring for approximately 3,040 surface coal mine operations. Operations must submit a report once per year after conducting the tests. OSM estimates 8 hours per operation for a total of 24,320 hours.

Section 816.53(b)(1)(iii) requires approximately 3040 surface coal mine operations to submit a copy of quarterly reports on the analytical results of sample collection of surface water monitoring. OSM estimates 4 hours per report, 4 times per year, for a total of 48,640 hours annually.

Section 816.53(a) requires approximately 950 operations, whenever the occasion arises, to submit a request for apporval to the regulatory authority before a monitoring or an exploratory well may be transferred for further use as a water well. OSM estimates that 950 written requests will be filed per year at 1 hour per request for a total of 950 hours annually.

Section 816.62 requires approximately 3800 surface coal mine operations to submit a preblast record. OSM estimates 3 requests per year per mine at 2 hours per request for a total of 22,800 hours annually.

Section 816.64 requires approximately 2800 surface coal mine operation to give advance written notice to local governments and residents that might be affected by use of explosives. OSM estimates the average number of house required per operator to be 20 hours, at 4 times per year, for a total or 224,000 hours annually.

Section 816.65(a)(iii) requires approximately 380 coal mine operations to submit a report specifying the reasons why blasting must be undertaken at night rather than the next day. This section requires operations to submit this report within three days after blasting at night has occured. OSM estimates 6 hours per report, for a total 2,280 hours annually.

Section 816.67 requires approximately 3800 surface coal mine operations to maintain a seismograph record of blasting at the time of the blast. OSM

estimates 2 hours per record and that each operation will make one record daily totaling 1,907,600 hours annually.

Section 816.68 requires approximately 3800 surface coal mine operations to maintain logs of blasting with detailed information for a period of three years. OSM estimates ½ hour for each record and approximately 251 blasts per operator for a total of 476,900 hours. Section 816.71 (j) requires approximately 3800 operations to submit, quarterly, a report certifying that all excess spoil material be placed in a controlled manner. OSM estimates 8 hours per report and 121,600 annually.

Section 816.82(a)(4) and (b) requires 3800 surface coal mine operations to submit a report quarterly, to certify that coal processing waste piles do not present a potential hazard. OSM estimates 8 hours per report and 121,600 hours annually. Section 816.87 requires approximately 380 surface coal mine operations to adhere to environmental performance standards with respect to disposal of mine wastes. OSM estimates 8 hours per operation and 3,040 hours annually.

Section 816.91(b) requires approximately 3300 surface coal mine operations to demonstrate, annually, to the regulatory authority that dams and embankments that will be constructed out of coal processing waste will meet design and construction specifications. OSM estimates 12 hours per demonstration and 39,600 hours annually.

Section 816.117(b)(4), (c), (1), (c)(3) requires approximately 1200 surface coal mine operations to conduct an inventory of woody plants that are to be affected. Inventory plans must be submitted every 10 years for the west and 5 years for the east. OSM estimates 40 hours per plan and 1200 of the plans to be submitted per year totalling 48,000 hours annually.

Section 816.131(b) requires approximately 900 surface coal mine operations to submit a report prior to cessation advising the regulatory authority of their intentions. OSM estimates 4 hours per notice and 3600 hours annually. Section 816.133(c)(1)-(4), (c)(8)-(9) requires approximately 900 surface coal mine operations to submit, once, specific plans for supporting approved alternative land uses. OSM estimates approximately 40 hours per operation and a total of 36,000 hours. Section 816.150(d)(1) requires approximately 3800 surface coal operations to certify the design and construction of Class I roads, as the occasion arises. OSM estimates 8 hours per demonstration and 30,400 annually. Section 816.152(d) (13) requires approximately 3800 surface coal mine operations to demonstrate, as the occasion arises, that no additional acid will leave the confines of the coal processing waste bank of Class I road embankments. OSM estimates 16 hours per demonstration and 60,800 hours annually.

Section 816.160(d)(1) requires approximately 925 surface coal mine operations, as the occasion arises to employ a professional engineer to certify the design and construction of Class II roads. OSM estimates 8 hours per certification and 7,400 hours annually. Section 816.163(d) requires approximately 900 surface coal mine operations, as the occasion arises to adhere to specifications with respect to construction of roads up a drainage channel. OSM estimates approximately 2 hours per operator and 1800 hours annually.

30 CFR PART 817

Section 817.46(c)(4) requires approximately 2300 underground coal mine operators to calculate theoretical detention time and supporting documentation for permit application. OSM estimates 16 hours per application and 36,800 hours annually.

Section 817.46(r) requires approximateiy 2,300 underground coal operations to have each sedimentation pond under construction, be supervised and certified by a professional engineer to met design specifications. OSM estimates 16 hours per operation and a total of 36,800 person hours.

Section 817.46(t) requires approximately 2,300 underground mine operations to examine ponds quarterly for structure weakness, erosion and other hazardous conditions and submit reports to the regulatory authority. OSM estimates eight hours per inspection and four inspections per year for a total of 73,600 person hours.

Section 817.49(h) requires 600 underground coal mine operators to submit annual certification and reporting of each dam or embankment that meets criteria of 30 CFR 177.216(a). OSM estimates 16 hours per application and 9,600 hours annually.

Section 817.52(a)(3) requires 1,840 underground coal mine operators to submit the results of additional hydrological tests to the regulatory authority, once, after conducting tests. OSM estimates eight hours per operation and 14,720 hours annually.

Section 817.52(b)(1)(iii) requires approximately 1,840 underground coal mine operators to submit a copy of quarterly reports of analytical results of sample collections on surface water monitoring and a copy of the discharge monitoring reports required by NPDES to the regulatory authority. OSM estimates four hours per operator and 7,360 hours annually.

Section 817.53(a) requires approximately 560 operators to submit a request, whenever the occasion arises, for approval to the regulatory authoriey before a monitoring or exploratory well may be transferred for further use in surface mining. OSM estimates that approximately 560 written requests will be filed per year consisting of one hour per request, totalling 560 hours annually.

Section 817.62 requires 560 underground coal mine operations to perform a pre-blast survey when requested by a resident or owner of a structure within one-half mile of any portion of the permitted area and to keep a record of the the surveys. It is estimated by OSM that operators will receive three requests per year consisting of two hours per request, totalling 3,360 annually.

Section 817.65(b)(2)(iii) requires approximately 500 underground coal mine operators to submit within three days after blasting a report to the regulatory authority specifying the reasons why blasting has to be undertaken at night rather than the next day. OSM estimates six hours per request and 3,000 hours annually.

Section 817.67 requires approximately 1,700 operations to maintain seismography records when operations do not use the formula provided in 30 CFR 817.65(L) for determining the maximum quantity of explosives. OSM estimates an average per blast of two hours for recording information during blast and preparing reports and one blast per day for the 1,700 operations and a total of 853,400 person hours per year.

Section 817.68 requires approximately 2,300 underground coal mine operators to maintain logs of blasting for a period of three years. OSM estimates one-half hour for recording information and assumes one blast per day for each of the 2,300 coal operators totaling 414,150 hours annually.

Section 817.71(j) requires approximately 1,700 underground coal mine operators, to submit quarterly, a report certifying that all excess spoil material and underground development waste be placed in a controlled manner. OSM estimates eight hours per operator with 1,700 reports in 1979 and an additional 400 reports in 1980 totaling 67,200 hours annually.

Sections 817.82 (a)(4) and (b) require approximately 2,300 underground coal mine operators to submit a report, quarterly, to certify that coal processing waste piles do not present a potential hazard. OSM estimates eight hours per report totaling 73,600 hours annually.

Section 817.87 requires approximately 230 underground coal mine operators to adhere to environmental performance standards with respect to moving mine wastes and submit a report annually. OSM estimates eight

hours per operator and 1,840 hours annually.

Section 817.91(b) requires approximately 2,000 underground coal mine operators to submit once, during the life of the mine, a report that dams and embankments that will be constructed out of coal processing waste will meet design and construction specifications. OSM estimates 12 hours per report and 24,000 hours annually.

Sections 817.117 (b)(4), (c)(1), (c)(3) require approximately 1,380 underground coal mine operators to submit, once every 10 years for the west and five years for the east, an inventory of woody plants to be affected by the mining. OSM estimates 1,380 inventories per year consisting of 40 hours per inventory, totaling 55,200 hours annually.

Section 817.131(b) requires approximately 560 underground operators to advise the regulatory authority, prior to cessation, of such intention by submitting a notice of intention to cease mining and reclamation operations. OSM estimates four hours preparation time per notice totaling 2,240 hours annually.

Sections 817.133 (c)(1)–(4) and (c)(8)–(9) require approximately 560 underground coal mine operators to submit specific plans, prior to the release of lands from the permit area within a years time, for reclamation of the land. OSM estimates 40 hours per report and 22,400 hours annually.

Section 817.150(d)(1) requires approximately 2,300 underground coal mine operators to have a professional engineer to certify the design and construction of Class I roads, as the occasion arises. OSM estimates eight hours per certification and 18,400 hours annually.

Section 817.152(d)(13) requires approximately 1,840 underground coal mine operators to demonstrate, as the occasion arises, to the regulatory authority that no additional acid will leave the confines of the coal procession waste banks of Class I road embankments. OSM estimates 16 hours per operator and 29,440 hours annually.

Section 817.160(d)(1) requires approximately 560 underground coal mine operators to provide, as the occasion arises, a professional engineer to certify the design and construction of Class II roads. OSM estimates eight hours per operator and 4,486 hours annually.

Section 817.163(d) requires approximately 560 underground coal mine operators to submit specific plans, as the occasion arises, pertaining to construction of roads up a drainage channel. OSM estimates approximately two hours per report and 1,120 hours annually.

30 CFR PART 822

Section 822.14(a)(d) specifies the type of monitoring data and analysis that an operator must make available to the regulatory authority for an environmental monitoring system on alluvial valley floors west of the 100th meridian. Data required to be collected varies in frequency as follows: Topography annual topographic map; water quality—monthly; water flow-monthly; vegetation—annual (seasonal); soil and soil moisture-annual. OSM estimates 10 plans must be submitted and computes compliance burden to be as follows: Topography—16 hours/year; Water quality—8 hours/month; Water flow—8 hours/month; vegetation—16 hours/year; soil and soil moisture—20 hours/year; and aerial imagery—8 hours/year. OSM estimates total compliance burden to be 2,520 hours annually.

30 CFR PART 826

Section 826.12(b) requires underground and surface coal mine operators to demonstrate to the regulatory authority, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3. OSM estimates 1460 operators must meet this requirement. Total reporting time is estimated at 16 hours per demonstration for a total of 23,360 hours for all permit applicants.

30 CFR PART 840

Section 840.11(a)(c)(d)(3) sets forth the minimum requirements for the Secretary's approval of provisions for inspections and enforcement. OSM estimates 27 states will have an approved program and each state must file a report. OSM estimates 47,600 reports will be filed comprising of 1 hour per report for a total of 47,600 hours. Additionally, Section 840.11(b) requires one complete inspection quarterly which would require 4 reports a year, estimated at 2 hours per report for a total of 47,600 hours. Therefore, the compliance burden for this section totals 95,200 hours annually. Section 840.14(a)(b) provides for citizen participation in enforcement by making information readily available for their use. OSM assumes 27 states will implement an approved program and would require 4 hours per state to make information available, totalling 108 hours annually.

30 CFR PART 842

Section 842.12(a) governs those occurrences which necessitate a Federal inspection as a result of citizen complaints pursuant to Section 842.11(b)(1). This Section requires all citizen complaints to be initiated by a signed written statement or an oral report followed by a written statement. OSM estimates 20 requests per month or 240 requests per year, consisting of 2 hours per request and an annual compliance burden of 480 person hours. Section 842.14 states that any person who is or may be adversely affected by a surface coal mining and reclamation operation may notify the Regional Director in writing of OSM's alledged failure to make adequate and complete or periodic inspections. OSM estimates 10 notifications per month or 120 per year consisting of 2 hours per notice, an annual compliance burden of 240 person hours. Section 842.15(a)(b) require a citizen to request, in writing, that the Regional Director review informally an inspector's decision not to inspect or to take appropriate enforcement action on alleged violations. OSM assumes 5 requests per month or 60 requests per year and estimates 2 hours per request and an annual compliance burden of 120 hours.

30 CFR PART 843

Section 843.11(a)(2), (b)(2), (c), (f) sets forth the provisions regarding the issuance of cessation orders, OSM estimates a range of 12 in states with a few mines to 100 orders a year in states with extensive mining. OSM estimates ½ hour per order and a range of 3500 to 21,000 orders to total 1750 to 10,500 hours. Section 843.12(a)(2), (b), (e) sets forth provisions regarding the issuance of notices of violation. OSM estimates a range of 2 notices of violation per year for states with few coal mines and 100 notices of violation per year for states with extensive mining. OSM estimates 2 hours per notice and a range of 4 hours to 200 hours annually. Section 843.13(c), (d), (e) sets forth the general rules regulating the suspension or revocation of permit. OSM estimates a low of 2 suspensions or revocations per year by states with few coal mines to 30 per year by states with extensive mining. OSM estimates a range of ½ hour per suspension and a range of 1 hour to 15 hours. The state, if requested, must also provide a notice of hearing consisting of ½ hour per hearing and a range of 1 hour to 15 hours per state. In addition, the state regulatory authority must prepare a written determination as to whether a pattern of violations exists; comprising 2 hours per statement and a range of 4 to 60 hours annually.

Section 843.14(a), (b), (c), (d) sets forth the general procedures for serving notices of violation and cessation orders. OSM estimates a range of 1 notice to 100 notices per state depending on the number of mines in that state. OSM estimates a range of ½ hour to 50 hours for notices and an additional 50 hours for orders for total

annual burden estimates of a range from 14 hours to 1400 hours for notices and 1400 hours for orders. Section 843.15(d), (f) requires the regulatory authority to post and publish notices of hearings and shall affirm, modify or vacate the notice 5 days after the hearing regarding the alleged violations. OSM estimates 6 hours per notice and decision and 162 hours annually. Section 843.16 enables a person, who is issued a notice of violation or cessation order, to request a review of said action by filing an application for review and request for hearing. OSM estimates 300 requests per year with 1 hour preparation time and 300 hours annually.

30 CFR PART 845

Section 845.17(a) enables any of the 6100 coal mine operators, if a notice of violation or cessation order has been issued to them, to submit written information about the violation to the State and to the inspector that issued the violation. OSM estimates one hour preparation per response depending on the State and assumes 100 responses, comprising 100 hours annually. Section 845.17(b) requires the State, upon receipt of the operator's response, to serve a copy of the proposed assessment and a copy of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued. OSM estimates 1 hour per assessment and 100 assessments per year, comprising of 100 hours annually.

Section 845.18(c) provides for the State to arrange for a conference to review the proposed assessment, upon written request of the person to whom the notice was issued. OSM estimates ½ hour per request and estimates there will be 10 requests that the State regulatory authority will receive, for a total of 5 hours. Section 845.18(d) provides that if the conference is granted then the person assessed will be deemed to have waived all rights to further review of the violation, except as otherwise expressly provided in the settlement agreement. OSM estimates 30 minutes per agreement with 10 requests estimated, for a total of 5 hours. Section 845.19(a) enables the person charged with the violation to contest the proposed penalty or the fact of the violation by submitting a petition. OSM estimates 3 hours per petition and a range of 2 petitions per year in States with few mines to 100 petitions per year in States with extensive mines. Therefore, OSM estimates from 6 hours to 300 hours.

NORMAN F. HEYL,
*Regulatory Reports Review Officer.*

[FR Doc. 79-9354 Filed 3-27-79; 8:45 am]

[6820-61-M]

## GENERAL SERVICES ADMINISTRATION

[Intervention Notice 86; Formal Case No. 715]

### POTOMAC ELECTRIC POWER CO.

**Proposed Intervention in Electric Rate Increase Proceeding Public Service Commission of the District of Columbia**

The administrator of General Services seeks to intervene in a proceeding before the Public Service Commission of the District of Columbia involving an application by the Potomac Electric Power Company for an increase in its retail rates. The Administrator of General Services represents the interests of the executive agencies of the United States Government as users of utility services.

Persons desiring to make inquiries of GSA concerning this case should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th & F Streets NW., Washington, D.C. 20405, telephone (202) 566-0726, on or before April 27, 1979, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4))

Dated: March 12, 1979.

JAY SOLOMON,
*Administrator of General Services.*

[FR Doc. 79-9272 Filed 3-27-79; 8:45 am]

[4110-02-M]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Office of Education

### VETERANS' COST-OF-INSTRUCTION PAYMENTS PROGRAM—PAYMENTS TO INSTITUTIONS OF HIGHER EDUCATION

**Closing Date for Transmittal of Applications for Fiscal Year 1979**

Applications for funds are being accepted from institutions of higher education under the Veterans' Cost-of-Instruction Payments Program.

Authority for this program is contained in Section 420 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070e-1)

This program issues awards to institutions or combinations of institutions of higher education.

The purpose of the awards is to assist institutions in providing specific educational services to veterans enrolled at the institution.

CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS: Applications for awards must be mailed or hand delivered by May 16, 1979.

APPLICATIONS DELIVERED BY MAIL: An application sent by mail must be addressed to the U.S. Office of Education, Bureau of Higher and Continuing Education, Veterans' Cost-of-Instruction Program Branch, Room 3514, ROB-3, 400 Maryland Avenue SW., Attention: 13.540, Washington, D.C. 20202.

Proof of mailing must consist of a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of mailing stamped by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted without a legible date stamped by the U.S. Postal Service.

NOTE.—The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.

Applicants are encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered in the current competition.

APPLICATIONS DELIVERED BY HAND: An application to be hand delivered must be taken to the U.S. Office of Education, Veterans' Cost-of-Instruction Program Branch, Room 3514, Regional Office Building 3, 7th and D Streets SW., Washington, D.C. Hand-delivered applications will be accepted daily between the hours of 8 a.m. and 4 p.m. (Washington, D.C. time) except Saturday, Sunday and Federal holidays.

Applications that are hand-delivered will not be accepted after 4 p.m. on the closing date.

PROGRAM INFORMATION AND APPLICATION FORMS: Program information packages and application forms are expected to be ready for mailing by April 10, 1979. They may be obtained by writing to the U.S. Office of Education, Bureau of Higher and Continuing Education, Veterans' Cost-of-Instruction Program Branch, Room 3514, Regional Office Building 3, 400 Maryland Avenue SW., Washington, D.C. 20202.

APPLICABLE REGULATIONS: The regulations applicable to this Program appear at 45 CFR Part 189, and amendments published on November 3, 1977 (42 FR 57638). However, these regulations do not reflect amendments to the authorizing legislation contained in Pub. L. 94-482 and Pub. L. 95-336.

FURTHER INFORMATION: For further information contact Mr. Stanley Patterson, Acting Director, Veterans' Cost-of-Instruction Program Branch, U.S. Office of Education,

Room 3514, ROB-3, 400 Maryland Avenue SW., Washington, D.C. 20202, telephone: 202-245-2806.

(20 U.S.C. 1070e-1)

Dated: March 20, 1979.

(Catalog of Federal Domestic Assistance Number 13.540; Higher Education—Veterans' Cost-of-Instruction Program (VCIP).)

ERNEST L. BOYER,
*U.S. Commissioner of Education.*

[FR Doc. 79-9274 Filed 3-27-79; 8:45 am]

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[4110-12-M]

**Office of the Secretary**

**SECRETARY'S ADVISORY COMMITTEE ON THE RIGHTS AND RESPONSIBILITIES OF WOMEN**

**Cancellation of the Family Policy Task Force Meeting**

This notice is to cancel the Family Policy Task Force meeting of the Secretary's Advisory Committee on the Rights and Responsibilities of Women on Thursday, April 5, 1979 from 10:00 to 5:00 p.m., and on Friday, April 6, 1979 from 10:00 to 3:00 p.m. as listed in the March 5 FEDERAL REGISTER, page 12109.

It will be rescheduled at a later date.

Dated: March 22, 1979.

SUSAN C. LUBICK,
*Executive Secretary, Secretary's Advisory Committee on the Rights and Responsibilities of Women.*

[FR Doc. 79-9335 Filed 3-27-79; 8:45 am]

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[4110-07-M]

**Social Security Administration**

**ADVISORY COUNCIL ON SOCIAL SECURITY**

**Public Meetings**

AGENCY: Advisory Council on Social Security, HEW.

ACTION: Notice is hereby given, pursuant to Pub. L. 92-463, that the Advisory Council on Social Security, established pursuant to section 706 of the Social Security Act, as amended, will meet on Friday, May 11, 1979, from 9:00 a.m. to 5:00 p.m. and Saturday, May 12, 1979, from 9:00 a.m. to 5:00 p.m. at the Marriott Twin Bridges Hotel, U.S. 1 and I-395, Washington, D.C. 20024. The meetings will be devoted to the topics of Medicare and the treatment of women under Social Security.

These meetings are open to the public.

Individuals and groups who wish to have their interest in the Social Security program taken into account by the Council may submit written comments, views, or suggestions to Mr. Lawrence H. Thompson.

FOR FURTHER INFORMATION CONTACT:

Mr. Lawrence H. Thompson, Executive Director, Advisory Council on Social Security, P.O. Box 17054, Baltimore, Maryland 21235. Telephone inquiries should be directed to Mr. Edward F. Moore, (301) 594-3171.

(Catalog of Federal Domestic Assistance Program Numbers 13.800-13.807 Social Security Program)

LAWRENCE H. THOMPSON,
*Executive Director, Advisory Council on Social Security.*

[FR Doc. 79-9292 Filed 3-27-79; 8:45 am]

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[4310-02-M]

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**INDIAN TRIBES PERFORMING LAW AND ORDER FUNCTIONS**

**Determination**

MARCH 19, 1979.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 230 DM 1 and 2.

Section 601(d), Title I of the Omnibus Crime Control and Safe Streets Act of 1968, places responsibility on the Secretary of the Interior to determine those Indian tribes which perform law and order functions. The listing published beginning on page 13758 of the May 25, 1973 issue of the FEDERAL REGISTER (38 FR 13758) identified all eligible Indian tribes and the specific law enforcement functions they have responsibility to exercise. Determination and certification of those tribes not listed will be made on an individual basis upon application by such tribes.

It has been determined by the Assistant Secretary—Indian Affairs that the Swinomish Tribe of Indians in the State of Washington has responsibility to perform the functions listed below.

Therefore, the listing published beginning on page 13758 of the May 25, 1973 FEDERAL REGISTER (38 FR 13758), is further amended by adding the entry for the Swinomish Indian Tribe in the State of Washington, to read as follows:

| Tribal entities recognized by the Federal Government and listed by State | Employ tribal police | Establish a tribal court | Adopt a tribal law and order code | Undertake correction function | Undertake program for prevention of adult crime and juvenile delinquency | Undertake juvenile and adult rehabilitation program |
|---|---|---|---|---|---|---|
| Washington: | | | | | | |
| Swinomish Tribe..... | X | X | X | X | X | X |

RICK LAVIS,
*Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 79-9276 Filed 3-27-79; 8:45 am]

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[4310-02-M]

**SENECA NATION**

**Plan for the Use and Distribution of Seneca Nation Judgment Funds Awarded in Docket 342-G Before the Indian Claims Commission**

MARCH 19, 1979.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 210 DM 1.2.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of any Indian tribe. Funds were appropriated by the Act of May 4, 1977, 91 Stat. 61, in satisfaction of the award granted to the Seneca Nation of Indians in Indian Claims Commission Docket 342-G. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated August 8, 1978, and was received (as recorded in the Congressional Record) by the House of Representatives on August 10, 1978, and by the Senate on August 15, 1978. Congress not having adopted a resolution disapproving it, the plan became effective on February 1, 1979, as provided by Section 5 of the 1973 Act, *supra.*

The plan reads as follows:

The funds appropriated by the Act of May 4, 1977, 91 Stat. 61, in satisfaction of a judgment awarded to the Seneca Nation in Docket 342-G before the Indian Claims Commission, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as provided herein.

Eighty (80) percent of the funds shall be distributed in the form of per capita payments, in a sum as equal as possible, to all Seneca Nation members born on or prior to and living on the effective date of this plan, and enrolled in accordance with the tribal enrollment ordinance adopted by the Council of the Seneca Nation on February 9, 1974.

The per capita shares of living competent adults shall be paid directly to them. Per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, Part 4, Subpart D. Per capita shares of legal incompetents shall be handled pursuant to 25 CFR 104.5. Per capita shares of minors shall be handled pursuant to 25 CFR 60.10(a) and (b)(1) and 104.4.

Twenty (20) percent of the funds, and any amounts remaining after the per capita payment provided above, shall be invested by the Secretary and utilized on an annual budgetary basis, subject to the approval of the Secretary, for Social Services, including, but not limited to, the funding and maintenance of the Day Care Program and the Poormaster Fund on the Allegany and Cattaraugus Reservations. The interest and investment income accrued, plus ten (10) percent of the principal, shall be utilized each year, until depleted, with the first expenditure to be made on or about July 1, 1979.

RICK LAVIS,
*Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 79-9275 Filed 3-27-79; 8:45 am]

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[4310-84-M]

**Bureau of Land Management**

**CLARK COUNTY, NEV.**

**Realty Action Sale of Public Lands**

The following described lands have been identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, at no less than the fair market value:

| Legal Description | Acreage |
|---|---|
| *T.21S., R.60E.* | |
| *Section 24* | |
| SE¼SE¼NW¼ | 10.00 |
| *Section 25* | |
| SE¼NW¼NE¼ | 10.00 |
| E½SW¼NW¼NE¼ | 5.00 |
| E½NE¼SW¼NE¼ | 5.00 |
| W½SW¼NE¼ | 20.00 |
| S½NE¼SE¼NE¼ | 5.00 |
| N½NE¼SE¼SE¼NE¼ | 1.25 |
| N½S½NE¼SE¼SE¼NE¼ | .625 |
| SW¼SE¼NE¼ | 10.00 |
| E½SW¼NW¼NW¼ | 5.00 |
| W½SE¼NW¼NW¼ | 5.00 |
| W½NE¼SW¼NW¼ | 5.00 |
| NW¼SW¼NW¼ | 10.00 |
| E½SW¼SW¼NW¼ | 5.00 |
| SE¼SW¼NW¼ | 10.00 |
| E½NE¼NE¼SW¼ | 5.00 |
| E½NW¼NE¼SW¼ | 5.00 |
| S½NE¼SW¼ | 20.00 |
| E½NE¼NW¼SW¼ | 5.00 |
| W½W½NW¼SW¼ | 10.00 |
| W½SE¼NW¼SW¼ | 5.00 |
| E½SW¼SW¼SW¼ | 5.00 |
| E½SE¼SW¼SW¼ | 5.00 |
| W½E½SE¼SW¼ | 10.00 |
| E½SW¼SE¼SW¼ | 5.00 |
| NW¼SE¼SW¼ | 10.00 |
| W½NW¼NE¼SE¼ | 5.00 |
| SE¼NE¼SE¼ | 10.00 |
| N½NW¼SE¼ | 20.00 |
| N½SW¼SE¼ | 20.00 |
| E½SW¼SW¼SE¼ | 5.00 |
| SE¼SW¼SE¼ | 10.00 |
| W½NE¼SE¼SE¼ | 5.00 |
| NW¼SE¼SE¼ | 10.00 |
| *Sec. 26* | |
| E½SE¼SE¼NW¼ | 5.00 |
| NE¼NE¼SW¼ | 10.00 |
| W½NW¼NE¼SW¼ | 5.00 |
| W½NE¼NW¼SW¼ | 5.00 |
| E½W½NW¼SW¼ | 10.00 |
| S½SW¼SW¼SW¼ | 5.00 |
| E½SE¼SE¼SW¼ | 5.00 |
| W½SW¼NE¼SE¼ | 5.00 |
| E½SE¼NE¼SE¼ | 5.00 |
| E½SW¼NW¼SE¼ | 5.00 |
| W½SE¼NW¼SE¼ | 5.00 |
| W½NW¼SW¼SE¼ | 5.00 |
| NE¼SE¼SE¼ | 10.00 |
| E½NW¼SE¼SE¼ | 5.00 |
| W½SE¼SE¼SE¼ | 5.00 |
| *T.21S., R.61E.* | |
| *Sec. 19* | |
| NE¼NE¼SW¼NW¼ | 2.50 |
| SW¼NE¼SW¼NW¼ | 2.50 |
| Lot 13 | 2.50 |
| Lot 14 | 1.09 |
| Lot 17 | 2.50 |
| Lot 18 | 1.10 |
| SW¼NE¼SE¼SE¼ | 2.50 |
| E½NW¼SE¼SE¼ | 5.00 |
| E½SW¼SE¼SE¼ | 5.00 |
| SW¼SW¼SE¼SE¼ | 2.50 |
| S½NE¼NE¼SE¼ | 5.00 |
| N½SE¼NE¼SE¼ | 5.00 |
| *Sec. 20* | |
| SE¼NW¼NW¼SW¼ | 2.50 |
| NE¼SW¼NW¼SW¼ | 2.50 |
| *Sec. 29* | |
| SW¼NW¼SE¼NW¼ | 2.50 |
| SE¼NE¼SW¼NW¼ | 2.50 |
| *Sec. 30* | |
| NE¼SW¼NE¼NE¼ | 2.50 |
| NW¼SE¼NE¼NE¼ | 2.50 |
| SW¼SW¼NW¼NE¼ | 2.50 |
| SE¼NE¼SW¼NE¼ | 2.50 |
| SE¼NW¼SW¼NE¼ | 2.50 |
| S½SW¼SW¼NE¼ | 5.00 |
| NW¼NE¼SE¼NE¼ | 2.50 |
| S½NW¼SE¼NE¼ | 5.00 |
| E½SW¼SE¼NE¼ | 5.00 |
| SW¼SW¼SE¼NE¼ | 2.50 |
| NW¼NE¼NW¼ | 10.00 |
| NE¼SW¼NE¼NW¼ | 2.50 |
| W½NW¼SE¼NW¼ | 5.00 |
| SE¼NW¼SE¼NW¼ | 2.50 |
| N½SE¼SE¼NW¼ | 5.00 |
| SE¼SE¼SE¼NW¼ | 2.50 |
| SE¼NE¼NE¼SE¼ | 2.50 |
| SW¼NW¼NE¼SE¼ | 2.50 |
| E½SW¼NE¼SE¼ | 5.00 |
| SW¼SW¼NE¼SE¼ | 2.50 |
| W½SE¼NE¼SE¼ | 5.00 |
| NW¼NE¼NW¼SE¼ | 2.50 |
| S½NE¼NW¼SE¼ | 5.00 |
| NE¼NW¼NW¼SE¼ | 2.50 |
| SW¼NW¼NW¼SE¼ | 2.50 |
| S½NW¼SE¼ | 20.00 |
| NE¼NE¼SW¼SE¼ | 2.50 |
| S½NE¼SW¼SE¼ | 5.00 |
| W½SW¼SE¼ | 20.00 |
| NE¼SE¼SW¼SE¼ | 2.50 |
| SW¼SE¼SW¼SE¼ | 2.50 |
| NW¼NW¼SE¼SE¼ | 2.50 |
| SE¼NW¼SE¼SE¼ | 2.50 |
| SW¼SE¼SE¼ | 20.00 |
| NW¼SE¼SE¼SE¼ | 2.50 |

The above described lands will be offered for sale at either the public land sale scheduled for June 27, 1979 or the public land sale scheduled for September 17, 1979. The subject public land sales will be held at the Las Vegas Convention Center, 3150 Paradise Road, Las Vegas, Nevada. Particulars for these public auction sales, including appraisals, reservations and other specific items will be made available to the public approximately 30 days before the scheduled sale dates.

Detailed information concerning the sale, including the planning documents, environmental assessment, and the record of the public discussions, is available for review at the Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

The lands are being offered for sale in order to facilitate land use planning in the area, enhance land use compatibility with adjoining private lands and to streamline administrative procedures in all phases of suburban and industrial development of this section of Clark County (the city of Las Vegas). The lands have potential for suburban and industrial development. The sale is consistent with the Bureau's planning for the lands involved and has been discussed with the Clark County Regional Planning Commission and the Clark County Planning and Zoning Commission. The public interest would be served by offering these lands for sale.

The terms and conditions applicable to the sale are:

1. Clark County Flood Control Division requires a plot and grading plan to be submitted with all building permit applications in order to mitigate flood hazards. The sale of these lands will be subject to this requirement and all other applicable Clark County regulations.

2. A reservation for road rights-of-way will be incorporated into each patent is conjunction with the Clark County road network.

3. The sale of these lands will be subject to all existing rights.

4. No preference right will be given to adjoining private land owners.

No bids will be accepted for less than the appraised price and bids for a parcel must include all the lands in the parcel. Federal law requires that bidders be U.S. citizens or, in the case of a corporation, subject to the laws of any state of the U.S.

The sale will be conducted by oral bidding. Bids must be made by the principal or his agent at the time of the sale. The highest oral bid will establish the sale price. The highest bidder will be required to submit a nonrefundable deposit of one-fifth of the full bid price immediately at the sale. The remainder of the full bid price shall be paid within 30 days of the sale. Failure to pay the full bid price within 30 days shall result in cancellation of the sale of the parcel, and the deposit shall be forfeited and disposed of as other receipts of sale.

All bids will be either returned, accepted, or rejected within 30 days of the sale date.

For a period of 30 days from April 1, 1979 to April 30, 1979, interested parties may submit comments to the Sec-

retary of the Interior (LLM 320), Washington, D.C. 20240. Any adverse comments will be evaluated by the Secretary of the Interior who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Secretary of the Interior, this realty action will become the final determination of the Department of the Interior.

Dated: March 20, 1979.

JOHN S. BOYLES,
*District Manager,*
*Las Vegas District Office.*

[FR Doc. 79-9263 Filed 3-27-79; 8:45 am]

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**[4310-84-M]**

[NM 35468]

**NEW MEXICO**

**Transfer of Jurisdiction to Pueblo of Santa Ana**

MARCH 20, 1979.

1. Pub. L. 95-498 (92 Stat. 1672) declared that all right, title, and interest of the United States in the lands situated within Sandoval County in the State of New Mexico and described in paragraph six of this notice are to be held by the United States in trust for the benefit and use of the Pueblo of Santa Ana. The transfer includes all right, title, and interest of the United States in all minerals, including gas and oil underlying the lands declared to be held in trust.

2. Approximately 2240.14 acres included in this Act shall continue to be subject to Public Land Order 873, which withdrew lands for use of the Department of the Army, unitl they are no longer needed.

3. All existing mineral leases, rights-of-way and grazing leases involving land declared to be held in trust by this Act, including oil and gas leases which have been issued or approved pursuant to Federal law, prior to enactment of this Act, shall remain in force and effect in accordance with the provisions thereof.

4. The Secretary of the Interior is authorized and directed to acquire by purchase or exchange the following described lands and to execute any title documents necessary to this exchange:

T. 13 N., R. 3 E., NMPM
Sec. 2;
Sec. 16.
T. 14 N., R. 3 E.,
Sec. 36.
T. 14 N., R. 4 E.,
Sec. 32.

Containing 2004.05 acres, more or less.

5. Paleontological resources from these lands shall be managed as provided by the Act.

6. New Mexico Principal Meridian, New Mexico.

T. 13 N., R. 3 E.,
Sec. 1, lots 1, 8 to 10 inclusive, S½N½ and S½;
Sec. 3, lots 9 to 12 inclusive, S½N½ and S½
Sec. 4, lots 9 to 12 inclusive, S½N½ and S½
Sec. 5, all of that portion lying east of the west boundary of the right-of-way of New Mexico Highway 44;
Sec. 9, E½W½ and E½;
Sec. 10;
Sec. 11;
Sec. 12;
Sec. 13;
Sec. 14;
Sec. 15, N½NW¼, SE¼NW¼, NE¼SW¼NW¼, N½NW¼SW¼NW¼, SE¼NW¼SW¼NW¼, N½NW¼SE¼SW¼NW¼, NE¼SE¼SW¼NW¼, NE¼, N½NE¼NW¼NE¼SW¼, N½NE¼NE¼SW¼, N½SW¼NE¼NE¼SW¼, SE¼NE¼NE¼SW¼, NE¼SE¼,N½NW¼SE¼, SE¼NW¼SE¼ NE¼SW¼NW¼SE¼, N½NW¼SW¼NW¼SE¼, N½SE¼SW¼NW¼SE¼, NE¼NE¼SW¼SE¼, NE¼SE¼SE¼, N½NW¼SE¼SE¼, SE¼NW¼SE¼SE¼, N½SW¼NW¼SE¼SE¼, N½NE¼SW¼SE¼SE¼, N½SE¼SE¼SE¼, N½SE¼SE¼SE¼SE¼ excluding existing rights-of-way;
Sec. 23, NE¼NW¼NW¼, NE¼NW¼NW¼NW¼, N½NW¼NW¼NW¼NW¼, N½NE¼SE¼NW¼NW¼, N½NE¼NW¼, SE¼NE¼NW¼, N½SW¼NE¼NW¼, SE¼SW¼NE¼NW¼, NE¼NE¼SE¼NW¼, N½NW¼NE¼SE¼NW¼, N½NE¼, SE¼NE¼, N½SW¼NE¼, N½SE¼SW¼NE¼, SE¼SE¼SW¼NE¼, N½SW¼SE¼SW¼NE¼, N½NE¼SW¼SW¼NE¼, NE¼NE¼SE¼, NE¼NW¼, NE¼SE¼, N½NW¼NW¼NE¼SE¼, N½SE¼NW¼NE¼SE¼, N½NE¼, SE¼NE¼SE¼; excluding Rec. PP CL 10/10/62 and existing rights-of-way;
Sec. 24, N½, SE¼, NE¼SW¼, N½NW¼SW¼, SE¼NW¼SW¼, N½SW¼NW¼SW¼, SE¼SW¼NW¼SW¼, N½SW¼SW¼NW¼SW¼, N½NE¼SW¼SW¼, N½SE¼NE¼SW¼SW¼, N½SE¼SW¼, SE¼SE¼SW¼, NE¼SW¼SE¼SW¼; excluding existing right-or-way;
Sec. 25 N½NE¼NE¼NE¼NW¼, NE¼NE¼, NE¼NW¼NE¼, N½NW¼NW¼NE¼, NE¼NW¼NW¼NE¼, N½SW¼NW¼ NW¼NE¼, N½NE¼SW¼NW¼NE¼, N½SE¼NW¼NE¼ and SE¼SE¼NW¼ NE¼.

T. 13 N., R. 4 E.,
Sec. 3, lots 4 to inclusive, W½NE¼ and NW¼;
Sec. 4, all, including bed of Jemez River:
Sec. 5, lots 1 to 5 inclusive, NW¼NW¼, S½NW¼, S½ and bed of Jemez River;
Sec. 6, lots 1 to 4 inclusive, E½W½, E½ and bed of Jemez River;
Sec. 7;
Sec. 8, lots 3 to 5 inclusive, N½, SW¼ and NW¼SE¼;
Sec. 9, lots 5 to 7 inclusive, and bed of Jemez River lying north of the north boundary of the Angostura Grant;
Sec. 17, lots 10 to 13 inclusive and NW¼;
Sec. 18, lots 2, 3, E½Nw¼ and NE¼.

T. 14 N., R. 3 E.,
Sec. 6, bed of the Jemez River.

T. 14 N., R. 4 E.,
Sec. 17;
Sec. 18, E½E½;
Sec. 19, E½E½;
Sec. 20,
Sec. 21, W½;
Sec. 27, SW¼SW¼;
Sec. 28, NW¼ and S½;
Sec. 29;
Sec. 30, E½E½;
Sec. 31, E½NE¼, SW¼NW¼, NW¼NW¼, S½NW¼, S½ and bed of the Jemez River;
Sec. 33;
Sec. 34, S½NE¼, NW¼ and S½;
Sec. 35, lot 9 and W½SW¼.

Containing a total of 16,249.98 acres.

LARRY L. WOODARD,
*Acting State Director.*

[FR Doc. 79-9295 Filed 3-27-79; 8:45 am]

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**[4310-84-M]**

[NM 36289, 36290 and 36307]

**NEW MEXICO**

**Applications**

MARCH 19, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Southern Union Gathering Company has applied for three 4-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. B W.,
Sec. 32, NW¼SW¼.
T. 31 N., R. 11 W.,
Sec. 31, lot 3.
T. 31 N., R. 12 W.,
Sec. 21, NW¼NW¼.

These pipelines will convey natural gas across 0.474 of a mile of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-9296 Filed 3-27-79; 8:45 am]

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**[4310-84-M]**

[Wyoming 66919]

**WYOMING**

**Application**

MARCH 16, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½ inch O.D. pipeline and related facilities for the pur-

pose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 13 N., R. 101 W.,
Sec. 34, SE¼SE¼;
Sec. 35, SW¼SW¼.

The proposed pipeline will transport natural gas from the Canyon Creek #15-34 well located in the SE¼ of section 34 into their existing natural gas pipeline facilities located in the SW¼ section 35, T. 13 N., R. 101 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, P.O. Box 1869, Highway 187, N., Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-9297 Filed 3-27-79; 8:45 am]

[4310-84-M]

[Wyoming 67248]

WYOMING

Application

MARCH 16, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Cities Service Gas Company of Oklahoma City, Oklahoma filed an application for a right-of-way to construct a 4½, 6⅝ and 8⅝ inch pipeline and anode facilities for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 20 N., R. 93 W.,
Sec. 6, S½SE¼.
T. 20 N., R. 94 W.,
Sec. 10, S½S½ and NE¼SE¼;
Sec. 12, SW¼NE¼, N½NE¼ and S½NW¼;
Sec. 22, E½NE¼ and N½S½.

The proposed pipeline will transport natural gas across federal lands in section 6, T. 20 N., R. 93 W., and sections 10, 12 and 22, T. 20 N., R. 94 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

HAROLD G. STINCHCOMB,
*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-9298 Filed 3-27-79; 8:45 am]

[4310-84-M]

DRAFT INTERIM MANAGEMENT POLICY AND GUIDELINES FOR WILDERNESS STUDY AREAS

Clarification of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of clarification of comment period.

SUMMARY: This notice makes it clear that comments on the draft Interim Management Policy and Guidelines for Wilderness Study Areas received by the Bureau of Land Management after March 14, 1979, the date listed in 44 FR 2694 as the date by which comments should be submitted will be considered to the extent time permits before final revision of the policy is published. This is in keeping with the general policy of the Bureau of Land Management.

ADDRESS: Send comments to Director (303), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Terry R. Sopher, 202-343-6064.

SUPPLEMENTARY INFORMATION: This notice clarifies how the Bureau of Land Management will handle comments received on the proposed revision of the policy after March 14, 1979. The Bureau of Land Management announced a public review period by publishing the draft document on January 12, 1979, 44 FR 2694. The notice advised the public of the availability of the draft document, and stated that comments were to be submitted by March 14, 1979. The Bureau does not expect to publish the final policy document until approximately May 15, 1979, and has received questions about its policy on considering written and oral comments received after March 14. The Bureau will analyze and consider comments received after March 14, 1979, and will attempt to incorporate responses in the preamble to the final revision of the policy to the extent time permits.

ARNOLD E. PETTY,
*Acting Associate Director, Bureau of Land Management.*

MARCH 26, 1979.

[FR Doc. 79-9547 Filed 3-27-79; 8:45 am]

[4310-31-M]

Geological Survey

KREBS, OKLA.

Known Recoverable Coal Resource Area

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and Section 8A of the Mineral Leasing Act of February 25, 1920, as added by Section 7 of the Federal Coal Leasing Amendments Act of 1976 (P.L. 94-377, August 4, 1976), Federal lands within the State of Oklahoma have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(36) OKLAHOMA

Krebs (Oklahoma) Know Recoverable Coal Resource Area; June 30, 1978; 2,001 acres.

A diagram showing the boundaries of the area classified has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colorado 80225.

Dated: March 21, 1979.

J. S. CRAGWALL, Jr.,
*Acting Director.*

[FR Doc. 79-9277 Filed 3-27-79; 8:45 am]

[4310-31-M]

MORGAN MOUNTAIN, OKLA.

Known Recoverable Coal Resource Area

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and Section 8A of the Mineral Leasing Act of February 25, 1920, as added by Section 7 of the Federal Coal Leasing Amendments Act of 1976 (P.L. 94-377, August 4, 1976), Federal lands within the State of Oklahoma have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(36) OKLAHOMA

Morgan Mountain (Oklahoma) Known Recoverable Coal Resource Area; August 9, 1978; 4,706 acres.

A diagram showing the boundaries of the area classified has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colorado 80225.

Dated: March 21, 1979.

J. S. CRAGWALL, Jr.,
*Acting Director.*

[FR Doc. 79-9278 Filed 3-27-79; 8:45 am]

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[4310-03-M]

**Heritage Conservation and Recreation Service**

[INT FES 79-16]

**MILL CREEK METROPARK**

**Notice of Availability of Final Environmental Statement**

Pursuant to section 201(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the proposed Mill Creek Metropark.

The environmental statement considers the effects on two rural townships of a proposed 3501-acre impoundment-type regional park designed to help satisfy the water-oriented recreation need in one sector of southeast Michigan. The Heritage Conservation and Recreation Service is considering providing financial assistance for land acquisition through the Land and Water Conservation Fund.

Copies are available for inspection at the following locations:

Department of the Interior, Office of Public Affairs, Room 7200, Washington, D.C. 20260, Telephone (202) 343-3171.
Heritage Conservation and Recreation Service, Lake Central Region Office, Federal Building, Ann Arbor, Michigan 48107, Telephone (313) 668-2000.
Huron Clinton Metropolitan Authority, 3050 Penobscot Building, Detroit, Michigan 48226.
Office of Budget and Federal Aid, Michigan Department of Natural Resources, Mason Building, Box 30028, Lansing, Michigan 48909.

Dated: March 22, 1979.

LARRY E. MEIEROTTO,
*Assistant Secretary of the Interior.*

[FR Doc. 79-9279 Filed 3-27-79; 8:45 am]

[7020-02-M]

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-52]

**CERTAIN APPARATUS FOR THE CONTINUOUS PRODUCTION OF COPPER ROD**

**Extension of the Completion Date for the Evidentiary Hearing and the Filing Date for the Recommended Determination**

On March 6, 1979, all parties to this investigation filed a joint motion (Motion Docket No. 52-205) for a 30-day extension of the completion date of the evidentiary hearing being held in this investigation pursuant to rule 210.41(a)(1) of the Commission's rules of practice and procedure (19 CFR 210.41(a)(1)). On March 7, 1979, the administrative law judge (ALJ) certified this motion to the Commission for its consideration and recommended that the additional time be granted. The ALJ also requested that the Commission extend the required filing date for the ALJ's recommended determination to August 22, 1979.

Having considered Motion Docket No. 52-205 and the ALJ's recommended determination, the Commission is granting a 21-day extension of the hearing completion date pursuant to rule 201.14(b) of the Commission's rules (19 CFR 201.14(b)). The Commission also extending the required date for filing the ALJ's recommended determination to August 13, 1979, pursuant to rule 210.53(a).

Copies of the Commission Action and Order are available to the public during official working hours at the Office of the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone (202) 253-0161. Notice of the institution of the Commission's investigation was published in the FEDERAL REGISTER of May 22, 1978 (43 F.R. 21951).

Issued: March 23, 1979.

By order of the Commission.

KENNETH R. MASON,
*Secretary.*

[FR Doc. 79-9398 Filed 3-27-79; 8:45 am]

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[7020-02-M]

[Investigation No. 337-TA-64]

**CERTAIN HIGH-VOLTAGE CIRCUIT INTERRUPTERS AND COMPONENTS THEREOF**

**Investigation**

Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 16, 1979, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of the Westinghouse Electric Corp., Gateway Center, Pittsburgh, Pa. 15222, alleging that unfair methods of competition and unfair acts exist in the importation of certain high-voltage circuit interrupters and components thereof into the United States, or in their sale, by reason of the alleged coverage of such circuit interrupters by claims 5, 6, and 7 of U.S. Letters Patent No. 3,291,947. Supplements to the complaint were filed with the Commission on March 9, 1979, and March 14, 1979.

The complaint alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Complaint requests an exclusion from entry into the United States, excpet under bond, of the imports in question during the period of the investigation. Complainant requests that, after a full investigation, a permanent exclusion of said imports and such other relief as is authorized by the statute be ordered.

Having considered the complaint as supplemented, the Commission, on March 15, 1979, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine whether there is, or there is reason to believe that there is, a violation of subsection (a) of this section in the unlawful importation into or the sale in the United States of certain high-voltage circuit interrupters and components thereof by reason of the alleged coverage of such high-voltage circuit interrupters by claims 5, 6, and 7 of U.S. Letters Patent No. 3,291,947, the effect or tendency of which is to destroy or substantially injure an industry efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Westinghouse Electric Corp., Gateway Center, Pittsburgh, Pa. 15222.

(b) The respondents are the following companies alleged to be involved in the unauthorized importation of such articles into the United States, or in their sale, and are parties upon which the complaint and the supplements to the complaint are to be served:

BBC Brown, Boveri & Co., Ltd., CH-5401 Baden, Haselstrasse, Switzerland.
Delle-Alsthom, 130 rue Leon Blum, 69611 Villeurbanne, France.
BBC Brown, Boveri Corp., 1460 Livingston Avenue, North Brunswick, N.Y. 08902.
High Voltage Breakers, Inc., 6901 Elmwood Avenue, Philadelphia, Pa. 19142.

Cogenel, Inc., 45 Rockefeller Plaza, New York, N.Y. 10020.
Hitachi, Ltd., 5-1, Marunouchi 1-Chome, Chiyoda-ku, Tokyo 100, Japan.
Hitachi America Ltd., 437 Madison Avenue, New York, N.Y. 10022.
Siemens AG Corp., 186 Wood Avenue South, Iselin, N.J. 08830.
Campagnie Generale D'Electricite, 54 Rue la Boetie, 75382 Paris Cedex 08, France.
Siemens Aktiengesellschaft, Wittelsbacherplatz 2, D-8000 Munich 2, Federal Republic of Germany.
Siemens-Allis, Inc., 223 Perimeter Center Parkway, Atlanta, GA. 30338
Merlin Gerin S. A., 20 Rue Henri Tarze, P.O. Box 83, 38041 Grenoble Cedex France.

(c) Louis S. Mastriani, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Chief Administrative Law Judge Donald K. Duvall, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the U.S. International Trade Commission's rules of Practice and Procedure, as amended (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the U.S. International Trade Commission if received not later than 20 days after the date of service of the amended complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and may authorize the presiding officer and the U.S. International Trade Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint and the supplements to the complaint are available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the Commission's New York City Office, 6 World Trade Center, New York, N.Y. 10048.

By order of the Commission.

Issued: March 22, 1979.

KENNETH R. MASSON,
*Secretary.*

[FR Doc. 79-9400 Filed 3-27-79; 8:45 am]

[7020-02-M]

## WATCHES AND WATCH MOVEMENTS FROM INSULAR POSSESSIONS

### Determination of Apparent U.S. Consumption of Watch Movements in 1978 and of Quotas for Duty-Free Entry

In accordance with headnote 6(c) of schedule 7, part 2, subpart E, of the Tariff Schedules of the United States (TSUS), the U.S. International Trade Commission has determined that the apparent U.S. consumption of watch movements for the calendar year 1978 was 67,694,000 units. The number of watches and watch movements, the product of the Virgin Islands, Guam, and American Samoa, which may be entered free of duty during calendar year 1979 under headnote 6(b) of subpart E of the TSUS is as follows:

| | |
|---|---|
| Virgin Islands | 6,581,000 units. |
| Guam | 627,000 units |
| American Samoa | 314,000 units. |

The above determination was derived as follows:

| Item | 1,000 units | |
|---|---|---|
| U.S. production | 27,137 | |
| Plus inventory decrease | 583 | |
| Less exports of domestic merchandise | 5,730 | |
| Apparent U.S. consumption of domestic units | | 21,990 |
| U.S. imports | 41,665 | |
| Less re-exports of foregin merchandise | 898 | |
| Net imports | | 40,767 |
| Shipments from Virgin Islands, Guam, and Americal Samoa | | 4,937 |
| Apparent U.S. consumption | | 67,694 |

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By order of the Commission.

KENNETH R. MASON
*Secretary.*

Issued: March 21, 1979.

[FR Doc. 79-9399 Filed 3-27-79; 8:45 am]

[4410-01-M]

## DEPARTMENT OF JUSTICE

### UNITED STATES CIRCUIT JUDGE NOMINATING COMMISSION, SOUTHERN NINTH CIRCUIT PANEL

#### Meeting

A meeting of the Southern Ninth Circuit Panel of the United States Circuit Judge Nominating Commission will be held on April 16 and 17, 1979, at the State Bar Offices, 1230 West Third Street, Los Angeles, California. The April 16 meeting will begin at 10:00 a.m.; the April 17 meeting at 8:30 a.m. The purpose of this meeting is to interview applicants from the Southern part of California. This meeting will be closed to the public pursuant to Pub. L. 92-463, Section 10(D) as amended. (CF 5 U.S.C. 552b(c)(6).)

JOSEPH A. SANCHES,
*Advisory Committee Management Officer.*

MARCH 20,1979.

[FR Doc. 79-9280 Filed 3-27-79; 8:45 am]

[4510-23-M]

## NATIONAL COMMISSION ON EMPLOYMENT AND UNEMPLOYMENT STATISTICS

### PUBLIC MEETING

Notice is hereby given that the National Commission on Employment and Unemployment Statistics will hold a public meeting on April 30 and May 1, 1979, in Room 6510, 2020 K Street, N.W., Washington, D.C. 20006.

The National Commission on Employment and Unemployment Statistics was established under Section 13 of the Emergency Jobs Program Extension Act of 1975, Public Law 94-444. Its purpose is to advise the President and the Congress on reliable and comprehensive measurements of employment and unemployment by examining the procedures, concepts, and methodology involved in employment and unemployment statistics, and suggesting ways and means of improving them.

The meetings will begin each day at 9:30 a.m. to review public comments on the Commission's Preliminary Draft Report. The public is invited to attend. Official records of the meetings will be available for public inspection by contacting:

Mr. Wesley H. Lacey, Administrative Officer, National Commission on Employment and Unemployment Statistics, Suite 550, 2000 K Street, N.W., Washington, D.C. 20006.

Signed at Washington, D.C., this 5th day of March 1979.

SAR A. LEVITAN,
*Chairman.*

[FR Doc. 79-9259 Filed 3-27-79; 8:45 am]

[7590-01-M]

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-295 and 50-304]

### COMMONWEALTH EDISON CO.

#### Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 45 and 42 to Facility Operating License Nos. DPR-39 and DPR-48, issued to Commonwealth Edison Company (the licensee), which revised the licenses for operation of the Zion Station, Unit Nos. 1 and 2, (the facility), located in Lake County, Illinois. The amendments became effective on February 23, 1979.

The amendments add license conditions to include the Commission-approved physical security plan as part of the licenses.

The licensee's filings comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

The licensee's filings dated November 18, 1977, as revised May 26 and July 25, 1978, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment Nos. 45 and 42 to License Nos. DPR-39 and DPR-48, and (2) the Commission's related letter to the licensee dated March 14, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Zion-Benton Public Library District, 2600 Emmaus Avenue, Zion, Illinois 60099. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 14th day of March, 1979.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
*Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.*

[FR Doc. 79-9302 Filed 3-27-79; 8:45 am]

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[7590-01-M]

[Docket No. 50-213]

### CONNECTICUT YANKEE ATOMIC POWER CO.

#### Notice of Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 32 to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Company (the licensee) which revised the Technical Specifications for operation of the Haddam Neck Plant (the facility) located in Middlesex County, Connecticut. The amendment is effective as of its date of issuance.

The amendment modifies the Appendix B (Environmental) Technical Specifications to: (1) Add a qualification to the allowable rate of change of discharge temperature which states that the temperature change must be related to a change in plant operation; (2) Change the pH limit to allow for fluctuations in naturally occurring pH of the river water; (3) Change the dissolved oxygen limit to relate it to the dissolved oxygen at the intake and any change caused by plant operation; (4) Change the reporting requirements for fish impingement; (5) Delete the requirement for fish deterrent studies which have been completed; and (6) Delete the requirement for phytoplankton studies which have been completed.

The amendment also incorporates numerous editorial and clarifying changes, Environmental Review Board authority and membership changes and organizational changes within the Northeast Utilities Service Company.

The Commission has determined that the portions of the amendment dealing with numerous editorial and clarifying changes, and the changes associated with the Environmental Review Board and organizational structure will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with these matters. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal relating to Items (1)-(6) above and has concluded that an environmental impact statement for these items is not warranted because there will be no significant environmental impact attributable to these items other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility.

For further details with respect to this action, see (1) the application for amendment dated June 4, 1976, and supplements thereto dated May 6, 1977 and November 28, 1977, and applications dated February 16, 1978 and August 15, 1978, (2) Amendment No. 32 to License No. DPR-61, including its letter of transmittal, and (3) the Commission's Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Russell Library, 119 Broad Street, Middletown, Connecticut 06457. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 15th day of March, 1979.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
*Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.*

[FR Doc. 79-9303 Filed 3-27-79; 8:45 am]

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[7590-01-M]

[Docket No. 50-302]

### FLORIDA POWER CORPORATION, ET AL.

#### Notice of Proposed Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-72 issued to Florida Power Corporation, City of Alachua, City of Bushnell, City of Gainesville, City of Kissimmee, City of Leesburg, City of New Smyrna Beach and Utilities Commission, City of New Smyrna Beach, City of Ocala, Orlando Utilities Commission and City of Orlando, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., and the City of Tallahassee (the licensees), for operation of the Crystal River Unit No. 3 Nuclear Generating Plant (the facility), a pressurized water reactor located in Citrus

County, Florida, and currently authorized to operate at power levels up to 2452 MWt.

In accordance with the licensees' requests dated November 29, 1978 and February 28, 1979, the amendment would revise the provisions of the Technical Specifications to reflect plant operating limits for the fuel loading to be used during Cycle 2 and would authorize operation of the facility at 2544 MWt in lieu of the current licensed power level of 2452 MWt.

Prior to 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.

By April 27, 1979, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert W. Reid: (petitioner's name and telephone number); (date petition was mailed); Crystal River; and (publication date and page number of this FEDERAL REGISTER notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to S. A. Brandimore, Vice President and General Counsel, P.O. Box 14042, St. Petersburg, Florida 33733, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR § 2.714(a)(i)-(v) and § 2.714(d).

For further details with respect to this action, see the licensee's requests dated November 29, 1978 and February 28, 1979, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Crystal River Public Library, Crystal River, Florida.

Dated at Bethesda, Maryland this 22nd day of March 1979.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
*Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.*

[FR Doc. 79-9300 Filed 3-27-79; 8:45 am]

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[7590-01-M]

[Docket No. 50-77]

## THE CATHOLIC UNIVERSITY OF AMERICA

### Notice of Renewal of Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 7 to Facility Operating License No. R-31, issued to The Catholic University of America (the licensee), which renews the license for operation of the AGN-201 nuclear research reactor (the facility) located in Washington, D.C. The facility is a research reactor that has been operating since November 15, 1957, and is currently licensed to operate at 0.1 watts (thermal). The amendment is effective as of its date of issuance.

The amendment extends the duration of Facility License No. R-31 until November 15, 1997.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of the proposed issuance of this action was published in the FEDERAL REGISTER on November 11, 1977, 42 FR 58800. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared an environmental impact appraisal for the renewal of the Facility Operating License and has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the action.

For further details with respect to this action, see (1) the application for amendment dated October 12, 1977, as supplemented April 21, 1978 and January 5, 1979, (2) Amendment No. 7 to License No. R-31, and (3) the Commission's related Safety Evaluation and Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 12th day of March 1979.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
*Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.*

[FR Doc. 79-9301 Filed 3-27-79; 8:45 am]

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[7590-01-M]

[Docket No. 50-220]

**NIAGARA MOHAWK POWER CORP.**

**Notice of Issuance of Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 28 to Facility Operating License No. DPR-63 to the Niagara Mohawk Power Corporation (the licensee) which revised the license for operation of the Nine Mile Point Nuclear Station, Unit No. 1 (the facility) located in Oswego County, New York. The amendment became effective on February 23, 1979.

The amendment modifies the license condition to include the current Commission-approved physical security plan as part of the license.

The licensee's filings comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's filings dated June 15, 1978, June 19, 1978 and December 8, 1978, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR § 9.12.

For further details with respect to this action, see (1) Amendment No. 28 to Licensee No. DPR-63 and (2) the Commission's related letter to the licensee dated March 16, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Oswego County Office Building, 46 E. Bridge Street, Oswego, New York 13126. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 16th day of March 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
*Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.*

[FR Doc. 79-9304 Filed 3-27-79; 8:45 am]

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[7590-01-M]

[Docket Nos. 50-282 and 50-306]

**NORTHERN STATES POWER CO.**

**Notice of Issuance of Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 34 and 28 to Facility Operating License Nos. DPR-42 and DPR-60, issued to Northern States Power Company (the licensee), which revised the licenses for operation of the Prairie Island Nuclear Generating Plant Unit Nos. 1 and 2, (the facility), located in Goodhue County, Minnesota. The amendments became effective on February 23, 1979.

The amendments add license conditions to include the Commission-approved physical security plan as part of the licenses.

The licensee's filings comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

The licensee's filing dated March 3, 1978, as supplemented September 25, 1978, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR § 9.12

For further details with respect to this action, see (1) Amendments Nos. 34 and 28 to License Nos. DPR-42 and DPR-60, and (2) the Commission's related letter to the licensee dated March 14, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 14th day of March, 1979.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
*Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.*

[FR Doc. 79-9305 Filed 3-27-79; 8:45 am]

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[7590-01-M]

[Docket No. 50-29]

**YANKEE ATOMIC ELECTRIC CO.**

**Notice of Issuance of Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 56 to Facility Operating License No. DPR-3, issued to Yankee Atomic Electric Company (the licensee), which amended the license and its appended Technical Specifications for operation of the Yankee Nuclear Power Station (the facility) located in Rowe, Franklin County, Massachusetts. The amendement is effective as of its date of issuance.

The amendment adds license conditions relating to the completion of fa-

cility modifications for fire protection and modifies the Technical Specifications to require additional sprinkler systems, water hose stations and yard hydrants to be operable, and surveillance for these features. In addition, the amendment requires increasing the onsite fire brigade from 3 to 5 members.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) and environmental impact statement or negative declaration and enviornmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the licensee's submittals dated January 31, 1977, May 10, 1978, June 26, 1978, August 14, 1978, August 22, 1978, October 16, 1978, February 5, 1979, and February 22, 1979, (2) Amendment No. 56 to License No. DPR-3, including the Commission's letter of transmittal, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 15th day of March, 1979.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
*Chief, Operating Reactors Branch Number 2, Division of Operating Reactors.*

[FR Doc. 79-9306 Filed 3-27-79; 8:45 am]

[7590-01-M]

## REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

### Issuance and Availability

As a part of the continual maintenance of the Standard Review Plan (SRP), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has deleted the following sections from the Standard Review Plan.

1. Appendix A to SRP Section 2.1.1, "Site Visits—Suggested Procedure for Site Analysts".

2. Appendix A to SRP Section 3.5.1.3, "High Trajectory Turbine Missile Analyses".

3. SRP Section 6.1.3, "Post-Accident Chemistry".

4. BTP-ETSB No. 11-1, attached to SRP Section 11.2, "Design Guidance for Radioactive Waste Management Systems Installed in Light-Water-Cooled Nuclear Power Plants."

5. Appendix A to SRP Section 13.3, "Emergency Plans for Nuclear Power Plants."

The content of these sections has been incorporated into other SRP sections or Regulatory Guides.

The NRC has also published Revision 2 to the Table of Contents, which lists the current revision number of each section of the SRP.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Virginia 22161. The domestic price is $70.00, including first-year supplements. Annual subscriptions for supplements alone are $30.00. Individual sections are available at current prices. The domestic price for Revision No. 2 to the Table of Contents is $4.00. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda, this 16th day of March, 1979.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
*Director, Division of Systems Safety.*

[FR Doc. 79-9307 Filed 3-27-79; 8:45 am]

[7600-01-M]

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### PRIVACY ACT OF 1974

### Systems of Records and New Routine Uses

Pursuant to the provisions of the Privacy Act of 1974, Pub. L. 93-479, 5 U.S.C. 552a(e)(4), the Occupational Safety and Health Review Commission, hereafter referred to as the Commission or OSHRC, hereby publishes this notice that the systems of records maintained by the Commission and originally published at 40 FR 40060, August 29, 1975, and amended at 41 FR 56188, December 23, 1976, remain unchanged since the amended report except for the following:

1. The agency is abbreviated as OSHRC rather than OSAHRC to maintain consistency with the abbreviation used by the agency in other matters.

2. The official to whom all Privacy Act requests should be made is now the Executive Director.

3. Two new systems of records, "Cases pending in the decisional process after oral decision" (OSHRC-9) and "Cases acted on by Judge" (OSHRC-10), are established, with routine uses as proposed.

4. The system location for travel records is now the Office of Financial Management rather than the Office of Chief Judge. Record systems concerning the processing of OSHRC cases (OSHRC-3, OSHRC-4, and OSHRC-5) are now located in the Office of Executive Secretary.

5. The record system "Parties, correspondence records-OSHRC" (OSHRC-7) has been deleted as it has been determined that the system neither contains personal information subject to the provisions of the Privacy Act nor is any information in the system capable of being retrieved by a personal identifier.

6. The listings herein of records systems managed by the Office of Executive Secretary (OSHRC-3, OSHRC-4 and OSHRC5) contain several minor changes. These were made to describe more accurately these systems as they are presently operating. The titles of these record systems have also been changed to describe more accurately their function.

As in our December 23, 1976 publication, the appendix contained herein describes routine uses that apply to all the listed systems.

All changes since our December 23, 1976 publication contained herein are published for comment. Any person interested in commenting on such changes may do so by submitting comments in writing to the Executive Secretary, OSHRC, 1825 K Street NW., Washington, D.C. 20006. Comments must be submitted on or before April 27, 1979. These changes will become final April 30, 1979, without further publication, unless the Commission publishes a notice to the contrary.

Dated at Washington, D.C. on March 21, 1979

RAY H. DARLING, Jr.,
*Executive Secretary.*

OSHRC-1

**System name:**

Travel Records-OSHRC

**System location:**

Office of Financial Management, OSHRC, 1825 K Street NW., Washington, D.C. 20006.

**Categories of individuals covered by the system:**

Names of persons who use OSHRC funds for travel

**Categories of records in the system:**

This system of records shows all places to which travel was accomplished and the costs of such travel including subsistence costs.

**Authority for maintenance of the system:**

29 U.S.C. § 651 et seq.

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:**

This system of records is used for budgetary purposes within the agency and for reporting to Members of Congress and other agencies when appropriate.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the sytstem:**

**Storage:**

These records are maintained in folders.

**Retrievability:**

These records are indexed by the names of the individuals on whom they are maintained.

**Safeguards:**

Access to and use of such records are limited to those persons whose official duties require such access.

**Retention and disposal:**

The records are maintained indefinitely.

**System manager(s) and address:**

Director, Office of Financial Management, OSHRC, 1825 K Street NW., Washington, D.C. 20006.

**Notification procedure:**

Individuals interested in inquiring about their records should notify: Executive Director, OSHRC, 1825 K Street NW., Washington, D.C. 20006.

**Record access procedures:**

Individuals who wish to gain access to their records should notify in writing, including their name, the Executive Director.

**Contesting record procedures:**

individuals who wish to contest their records should notify in writing, including their name, the Executive Director.

**Record source categories:**

Information in this system of records comes from the individual to whom it applies.

## OSHRC-2

**System name:**

Mailing lists for news releases, speeches, reports-OSHRC

**System location:**

Office of Information and Publication, 1825 K Street NW., Washington, D.C. 20006.

**Categories of individuals covered by the system:**

This system contains the names of all persons who routinely are sent information on OSHRC.

**Categories of records in the system:**

This system contains information relating to the individual's address, business affiliation, and the information he desires to receive.

**Authority for maintenance of the system:**

29 U.S.C. § 651 et seq.

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:**

These records are used to mail information relating to case dispositions, speeches, and statistical reports.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:**

These records are stored on mag tape and on labels.

**Retrievability:**

These records are indexed by the names of the individual on whom they are maintained.

**Safeguards:**

Access to and use of these records are limited to those persons whose official duties requires such access.

**Retention and disposal:**

These records are maintained indefinitely unless the individuals requests that his/her reference be deleted and then that reference is disposed immediately.

**System manager(s) and address:**

Director of Information, OSHRC, 1825 K Street NW., Washington, D.C. 20006.

**Notification procedure:**

Individuals interested in inquiring about their records should notify: Executive Director, OSHRC, 1825 K Street NW., Washington, D.C. 20006.

**Record access procedures:**

Individuals who wish to gain access to their records should notify in writing, including their name, the Executive Director.

**Contesting record procedures:**

Individuals who wish to contest their records should notify in writing, including their name, the Executive Director.

**Record source categories:**

Information in this system either comes from the individual to whom it applies or was derived from private source directories.

## OSHRC-3

**System name:**

Cases Pending With the Commissioners.

**System location:**

Office of the Executive Secretary, 1825 K Street NW., Washington, D.C. 20006.

**Categories of individuals covered by the system:**

Commission members formerly or currently employed by OSHRC who call cases for review and issue decisions.

**Categories of records in the system:**

This system identifies the Commissioner who has directed a case for review. It lists: (1) the case name and docket number; (2) the petitioner and date of petition; (3) the date of a direction for review; (4) the dates parties file briefs; and (5) the months from both the notice of contest and direction for review.

**Authority for maintenance of the system:**

29 U.S.C. sec. 651 *et seq.*

**Routine uses of records maintained in the system, including categories of users and purposes of such uses:**

These records may be used:

a. By Commission personnel working with cases under review.

b. To respond to a member of the public concerning the status of a case under review.

c. As a date source to make management decisions as to case processing activities.

d. For statistical and budgetary purposes.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:**

Records are maintained on magnetic disk and in binders.

**Retrievability:**

Records are indexed by docket number.

**Retention and disposal.**

These records are retained permanently on magnetic disk. Information in binders is retained one year.

**System manager(s) and address:**

Executive Secretary, OSHRC, 1825 K Street NW., Washington, D.C. 20006.

**Notification procedure:**

Individuals interested in inquiring about their records should notify: Executive Director, OSHRC, 1825 K Street NW., Washington, D.C. 20006.

**Record access procedures:**

Individuals who wish to gain access to their records should notify in writing, including their name, the Executive Director.

**Contesting record procedures:**

Individuals who wish to contest their records should notify in writing, including their name, the Executive Director.

**Record source categories:**

Information in this system either comes from the individual to whom it applies, or is derived from information he supplied or by the parties who appear before the Commission.

OSHRC-4

**System name:**

Judge report on pending cases.

**System location:**

Office of the Executive Secretary, OSHRC, 1825 K Street NW., Washington, D.C. 20006.

**Categories of individuals covered by the system:**

This system summarizes the status of all cases currently pending before the Commission's Administrative Law Judges.

**Categories of records in the system:**

This system shows the Judge's name and pertinent information about each case assigned to him including the scheduled dates for a hearing; the number of times the hearing was rescheduled and the time span between dates; the opening and closing dates of hearing and the number of hearing days; the receipt date of transcripts and the number of transcript pages; dates of settlement; dates briefs are filed; number of days since assignment; and notations for cases assigned for more than 180 days.

**Authority for maintenance of the system:**

29 U.S.C. § 651 *et seq.*

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:**

This system is used by Administrative Law Judges and other Commission employees for administrative purposes.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.**

**Storage:**

Records are maintained on magnetic disk and in binders.

**Retrievability:**

Records are indexed by docket number.

**Safeguards:**

Access to and use of these records are limited to those persons whose official duties require such access.

**Retention and disposal:**

These records are retained permanently on magnetic disk. The written records pertaining to each Judge are given to the Judge and disposed of by the Judge. Information in binders is retained one year.

**System manager(s) and address:**

Executive Secretary, OSHRC, 1825 K Street NW., Washington, D.C. 20006.

**Notification procedure:**

Individuals interested in inquiring about their records should notify: Executive Director, OSHRC, 1825 K Street NW., Washington, D.C. 20006.

**Record access procedures:**

Individuals who wish to gain access to their records should notify in writing, including their name, the Executive Director.

**Contesting record procedures:**

Individuals who wish to contest their records should notify in writing, including their name, the Executive Director.

**Record source categories:**

Information in the system either comes from the individual to whom it applies, or is derived from information he or the Chief Administrative Law Judge supplied or by the parties who appear before the Commission.

OSHRC-5

**System name:**

Judge summary report.

**System location:**

Office of the Executive Secretary, OSHRC, 1825 K Street NW., Washington, D.C. 20006.

**Categories of individuals covered by the system:**

OSHRC Administrative Law Judges currently employed who are assigned to hear and decide case.

**Categories of records in the system:**

This system contains the name of each OSHRC judge, the number of cases greater than 180 days on the judge's docket, the number of cases pending for each judge, the number of cases pending for all judges, the number of settlements, and the region for each judge.

**Authority for maintenance of the system:**

29 U.S.C. § 651 *et seq.*

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:**

These records are used by the Chairman and the Chief Administrative Law Judge for administrative purposes.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:**

Records are maintained on magnetic disk and in binders.

**Retrievability:**

Records are indexed by judge number.

**Safeguards:**

Access to and use of these records are limited to those persons whose official duties require such access.

**Retention and disposal:**

These records are retained permanently on magnetic disk. Information in binders is retained one year.

**System manager(s) and address:**

Executive Secretary, OSHRC, 1825 K Street N.W., Washington, D.C. 20006.

**Notification procedure:**

Individuals interested in inquiring about their records should notify: Executive Director, OSHRC, 1825 K Street N.W., Washington, D.C. 20006.

**Record access procedures:**

Individuals who wish to gain access to their records should notify in writing, including their name, the Executive Director.

**Contesting record procedures:**

Individuals who wish to contest their records should notify in writing, including their name, the Executive Director.

**Record source categories:**

Information in this system either comes from the individual or is derived from information he or the Chief Administrative Law Judge supplied or by the parties who appear before the Commission.

OSHRC-6

**System name:**

Applications for employment-OSHRC.

**System location:**

Personnel Office, 1825 K Street N.W., Washington, D.C. 20006.

**Categories of individuals covered by the system:**

All those desiring employment with OSHRC who have submitted a Form 171 or resume.

**Categories of records in the system:**

This system contains information relating to birth date, veteran preference, tenure, past and present salaries, grades and position titles, awards and other information relating to the status of the individual, as well as education and test scores.

**Authority for maintenance of the system:**

5 U.S.C. §§ 3301; 1302.

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:**

These records and information in the records may be used to refer applications to those sections within the agency having position vacancies.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:**

These records are maintained in folders.

**Retrievability:**

These records are indexed by the names of the applicants.

**Safeguards:**

Access to and use of these records are limited to those persons whose official duties require such access.

**Retention and disposal:**

The records are maintained up to one year and then are destroyed.

**System manager(s) and address:**

Personnel Director, OSHRC, 1825 K Street N.W., Washington, D.C. 20006.

**Notification procedure:**

Individuals interested in inquiring about their records should notify: Executive Director, OSHRC, 1825 K Street N.W., Washington, D.C. 20006.

**Record access procedures:**

Individuals who wish to gain access to their records should notify in writing, including their name, the Executive Director.

**Contesting record procedures:**

Individuals who wish to contest their records should notify in writing, including their name, the Executive Director.

**Record source categories:**

Information in this system comes from the individual to whom it applies.

OSHRC-8

**System name:**

Payroll Records-Occupational Safety and Health Review Commission.

**System location:**

General Services Administration, Region 3 Office; copies held by the Commission. (GSA holds records for the Commission under contract.)

**Categories of records in the system:**

Varied payroll records, including, among other documents, time and attendance cards; payment vouchers; comprehensive listing of employees; health benefits records, requests for deductions; tax forms, W-2 forms, overtime requests; leave data; retirement records. Records are used by Commission and GSA employees to maintain adequate payroll information for Commission employees, and otherwise by Commission and GSA employees who have a need for the record in the performance of their duties.

**Authority for maintenance of the system:**

31 U.S.C., generally. Also, 29 U.S.C. § 651, et seq.

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:**

See Appendix. Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement, also is disclosed to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. §§ 5516, 5517, or 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the OSHRC Director of Personnel. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to the tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5220), copies of executed city tax withholding certificates shall be furnished the city in response to written request from an appropriate city official to the Director of Personnel.

In the absence of a withholding agreement, the Social Security number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security Number, in accordance with Section 7 of the Privacy Act, Public Law 93-579.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:**

Paper and microfilm.

**Retrievability:**

Social Security Number.

**Safeguard:**

Stored in guarded building; OSHRC copies stored in secure room and locked file drawers; released only to authorized personnel.

**Retention and disposal:**

Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

**System manager(s) and address:**

Director of Personnel, Occupational Safety and Health Review Commission, 1825 K Street N.W., Washington, D.C. 20006.

**Notification procedure:**

Individuals interested in inquiring about their records should notify: Executive Director, OSHRC, 1825 K Street N.W., Washington, D.C. 20006.

**Record access procedures:**

Individuals who wish to gain access to their records should notify in writ-

ing, including their name, the Executive Director.

**Contesting record procedures:**

Individuals who wish to contest their records should notify in writing, including their name, the Executive Director.

**Record sources:**

Information in this system of records either comes from the individual to whom it applies or is derived from information compiled by Commission employees performing administrative duties.

OSHRC-9

**System name:**

Cases pending in the decisional process after oral decision.

**System location:**

Office of the Executive Secretary, 1825 K Street, N.W., Washington, D.C. 20006.

**Categories of individuals covered by the system:**

Commission members formerly or currently employed by OSHRC who call cases for review and issue decisions.

**Categories of records in the system:**

This system identifies cases pending after a Commission meeting. It identifies the Commissioner who directed the case for review together with the opinions or comments filed by the Commissioners as well as the dates of filing.

**Authority for maintenance of the system:**

29 U.S.C. § 651 *et seq.*

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:**

These records are used by Commission members and their staffs in processing cases under review. The records are used to determine the status of a case after a vote has been taken at a Commission meeting.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:**

These records are maintained on magnetic disk and in binders.

**Retrievability:**

Records are indexed by docket number.

**Safeguards:**

Access to and use of these records are limited to those persons whose official duties require such access.

**Retention and disposal:**

These records are retained permanently on magnetic disk. Information in binders is retained one year.

**System manager(s) and address:**

Executive Secretary, OSHRC, 1825 K Street, N.W., Washington, D.C. 20006.

**Notification procedure:**

Individuals interested in inquiring about their records should notify: Executive Director, OSHRC, 1825 K Street N.W., Washington, D.C. 20006.

**Record access procedures:**

Individuals who wish to gain access to their records should notify in writing, including their name, the Executive Director.

**Contesting record procedures:**

Individuals who wish to contest their records should notify in writing, including their name, the Executive Director.

**Record source categories:**

Information in this system is derived from the individual to whom it applies or is derived from the official minutes of Commission meetings and other records submitted to the Office of the Executive Secretary.

OSHRC-10

**System name:**

Cases acted on by Judge.

**System location:**

Office of the Executive Secretary, OSHRC, 1825 K Street, N.W., Washington, D.C. 20006.

**Categories of individuals covered by the system:**

Administrative Law Judges currently employed by the Commission.

**Categories of records in the system:**

This system contains names of the OSHRC Administrative Law Judges and gives a comparison of each with the averages of all judges of a one-month period. Comparisons are made for the number of cases assigned, the number of trials held, the average days per trial, the number of heard and unheard cases, the average elapsed days for heard and unheard cases that are completed, and the number of cases pending at the end of a time period together with the average days pending.

**Authority for maintenance of the system:**

29 U.S.C. 651 *et seq.*

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:**

These records are used by the Chairman and the Chief Administrative Law Judge for administrative purposes.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:**

Records are maintained on magnetic disk and in binders.

**Retrievability:**

Records are indexed by the Judge's name.

**Safeguards:**

Access to and use of these records are limited to those persons whose official duties require such access.

**Retention and disposal:**

The information used to generate these records is retained permanently. Information in binders is retained one year.

**System manager(s) and address:**

Executive Secretary OSHRC, 1825 K Street, N.W., Washington, D.C. 20006.

**Notification procedure:**

Individuals interested in inquiring about their records should notify: Executive Director, OSHRC, 1825 K Street N.W., Washington, D.C. 20006.

**Record access procedures:**

Individuals who wish to gain access to their records should notify in writing, including their name, the Executive Director.

**Contesting record procedures:**

Individuals who wish to contest their records should notify in writing, including their name, the Executive Director.

**Record source categories:**

Information in this system either comes from the individual to whom it applies or is derived from information the individual judge, other judges, or the Chief Administrative Law Judge have supplied or by the parties who appear before the Commission.

APPENDIX—OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursu-

ant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

A record from this system or records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of federal personnel management.

A record from this system of records may be disclosed to officers and employees of a federal agency for purposes of audit.

The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that circular.

A record of this system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response to a request from the individual about whom the record is maintained.

A record from this system of records may be disclosed to officers and employees of the General Services Administration in connection with administrative services provided to this Agency under agreement with GSA.

[FR Doc. 79-9334 Filed 3-27-79; 8:45 am]

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[8025-01-M]

## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1597]

### CONNECTICUT

#### Declaration of Disaster Loan Area

The area of Pearl and High Streets in the town of Enfield, Hartford County, Connecticut, constitutes a disaster area because of damage resulting from a fire which occurred on March 12, 1979. Applications will be processed under the provisions of Pub. L. 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on May 21, 1979 and for economic injury until the close of business on December 21, 1979, at:

Small Business Administration, District Office, One Financial Plaza, Hartford, Connecticut 06103.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008,)

Dated: March 21. 1979.

WILLIAM H. MAUK, Jr.,
*Acting Administrator.*

[FR Doc. 79-9358 Filed 3-27-79; 8:45 am]

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[8025-01-M]

[Declaration of Disaster Loan Area No. 1598]

### ILLINOIS

#### Declaration of Disaster Loan Area

Union and Williamson Counties and adjacent counties within the State of Illinois constitute a disaster area as a result of damage caused by heavy snows which occurred on February 24 and 25, 1979. Applications will be processed under the provisions of Pub L. 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on May 21, 1979, and for economic injury until close of business on December 21, 1979, at:

Small Business Administration, Branch Office, One North Old State Capitol Plaza, Springfield, Illinois 62701.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 21, 1979.

WILLIAM H. MAUK, Jr.,
*Acting Administrator.*

[FR Doc. 79-9359 Filed 3-27-79; 8:45 am]

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[8025-01-M]

[Declaration of Disaster Loan Area No. 1593]

### MARYLAND

#### Declaration of Disaster Loan Area

Allegany, Carolina, Montgomery, Prince Georges and Washington Counties and adjacent counties within the State of Maryland constitute a disaster area as a result of damage resulting from snow, heavy rains and flooding which occurred on February 18, 1979 through February 26, 1979, followed by rising temperature, heavy rains and flooding. Applications will be processed under provisions of Pub. L. 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on May 21, 1979, and for economic injury until close of business on December 20, 1979, at :

Small Business Administration, District Office, Oxford Building, Room 630, 8600 La Salle Road, Towson, Maryland 21204.

"or other locally announced locations.

"(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 20, 1979.

WILLIAM H. MAUK, Jr.,
*Acting Administrator.*

[FR Doc. 79-9360 Filed 3-27-79; 8:45 am]

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[8025-01-M]

[Declaration of Disaster Loan Area No. 1592]

### MICHIGAN

#### Declaration of Disaster Loan Area

Allegan, Ionia, Kent, Montcalm, Muskegon, and Ottawa Counties and adjacent counties within the State of Michigan constitute a disaster area as a result of damage caused by ice and snow storm which occurred on December 31, 1978 through January 1, 1979 and January 13, 1979. Applications will be processed under the provisions of Pub. L. 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on May 21, 1979, and for economic injury until the close of business on December 21, 1979 at:

Small Business Administration, District Office, 477 Michigan Avenue, McNamara Bldg., Detroit, Michigan 48226.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 21, 1979.

WILLIAM H. MAUK, Jr.,
*Acting Administrator.*

[FR Doc. 79-9361 Filed 3-27-79; 8:45 am]

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**[8025-01-M]**

[License No. 09/09-5230]

**MINORITY ENTERPRISE FUNDING, INC.**

**Issuance of a License To Operate as a Small Business Investment Company**

On January 11, 1979, a notice was published in the FEDERAL REGISTER (44 FR 2445), stating that Minority Enterprise Funding, Inc., located at 4061 East Whittier Blvd., Los Angeles, California 90023, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1978) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on January 26, 1979, and no comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 09/09-5230 to Minority Enterprise Funding, Inc.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 22, 1979.

PETER F. MCNEISH,
*Deputy Associate Administrator for Investment.*

[FR Doc. 79-9355 Filed 3-27-79; 8:45 am]

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**[8025-01-M]**

[Declaration of Disaster Loan Area No. 1594]

**MISSOURI**

**Declaration of Disaster Loan Area**

Andrew County and adjacent counties within the State of Missouri constitute a disaster area as a result of damage caused by flooding and ice jamming which occurred on March 3, 1979, through March 4, 1979. Applications will be processed under the provisions of Pub. L. 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on May 21, 1979, and for ecomonic injury until the close of business on December 21, 1979, at:

Small Business Administration, District Office, Mercantile Tower, Suite 2500, One Mercantile Tower, St. Louis, Missouri 63101.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 21, 1979.

WILLIAM H. MAUK, Jr.,
*Acting Administrator.*

[FR Doc. 79-9362 Filed 3-27-79; 8:45 am]

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**[8025-01-M]**

[Declaration of Disaster Loan Area NO. 1599]

**NEW YORK**

**Declaration of Disaster Loan Area**

Broome, Cortland, Montgomery, Oneida and Tioga Counties and adjacent counties within the State of New York constitute a disaster area as a result of damage caused by flooding which occurred on March 5-9, 1979. Applications will be processed under the provisions of Pub. L. 94-305. Interest rate is 7⅜ percent. Eligible persons firms and organizations may file applications for loans for physicial damage until the close of business on May 17, 1979, and for economic injury until the close of business on December 17, 1979, at:

Small Business Administration, District Office, 26, Federal Plaza, Room 3100, New York, New York 10007.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 20, 1979.

WILLIAM H. MAUK Jr.,
*Acting Administrator.*

[FR Doc. 79-9363 Filed 3-27-79; 8:45 am]

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**[8025-01-M]**

[License No. 05/05-5133]

**NORTHERN CAPITAL CORP.**

**Issuance of a License to Operate as a Small Business Investment Company**

On February 7, 1979, a notice was published in the FEDERAL REGISTER (44 FR 7857), stating that Northern Capital Corporation, located at 1017 Walnut Street, Batavia, Illinois 60510, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1978) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on February 22, 1979, and no comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 05/05-5133 to Northern Capital Corporation.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 21, 1979.

PETER F. MCNEISH,
*Deputy Associate Administrator for Investment.*

[FR Doc. 79-9356 Filed 3-27-79; 8:45 am]

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**[8025-01-M]**

[License No. 02/02-0324]

**PIONEER INVESTORS CORP.**

**Filing of Application for Approval of Conflict of Interest Transaction**

Notice is hereby given that Pioneers Investors Corp. (Pioneer), One Battery Park Plaza, New York, New York 10004, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application pursuant to § 107.1004(b) of the SBA Rules and Regulations governing small business investment companies (13 CFR 107.1004 (1978)), for an exemption from the provisions of the conflict of interest regulations.

The exemption, if granted, will permit Pioneer to purchase $400,000 of the common stock of Grassland Resources Inc. (GRI), P.O. Box 1596 Santa Fe, New Mexico 87501. The purchase will be part of $1.5 million stock offering by GRI.

GRI is considered to be "Associate" of the Licensee as defined by § 107.3 of the Regulations because of the prior financing within the past year by a partnership owned by two directors of the Licensee. This transaction, therefore, will require an exemption pursuant to § 107.1004(b)(1) of the Regulations.

Notice is hereby given that any person may, no later than April 12, 1979, submit written comments on the proposed transaction to: Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, N. W., Washington, D. C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalogue of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies).

Dated: March 20, 1979.

PETER F. MCNEISH,
*Deputy Associate Administrator for Finance and Investment.*

[FR Doc. 79-9357 Filed 3-27-79; 8:45 am]

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[8025-01-M]

REGION I ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Concord, New Hampshire will hold a public meeting at 10:00 a.m., on Friday, April 20, 1979, in the conference room No. 418 on the fourth floor of the Concord Federal Building, 55 Pleasant Street, Concord, New Hampshire, to discuss such business as may be presented by members, the staff of the Small Business Administration, or others attending.

For further information, write or call Bert Teague, District Director, U.S. Small Business Administration, 55 Pleasant Street, Concord, New Hampshire 03301—(603)224-5588.

Dated: March 21, 1979.

K DREW,
*Deputy Advocate for Advisory Councils.*

[FR Doc. 79-9364 Filed 3-27-79; 8:45 am]

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[8025-01-M]

REGION I ADVISORY COUNCIL MEETING

Cancellation of Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Providence, Rhode Island, meeting scheduled for 12:00 Noon, on Thursday, April 19, 1979, at the Governor Dyer's Buffet House, Providence, Rhode Island, has been cancelled.

For further information, write or call Charles J. Fogarty, District Director, U.S. Small Business Administration, 57 Eddy Street, Providence, Rhode Island 02903 (401) 528-4580.

Dated: March 22, 1979.

K DREW,
*Deputy Advocate for Advisory Councils.*

[FR Doc. 79-9365 Filed 3-27-79; 8:45 am]

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[8025-01-M]

REGION I ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Augusta, Maine, will hold a public meeting at 10:00 a.m., on Friday, April 27, 1979, in Room 201, Federal Building, 40 Western Avenue, Augusta, Maine, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Thomas A. McGillicuddy, District Director, U.S. Small Business Administration, Federal Building, 40 Western Avenue, Augusta, Maine 04330—(207) 622-6171—Ext. 225.

Dated: March 22, 1979.

K DREW,
*Deputy Advocate for Advisory Councils.*

[FR Doc. 79-9366 Filed 3-27-79; 8:45 am]

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[8025-01-M]

REGION I ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, Vermont, will hold a public meeting at 9:30 a.m., on Wednesday, May 2, 1979, in the Federal Court Room of the Federal Building, Third Floor, 87 State Street, Montpelier, Vermont, to discuss such business as may be presented by members, staff of the Small Business Administration, or others attending.

For further information, write or call David C. Emery, District Director, U.S. Small Business Administration, 87 State Street, P.O. Box 605, Federal Building, Montpelier, Vermont 05602—(802) 229-0538.

Dated: March 22, 1979.

K DREW,
*Deputy Advocate for Advisory Councils.*

[FR Doc. 79-9367 Filed 3-27-79; 8:45 am]

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[8025-01-M]

REGION II ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region II Advisory Council, located in the geographical area of Newark, New Jersey, will hold a public meeting at 9:30 a.m., on Wednesday, April 25, 1979, at the Sheraton Garden, Route 537 & Gibson Place, Freehold, New Jersey, to discuss such business as may be presented by members and the staff of the Small Business Administration, or others attending.

For further information, write or call Andrew P. Lynch, District Director, U.S. Small Business Administration, 970 Broad Street, Newark, New Jersey 07102—(201) 645-3580.

Dated: March 21, 1979.

K DREW,
*Deputy Advocate for Advisory Councils.*

[FR Doc. 79-9368 Filed 3-27-79; 8:45 am]

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[8025-01-M]

REGION III ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Philadelphia, Pennsylvania, will hold a public meeting at 9:30 a.m., on Thursday, May 3, 1979, at the Holiday Inn, City Line and Monument Road, Philadelphia, Pennsylvania, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Raleigh Jones, Acting District Director, U.S. Small Business Administration, Philadelphia District Office, One Bala Cynwyd Plaza, Suite 400-East Lobby, Bala Cynwyd, Pennsylvania 19004—(215) 596-5801.

K DREW,
*Deputy Advocate for Advisory Councils.*

Dated: March 22, 1979.

[FR Doc-9369 Filed 3-27-79; 8:45 am]

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[8025-01-M]

REGION IV ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Atlanta, Georgia, will hold a public meeting from 9:00 a.m. to 2:00 p.m., on Friday, May 4, 1979, in the Dean's Conference Room, School of Business, University of Georgia, Athens, Georgia, to discuss such business as may be presented by members and the staff of the Small Business Administrator or others attending.

For further information, write or call Clarence B. Barnes, District Director, U.S. Small Business Administration Peachtree-25th Complex, 1720 Peachtree Road, N.W., 6th Floor, Atlanta, Georgia 30309—(404) 257-4749.

Dated: March 22, 1979.

K DREW,
*Deputy Advocate for Advisory Councils.*

[FR Doc. 79-9370 Filed 3-27-79; 8:45 am]

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[8025-01-M]

REGION IV ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Charlotte, North Carolina, will hold a public meeting at 2:00 p.m. on Wednesday, April 25, 1979, and Thursday, April 26, 1979, at 9:00 a.m., at the Center for

Continuing Education, Appalachian State University, Boone, North Carolina, to discuss such business as may be presented by members of the staff of the Small Business Administration or others attending.

For further information, write or call George W. Marschall, District Director, U.S. Small Business Administration, 230 South Tryon Street, Suite 700, Charlotte, North Carolina 28202—(704) 371-6561.

Dated: March 22, 1979.

K DREW,
*Deputy Advocate for Advisory Councils.*

[FR Doc. 79-9371 Filed 3-27-79; 8:45 am]

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[8025-01-M]

**REGION VIII ADVISORY COUNCIL MEETING**

**Public Meeting**

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Salt Lake City, Utah, will hold a public meeting at 9:00 a.m., on Friday, April 27, 1979, at the Fort Douglas Hidden Valley Country Club—#2 Medical Drive (near University Medical Center) Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Clair R. Hopkins, District Director, U.S. Small Business Administration, 2237 Federal Building, 125 South State Street, Salt Lake City, Utah 84138—(801) 524-5804.

Dated: March 22, 1979.

K DREW,
*Deputy Advocate for Advisory Councils.*

[FR Doc. 79-9372 Filed 3-27-79; 8:45 am]

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[8025-01-M]

**REGION VIII ADVISORY COUNCIL MEETING**

**Public Meeting**

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Sioux Falls, South Dakota, will hold a public meeting on Friday, April 27, 1979, from 9:00 a.m. to 3:30 p.m., at the Downtown Holiday Inn, 100 West 8th, Sioux Falls, South Dakota, to discuss such business as may be presented by members, the staff of the Small Business Administration and others present.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, 402 National Bank of South Dakota Building, Sioux Falls, South Dakota 57102—(605) 336-2980—Ext. 231.

Dated: March 22, 1979.

K DREW,
*Deputy Advocate for Advisory Councils.*

[FR Doc. 79-9373 Filed 3-27-79; 8:45 am]

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[4710-02-M]

## DEPARTMENT OF STATE

**Agency for International Development**

[Redelegation of Authority No. 99.1.73, Amdt. No. 3]

**MISSION DIRECTOR, INDIA**

**Redelegation of Authority Regarding Contracting Functions**

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority 99.1.73 dated September 19, 1975 (40 FR 45451) as amended on August 2, 1976 (41 FR 33312) and January 9, 1979 (14 FR 2050) as follows:

The first paragraph is hereby amended to reflect the following changes:

a. "Redelegation of Authority No. 99.1.51" is deleted and "Redelegation of Authority 99.1.73" inserted in lieu thereof.

b. The designation "AID Affairs Officer, India" is deleted and "Mission Director USAID, India" inserted in lieu thereof.

Except as provided herein, the Redel >egation of Authority remains unchanged and countinues in full force and effect.

Dated: March 16, 1979.

HUGH L. DWELLEY,
*Director, Office of Contract Management.*

[FR Doc. 79-9299 Filed 3-27-79; 8:45 am]

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[4910-22-M]

## DEPARTMENT OF TRANSPORTATION

**Federal Highway Administration**

[Docket No. 78-15T]

**IN THE MATTER OF THE TOLLS ON BRIDGES OWNED BY THE DELAWARE RIVER PORT AUTHORITY**

**Order of the Administrator**

Following complaints received by the Administrator concerning the February 1, 1978, toll increase on bridges owned by the Delaware River Port Authority (DRPA), the Administrator, by Order dated April 20, 1978, established an Investigation Team pursuant to the Federal Highway Administration's Bridge Toll Procedural Rules (49 CFR 310). The Team submitted its final report on November 15, 1978, and recommended that no formal administrative hearing be held and concluded that the tolls imposed by DRPA on February 1, 1978, are reasonable and just.

The complainants are the Automobile Club of Southern New Jersey (Auto Club), Mr. Henry Ward, Mr. Harry Wilson, Mr. John T. Chesluk, and Mr. David Creskoff.

The matter is now before the Administrator to determine whether, from the record compiled by the Investigation Team, a formal hearing is required or, if not, whether the tolls imposed by the DRPA are reasonable and just.

The bridges in question are the Benjamin Franklin, Walt Whitman, Betsy Ross, and Commodore Perry, crossing the Delaware River between New Jersey and Philadephia. The DRPA is an agency created by the Interstate Compact entered into by the States of New Jersey and Pennsylvania. It owns and operates the four bridges, a rail mass transit facility (PATCO), and a World Trade Division for the promotion of trade of the Philadelphia Port. The old and new toll schedules are set forth in Attachment 1 to this opinion. As can be seen, the tolls in five categories of vehicles were raised: (1) Passenger automobiles and trucks less than 7,000 pounds, raised from 55 cents to 60 cents; (2) automobiles and trucks over 7,000 pounds, from 85 to 90 cents; (3) motorcycles, from 35 cents to 40 cents; (4) trucks, 2 or more axles over 7,000 pounds per axle, from 75 cents to 85 cents; and (5) commuter decals, good for 30 days reduced from $12 to $6 with the individual crossing rate raised from 5 cents to 25 cents.

The Team, in conducting its investigation, compiled a voluminous record, consisting of interrogatories and answers thereto and prepared a draft Investigation Report which was submitted to all parties on September 5, 1978. An opportunity was given to the parties to comment on the draft Investigation Report and an informal conference was held with the parties on September 13, 1978, to review the comments on the draft Investigation Report.

Further, in the submission of the final report by the Investigation Team on November 15, 1978, the parties were allowed 20 days to submit alternative recommendations and an additional 10 days for responding to any submitted recommendations.

NECESSITY FOR FULL HEARING

First, we consider the question of necessity for a full hearing. The test in

determining whether a hearing is necessary is whether there are any material factual issues in dispute. The Team's Report amply covers this question and the Administrator accepts the recommendation that no hearing be held. In a sense, from the record compiled, the Team has conducted an administrative hearing.

One of the complainants, the Auto Club, submitted a statement on December 14, 1978, requesting a formal hearing at which it stated that its case will be proven in detail. DRPA, by its attorney, suggests that the submission of the Auto Club be disregarded for the reason that it was not a timely submission and that the statements therein are merely "a rephrasing of past, frequently-made statements, which were given consideration by the Investigation Team."

The Auto Club's submission of December 15 does not, in the Administrator's opinion, present any new factual issues that have not been raised and considered during the investigation process. In fact, the submission appears to be a call for the Administrator to require in some way that DRPA secure operating subsidies for PATCO, the rapid transit line owned by DRPA, from sources other than bridge tolls. DRPA presented adequate evidence of its efforts to obtain capital and operating subsidy funds from both State and Federal Governments. (See answer to Interrogatory 27, with Exhibits "A" through "QQ.") This evidence has not been refuted by the Auto Club's submission of December 14, 1978. Therefore, the Administrator hereby determines that this issue has been adequately presented thereon.

### The Test to be Applied to Reasonable and Just Tolls

The second determination to be made by the Administrator is whether the toll schedule imposed by DRPA on February 1, 1978, is a reasonable and just toll. On this question, the Administrator concludes that the tolls are reasonable and just, and this determination is made based upon the findings of the Investigation Team in the November 15, 1978, report and the record compiled thereon. The Administrator hereby adopts the report as his own, except those parts dealing with the test to be applied in finding a reasonable and just toll and particularly the rate of return found to be fair for DRPA. The Administrator's conclusion on these matters follows.

The tolls on the bridges owned by DRPA are regulated under section 503 of the General Bridge Act of 1946, 33 U.S.C. 526. That section states that the tolls shall be reasonable and just and gives the Secretary of Transportation (delegated to the FHWA, 49 CFR 1.48(i)), the authority to prescribe reasonable rates, 66 Stat. 746, 747.

The Investigation Team used the recent toll procedure involving the Port Authority of New York and New Jersey (FHWA Docket No. 76-9) in evaluating the toll increase of DRPA. The Administrator's decisions (August 9, 1977, and November 7, 1977) in that case identified three major factors to be considered in toll rate determinations: the financial need of the bridge owner, fairness to bridge user, and the public interest. The Administrator's Order in the case was upheld by the U.S. District Court (*Automobile Club of New York v. Cox*, 444 F. Supp. 174 (S.D. N.Y. 1978) and subsequent to the Investigation Team report of November 15, 1978, in this DRPA case, upheld by Court of Appeals, 2d Cir., No. 78-6054 on January 12, 1979.

The Administrator on several occasions previously has considered the toll schedules of DRPA, the latest by an Order of May 19, 1975. This Order found the toll schedule of DRPA to be unreasonable and instituted reduced tolls. The Order was litigated in court and finally upheld. *DRPA v. Tiemann*, 403 F. Supp. 1117 (D.N.J. 1975), *vacated and remanded*, 531 F. 2d 699 (3d Cir. 1976), *on remand*, 421 F. Supp. 142 (D.N.J. 1976). The Administrator's Order was limited in effet to 2 years, which expired December 1, 1977. Hence, on February 1, 1978, the DRPA again increased the tolls which are the subject of the current proceeding.

The Administrator's Order of May 19, 1975, declared that a reasonable and just toll schedule should generate a return sufficient to support DRPA's total activities, including the operation of the bridges, the PATCO rapid transmit system, the World Trade Division, and provide sufficient coverage for financings. It was this criteria that was upheld by the court. The court also accepted the Administrator's judgment that "within the definition of reasonable and just, the criteria of national interest and public policy must, at this time, also be inserted. The national interest and public policy in this case being the conservation of fuel."

The Investigation Team says, now, that it is appropriate to use the criteria developed in the New York case since it represents the latest thinking of the Administrator and "provides a further refinement of the principles set out in the last DRPA case." This pronouncement by the Team is a matter of judgment on its part which the Administrator must examine somewhat more closely. Indeed, one aspect of the criteria used in the New York case—financial need of the bridge owner—is determined by establishing a rate base and a fair rate of return thereon. This method was utilized in another bridge toll case, *City of Burlington v. Turner*, 136 F. Supp. 594, (S.D. Iowa 1972) modified and affirmed, 471 F. 2d 120 (8 Cir. 1973) which said that "Congress intended the term [reasonable and just] to have a certain flexibility so that it might, in the discretion of the Administrator, be tailored to varying, multi-factorial circumstances." *Id.* at 604. The Court of Appeals modified the District Court's decision and remanded the matter to the Administrator with a direction that his definition of "reasonable and just" must include a reasonable return on invested capital.

On the other hand, the Administrator must take note of the fact, that the District Court of New Jersey, in the first DRPA opinion, *DRPA v. Tiemann*, 403 F. Supp. 1117 (1975), at p. 1124, after discussing the term "reasonable and just," cites several cases defining the term as applied to regulated private utilities, declares that those principles were fashioned for private, profit-oriented utilities so as to set rates which allow them to attract capital and compensate investors. The court further said that the DRPA is not such a utility, but rather it is a public agency. "Therefore, the DRPA has no right to profit from public use of its facilities." To support this conclusion, the court quotes at length from the legislative history when Congress gave its consent to the compact creating DRPA which expresses concern that the Authority not be allowed to retain excess revenue which would have the effect of watering its capital.

Hence, it would appear that the Investigation Team, in using the fair rate of return procedure employed in the New York case, runs counter to the court's approach as set forth above, and the Administrator feels constrained to reject such method. That is not to say that the method is not useful, but it cannot be permitted to become such a dominant factor as perceived here.

The fallacy of using the fair rate of return method in this case can be seen in looking at the facts of the case. The Team, for example, declares that a 6.5 rate of return on investments "would allow DRPA to compete in the capital market by encouraging investor confidence." Team Report, p. 8. Two things must be said about this statement:

(1) Accepting a 6.5 rate of return in this case as fair has the effect, for all practicable purposes of foreclosing any future successful complaints of toll increases. The Team indicates that under this toll schedule, DRPA will realize a rate of return ranging from 2.1 to 2.5 for the years 1979-1982 (after deduction of World Trade expenses). Attachment 5 to the Team's Report. Theoretically then, DRPA could raise

its tolls substantially to achieve the 6.5 rate of return. Such a return on its unamortized investment for the year 1980 would yield DRPA an additional $19 million ($448,658,000 x 6.5 = $29,162,000 vs. $10,355,000 net revenue under the current toll schedule). (Attachment 5, Team's Report.) There is nothing in the Team's report, record or DRPA assertions to support a need for this much additional revenue. Perhaps the Team was guided to a large extent by the Administrator's opinion in the New York case which accepted as fair a 6.5 rate of return. But in that case, the record advocated a rate ranging from 5.03 percent to a high of 10 percent, and that actual and projected rates of return ranged from 4.0 percent in 1976 to 2.6 percent in 1981.

(2) The record does not show that DRPA is planning to issue any bonds in the near future which would compel it to enter the competitive financing world. The DRPA states, in response to the Team's Interrogatory No. 3, that it is estimated that the balance in the Construction Fund (proceeds from bonds) will be sufficient to pay for its construction projects and no additional bonds should be needed. This obviates the necessity to attract investment captital. Funds for capital improvements, etc., come from the General Fund after payment of operating expenses and debt service.

The Administrator, in accepting the 6.5 rate as fair in the New York case, cautioned that since it was possible for the New York and New Jersey Port Authority to increase its tolls beyond the present limits without exceeding a 6.5 percent rate of return, the need for a toll to produce revenues sufficient to maintain this rate of return is not paramount in the ultimate determination of whether a toll is reasonable and just. The Administrator said, "Thus any further toll increase would have to be assessed in the light of the other factors mentioned in this decision." Op. August 9, 1977, pp. 18 and 19. The Team, in recommending the 6.5 percent in the instant case, did not insert such caveat, but merely concludes that the 6.5 percent rate would allow DRPA to compete in the capital market.

The Investigation Team's choice of the 6.5 percent rate of return was based solely on Attachment 4 to the Team Report. This attachment is a statement by an FHWA economist setting forth a brief economic analysis of the fair rate of return on total assets involved in transportation for DRPA. Without questioning the accuracy of method and conclusions contained therein, the document can only be accepted as showing a method of determining DRPA's fair rate of return. In view of the fact that the report does not reconcile the reason for accepting a 6.5 rate of return when the toll schedule yields less than 2.5, the Administrator can give little credence to Attachment No. 4, mainly because it appears unneeded. This report would have been just as valid by concluding that the 2.4 rate of return is not excessive.

The Administrator therefore makes no determination as to what is a fair rate of return, but merely concludes that the rate set out in Attachment 6 to the Team's Report (2.1—2.5 after deduction of World Trade expenses) appears to be reasonable in view of this record, and reiterates that a fair rate of return on investment is only one facet in the determination of the financial needs of the bridge owner. In DRPA's case, the financial needs can be met by a toll schedule which will generate revenues sufficient to achieve a return which will support its total activities, including the operation of the bridges, the PATCO rapid transit system and the World Trade Division, and provide sufficient coverage for financings. "The Authority's ability to maintain its operations and meet its bond commitments are essential aspects of the concept of reasonable and just tolls. Equally important are the relevant public interests, including public policy favoring the conservation of fuel and the aforesaid interest of the tollpaying public in reasonable and just tolls." *DRPA* v. *Tiemann*, 403 F. Supp. 1117 at 1125 (1975). The toll schedule of February 1, 1978, meets this test.

### Need for Toll Increase

The Team's Report is not clear in establishing the need for the toll increase which will yield an estimated additional $3 to $4 million per year in toll revenues. Attachment 6 to the Report refers to DRPA allegations of "losses" amounting to $1 million in 1976 and $2 million in 1977, and projections to $7.2 million in 1978. These deficits have the effect of reducing the Authority's equity balances (reserves) and Figure 4 of Attachment 6 indicates that without the toll increase the equity balance would be $4.0 million in 1979 and minus $4.3 million in 1980. It is further said that as a matter of policy, DRPA's Board of Commissioners believes that the reserves should not be allowed to drop below $10 million, which is considered a minimum safe level to provide for major contingencies, and, in particular, for major repairs and modernization of Authority-owned facilities. Examples of major repairs are the total replacement of all suspended cables on the Ben Franklin Bridge, which must be done over the next 3 years as a cost of $6.8 million, and replacement of deteriorated finger-dam joints on the same bridge at an estimated cost of $350,000. Because of the age of the two older bridges, unforeseeable major repairs and replacement of this type are anticipated to occur in the future. An example of the modernization costs which will be incurred is the Authority's share of the costs of ramps to connect the Walt Whitman Bridge to the new North-South Freeway (I-76) in New Jersey, estimated at $4 million payable over the period of 1979, 1980, and 1981.

These assertions appear to be accepted unqualifiedly by the Team and undisputed by the complainants, except in one respect The Auto Club contends that the reserves should be exhaused before tolls are raised which might, in the Club's opinion, have the effect of forcing DRPA to try harder for State and Federal subsidies for the PATCO deficits. With this position, the Administrator cannot agree. To require the DRPA to exhaust its reserves to take care of apparent reasonable long-range captial maintenance expenses on the rare chance of forcing the State or Federal Governments to come forward with additional funds to subsidize the PATCO deficits is a gamble that the Administrator cannot ask DRPA to take. The maintenance of a healthy reserve for a financial operation of this size appears to be a necessity to take care of unforeseen contingencies. The Administrator, at this time, finds reasonable the DRPA's policy of maintaining a reserve sufficient to take care of such large capital expenditures.

### Conclusion

For the reasons stated herein and the Investigation Team's Report, the Administrator finds that there are no material factual issues outstanding which would necessitate a full administrative hearing, and further that the toll schedule adopted by DRPA on February 1, 1978, is reasonable and just. Therefore, the complaints filed by the Auto Club, Mr. Henry Ward, Mr. Harry Wilson, Mr. John T. Chesluk, and Mr. David Creskoff are hereby dismissed.

In accordance with the Toll Bridge Procedural Rules, 49 CFR 310.16, it is the intention of the Administrator to limit the effect of his final Order to a period of 3 years, measured from February 1, 1978, the date the new toll rates went into effect.

Within 20 days after the date of this Order, any party may petition the Administrator for reconsideration of this Order, and after due consideration of such petitions, the Administrator will take appropriate action.

Issued this 20th day of March, 1979.

Karl S. Bowers,
*Federal Highway Administrator.*

ATTACHMENT 1 TO THE ADMINISTRATOR'S ORDER

DELAWARE RIVER PORT AUTHORITY

Toll schedule for Benjamin Franklin Bridge, Betsy Ross Bridge, Walt Whitman Bridge, Commodore Barry Bridge

| Type passage | Previous rate | Feb. 1, 1978, rate |
|---|---|---|
| Passenger Automobiles and Trucks to and including 7,000 lbs gross wt. | $.55 | $.60 |
| Passenger Automobiles and Trucks to and including 7,000 lbs gross wt.: | | |
| With one axle trailers | .85 | .90 |
| Each additional trailer axle | .30 | .30 |
| Motorcycle | .35 | .40 |
| Buses: | | |
| 2 axle | .80 | .80 |
| 3 axle | 1.20 | 1.20 |
| Trucks—2 or more axles, 7,001 lbs or more gross wt., per axle | .75 | .85 |
| Commutation Rate for Passenger Automobiles and 2-Axle Trucks up to and including 7,000 lbs gross wt.: | | |
| Decal valid for 30 days after date of purchase | 12.00 | 6.00 |
| Plus cash per crossing | .05 | .25 |
| Carpool Commutation rate for Registered Passenger Automobiles only, occupied by three (3) or more persons (including driver)—accepted at all times—transferrable book of 40 tickets valid until the end of the calendar months following the month in which purchased | 4.00 | 4.00 |
| Special Permits (Non-Commercial Motor Vehicles 60,001 lbs gross wt. and upward, Commercial Vehicles operating under official permit): | | |
| Permit Fee | 10.00 | 10.00 |
| First 40,000 lbs | 1.50 | 1.50 |
| Ea. add'l 2,000 lbs or fraction thereof | .25 | .25 |
| Bus and Truck Scrip (25 crossings) | .80 | .80 |
| | 1.20 | 1.20 |
| | 1.50 | 1.70 |
| | 2.25 | 2.55 |
| | 3.00 | 3.40 |
| | 3.75 | 4.25 |

DEFINITION AND RESTRICTIONS

Commutation Decal valid ONLY in EXACT-CHANGE automatic toll lanes and not valid in manned lanes. Motorist using a manned toll lane with a valid Decal will be charged $.60. Decal is non-transferrable.

Carpool Commutation Ticket accepted in manned lane only and not valid in automatic lanes. A $.60 toll will be levied if there are less than three persons in a car. Tickets detached from book will not be honored for passage. Unused tickets will not be redeemable or refundable.

Bus and Truck Scrip shall be good and valid until used. Toll Scrip in excess of the required toll may be tendered in payment; however, no refund of the excess shall be made. Toll Scrip in denominations of less than the fare and the balance in cash may be tendered in payment of the fare. Toll Scrip may not be used to purchase other reduced rate fares. Toll Scrip may be purchased by mail or in person at the Toll Accounting Offices located in the Administration Building for each of the Bridges.

Toll Scrip will not be accepted in payment of a Special Permit.

Cash only will be accepted in payment for Commutation Decals and Carpool Commutation Tickets.

[FR Doc. 79-9291 Filed 3-27-79; 8:45 am]

[4810-40-M]

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### 9 PERCENT TREASURY BONDS OF 1994

MARCH 23, 1979.

[Dept. CIRCULAR Public Debt Series—No. 7-79]

1. INVITATION FOR TENDERS

1. 1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $1,500,000,000 of United States securities, designated 9% Treasury Bonds of 1994 (CUSIP No. 912810 CF 3). The securities will be sold at auction, with bidding on the basis of price. Payment will be required at the bid price of each accepted tender in the manner described below. Additional amounts of these securities may be issued for cash to Federal Reserve Banks, as agents of foreign and international monetary authorities.

2. DESCRIPTION OF SECURITIES

2. 1. The securities offered will be identical to the 9% Treasury Bonds of 1994 (CUSIP No. 912810 CF 3) issued under Department of the Treasury Circular, Public Debt Series-No. 31-78, dated December 28, 1978, except that the interest will accrue from April 5, 1979, and payment for the securities will be calculated on the basis of the auction price determined in accordance with this circular, plus accrued interest from January 11, 1979. with this exception, the securities are as described in the following excerpt from the above circular:

"2. 1. The securities will be dated January 11, 1979, and will bear interest [1] from that date, payable on a semiannual basis on August 15, 1979, and each subsequent 6 months on February 15 and August 15, until the principal becomes payable. They will mature February 15, 1994, and will not be subject to call for redemption prior to maturity.

"2. 2. the income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

"2. 3. The securities will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

"2. 4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000 $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

"2. 5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date."

3. SALE PROCEDURES

3. 1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D. C. 20226, up to 1:30 p.m., Eastern Standard time, Thursday, March 29, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, March 28, 1979.

3. 2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the price offered, expressed on the basis of 100 with two decimals, e.g., 100.00. Common fractions may not be used. Only tenders at a price more than the original issue discount limit of 96.50 will be accepted. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified price. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3. 3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3. 4. Tenders will be received without deposit for their own account from

[1] On January 5, 1979, the Secretary of the Treasury announced that the interest rate on the bonds would be 9 percent per annum.

commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3. 5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and price range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the highest prices, through successively lower prices to the extent required to attain the amount offered. Tenders at the lowest accepted price will be prorated if necessary. successful competitive bidders will be required to pay the price that they bid. Those submitting noncompetitive tenders will pay the weighted average price in two decimals of accepted competitive tenders. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the price. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the weighted average price of accepted competitive tenders.

3. 6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

### 4. Reservations

4. 1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

### 5. Payment and Delivery

5. 1. Settlement for allotted securities must be made or completed on or before Thursday, April 5, 1979, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accrued interest from January 11, 1979, to April 5, 1979, in the amount of $20.74210 per $1,000 of securities allotted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Tuesday, April 3, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Monday, April 2, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5. 2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5. 3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer indentifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5. 4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5. 5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

### 6. General Provisions

6. 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6. 2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

SUPPLEMENTARY STATEMENT: The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,
*Fiscal Assistant Secretary.*

[FR Doc. 79-9294 Filed 3-23-79; 3:06 pm]

[6035-01-M]

## INTERSTATE COMMERCE COMMISSION

### AGRICULTURAL COOPERATIVE NOTICE TO THE COMMISSION OF INTENT TO PERFORM INTERSTATE TRANSPORTATION FOR CERTAIN NONMEMBERS

MARCH 23, 1979.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change. The name and address of the agricultural cooperative, the location of the records, and the name and address of the person to whom inquiries and correspondence should be addressed, are published here for interested persons. Submission of information that could have bearing upon the propriety of a filing should be directed to the Commission's Bureau of Investigations and Enforcement, Washington, D.C. 20423. The Notices are in a central file and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Cross Country Farming Cooperative, Inc. Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Pine Island Turnpike, Pine Island, New York 10969. Principal Mailing Address (Street No., City, State, and Zip Code): c/o Arnold Ellerin, 41 Dolson Avenue, Middletown, New York 10940. Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): Kalter & Gottlieb, Esq., Church Street, Woodbourne, New York 12788. Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address).

(2) North State Farm Lines, Inc. Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Post Office Box 690, Hawthorne, Florida 32640. Principal Mailing Address (Street No., City, State and Zip Code): Route 3 Box 28, Hawthorne, Florida 32640. Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): Robert J. Spence, P.O. Box 690, Hawthorne, Florida 32640. Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address).

(3) Tierras Unidas, Inc. Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: P.O. Box 10790, Santa Ana, California 92711. Principal Mailing Address (Street No., City, State and Zip Code): 2201 E. 4th Street, Santa Ana, California 92705. Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): Dale Wells, P.O. Box 10790, Santa Ana, California 92711. Person To Whom Inquiries and Correspondence Should Be Addressed.

H. G. HOMME, Jr.,
*Secretary.*

[FR Doc. 79-9349 Filed 3-27-79; 8:45 am]

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[7035-01-M]

[Notice No. 54]

### ASSIGNMENT OF HEARINGS

MARCH 23, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No. MCC 10143 O.N.C. Freight Systems, Inc., v Herbert D. Needel DBA Tucson Package Delivery, now assigned for hearing on April 3, 1979, at Tucson, Arizona and will be held in Room 4T, U.S. Federal Building, 301 West Congress.

No. MC 71593 (Sub-No. 10F), Forwarders Transport, Inc., now assigned for hearing on April 17, 1979, at New York, New York and will be held in room D-22206, Federal Building, 26 Federal Plaza.

No. MC 93649 (Sub-No. 22F), Gaines Motor Lines, Inc., now assigned for hearing on April 18, 1979, at New York, New York and will be held in Room D-22206, Federal Building, 26 Federal Plaza.

No. MC 107295 (Sub-No. 873F), Pre-Fab Transit Company, now assigned for hearing on April 23, 1979, at Boston, Massachusetts and will be held on Fifth Floor, 150 Causeway.

No. MC 142887 (Sub-No. 1), New England Bulk Terminal, Inc., now assigned for hearing on April 24, 1979, at Boston, Massachusetts, and will be held on the Fifth Floor, 150 Causeway.

No. MC 68909 (Sub-no. 8F), Mullen Bros., of North Adams, Mass., Downing Inc., now assigned for hearing on April 25, 1979, at Boston, Massachusetts and will be held on the Fifth Floor, 150 Causeway.

No. MC 114569 (Sub-No. 236F), Shaffer Trucking, Inc., now assigned for hearing on April 24, 1979, (2 days), at Tampa, Fl. in a hearing room to be later designated.

No. MC-C-10300 Fogarty Van Lines, Inc.—Investigation And Revocation of Certificates, now assigned for hearing on April 26, 1979, (2 days), at Tampa, Fl., in a hearing room t be later designated.

No. MC 11746 (Sub-No. 58F), Newman and Pemberton Corporation, now assigned for continued hearing on April 10, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

H. G. HOMME, Jr.,
*Secretary.*

[FR Doc. 79-9350 Filed 3-27-79; 8:45 am]

# sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) U.S.C. 552b(e)(3).

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[6714-01-M]

1

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:30 p.m. on March 22, 1979, the Corporation's Board of Directors met by telephone conference call to consider certain matters which it determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac, and concurred in by Director John G. Heimann, (Comptroller of the Currency), required its consideration on less than seven days' notice to the public.

The following matters were considered in open session:

Memorandum proposing that the Corporation process national bank call reports and trust asset surveys.

Memorandum proposing the negotiation of a contract for the performance of a study as to the feasibility of the Corporation's providing computer support to the Office of the Comptroller of the Currency.

The Board then considered certain personnedl actions in closed session, pursuant to subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)), after determining, on motion of Director Jophn G. Heimann (Comptroller of the Currency), seconded by Chairman Irvine H. Sprague, and concurred in by Director William M. Isaac (Appointive), that the public interest did not require consideration of the matters in a meeting open to public observation.

The Board further determined that no earlier notice of the meeting was practicable.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Acting Executive Secretary of the Corporation, at 202-389-4425.

Dated: March 23, 1979.

FEDERAL DEPOSIT INSURANCE CORPORATION,
HOYLE L. ROBINSON,
*Acting Executive Secretary.*

[S-599-79 Filed 3-26-79; 10:45 am]

[7545-01-M]

2

NATIONAL LABOR RELATIONS BOARD.

TIME AND DATE: 11:30 a.m., Wednesday, April 4, 1979.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Promotion of staff attorneys in view of the "demise" of Whitten rider.

CONTACT PERSON FOR MORE INFORMATION:

William A. Lubbers, Executive Secretary, Washington D.C. 20570, Telephone, 202-254-9430.

Dated, Washington, D.C., March 26, 1979.

By direction of the Board:

NATIONAL LABOR RELATIONS BOARD,
GEORGE A. LEET,
*Associate Executive Secretary.*

[S-600-79 Filed 2-26-79; 11:15 am]

[7710-12-M]

3

POSTAL SERVICE.

BOARD OF GOVERNORS

Notice of 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 a meeting at 9:00 A.M. on Tuesday, April 3, 1979, at the Sectional Center, 21st South and Redwood Road, Rooms 210-215, Salt Lake City, Utah. The 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, Louis A. Cox, at (202) 245-4632.

AGENDA

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.

(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)

3. Report of the Regional Postmaster General.

(Mr. Morris, Regional Postmaster General, will report on postal conditions in the Western Region.)

4. Recommended Decision of the Postal Rate Commission on the Domestic Mail Classification Schedule.

(The Governors will consider the Recommended Decision of November 29, 1978, concerning the Proper Scope and Extent of the Mail Classification Schedule (Commission Docket No. MC76-5).)

5. Recommended Decision of the Postal Rate Commission re surcharge for nonstandard mail. (The Governors will consider the Recommended Decision of February 26, 1979, proposing that a seven-cent surcharge be adopted for nonstandard first-class mail and single piece third-class Mail (Docket No. R78-1).)

6. Effective date for minimum size standards.

(Section 002.1 of the Domestic Mail Classification Schedule currently states that the minimum size standards therein prescribed will become effective not earlier than November 30, 1978. The Board will consider fixing the effective date for these standards, pursuant to 39 U.S.C. 3625(f).)

7. Modification to the Bylaws of the Board to reflect the advent of the Postal Career Executvie Service.

(Section 3.4 of the Bylaws of the Board of Governors (39 CFR parts 1-6) provides that a number of matters are reserved for decision by the Board. One of these is the compensation of officers and executives "in PES grade 34 and above". (The "PES" salary schedule has been changed to the "EAS" schedule.) Since adoption of the Postal Career Executive Service will generally result in the elimination of grades for senior officers and executives in the Postal Service, it is proposed that the Bylaws be modified so as to reserve for Board decision the salaries of officers of the Postal Service. "Officers" will be defined as including Assistant Postmasters General and above, as well as a small number of ancillary positions.)

8. Temporary classification change proposal for Express Mail Metro Service.

(Under the Postal Reorganization Act (39 U.S.C. 3641(e)), if the Postal Rate Commission does not transmit a recommended decision on a change in the Mail Classification Schedule to the Governors of the Postal Service within ninety days after the Postal Service has submitted to the Commission a request for such a recommended decision, the Postal Service, upon ten days notice in the Federal Register, may place into effect temporary changes in the Mail Classification Schedule in accordance with proposed changed under consideration by the Commission. The Postal Service requested a recommended decision on December 7, 1978, to change the Domestic Mail Classification Schedule to include a new Express Mail Metro Service. It does not appear that the Postal Rate Commission will transmit its recommended decision on this matter within ninety days after December 7. The Board will consider the question of whether the Postal Service should place the proposal into effect on a temporary basis.)

9. Report on Finance Group Programs.

(Mr. Finch, Senior Assistant Postmaster General, Finance Group, will brief the Board on current developments in the Finance Group.)

10. Capital Investment Projects:

a. Proposed purchased of post office building, Honolulu, Hawaii.

(The Board will consider a proposal to purchase the currently leased post office building at 335 Merchant Street in Honolulu, Hawaii, and a nearby parking lot. The building is currently owned by the United States and maintained by the General Services Administration.)

b. Proposed new General Mail Facility at Norfolk, Virginia.

(The Board will consider investment in a proposed new general mail facility and vehicle maintenance facility in Norfolk, Virgina.)

LOUIS A. COX,
*Secretary.*

[S-598-79 Filed 3-26-79; 10:27am]

[8240-01-M]

4

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., April 4, 1979.

PLACE: 955 L'Enfant Plaza North, S.W., Board Room, Room 2-500, Fifth Floor, Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS:

Portions closed to the public (9 a.m.)

1. Consideration of internal personnel matters.
2. Review of Conrail proprietary and financial information for monitoring and investment purposes.
3. Review of Delaware and Hudson Railway Company proprietary and financial information for monitoring and investment purposes.
4. Litigation report.

Portions open to the public (1:30 p.m.)

5. Approval of minutes of the March 1, 1979 Board of Directors meeting.
6. Report on Conrail monitoring.
7. Consideration of Financing Agreement.
8. Appoint Conrail Board Members.
9. Election of Executive Committee.
10. Consideration of Conrail Quarterly Investment Commitment.
11. Consideration of Conrail April drawdown request.
12. Consideration of 211(h) request.
13. Contract Actions (extensions and approvals).

[S-601-79 Filed 3-26-78; 3:03 p.m.]

federal register

WEDNESDAY, MARCH 28, 1979

PART II




# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

■

# COASTAL ZONE MANAGEMENT PROGRAM

## Development and Approval Provisions

[3510-08-M]

Title 15—Commerce and Foreign Trade

## CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

## PART 923—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT AND APPROVAL REGULATIONS

### Final Regulations

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

ACTION: Final rule.

SUMMARY: These final regulations revise and incorporate several sets of existing regulations dealing with development and approval of State coastal management programs. These regulations reflect the most current and accurate interpretation of the program approval requirements of the Office of Coastal Zone Management (OCZM), NOAA.

EFFECTIVE DATE: April 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Carol Sondheimer, Chief, Policy and Program Evaluation, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, 202-634-4245.

SUPPLEMENTARY INFORMATION: NOAA is issuing these final regulations pursuant to sections 305, 306 and 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), hereafter referred to as the "Act".

These final regulations revised and supersede the Interim—Final Program Development and Approval Regulations (15 CFR Part 923) published in the FEDERAL REGISTER on March 1, 1978. (43 FR 8378.)

When NOAA issued the Interim—Final Regulations (FR, Vol. 43, No. 41, pages 8378-8432), a 60-day comment period ending April 30, 1978 was provided. During the comment period, NOAA received a number of requests to consider additional comments related to five major issues: (1) changes to approved State coastal management programs, (2) adequate consideration of the national interest, (3) uses of regional benefit, and (4) incorporation of State and local air and water quality control standards pursuant to the Clean Water and Clean Air Acts, and (5) amendments to approved State programs. In order to consider additional comments and to resolve some of the complexities related to these issues, NOAA issued a notice in the FEDERAL REGISTER on July 6, 1978 (Vol. 43, No. 130, pages 29106-29109) extending the comment period on the Interim—Final Regulations to August 31, 1978.

During the period from March 1 to August 31, 1978, OCZM received comments from 11 States (Alaska, Illinois, Massachusetts, Michigan, New Hampshire, New York, Oregon, Texas, Washington and Wisconsin), 9 Federal agencies (Department of the Army—Corps of Engineers, Department of Commerce—National Marine Fisheries Service, Department of Energy, Environmental Protection Agency, Federal Energy Regulatory Commission, Department of Housing and Urban Development, Department of the Interior, Nuclear Regulatory Commission, and Department of Transportation), 4 public interest groups (Environmental Defense Fund, Natural Resources Defense Council, Rhode Island League of Cities and Towns, Sierra Club), 3 groups representing energy industries (American Petroleum Institute, Edison Electric Institute, and Florida Power and Light Company), and 5 from unclassified groups or individuals (Coastal Environmental Resources Institute, Louis Gaitanis, Brad Green, Rose, Schmidt, Dixon, Whyte and Hardesty, and Wald, Harkrader and Ross). In addition, during the comment period, OCZM met with representatives of the following: Department of the Interior, the Environmental Protection Agency, the Natural Resources Defense Council, the American Petroleum Institute, the Edison Electric Institute, and the Florida Power and Light Company.

All comments were given full consideration. Some recommendations were adopted in their entirety or in modified form. Others were rejected as being inappropriate or legally impermissible. NOAA would like to take this opportunity to express its gratitude to each government agency, organization or individual that submitted comments.

Comments on the Interim—Final Regulations tended to reiterate issues raised in connection with the August 29, 1977 Proposed Program Approval Regulations (42 FR 43552). Comments tended to fall into two broad categories: the first relating to basic philosophical differences on the part of reviewers with NOAA's interpretation of the statute and Congressional intent. In this category fall issues related to the adequacy of environmental protection provided by the regulations, what constitutes adequate consideration of the national interest, the relationship between facilities in which there is a national interest and uses of regional benefit.

The second major category of comments addresses technical issues, such as the addition or deletion of Federal agencies and other items from lists and tables. NOAA has accommodated these reviewers to the extent the recommended changes are legally permissible and add to the sense and clarity of the regulations.

In addition, NOAA has revised section 923.62—Environmental Assessment to reflect changes made in the Council of Environmental Quality's Final Regulations (FR, Vol. 45, No. 230, November 29, 1978) on the content of environmental impact statements.

### DISCUSSION OF MAJOR ISSUES AND NOAA RESPONSE

#### FORMAT OF THE REGULATIONS

A number of reviewers suggested that the format in the Interim—Final Regulations was confusing. These commentators noted that "comments" frequently were separated from relevant "requirements" by several unrelated sections and that, occasionally, requirements were found in "comments." Several reviewers suggested that some "comments" contained language that did not clarify or complement the "requirements," and that some "comments" contained contradictory or confusing language.

In keeping with the intent of Executive Order 12044 (issued March 23, 1978) to keep government regulations clear and brief and in response to the recommendations of commentators, NOAA has made a number of changes in the format of these final regulations. Comments related to a particular requirement have been placed under the requirement and are clearly distinguished from the requirement by type size. General comments that relate to several requirements have been clearly labeled as such and placed after the entire set of requirements. NOAA has endeavored to make the regulations clearer and more understandable by simplifying the length and type of commentary. A number of comments have been rewritten, consolidated or deleted. Where appropriate, some of the requirements also have been rewritten or consolidated. Despite these changes in format, relatively few substantive changes have been made in the requirements for program developmnent and approval. Where substantive changes have been made, they are noted in this preamble.

#### ADEQUACY OF ENVIRONMENTAL PROTECTION

Several reviewers, especially environmental groups, questioned the degree to which the regulations provide sufficient assurance that resource protection will be the major focus of state

coastal management programs. A number of these reviewers objected to the emphasis on resource management rather than on resource protection. These commentators were concerned that unless the regulations were strengthened, inadequate programs would qualify for Federal approval.

In order to emphasize resource protection, one reviewer suggested that the regulations contain a clear statement that state programs would be evaluated in light of the primary conservation thrust of the Act, and recommended reinstating language that had appeared in earlier program approval regulations.

Some commentators requested that the determination of uses subject to the management program be based on an analysis of capability and suitability of coastal resources for development, and on analysis of the impacts various uses may have on these resources.

Other reviewers objected to the manner in which NOAA incorporated the Executive Orders on Wetlands (E.O. 11990) and Floodplains (E.O 11988) into the Interim—Final Regulations. These reviewers suggested that OCZM specify the substantive standards that would be used to evaluate the adequacy of state coastal programs in this regard.

NOAA Response: While the Act emphasizes resource protection, it does not exclude resource use and development where appropriate. The States are given the responsibility in the Act to choose the appropriate mix between preservation and development based on requirements for consultation with a wide variety of governmental bodies, interest groups and the public. A major part of OCZM's review involves an assessment of the appropriateness of the mix. Nonetheless, resource protection can be given greater emphasis in the regulations, while still recognizing appropriate resource use and development.

Accordingly, section 923.3(b), containing the overall policy requirements on which OCZM relies most heavily to assure adequate resource protection in state programs, has been rewritten to require that states * * *

> "take steps to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the state's coastal zone a unique, vulnerable or valuable area."

In response to the suggestion that capability and suitability analyses be required, NOAA does not find any statutory language or legislative history that would make such analyses mandatory nor does NOAA believe these are or need be the sole means for determining use permissibility.

NOAA has revised the final regulations to be more explicit about the types of policies state programs must contain in order to be responsive to the Executive Orders on Wetlands and Floodplains. In addition, NOAA has added more detailed guidance to assist states in their response to this requirement. (See § 923.3(b)(2)(ii) and *Comment.*)

### ADEQUATE CONSIDERATION OF THE NATIONAL INTEREST

Comments were received addressing two major issues regarding the interpretation of section 306(c)(8) of the Act, and related § 923.52 of these regulations, having to do with (1) how the "national interest" is defined, and (2) what constitutes "adequate consideration" of this interest. Comments of a similar or identical nature have been received and responded to in previous publication of these regulations. (See Preamble to Interim—Final Regulations issued March 1, 1978, pages 8379–8380 and 8391–8393. See also Notice of Extension of Comment Period issued July 6, 1978, pages 29107–29109.) A related concern of reviewers—the relationship of section 306(c)(8) of the Act ("national interest") to section 306(e)(2) ("uses of regional benefit")—is discussed in connection with comments on "Uses of Regional Benefit."

To review the major issues:

(1) The determination of what constitutes a facility in which there is a national interest and how that interest is defined has been difficult because the statute and legislative history provide little, if any, guidance on this matter and because numerous parties involved with or affected by this program have differed greatly as to the proper interpretation.

Some reviewers have maintained that there is a single national interest for any particular type of facility and that that interest is defined in national legislation relating to that type of facility. Thus, for example, the national interest in interstate highways would be defined in the National Highways Act.

Others have suggested that the national interest in a particular type of facility should be defined by those Federal agencies most closely associated with the facility. Under this approach, as an example, the Department of Energy and the Department of the Interior would define the national interest in energy production and transmission facilities, based on their legislatively defined missions.

Still others have suggested that there is no single national interest associated with a particular type of facility; rather there are a number of associated, sometimes conflicting, national interests. As an example, the national interest associated with providing interstate transportation facilities would include the need for efficient and economical transportation modes and the need to provide this transportation in a manner that recognizes the national interest in preserving wetlands, protecting rare and endangered species, avoiding development of floodplains, etc.

Some have maintained that it is the responsibility solely of Federal agencies to determine what constitutes the national interest in any particular type of facility; others have suggested that this determination should be left to the States; and still others have suggested that the national interest should be distilled from a variety of sources including local governments, interest groups and the general public as well as Federal and state agencies.

NOAA Response: The final regulations (section 923.52(c)) require that, at a minimum, States solicit views on what constitutes the national interest in particular types of facilities from Federal agencies most directly associated with the need for those facilities. However, the final regulations acknowledge (as did the Interim-Final Regulations) that there can be several sources which may specify the national interest in a particular facility. These sources may include Federal laws and legislation, policy statements from the President, statements from Federal agencies, and plans, reports or studies from Federal, State or interstate groups. The predominant emphasis is on the Federal perspective and input. In practice, States have tended to rely on statements of mission from Federal agencies (when these have been made available to the States). The other issue related to the definition of facilities is the extent to which resource types (such as wetlands, endangered flora and fauna, historic and cultural resources, etc.) should be considered "facilities," and the national interest in those resources considered as part of the requirements of section 306(c)(8) of the Act. This issue has more to do with what constitutes "adequate consideration" of the national interest than with the definition of facilities and is addressed below in greater detail in the discussion of what constitutes "adequate consideration" of the national interest. It should be noted here, however, that the final regulations do not define resources as "facilities" for which the national interest must be considered.

(2) Once the relevant national interest has been identified, the issue remains what constitutes adequate consideration thereof on the part of a State.

Some have suggested that accommodation of Federal agency views of the national interest should constitute

adequate consideration. Others have suggested that accommodation of the facility itself is required to constitute adequate consideration. Other commentators have suggested that adequate consideration requires a balancing of the national interest in the need for a particular type of facility with other national concerns related to resource protection. Still others have suggested that a procedure to consider the national interest must be set forth specifically in State legislation in order to be judged adequate.

NOAA Response: The final regulations (see § 923.52(c)) stipulate that in order for a State's consideration of the national interest in a particular type of facility to be deemed adequate, a State must:

(1) Describe the national interest in the planning for and siting of facilities considered during program development, and the sources relied upon for the statement of national interest;

(2) Indicate how and where the consideration of this national interest is reflected in the substance of the management program; and

(3) Describe a process for continued consideration of the national interest in particular facilities during program implementation, including a clear and detailed description of the administrative procedures and decision points where this interest will be considered.

These requirements do not stipulate that a State accommodate the national interest in a particular facility to the extent of assuring that such facilities will be sited in a state's coastal zone. They do assure, however, that there is a procedure during both program development and program implementation to assess the national interest in such facilities as well as their locational requirements. The regulations do not treat resources as facilities subject to the special consideration afforded facilities by section 306(c)(8) of the Act. They do, however, recognize that natural resource considerations of a national nature can and should enter into the assessment of the demand for and locational needs of particular types of facilities (see § 923.52(c)(4)). The regulations do not require the procedure for considering the national interest to be set forth specifically in State legislation. They do, however, require a legally enforceable basis (either in State legislation or agency rules and regulations) for establishing and implementing the procedure for national interest consideration that will be used once the management program is approved.

Reviewers should note the addition of a new comment to § 923.52(c)(4) which indicates OCZM's availability during program implementation to assist states in soliciting relevant Federal agency views regarding the national interest in a particular facility when it is proposed to be built in a State's coastal zone.

USES OF REGIONAL BENEFIT

NOAA has continued to receive comments regarding two basic issues related to section 306(e)(2) of the Act, and related sections § 923.13 and § 923.43 of the Interim-Final Regulations, dealing with uses of regional benefit. These two issues have to do with (1) whether facilities in which there is a national interest" are included as uses of regional benefit (URBs) and (2) whether States must have the ability to override local regulations in order to satisfy the requirement of section 306(e)(2) that local regulations "do not unreasonably restrict or exclude land and water uses of regional benefit." These issues have been raised and responded to previously. (See same pages of the FEDERAL REGISTER cited in connection with comments on "Adequate Consideration of the National Interest.")

(1) A number of reviewers continue to maintain that facilities referred to in section 306(c)(8) of the Act should be defined by regulation to be uses of regional benefit and the requirements of sections 306 (c)(8) and (e)(2) should be read in conjunction.

Others have expressed the view that these two sections of the Act should not be read in conjunction because they are derived from different concerns and were meant to address different issues. Accordingly, they were intended as separate and distinct requirements. Under this interpretation, consideration of the national interest is seen as a mechanism to assure States consider national (or multistate) impacts and benefits of major facilities. The URB requirement of section 306(e)(2) of the Act is viewed as being similar to the concept of "development of regional benefit" contained in Federal land use legislation under consideration at approximately the same time the Coastal Zone Management Act was being considered in 1972. In the Federal land use legislation, the area of benefit is defined in terms of multilocality, intrastate areas, and not in terms of national considerations. The "development of regional benefit" concept is derived from the American Law Institute (ALI) Model Land Development Code.

NOAA Response: These Final Regulations (see section § 923.12(b)(1)) contain requirements similar to those in the Interim-Final Regulations. The interpretation of URB in the regulations is similar to that contained in the ALI code. There is no statutory language or legislative history to indicate that sections 306 (c)(8) and (e)(2) of the Act were meant to be read in conjunction nor that "national interest" facilities were meant to be URBs. Accordingly, these regulations leave it to States to define URBs, using multicounty effect and direct and significant impact on coastal waters as suggested criteria. The option is left to States, however, to define "national interest" facilities as URBs since there is nothing in the Act or legislative history to preclude such option.

Beyond the relationship of sections 306 (c)(8) and (e)(2) of the Act, reviewers have questioned whether the Interim-Final regulations contained adequate criteria for defining URBs. Section 923.13(d) of the Interim-Final Regulation suggested two criteria that could be used to identify URBs: (1) effect on more than one unit of local government (consistent with the ALI Code) and (2) direct and significant impact on coastal waters (consistent with the focus in the Act on coastal waters). In the July 6, 1978 Extension Notice, NOAA indicated it was considering adding two other criteria to identify URBs: (1) public ownership (which would be consistent with the ALI commentary on the Model Land Development Code) and (2) coastal dependency (which would be consistent with the focus in the Act on the interrelationship of land and water).

Several reviewers objected to the addition of these criteria. Some suggested that public ownership was not necessarily synonymous with public benefit; others that the concept of public ownership was too restrictive and that rather, the criterion should be based on whether a use was subject to regulation by a public agency. Some suggested that coastal dependency was too ambiguous; others objected that it was without statutory benefit. One reviewer suggested that URBs be defined as uses which provide income, services or improvements in environmental quality to residents of more than one unit of local government.

NOAA Response: In light of these comments, NOAA has reconsidered and rejected the addition of public ownership and coastal dependency as criteria for identifying uses of regional benefit. NOAA also has rejected regulation by a public agency as a criterion as being too broad. Nor does NOAA feel that defining URBs as uses providing income, services or improvements in environmental quality adds any more clarity or specificity to the guidance contained in the Interim-Final Regulations (now part of the *Comment* contained in § 923.12(b)(1)).

(2) Some reviewers have maintained that States must have the ability to override local regulations in order to be able to meet the requirement of section 306(e)(2) of the Act that local regulations not unreasonably exclude or restrict uses of regional benefit.

NOAA Response: Nothing in the statute or the legislative history indi-

cates that a State override was intended as the sole means for assuring unreasonable local restrictions or exclusions not occur. The Interim-Final Regulations noted at least 4 other techniques that would satisfy this requirement. (See § 923.43(c) of the Interim-Final Regulations.) None of the comments received on these other techniques has dissuaded NOAA that they represent satisfactory responses to the requirements of section 306(e)(2). Accordingly, the requirements of § 923.43 of the Interim-Final Regulations have not been changed (now § 923.12(b)(2) of these regulations).

Readers should note that §§ 923.13 and 923.43 of the Interim-Final Regulations have been consolidated. All requirements pertaining to URBs may be found in § 923.12 of these regulations.

INCORPORATION OF MORE STRINGENT STANDARDS PURSUANT TO THE CLEAN WATER ACT (CWA) AND CLEAN AIR ACT (CAA)

A number of commentators continued to express concern that air and water quality requirements adopted by a State or locality pursuant to the CWA and CAA may be extremely broad and thereby may lead to preclusion of facilities in which there may be a national interest. These concerns have been raised and responded to previously. (See Preamble to Interim-Final Regulations issued March 1, 1978, (43 FR 8378). See also Notice of Extension of Comment Period issued July 6, 1978 (43 FR 29106).)

NOAA Response: To date, NOAA has not been provided with any examples where incorporation into a State's coastal management program of more stringent State or local air or water pollution control standards (adopted pursuant to the CAA or CWA) has led to the preclusion of any facilities in which there may be a national interest.

Moreover, section 307(f) of the Act clearly states that "any requirements established by the CWA or CAA or *by any State or local* government pursuant to such Acts" (emphasis added) shall be the air and water pollution control requirements applicable to a State's coastal management program. Accordingly, § 923.45 of these regulations continues to reflect this provision of the Act.

AMENDMENTS TO APPROVED STATE COASTAL MANAGEMENT PROGRAMS

On December 29, 1978, NOAA issued a proposed rule (*FR*, Vol. 43, No. 251, pages 60949-60954) revising Subpart I of the Interim-Final Regulations. Subpart I defines changes to approved State management programs, procedures for incorporating these changes into a states program, and establishes conditions and procedures by which administrative funding may be terminated for programmatic reasons. The proposed rule was issued to provide additional opportunity for public comments on changes NOAA proposed in response to earlier comments on this particularly controversial subpart of the regulations.

By the close of the comment period on January 29, 1979, NOAA has received comments from 16 states (Alaska, California, Connecticut, Georgia, Louisiana, Maine, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, and Washington), 1 local government (Anchorage, Alaska), 4 Federal agencies (Department of the Army (Corps of Engineers), Department of Energy, Department of the Interior, and Department of the Navy), 6 groups representing energy interests (American Petroleum Institute; Exxon; Mobil, Rose, Schmidt, Dixon, Hasley Whyte and Hardesty; Southern California Gas Company; and Tenneco), and 3 groups representing environmental interests (Friends of the Earth, Natural Resources Defense Council, and Natural Resources Law Institute).

Comments related primarily to the following: (1) the definition of amendments (§ 923.80(c) of the proposed regulations); (2) whether initial state approval of local coastal programs should be treated as amendments (§ 923.80(d) of the proposed regulations), (3) whether changes to approved local programs should be treated as amendments (§ 923.80(d) of the proposed regulations), and (4) whether notice of and opportunity to comment on routine state program implementation should be provided (§ 923.84 of the proposed regulations). A discussion of the comments and NOAA's response follows:

(1) *Definition of Amendments.* A number of comments were received that the definition of amendments (§ 923.80(c)) was too narrow.

(a) A number of reviewers were concerned that the language of § 923.80(c) indicated only changes in policies or authorities related to boundaries, uses subject to management, criteria or procedures for designating areas of particular concern (APCs) or Areas for Preservation or Restoration (APRs), and consideration of the national interest would constitute amendments but that actual boundary changes or deletions of APCs would not constitute amendments.

Relatedly, two reviewers were concerned that if the intent was to cover actual changes, potentially minor boundary alterations would be subject to an unnecessary and burdensome amendment process.

NOAA Response: NOAA did not intend proposed § 923.80(c) to be construed narrowly. The purpose of the amendment provision is to insure that all major program changes are subject to public review before their adoption as part of a State's approved management program. NOAA agrees that the language of proposed § 923.80(c) is ambiguous as to whether actual changes to the above are covered.

Accordingly § 923.80(c) has been rewritten to clarify that amendments are *substantial changes in, or* substantial changes to enforceable policies or authorities related to:

(1) Boundaries;

(2) Uses subject to the management program; (3) Criteria or procedures for designating or *managing* areas of particular concern or areas for preservation or restoration; and

(4) Consideration of the national interest involved in the planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature.

The term "substantial changes in," has been added to assure that major, substantive changes to a management program will be accorded the benefit of a full review. Under this definition, for example, the deletion of a APC, originally included as part of a State's approved management program, would represent a substantial change in the criteria or procedures for managing that APC. Similarly, designation of a new special management area, with new management controls applied as a result of designation, that had not been identified as part of the approved program, would represent an amendment. However, where a State's management program includes procedures for APC designation and what management will occur as a result of designation and these are approved by the Assistant Administrator as part of the State's program, such designations will constitute routine program implementation.

(b) One reviewer maintained that the energy facility planning process (required pursuant to section 305(b)(8) of the Act) should be acknowledged as amendments to approved programs.

NOAA Response: NOAA concurs that the energy facility planning process (§ 923.13) as well as shorefront access and protection planning (§ 923.24), and shoreline erosion/mitigation planning (§ 923.25) (required pursuant to sections 305(b) (7) and (9)), respectfully constitute amendments, because section 306(g) of the Act mandates that they be treated as such. NOAA has not included the planning elements as amendments in the Final Regulations because they already are being processed as amendments under procedures contained in the Interim-Final regulations and

therefore will not come up as amendments under the Final Regulations. Any future changes states may make to these planning processes will be treated as amendments if these changes result in any of the substantial changes defined in § 923.80(c). These procedures will apply to program changes initiated after the effective date of these regulations.

(c) Several reviewers suggested that changes in uses of regional benefit (URBs), federal consistency procedures, and APC/APR designations be included in § 923.80(c) as criteria for triggering the amendment process. Other reviewers suggested the addition of items such as changes in the rate of accomplishing program goals and objectives.

NOAA Response: The addition of a special category for uses of regional benefit (URBs) is unnecessary as these represent uses subject to the management program and already are covered by § 923.80(c)(2). As further clarification that URBs are included as uses subject to management, NOAA has added a new paragraph (D) to § 923.82(a)(1)(ii) to indicate that amendments pertaining to uses subject to management will be reviewed to determine that any amendments related thereto continue to identify URBs and method(s) for assuring local regulations do not unreasonably restrict or exclude such uses.

NOAA has not added changes in Federal consistency procedures as program amendments because any substantive changes that would affect consistency determinations already are covered by the items listed in § 923.80(c). In addition, procedures for making consistency determinations are covered by other NOAA regulations (15 CFR Part 930).

The concern about APCs/APRs has been addressed by changing the language in § 923.80(c) to address "substantial changes in" and by adding the word "managing" to § 923.80(c)(3).

NOAA feels a number of items suggested as amendments by reviewers, such as changes in rate of accomplishing program goals and objectives or organizational changes, are addressed more appropriately as part of the continuing review and evaluation of approved State programs, required by section 312 of the Act. Issues related to continuing program review and evaluation will be addressed by NOAA in separate regulations. These will be issued as a proposed rule in the FEDERAL REGISTER in order to assure full opportunity for public review and comment.

(2) *Initial Approval of Local Land Use Programs.* Of the sixteen States that commented on the proposed regulations, fifteen took major exception with proposed § 923.80(d) which would have required local coastal programs developed pursuant to section 306(e)(1)(A) of the Act to be incorporated into a State's management program as amendments.

A number of State reviewers pointed out that, as part of the requirements for approval for a State employing control technique A, the program must contain specific policies, standards and criteria—including those covering local programs—that meet the requirements of § 923.3. Accordingly when the Assistant Administrator approves a State program, he/she is indicating that the program—including policies, standards and criteria governing local program development—are sufficiently complete and specific to indicate that the range of what these local programs will cover is acceptable. In addition § 923.42(c)(4) of the regulations require that States using control technique A include, as part of their approved program procedures, a number of different opportunities for the public and government agencies to be involved in the development of local programs and their approval at the State level. In light of these existing requirements, State reviewers felt treating initial approval of mandated local programs would be duplicative, extremely expensive, time delaying, an extraordinary administrative burden (given the number of local coastal programs that would be subject to the amendment procedure) and counterproductive to implementation of sound and efficient coastal management practices. Most State reviewers recommended that adoption of local coastal programs be treated as routine program implementation.

On the other hand, reviewers representing Federal agencies, the energy industry, and environmental interests supported the treatment of initial local program adoption as amendments.

NOAA Response: NOAA concurs with the analysis of State commentators that there is nothing in the Act that indicates State approval of local programs should be held to different standards than other major program changes, especially in light of the fact that States using control technique A must meet the requirements of § 923.42(c). NOAA also is concerned about the tremendous and unnecessary administrative burden proposed § 923.80(d) could place on State and local governments. NOAA does not agree, however, that local program approval always would constitute routine program implementation.

Incorporation of State approved local management programs should be held to the same standards as any other major program changes (defined in § 923.80(c)). Accordingly, when incorporation of a State approved local program will result in any of the changes defined in § 923.80(c), these will be treated as amendments to State's approved management program. Thus, for example, the process for local program development in Alaska may result in substantial changes in the approved State coastal zone management boundary or in uses of State concern. Where this occurs, such changes will constitute amendments and be processed as such. Where adoption of local programs does not result in the changes described in § 923.80(c), this will constitute routine program implementation, subject to the notice requirements contained in § 923.84(b) (2) and (4).

Accordingly, proposed § 923.80(d)—which dealt with local program incorporation as a separate item—has been deleted since incorporation of local programs now is subject to the requirements of § 923.80(c).

(3) *Subsequent Changes to Local Programs.* A number of commentators objected to the provision in proposed § 923.80(d) which would have exempted subsequent changes to local management programs from the amendment process. These reviewers suggested that changes in local programs potentially could result in major changes into a State's approved program.

NOAA Response: NOAA concurs with these reviewers. Subsequent changes to local programs that result in any of the changes contained in § 923.80(c) will be treated as amendments. Accordingly, § 923.80(d) of the proposed regulations has been deleted.

(4) *Routine Program Implementation.* The majority of reviewers supported the concept of routine program implementation. Some expressed concern regarding the opportunity for comment, particularly as it relates to federal review.

NOAA Response: NOAA appreciates this concern and has added a new § 923.84(b)(2) which requires States to provide notice to the general public and affected parties, including local governments, State agencies and regional offices of Federal agencies, of the proposed routine program implementation action at the same time OCZM is notified. In addition, routine program implementation is subject to serious disagreement on the part of Federal agencies and the mediation provisions of § 923.54. It also should be noted that § 923.82(c)(2)(ii) has been altered to emphasize that all comments will be considered by the Assistant Administrator in making a decision on whether to approve an amendment.

Having considered the comments received and other relevant information, there are adopted below final regulations regarding the development and

approval of State coastal management programs.

Dated: March 16, 1979.

R. L. CARNAHAN,
*Acting Assistant Administrator for Administration.*

15 CFR is amended by revising Part 923 to read as follows:

#### Subpart A—General

Sec.
923.1 Purpose.
923.2 Definitions.
923.3 General requirements.

#### Subpart B—Uses Subject to Management

923.10 General.
923.11 Uses subject to management.
923.12 Uses of regional benefit.
923.13 Energy facility planning process.

#### Subpart C—Special Management Areas

923.20 General.
923.21 Areas of particular concern.
923.22 Areas for preservation or restoration.
923.23 Other areas of particular concern.
923.24 Shorefront access and protection planning.
923.25 Shoreline erosion/mitigation planning.

#### Subpart D—Boundaries

923.30 General.
923.31 Inland boundaries.
923.32 Seaward boundaries.
923.33 Excluded lands.
923.34 Interstate boundaries.

#### Subpart E—Authorities and Organization

923.40 General.
923.41 Identification of authorities.
923.42 State establishment of criteria and standards for local implementation—Technique A.
923.43 Direct State land and water use planning and regulation—Technique B.
923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.
923.45 Air and water pollution control requirements.
923.46 Organizational structure.
923.47 Designated State agency.
923.48 Documentation.

#### Subpart F—Coordination, Public Involvement and National Interest

923.50 General.
923.51 Federal-State consultation.
923.52 Consideration of the national interest in facilities.
923.53 Federal consistency procedures.
923.54 Mediation.
923.55 Full participation by State and local governments, interested parties, and the general public.
923.56 Plan coordination.
923.57 Continuing consultation.
923.58 Public hearings.

#### Subpart G—Miscellaneous

923.60 General.
923.61 Segmentation.
923.62 Environmental assessment.

#### Subpart H—Review/Approval Procedures

923.70 General.
923.71 Recommended format for program submission.
923.72 Review/approval procedures.
923.73 Miscellaneous.
923.74 Preliminary approval.
923.75 Requirements for preliminary approval.
923.76 Preliminary review/approval procedures.

#### Subpart I—Amendments to and Termination of Approved Management Programs

923.80 General.
923.81 Requests for amendments.
923.82 Amendment review/approval procedures.
923.83 Mediation of amendments.
923.84 Routine program implementation.
923.85 Termination and withdrawal of administrative funding.

#### Subpart J—Applications for Program Development or Implementation Grants

923.90 General.
923.91 State responsibility.
923.92 Allocation.
923.93 Geographic segments.
923.94 Eligible implementation costs.
923.95 Application for initial program development or implementation grants.
923.96 Applications for subsequent program development grants.
923.97 Applications for subsequent program implementation grants.
923.98 Applications for preliminary approval grants.
923.99 Approval of applications.
923.100 Grant amendments.

AUTHORITY: Secs. 305, 306, 307 and 312, Coastal Zone Management Act of 1972, as amended, Pub. L. 92-583, 86 Stat. 1280, as amended by Pub. L. 94-370, 90 Stat. 1013 (16 U.S.C. 1451 et seq.).

## Subpart A—General

### § 923.1 Purpose.

(a) The primary purpose of these regulations is to set forth the requirements for State coastal management program approval by the Assistant Administrator for Coastal Zone Management pursuant to the Coastal Zone Management Act of 1972, as amended (hereafter, the Act). Also, included in these regulations are the grant application procedures for program development and program implementation funds (pursuant to sections 305 and 306 of the Act, respectively); and conditions under which grants may be terminated.

(b) Sections 305, 306, and 307 of the Act set forth requirements which must be fulfilled as a condition of program approval. The specifics of these requirements are set forth below under the following headings: General Requirements; Uses Subject to Management; Special Management Areas; Boundaries; Authorities and Organization; Coordination, Public Involvement and National Interest; and, Miscellaneous. All relevant sections of the Act are dealt with under one of these groupings, but not necessarily in the order in which they appear in the Act.

(c) In summary, the requirements for program approval are that a State develop a management program that:

(1) Identifies and evaluates those coastal resources recognized in the Act as requiring management or protection by the State;

(2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable;

(3) Determines specific use and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns;

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and

(6) Includes sufficient legal authorities and organizational arrangements to implement the program and to ensure conformance to it. In arriving at these elements of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, State, interstate, and Federal agencies.

(d) These regulations revise, consolidate, and supersede the following sets of existing regulations and guidance related to management program development and approval:

(1) Interim—Final Program Development and Approval Regulations published March 1, 1978 (15 CFR Part 923) published in the FEDERAL REGISTER on March 1, 1978, dealing with all sections 305 and 306 program development and approval requirements;

(2) Final Coastal Zone Management Program Development Regulations (15 CFR Part 920) published in the FEDERAL REGISTER on April 29, 1977, dealing with section 305 program development, preliminary approval and grant applications;

(3) Proposed Coastal Zone Management Program Approval Regulations Amendments (15 CFR Part 923) published in the FEDERAL REGISTER on December 30, 1976, dealing with subsections 306(c)(2)(B), 306(g), and 312 of the Act having to do with a continuing state-local consultation mechanism, changes to approved management programs, and termination and withdrawal of funding of approved management programs;

(4) Final Coastal Zone Management Program Approval Regulations amendment (15 CFR Part 923) published in the FEDERAL REGISTER on No-

vember 2, 1976, dealing with subsection 306(h) of the Act having to do with island segments;

(5) The "Threshold Papers," informal guidance papers issued by Office of Coastal Zone Management (OCZM) in December 1975, but never published in the FEDERAL REGISTER;

(6) Interim Coastal Zone Management Federal-State Consultation Regulations (15 CFR Part 925) published in the FEDERAL REGISTER on February 2, 1975, dealing with subsections 307 (b) and (h) of the Act which deal with federal consultation, review and approval procedures, and mediation during program development and preliminary approval; and

(7) Final Coastal Zone Management Program Approval Regulations (15 CFR Part 923) published in the FEDERAL REGISTER on January 9, 1975, dealing with section 306 program approval requirements.

(e) Each subpart of the regulations is organized as follows:

(1) An introductory section describing which subsections of the Act are addressed in the subpart;

(2) Relevant statutory citations;

(3) The requirements. Where comments are included among the requirements, they are clearly distinguished by label and type face from the requirements. Comments on individual requirements are included for the purpose of providing a clearer understanding of acceptable or recommended ways to meet the requirement; and

(4) General commentary applicable to all the requirements.

(f) While states must meet the requirements of these regulations, their presentation—either to the Assistant Administrator or to the public—need not be in the order or terminology used herein. (See § 923.71 for further discussion of the program submission format.)

**§ 923.2 Definitions.**

(a) The term "Act" means the Coastal Zone Management Act of 1972, as amended.

(b) The term "Secretary" means the Secretary of Commerce and his/her designee. With the exception of the mediation functions discussed in § 923.54, all functions of the Act have been vested in the Assistant Administrator for Coastal Zone Management based on duly executed delegations of authority from the Secretary to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) by Department of Commerce Organizational Order 25-5A, and from the Administrator to the Assistant Administrator for Coastal Zone Managment by NOAA Circular 78-14.

(c) The term "Assistant Administrator" means the Assistant Administrator for Costal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d)(1) The term "relevant Federal agencies" means those Federal agencies with programs, activities, projects, regulatory, financing, or other assistance responsibilities in the following fields which could impact or affect a State's coastal zone:

(i) Energy production or transmission,

(ii) Recreation of a more than local nature,

(iii) Transportation,

(iv) Production of food and fiber,

(v) Preservation of life and property,

(vi) National defense,

(vii) Historic, cultural, aesthetic, and conservation values,

(viii) Mineral resources and extraction, and

(ix) Pollution abatement and control.

(2) The following are defined as relevant Federal agencies:

Department of Agriculture;
Department of Commerce;
Department of Defense;
Department of Energy;
Department of Health, Education, and Welfare;
Department of Housing and Urban Development;
Department of the Interior;
Department of Transportation;
Environmental Protection Agency;
Federal Energy Regulatory Commission;
General Services Administration;
Nuclear Regulatory Commission.

[*Comment:* Should governmental reorganization occur, relevant Federal agencies shall be those with programs, activities, projects or responsibilities in the fields cited above. States should include other Federal agencies as appropriate to their program development or implementation efforts.]

(e) The term "Federal agencies principally affected" shall mean the same as "relevant Federal agencies." The Assistant Administrator may expand upon the term for purposes of reviewing the management program and environmental impact statement.

(f) The term "Coastal State" means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. Pursuant to section 304(3) of the Act, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa. Pursuant to section 703 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the term also includes the Northern Marianas.

(g) The term "management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the State in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone. The management program shall include an articulation of enforceable policies and citation of authorities providing this enforceability.

(h) The following terms, as used in these regulations, have the same definition as provided in section 304 of the Act:

(1) Coastal zone,
(2) Coastal waters,
(3) Estuary,
(4) Land use.

(i) The term "grant" means a financial assistance instrumment and refers to both grants and cooperative agreements.

**§ 923.3 General requirements.**

(a) Statutory Citations, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: (1) the State had developed and adopted a management program for its coastal zone * * * which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

Section 302:
The Congress finds that—

(a) There is a national interest in the effective management, beneficial use, protection, and develpment of the coastal zone.

(b) The coastal zone is rich in a variety of natural, commercial, recreational, industrial, and aesthetic resoures of immediate and potential value to the present and future well-being of the Nation;

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion;

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations;

(e) Important ecological, cultural, hostoric, and aesthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost;

(f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values;

(g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional ar-

rangements for planning and regulating land and water uses in such areas are inadequate; and

(h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

(i) The national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet State and local needs resulting from new or expanded energy activity in or affecting the coastal zone.

Section 303:

The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance the resources of the Nation's coastal zone for this and succeeding generations; (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and aesthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with State and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

(b) Requirements.

The approvability of any state program will be determined by the Assistant Administrator in accordance with the following general requirements:

(1) The management program must provide for the management of those land and water uses having a direct and significant impact on coastal waters and must take steps to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the state's coastal zone a unique, vulnerable, or valuable area;

(2) The management program must contain three broad classes of policies, consistent with the findings of section 302 of the Act, that are related to resource protection, management of coastal development, and simplification of governmental processes.

[*Comment:* The Act emphasizes that important ecological, cultural, historic, and aesthetic values such as living marine resources, wildlife habitats, public and open space, and nutrient rich areas are being lost or adversely affected by population growth and economic development in the coastal zone. The Act clearly envisions that such activities as population growth and economic development will continue to occur in the coastal zone but in a manner that recognizes the ecological and social values of important coastal resources and prevents or mitigates, to the extent possible, damage to or loss of these resources.]

(i) Within these three broad classes, states must include specific policies that provide the framework for the exercise of various management techniques and authorities governing coastal resources, uses, and areas.

[*Comment: Resource protection policies* should be directed toward the management and conservation of valuable or vulnerable coastal resources in a state's coastal zone such as wetlands, floodplains, estuaries, intertidal area, beaches and dunes, barrier islands, cliffs and bluffs, other areas subject to erosion or accretion, areas containing fishery spawning and harvesting grounds, other wildlife habitats including those of endangered species, and aesthetic, cultural and historic resources;

(*Coastal development management policies* should address such matters as shorefront access, ports and harbors, energy facilities, coastal dependency of large-scale industrial, commercial, residential and institutional developments, mineral extraction, onshore OCS-related development; and

(*Government process policies* should address such matters as the roles and responsibilities of different levels of government, or clarification and simplification of regulatory and permitting procedures.)

(ii) As part of these three broad classes of policies, the management program must include policies that address uses of or impacts on wetlands and floodplains within the State's coastal zone. These particular policies shall minimize the destruction, loss or degradation of wetlands and preserve and enhance their natural values in accordance with the purposes of Presidential Executive Order 11990, pertaining to wetlands. These policies also shall reduce risks of flood loss, minimize the impact of floods on human safety, health and welfare, and preserve the natural, beneficial values served by floodplains, in accordance with the purposes of Presidential Executive Order 11988, pertaining to floodplains.

[*Comment:* In addressing the intent of these Executive Orders, states should develop and incorporate into their management programs policies and procedures for:

(A) determining the effect of a proposed development's location in a wetland or floodplain located within a State's coastal zone boundaries. Factors that should enter into this determination include considerations of public health, safety and welfare; maintenance of natural systems for diverse ecological and conservation purposes; and other uses in the public interest including recreation, scientific and cultural uses;

(B) identifying and evaluating practicable alternatives to location of a proposed project, including alternative sites (including inland sites) or alternative actions (including no action), which could accomplish the purpose of the project but minimize harm to the floodplain or wetland; and

(C) mitigating the effect of locating a proposed project in a floodplain or wetland if there is no practicable alternative.]

(3) The policies in the program must be appropriate to the nature and degree of management needed for uses, areas, and resources identified as subject to the program.

[*Comment:* States may include, as part of their management program, enhancement policies which provide guidance or preferences regarding certain activities but which are not legally binding. Where unenforceable policies are included in a management program, states should be aware that:

(A) the Assistant Administrator shall judge the adequacy of a state's authorities to carry out its program only on the enforceable policies of a state's management program, and

(B) enhancement policies are binding for consistency purposes, pursuant to section 307 of the Act, only to the extent binding on the state and its agencies.]

(4) The policies, standards, objectives, criteria, and procedures by which program decisions will be made must provide (i) a clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and (ii) a clear sense of direction and predictability for decisionmakers who must take actions pursuant to or consistent with the management program.

## Subpart B—Uses Subject to Management

### § 923.10 General.

This subpart deals with land and water uses which, because of their direct and significant impacts on coastal waters, are subject to the terms of the management program. Determination of these uses will assist in determining the appropriate coastal management boundary (see Subpart D). This subpart deals in full with the requirements of subsections 305(b)(2)—Uses Subject to Management, 305(b)(8)—Energy Facility Planning, and 306(e)(2)—Uses of Regional Benefit.

### § 923.11 Uses Subject to Management.

(a) Statutory Citation, Subsection 305(b)(2):

The management program for each coastal state shall include * * * A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal water.

(b) *Requirements.*

(1) States must identify those land and water uses that will be subject to the terms of the management program. These uses shall be those with direct and significant impacts on coastal waters.

[*Comment.* In determining if uses and their management are sufficiently comprehensive, the Assistant Administrator will consider whether significant coastal-related issues raised by the public and/or governmental entities during the course of program development or related to the findings and national policies of Sections 302 and 303 of the Act have been addressed.]

(2) The management program must explain how those uses identified in paragraph (b)(1) of this section will be managed. The management program must contain those enforceable policies, legal authorities, performance standards or other techniques or procedures that will govern whether and how uses will be allowed, conditioned, modified, encouraged or prohibited.

[*Comment.* To the extent a State's management program policies are generalized, performance standards that will be used to enforce these policies will need to be sufficiently explicit and specific that persons affected by the management program will have a reasonable understanding of what uses would be permitted in which locations of the coastal zone and under what conditions. Further, while performance standards represent an acceptable procedure for managing uses, they do not substitute for the requirement of paragraph (1) to identify uses subject to the management program.]

(c) *General Comments.*

(1) In identifying uses and their appropriate management, States should analyze the quality, location, distribution and demand for the natural and man-made resources of their coastal zone.

(2) States also should consider potential individual and cumulative impacts of uses on coastal waters including, but not limited to the following uses:

(i) Residential and commercial developments such as subdivisions, highrise apartments or hotels, trailer parks and second-home developments, and shopping centers;

(ii) Industrial developments, such as tank farms and refineries, power plants, manufacturing complexes, industrial parks, onshore and offshore port facilities, mineral and sand extraction operations; liquified natural gas (LNG) facilities, petrochemical plants, and Outer Continental Shelf (OCS) development;

(iii) Recreational facilities such as beaches, amusement parks, marinas and other boating facilities;

(iv) Public facilities and public works such as schools, hospitals, government buildings, dams and water treatment facilities; and

(v) Transportation facilities such as highways, railroads, airports, ports and harbors.

(3) States should utilize the following types of analyses:

(i) Capability and suitability of resources to support existing or projected uses;

(ii) Environmental impacts on coastal resources;

(iii) Compatability of various uses with adjacent uses or resources;

(iv) Evaluation of inland and other location alternatives;

(v) Water dependency of various uses and other social and economic considerations.

(4) Since management of uses must take into account the full range of considerations called for in Sections 302, 303 and 307(f) of the Act, examination of the following representative factors is suggested:

(i) Air and water quality;

(ii) Historic, cultural and aesthetic resources where coastal development resources is likely to affect these resources;

(iii) Open space or recreational uses of the shoreline where increased access to the shorefront is a particularly important concern;

(iv) Floral and faunal communities where loss of living marine resources or threats to endangered or threatened coastal species are particularly important concerns.

**§ 923.12 Uses of regional benefit.**

(a) Statutory Citation, Subsection 306(e)(2):

Prior to granting approval, the Secretary shall also find that the program provides- * * * for a method of assuring that local and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

(b) *Requirement.*

In order to meet the requirements of subsection 306(e)(2) of the Act, States must:

(1) Identify what constitute uses of regional benefit.

[*Comment.* In determining these uses, States should consider use of the following criteria:

(i) Effect on more than one local unit of government, multicounty or intrastate effect;

(ii) Direct and significant impact on coastal waters. Using these criteria, such uses as electrical utilities, regional waste treatment plants, multi-county garbage disposal sites or landfills, State highways, or multi-county parks and beaches could be identified as uses of regional benefit.

States also have the option, under these criteria, of defining uses of which there may be a national interest in their planning and siting facilities as regional benefit. See § 923.52 which discusses consideration of facilities in which there may be a national interest. This could include ports, highways, energy production and transmission facilities, national seashores, parks and forests, and military bases.]

(2) Identify and utilize any one or a combination of methods, consistent with the control techniques employed by the State, to assure local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit.

[*Comment.* These methods may include:

(i) Statewide siting laws that supersede local regulations when necessary;

(ii) State acquisition authorities for sites as the need arises for identified uses of regional benefit;

(iii) Provision of sites for identified uses of regional benefit in local maps or ordinances provided that the State has the ability to assure that if local maps or ordinances are changed, there still will remain a sufficient number of sites throughout the coastal zone to meet projected needs;

(iv) State criteria defining uses of regional benefit that are required to be considered and incorported into local implementation programs;

(v) Definition of what constitutes unreasonable restrictions or exclusions and identification of standing and an administrative or judicial mechanism to assure that such unreasonable restrictions or exclusions do not occur.]

**§ 923.13 Energy facility planning process.**

(a) Statutory Citation Subsection 305(b)(8):

The management program for each coastal state shall include * * * (8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process anticipating and managing the impacts from such facilities * * *

(b) *Requirements.* States must develop a planning process which is capable, at a minimum, of anticipating and managing the impacts from energy facilities in or affecting a State's coastal zone. This process must include the following elements:

(1) Identification of energy facilities which are likely to locate in, or which may significantly affect, a State's coastal zone;

[*Comment.* This may be accomplished by:

(1) Pre-identification of likely facilities and their probable or acceptable locations within or significantly affecting the coastal zone as part of the management program;

(2) Provision of sufficient and specified lead time in a permitting or licensing process applying to energy facilities to assure proper consideration of the coastal management program;

(3) A regular reporting requirement for responsible government agencies or non-governmental entities which identifies, within a reasonable future time frame, likely future facilities or sites within or significantly affecting the coastal zone; or

(4) Any other procedure which identifies likely facilities and their potential impacts in a timely manner.]

(i) In determining energy facilities which may significantly affect the coastal zone, States must consider, at a

minimum, those facilities listed in subsection 304(5) of the Act.

[*Comment.* States have the option of expanding this list for planning and management purposes to include any related or secondary energy activities, which a State feels may significantly affect its coastal zone.]

(ii) At a minimum, "significantly affect" shall be defined in terms of substantial or potentially substantial changes in coastal zone resources which could be affected by a proposed energy facility. These include changes in land, air, water, mineral, flora, fauna, noise, and objects of historic, cultural, archeological or aesthetic significance.

[*Comment.* States have the option of using a more expansive definition of "significantly affect" which could include any or all of the concepts in the National Environmental Policy Act of 1969 (Pub. L. 91-190, as amended). These concepts include the following: (A) Effects which are noteworthy in an overall, cumulative way, considering the impacts of a given energy facility and related facilities, either existing or contemplated; (B) effects which may be positive, negative or both; (C) effects which may come about or increase in magnitude because of the particular location of an energy facility; and (D) effects which cover a broad range of environmental, social and economic impacts.]

(2) Procedures for assessing the suitability of sites for such facilities. This assessment procedure shall be designed to evaluate, to the extent practicable, the costs and benefits of proposed and alternative sites in terms of State and national interests as well as local concerrns.

[*Comment.* Many of the requirements contained in paragraphs (1) and (2) can be met by completing the work called for in section 923.11.]

(3) Articulation and identification of enforceable State policies, authorities and techniques for managing energy facilities and their impacts;

(i) States must identify any conditions that may be attached to State energy facility, planning and siting procedures;

[*Comment.* The actual analysis of particular sites may be accomplished using planning funds authorized under subsection 308(3) of the Act.]

(ii) States must list relevant constitutional provisions, laws, regulations, judicial decisions and other appropriate official documents or actions that are specifically related to planning for, anticipating and managing energy facilities or impacts, including licensing or permitting procedures.

(4) Identification of how interested and affected public and private parties will be involved in the planning process.

(i) States must identify the organization and structure and procedure means by which energy facility planning and siting decisions are carried out in the State.

(ii) States must address the respective roles of relevant State agencies and their relationship to the lead agency and to the management program's requirements as well as the respective roles and opportunity for participation by Federal agencies, local governments, other interested and affected public and private parties.

(iii) States must integrate into this planning process the procedures by which the national interest in the planning for and siting of energy facilities, identified pursuant to § 923.52(c) can continue to be considered after program approval.

[*Comment.* See § 923.52(c) regarding requirements for considering the national interest.]

(c) *General Comments.* (1) States are encouraged to develop the elements required in paragraph (b) in consultation and cooperation with other State, local and Federal agencies. General consultation requirements for program development, of which this consultation should be considered a part, are discussed more fully in § 923.51. Depending on the approach taken to energy facilities management, this consultation and coordination should include, but need not be limited, to procedures for:

(i) assessing need/demand projections;

(ii) allocating these needs among coastal and inland locations;

(iii) identifying potential coastal impacts; and

(iv) determining site suitability of alternative locations for particular facilities.

(2) In developing this planning process, States should address several common problems having to do with weak policy and planning linkages and, relatedly, fragmented and overlapping jurisdictions.

(i) Often there is no comprehensive planning process. While one state agency may develop energy plans or policy regarding energy facilities, other state or local agencies may have the responsibility for issuing necessory siting and operating permits. Often these other agencies operate independently of and without regard to state energy or coastal management policies.

(ii) Relatedly, the responsibility for permitting of facilities is diffuse. Often several permits are required from several different agencies at different levels of government.

(iii) Additionally, there frequently are differing permitting processes for different types of energy facilities (e.g., oil and gas facilities as distinct from electric power plants). This may result in a lack of standardized procedures as well as inconsistent application of coastal management policies.

(3) In order to address these problems and to assure the full integration of coastal management considerations with the energy facility planning process, States should consider the following:

(i) Establishment of the designated State coastal management agency as the lead agency in revewing and making decisions related to siting and conditions of development for energy facilities located in or significantly affecting the coastal zone;

(ii) In states where siting authority is vested in an agency other than the coastal management agency, establishment of a formal means to assure the input and consideration of the coastal management agency's views as part of the decision-making process;

(iii) Establishment of a procedure whereby the management program policies are incorporated into locational or developmental decisions (e.g., licenses, permits, zoning approvals).

## Subpart C—Special Management Areas

### § 923.20 General.

(a) This subpart deals with areas that are of particular concern because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond the general planning and regulatory system which is part of the management program. As a result, these areas require special management attention within the terms of the State's overall coastal program. This special management may include regulatory or permit requirements applicable only to the area of particular concern. It also may include increased intergovernmental coordination, technical, assistance, enhanced public expenditures, or additional public services and maintenance to a designated area. This subpart deals with the following subsections of the Act: 305(b)(3)—Geographic Areas of Particular Concern; 305(b)(5)—Guidelines on Priorities of Uses; 305(b)(7)—Shorefront Access and Protection Planning; 305(b)(9)—Areas for Preservation and Restoration.

(b) The importance of designating areas of particular concern for management purposes and the number and type of areas that should be designated is directly related to the degree of comprehensive controls applied throughout a State's coastal zone. Where a State's general coastal management policies and authorities address state and national concerns comprehensively and are specific with respect to particular resources and uses, relatively less emphasis need be placed on designation of areas of particular

concern. Where these policies are limited and non-specific, greater emphasis should be placed on areas of particular concern to assure effective management and an adequate degree of program specificity.

**§ 923.21 Areas of particular concern.**

(a) Statutory Citations Subsection 305(b)(3):

The management program for each coastal state shall include * * *
(a) an inventory and designation of areas of particular concern within the coastal zone.

Subsection 305(b)(5):

The management program for each coastal state shall include * * *
(b) broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(b) *Requirements.* (1) Inventory and designate geographic areas that are of particular concern, on a generic (i.e., by type of area, such as all wetlands or port areas) or site-specific basis, or both;

(i) In developing criteria for inventorying and designating areas of particular concern. States shall consider whether the following represent areas of concern requiring special management:

(A) Areas of unique, scarce, fragile or vulnerable natural habitat; unique or fragile, physical, figuration (as, for example, Niagara Falls); historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National Register of Historic Places.);

(B) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and endangered species and the various trophic levels in the food web critical to their well-being;

(C) Areas of substantial recreational value and/or opportunity;

(D) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(E) Areas of unique hydrologic, geologic or topographic significance for industrial or commercial development or for dredge spoil disposal;

(F) Areas or urban concentration where shoreline utilization and water uses are highly competitive;

(G) Areas where, if development were permitted, it might be subject to significant hazard due to storms, slides, floods, erosion, settlement, and salt water intrusion;

(H) Areas needed to protect, maintain or replenish coastal lands or resources including coastal flood plains, aquifers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

(ii) Where states will involve local governments, other state agencies, federal agencies and/or the public in the process of designating areas of particular concern, States must provide guidelines to those who will be involved in the designation process. These guidelines shall contain the purposes, criteria, and procedures for nominating areas of particular concern.

(2) Identify areas by location (if site specific) or category of coastal resources (if generic) in sufficient detail that affected landowners, governmental entities and the public can determine with reasonable certainty if a given area is or is not designated.

[*Comment.* Maps that indicate the location of designated areas or types of areas are encouraged as part of a State's program submission.]

(3) Describe the nature of the concern and the basis on which designations are made in order to: (i) indicate why areas or types of areas have been selected for special management attention, and (ii) provide a basis for appropriate management policies and use guidelines.

(4) Describe how the management program addresses and resolves the concerns for which areas are designated; and

(5) Provide guidelines regarding priorities of uses in these areas, including guidelines on uses of lowest priority.

[*Comment.* These guidelines will serve:
(i) To provide a basis for special management in areas of particular concern;
(ii) To provide a common reference point for resolving conflicts; and
(iii) To articulate further the nature of the interests to be promoted, prohibited or managed as a result of desgination. States may also establish priority use of guidelines that apply throughout the coastal zone and are encouraged to do so, especially as an aid to resolving use conflicts.]

**§ 923.22 Areas for preservation or restoration.**

(a) Statutory Citation, Subsection 306(c)(9):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * The management program makes provisions for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or aesthetic values.

(b) *Requirements.* (1) The criteria by which designations will be made must be included in the management program. Designations may be made for the purposes of preserving or restoring areas for their conservation, recreational, ecological, or aesthetic values.

(2) The procedures by which designations will be made must be included in the management program.

**§ 923.23 Other areas of particular concern.**

(a) States must meet the requirements of § 923.21(b) in order to receive program approval. Beyond this, States have the option of designating specific areas known to require additional or special management, but for which additional management techniques have not been developed or necessary authorities have not been established at the time of program approval. Where States exercise this option, they must meet the requirements of paragraph (b) of this section.

(b) *Requirements.* (1) The basis for designation of these additional special management areas must be clearly stated;

(2) A reasonable time frame and procedures must be established for developing and implementing appropriate management techniques. These procedures must provide for the development of those items required in § 923.21(b);

(3) An agency (or agencies) capable of formulating the necessary management policies and techniques must be identified.

(c) States must meet the requirements of § 923.22(b) for having procedures for designating areas for preservation or restoration. Beyond this, States have the option of including procedures for designating areas of particular concern for other than preservation or restoration purposes after program approval. Where States exercise this option, they must meet the requirements of paragraph (d) of this section.

(d) *Requirements.* (1) The criteria by which designations of additional areas of particular concern will be made must be included in the management program; and

(2) The procedures by which such designations will be made must be included in the management program.

**§ 923.24 Shorefront access and protection planning.**

(a) Statutory Citation, Subsection 305(b)(7):

The management program for each coastal shall include * * * (a) a definition of the term "beach" and a planning process for the protection to, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

(b) The basic purpose in focusing special planning attention on shorefront access and protection is to provide public beaches and other public coastal areas of environmental, recreational, historic, esthetic, ecological or cultural value with special management attention within the purview of the State's management program. This special management attention may be achieved by designating public

shorefront areas requiring additional access or protection as areas of particular concern pursuant to § 923.21 or areas for preservation or restoration pursuant to § 923.22.

(c) *Requirements.* (1) The management program must contain a procedure for assessing public beaches and other public areas, including State owned lands, tidelands and bottom lands, which require access or protection, and a description of appropriate types of access and protection.

[*Comment.* In meeting this requirement, States should:

(i) Make use of the analyses developed to meet the requirements of § 923.21 as well as information contained in State Outdoor Comprehensive Recreations Plans;

(ii) Consider the need and priority for the protection of islands if they are not already designated as areas of particular concern or areas for preservation or restoration pursuant to §§ 923.21 and 923.22. This analysis will be useful in establishing eligibility for such funds as may be available for islands acquisition pursuant to subsection 315(2) of the Act;

(iii) Analyze the supply of existing public facilities and areas, the anticipated demand for future use of these facilities, the capability and suitability of existing areas to support increased access, and governmental and public preferences and priorities;

(iv) Consider both provision of increased physical and visual access. Emphasis should be on the provision of increased physical access. Physical access could include, but need not be limited to, footpaths, bikepaths, boardwalks, jitneys, rickshaws, parking facilities, ferry services and other public transport. Visual access could involve, but need not be limited to viewpoints, setback lines, building height restrictions, and light requirements;

(v) Give special attention to recreational needs of urban residents;

(vi) Define public coastal areas broadly to include, but not necessarily be limited to: public recreation areas, scenic natural areas, threatened or endangered floral or faunal habitat, wetlands, barrier islands, bluffs, historic, cultural or archaeological artifacts, and urban waterfronts; and

(vii) Consider, in determining protection needs, such factors as (A) environmental, esthetic or ecological preservation (including protection from over-use and mitigation of erosion or natural hazards), (B) protection for public use benefits (including recreational, historic or cultural uses), (C) preservation of islands, and (D) such other protection as may be necessary to insure the maintenance of environmemtal, recreational, historic, esthetic, ecological or cultural values of existing public shorefront attractions.]

(2) There must be a definition of the term "beach" that is the broadest definition allowable under state law or constitutional provisions, and an identification of public areas meeting that definition.

[*Comment.* The purpose of defining the term "beach" is to aid in the identification of those existing public beach areas requiring further access and/or protection as a part of the State's management program. For planning purposes, States may define "beach" in terms of characteristic physical elements (e.g., submerged lands, tidelands, foreshore, dry sand area, line of vegetation, dunes) or in terms of public characteristics (e.g., local, State or Federal ownership, or other demonstrated public interest such as easements, leases, licenses, or traditional and habitual usage.]

(3) There must be an identification and description of enforceable policies, legal authorities, funding programs and other techniques that will be used to provide such shorefront access and protection that the State's planning process indicates is necessary.

**§ 923.25 Shoreline erosion/mitigation planning.**

(a) Statutory Citation, Section 305(b)(9):

The management program for each coastal state shall include * * * A planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

(b) The basic purpose in developing this planning process is to give special attention to erosion issues. This special management attention may be achieved by designating erosion areas as areas of particular concern pursuant to § 923.21 or as areas for preservation or restoration pursuant to § 923.22.

(c) *Requirements.* (1) The management program must include a method for assessing the effects of shoreline erosion and evaluating techniques for mitigating, controlling or restoring areas adversely affected by erosion.

[*Comment.* In developing assessment and evaluation techniques, states should consider:

(i) loss of land along the shoreline or estuarine banks;

(ii) whether the loss resulted from natural or man induced forces;

(iii) whether the erosion is regularly occurring, cyclical, or a one time event;

(iv) impacts of the erosion on adjacent shorelines, and land and water uses;

(v) probable impacts of mitigation on adjacent shorelines, land and water uses, littoral drift and other natural processes such as accretion; and

(vi) probable impacts of re-establishment of pre-erosion shoreline or rebuilding on wetlands and natural habitat, particularly as the re-establishment or rebuilding might relate to the Executive Orders on Wetlands and Floodplains (see § 923.3(b)(2)(ii)).]

(2) There must be an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion as the State's planning process indicates is necessary.

[*Comment.* In developing a process to manage the effects of erosion, States should consider:

(i) the extent and location of erosion problems;

(ii) the necessity for control versus non-control of erosion;

(iii) whether structural (e.g., groins) or nonstructural controls (e.g., land use setbacks) are appropriate;

(iv) costs of alternative solutions (including operation and maintenance costs); and

(v) the National Flood Insurance Program (24 CFR 1909 et seq.) and regulations of the Federal Insurance Administration on flood-related erosion-prone areas (24 CFR 910.5).]

[*Comment.* Due to restrictions on the use of section 306 funds (see § 923.94), not all means of restoration proposed by States may be eligible for funding under section 306 or other sections of the Act. Accordingly, particular attention should be given to coordination of shoreline erosion management objectives with funding programs pursuant to the U.S. Army Corps of Engineers Beach Erosion Control Program (33 U.S.C. 426 et seq.), the Hurricane Protection Program (33 U.S.C. 701 et seq.) and other programs as may be appropriate.]

## Subpart D—Boundaries

**§ 923.30 General.**

(a) This subpart deals in full with subsection 305(b)(1) of the Act—Boundaries of the Coastal Zone.

(b) There are four elements to a State's boundary: The inland boundary, the seaward boundary, areas excluded from the boundary, and, in most cases, interstate boundaries. Specific requirements with respect to procedures for determining and identifying these boundaries are discussed in the sections of this subpart that follow.

(c) Statutory Citations, Subsection 305(b)(1):

The management program for each coastal state shall include * * * (1) An identification of the boundaries of the coastal zone subject to the management program.

Subsection 304(1):

The term "coastal zone" means the coastal waters (including the lands therein and thereunder), and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

Subsection 304(2):

The term "coastal waters" means (A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, estuary-type areas such as bays, shallows and

marshes, and (B) in other areas, those waters adjacent to shorelines which contain a measurable quantity or percentage of seawater, including but not limited to, sounds, bays, lagoons, bayous, ponds and estuaries.

**§ 923.31 Inland boundaries.**

(a) *Requirements.* The inland boundary of a State's coastal management area must include:

(1) Those areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters, pursuant to § 923.11 of these regulations;

(2) Those special management areas identified pursuant to § 923.21;

(3) Waters under saline influence—Waters containing a significant quantity of seawater, as defined by and uniformly applied by the State;

(4) Salt marshes and wetlands—Areas subject to regular inundation of tidal salt (or Great Lakes) waters which contain marsh flora typical of the region;

(5) Beaches—The area affected by wave action directly from the sea. Examples are sandy beaches and rocky areas usually to the vegetation line;

(6) Transitional and intertidal areas—Areas subject to coastal storm surge, and areas containing vegetation that is salt tolerant and survives because of conditions associated with proximity to coastal waters. Transitional and intertidal areas also include dunes and rocky shores to the point of upland vegetation;

[*Comment.* Because there are a number of different floodplains and methods of determining floodplains, no single definition is appropriate for all coastal states. Accordingly, it is left to the states to determine which concept of floodplain should be utilized for the purposes of this section, although use of the 100 year coastal floodplain is recommended.]

(7) Islands—Bodies of land surrounded by water on all sides. Islands must be included in their entirety, except when uses of interior portions of islands do not cause direct and significant impacts.

(8) The inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether property or an activity is located within the management area. States must be able to advise interested parties whether they are subject to the terms of the management program within, at a maximum, 30 days of receipt of an inquiry. An inland coastal zone boundary defined in terms of political jurisdiction (e.g., county, township or municipal lines) cultural features (e.g., highways, railroads), planning areas (e.g., regional agency jurisdictions, census enumeration districts), or a uniform setback line is acceptable so long as it includes the areas identified.

[*Comment.* The program submission should contain maps, charts or other graphics appropriate to understanding the provisions and geographic scope of the management program.]

(b) Beyond those areas required by paragraph (a) of this section above States have the option of including the following within the coastal zone boundaries:

(1) Watersheds—A State may determine some uses within entire watersheds have direct and significant impact on coastal waters. In such cases it may be appropriate to define the coastal zone as including these watersheds.

(2) Areas of tidal influence that extend further inland than waters under saline influence; particularly in estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters.

(3) Indian lands not held in trust by the Federal Government.

[*Comment.* Because such lands often are interspersed with trust lands (which must be excluded from the management area), it may be difficult to develop a discrete management program for non-trust lands alone. Moreover, in some cases, because of long-standing jurisdictional disputes, it often may be difficult to determine which lands are trust lands and which are non-trust lands. Accordingly, States have the option of including or excluding non-trust lands from the management program. See § 923.33(b) regarding tribal participation in coastal management.]

(c) *General Comments.* Urban areas: In many urban areas or where the shoreline has been modified extensively, natural system relationships between land and water may be extremely difficult, if not, impossible, to define in terms of direct and significant impacts. Two activities that States should consider as causing direct and significant impacts on coastal waters in urban areas are sewage discharges and urban runoff. In addition, States should consider dependency of uses on water access and visual relationships as factors appropriate for the determination of the inland boundary in highly urbanized areas.

**§ 923.32 Seaward boundaries.**

(a) *Requirements.*

(1) For States adjoining the Great Lakes, the seaward boundary is the international boundary with Canada or the boundaries with adjacent States. For all other States participating in the program, the seaward boundary is the outer limit of the United States territorial sea.

(2) The requirement for defining the seaward boundary of a State's coastal zone can be met by a simple restatement of the limits defined in this section, unless there are water areas which require a more exact delineation because of site specific policies associated with these areas.

[*Comment.* Examples of areas that could require more precise delineation include areas where a State specifically allows or, conversely, conditions construction of a monobuoy; designates marine sanctuaries, protected resource habitats or preserves; reserves corridors for pipelines; or reserves areas for siting of offshore islands or other structures.]

Where States have site specific policies for particular water areas, these shall be mapped, described or referenced so that their location can be determined reasonably easily by any party affected by the policies.

(b) *General Comments.* The seaward limits, as defined in this section, are for purposes of this program only and represent the area within which the State's management program may be authorized and financed. These limits are irrespective of any other claims States may have by virtue of the Submerged Lands Act or any changes that may occur as a result of the Fisheries Conservation and Management Act of 1976.

**§ 923.33 Excluded lands.**

(a) *Requirement.* States must esclude from their coastal management zone those lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents. To meet this requirement, States must describe, list or map lands or types of lands owned, leased, held in trust or otherwise used solely by Federal agencies.

(b) *Indian lands.* Tribal participation in coastal management efforts may be supported and encouraged through a State's program provided that:

(1) tribal lands are not held in trust by the Federal Government or otherwise excluded from the coastal zone; and

(2) such efforts are compatible with a State's coastal management policies and are in furtherance of the national policies of Section 303 of the Act.

[*Comment.* See § 923.92(b)(4) for further guidance on tribal participation in coastal management activities.]

(c) *General comments.* (1) The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that significantly affect coastal zone areas, uses or resources within the purview of a State's management program. Therefore, States should consider mapping the following types of excluded Federal lands:

(i) Large-scale holdings (of 100 or more acres), especially those on which

Federal activities may have spillover effects;

(ii) Lands near special management areas; and,

(iii) Lands that may be declared surplus or excess in the near future, especially those for which the State has reuse priorities or policies.

(2) In excluding Federal lands from a State's coastal zone for the purposes of this Act, a State does not impair any rights or authorities that it may have over Federal lands that exist separate from this program.

**§ 923.34 Interstate boundaries.**

*Requirement.* States must document that there has been consultation and coordination with adjoining coastal States regarding delineation of adjacent inland and lateral seaward boundaries.

[*Comment.* While it is not required that boundaries of contiguous States be coterminous, the purpose of consultation and coordination should be to ensure compatible management of a common resource and to minimize the possibility of incompatible uses occurring at the juncture of States' boundaries.]

## Subpart E—Authorities and Organization

**§ 923.40 General.**

(a) The authorities and organizational structure on which a State will rely to administer its management program are the crucial underpinnings for enforcing the policies which guide the management of the uses and areas identified according to the previous subparts. There is a direct relationship between the adequacy of authorities and the adequacy of the overall program. The authorities need to be broad enough in both geographic scope and subject matter to ensure implementation of the State's enforceable policies. These enforceable policies must be sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses in order to assure wise use of the coastal zone. (Issues relating to the adequate scope of the program are dealt with in § 923.3.)

(b) The entity or entities which will exercise the program's authorities is a matter of State determination. They may be the State agency designated pursuant to section 306(c)(5) of the Act, other State agencies, regional or interstate bodies, and local governments. The major approval criterion is a determination that such entity or entities are required to exercise their authorities in conformance with the policies of the management program. Accordingly, the essential requirement is that the State demonstrate that there is a means of ensuring such compliance. This demonstration will be in the context of one or a combination of the three control techniques specified in section 306(e)(1) of the Act. The requirements related to section 306(e)(2) are described in §§ 923.42–923.44 of this Subchapter.

(c) In determining the adequacy of the authorities and organization of a State's program, the Assistant Administrator will review and evaluate authorities and organizational arrangements in light of the requirements of this subpart and the finding of section 302(g) of the Act, which provides:

In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present State and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(d) The authorities requirements of the Act dealt with in this subpart are those contained in subsections 305(b)(4)—Means of Control; 306(c)(7)—Authorities; 306(d)(1)—Control Development and Resolve Conflicts; 306(d)(2)—Powers of Acquisition; 306(e)(1)—Techniques of Control; and 307(f)—Air and Water Quality Control Requirements. The organizational requirements of the Act dealt with in this subpart are those contained in subsections 305(b)(6)—Organizational Structure; 306(c)(5)—Designated State Agency; and 306(c)(6)—Organization.

**§ 923.41 Identification of authorities.**

(a) Statutory Citations, Subsection 305(b)(4):

The management program for each coastal state shall include * * * (4) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (2), including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions.

Subsection 306(c)(7):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * (7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

Subsection 306(d):

Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone, in accordance with the management program. Such authority shall include power:

(1) To administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) To acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(b) *Requirements.* In order to meet the requirements of the preceding subsections of the Act, States must:

(1) Identify relevant constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and interagency agreements) that will be used to carry out the State's management program.

[*Comment.* When, in the opinion of the Assistant Administrator, there is serious question as to the enforceability of any of the authorities asserted to be part of the management program, the Assistant Administrator may request the designated State agency to seek an opinion from the State's Attorney General.]

(2) This identification will include the authorities pursuant to sections 306(d) and 306(e) of the Act which require a State have the ability to:

(i) Administer land and water use regulations in conformance with the policies of the management program;

(ii) Control such development as is necessary to ensure compliance with the management program; and

(iii) Resolve conflicts among competing uses:

[*Comment.* Examples of acceptable conflict resolution mechanisms include, but are not limited to, mediation procedures, administrative review, gubernatorial action, or judicial appeal provisions provided that any such mechanisms results in a decision which is binding upon the entities involved.]

(iv) Acquire appropriate interest in lands, waters or other property as necessary to achieve management objectives. Where acquisition will be a necessary technique for accomplishing particular program policies and objectives, the management program must indicate for what purpose acquisition will be used (i.e., what policies or objectives will be accomplished); the type of acquisition (e.g., fee simple, purchase of easements, condemnation); and what agency (or agencies) of government have the authority for the specified type of acquisition.

**§ 923.42 State establishment of criteria and standards for local implementation—Technique A.**

(a) Statutory Citation, Subsection 306(e)(1)(A):

Prior to granting approval, the Secretary shall also find that the program provides:

(1) for anyone or a combination of the following general techniques for control of land and water uses within the coastal zone;

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance * * *

(b) Control technique 306(e)(1)(A) of the Act allows for State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance. There are 5 principal requirements associated with use of this control technique. They are that:

(1) The State have in place adequate standards and criteria to guide local program development;

(2) During the period while local programs are being developed, the State has sufficient authority to assure compliance with the management program's enforceable policies;

(3) The State can ensure that local coastal programs will be developed pursuant to its standards and criteria;

(4) The State review and approve local coastal programs to assure their conformance to State standards and criteria; and

(5) The State has the ability to assure local compliance with its program once approved.

More detailed and specific requirements for each of these general items are contained in paragraph (c) below.

(c) *Requirements.* (1) The State must have developed and have in effect at the time of program approval enforceable policies that meet the requirements of § 923.3. These policies must serve as the standards and criteria for local program development or the State must have separate standards and criteria, related to these enforceable policies, that will guide local program development.

(2) During the period while local programs are being developed, a State must have sufficient authority to assure that land and water use decisions subject to the managment program will comply with the program's enforceable policies. The adequacy of these authorities wil be judged on the same basis as specified for direct State controls or case-by-case reviews.

[*Comment.* For a discussion of direct State control requirements, see § 923.42. For a discussion of case-by-case review requirements, see § 923.43.]

(3) A State must be able to ensure that coastal programs will be developed pursuant to the State's standards and criteria, or failing this, that the management program can be implemented directly by the State. This requirement can be met if a State can exercise any one of the following techniques:

(i) Direct State enforcement of its standards and criteria in which case a State would need to meet the requirements of § 923.42 which address the direct State control technique;

(ii) Preparation of a local program by a State agency which the local government then would implement. To use this technique the State must have (A) statutory authority to prepare and adopt a program for a local government, and (B) a mechanism by which the State can cause the local government to enforce the State-created program. Where the mechanism to assure local enforcement will be judicial relief, the program must include the authority under which judicial relief can be sought;

(iii) State preparation and enforcement of a program on behalf of a local government. Here the State must have the authority to (A) prepare and adopt a plan, regulations, and ordinances for the local government and (B) enforce such plans, regulations and ordinances;

[*Comment.* The distinction between this approach and the preceding one is that in this case the State both adopts and implements while in the preceding case, the State adopts but the local government implements.]

(iv) State review of local government actions on a case-by-case basis or on appeal, and prevention of actions inconsistent with the standards and criteria. Under this technique, when a local government fails to adopt an approvable program, the State must have the ability to review activities in the coastal zone subject to the management program and the power to prohibit, modify or condition those activities based on the policies, standards and criteria of the management program; or

(v) If a locality fails to adopt a management program, the State may utilize a procedure whereby the responsibility for preparing a program shifts to an intermediate level government, such as a county. If this intermediate level of government fails to produce a program, then the State must have the ability to take one of the actions described above. This alternative cannot be used where the intermediate level of government lacks the legal authority to adopt and implement regulations necessary to implement State policies, standards and criteria.

(4) A State must have a procedure whereby it reviews and certifies the local program's compliance with State standards and criteria. This procedure must include provisions for:

(i) Opportunity for the public and governmental entities (including Federal agencies) to participate in the development of local programs; and

(ii) Opportunity for the public and governmental entities (including Federal agencies) to make their views known (through public hearings or other means) to the State agency prior to approval of local programs; and

(iii) Review by the State of the adequacy of local programs consideration of facilities identified in a State's management program in which there is a national interest.

(A) A State must be able to assure implementation and enforcement of a local program once approved. To accomplish this a State must:

(*1*) Establish a monitoring system which defines what constitutes and detects patterns of non-compliance. In the case of uses of regional benefit and facilities in which there is a national interest, the monitoring system must be capable of detecting single instances of local actions affecting such uses or facilities in a manner contrary to the management program.

[*Comment.* Following are some monitoring techniques States may want to use, either singly or in combination. The list is not exhaustive and does limit States to only these techniques:

(i) Periodic reports—monthly reports submitted by each local government listing all building permits issued, variances and exceptions granted, subdivision plats approved, etc. during the preceding month,

(ii) Spot checks by State Agency,

(iii) Procedures for submission of citizen complaints followed by State review of complaint,

(iv) Establishment of citizen "overview" committees, or

(v) Selective review of local decisions.]

[*Comment.* In developing a definition of a pattern of noncompliance, State may want to consider the number of activities improperly managed, the size and type of such activities, their proximity to coastal waters and to special management areas.]

(*2*) Be capable of assuring compliance when a pattern of deviation is detected or when a facility involving identified national interests or a use of regional benefit is affected in a manner contrary to the program's policies. When State action is required because of failure by a local government to enforce its program, the State must be able to do one or a combination of the following:

(*i*) Directly enforce the entire local program;

(*ii*) Directly enforce that portion of the local program that is being enforced improperly. State intervention would be necessary only in those local government activities that are violating the policies, standards or criteria.

[*Comment.* For example, if a subdivision regulation were the only part of a program that was being enforced improperly, State enforcement could be limited to that regulation. In such a case, the State, would need to have the statutory authority to ensure compliance of subdivision applications.]

(*iii*) Seek judicial relief against local government for failure to properly enforce;

(*iv*) Review local government actions on a case-by-case basis or on appeal and have the power to prevent those actions inconsistent with the policies and standards.

(*v*) Provide a procedure whereby the responsibility for enforcing a program shifts to an intermediate level of government, assuming statutory authori-

ty exists to enable the immediate of government to assume this responsibility.

**§ 923.43 Direct State land and water use planning and regulation—Technique B.**

(a) Statutory Citation, Subsection 306(e)(1)(B):

Prior to granting approval, the Secretary shall also find that the program provides:

(1) For any one or a combination of the following general techniques for control of land and water uses within the coastal zone: • • • Direct state land and water use planning regulation.

(b) Control technique 306(e)(1)(B) of the Act allows for direct state control of land and water uses subject to the management program on the basis of direct State authority. This authority can take the form of:

(1) Comprehensive legislation: A single piece of comprehensive legislation specific to coastal management and the requirements of this Act.

[*Comment.* While it is possible that a State will be able to put together into a single piece of legislation all the authorities needed to meet the requirements of this subpart, it is more likely that even a single, major piece of coastal legislation will be supplemented with other State authorities to meet all the authorities requirements. Where this will be the case, States are advised to review the commentary on networking that follows. Also, in cases where a State will be relying primarily—but not exclusively—on a single piece of legislation, it is important to be explicit about those other authorities included in the management program as part of the listing called for in § 923.41.]

(2) Networking: The utilization of authorities which are compatible with and applied on the basis of coastal management policies developed pursuant to § 923.3

[*Comment.* Even though each agency is statutorily mandated to carry out its own, often more narrowly focused policies, the effect of networking is to tie the implementation of these individual authorities into a comprehensive and unified framework for managing coastal land and water resources.]

(c) *Requirements.* In order to apply the networking concept, State must:

(1) Demonstrate that, taken together, existing authorities can and will be used to implement the full range of policies and management techniques identified as necessary for coastal management purposes; and

(2) Bind each party which exercises statutory authority that is part of the management program to conformance with relevant enforceable policies and management techniques. Parties may be bound to conformance through an executive order, administrative directive or a memorandum of understanding provided that:

(i) The management program authorites provide grounds for taking action to ensure compliance of networked agencies with the program. It will be sufficient if any of the following can act to ensure compliance: The State agency designated pursuant to subsection 306(c)(5) of the Act, the State's Attorney General, another State agency, a local government, or a citizen.

(ii) The executive order, administrative directive or memorandum of understanding establishes conformance requirements of other State agency activities or authorities to management program policies.

[*Comment.* These instruments will be most effective if they contain the following:

(A) A description of how the networked agency, in implementing or enforcing its particular authorities, will operate those authorities in conformance with the management program's policies;

(B) A description of procedures to be followed to resolve conflicts between agency activities and management program policies or conflicts between agencies regarding what constitutes conformance with the policies;

(C) A description of the enforcement mechanism that will be used to assure implementation of and adherence to the program's enforceable policies.]

(3) A gubernatorial executive order will be an acceptable instrument to meet the requrements of paragraph (2) above in those States where networked State agency heads are directly responsible to the Governor.

(4) Where networked State agencies can enforce the management program policies at the time of section 306 approval without first having to revise their operating rules and regulations, then any proposed revisions to such rules and regulations which would enhance or facilitate implementation need not be accomplished prior to program approval. Where State agencies cannot enforce coastal policies without first revising their rules and regulations, then these revisions must be made prior to approval of the State's program by the Assistant Administrator.

[*Comment.* Examples explaining this paragraph follow: Assuming State X has established as a management program policy that only specified types of development henceforth will be permitted on barrier islands. Assume further that such a policy statement is contained in State legislation that proclaims such policy to be effective immediately and directs all State agencies to revise their existing operating procedures (including rules and regulations) within a certain time period to conform with the policy. In this case, the policy is enforceable at time of management program approval and the revision of associated rules and regulations could occur after program approval. Now, however, assume the same policy is part of the management program but the corresponding State legislation states the policy becomes effective when State regulations have been revised to reflect this policy mandate. In this example, rule revision would be necessary prior to program approval.]

**§ 923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.**

(a) Statutory Citation; Subsection 306(e)(1)(C):

Prior to granting approval, the Secretary shall find that the program provides:

(1) For any one or a combination of the following general techniques for control of land and water uses within the coastal zone:

State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(b) Under case-by-case review, States have the power to review individual development plans, projects or land and water use regulations (including variances and exceptions thereto) proposed by any State or local authority or private developer which have been identified in the management program as being subject to review for consistency with the management program.

This control technique requires the greatest degree of policy specificity because compliance with the program will not require any prior actions on the part of anyone affected by the program. Specificity also is needed to avoid challenges that decisions (made pursuant to the management program) are unfounded, arbitrary or capricious.

(c) *Requirements.* To use this control technique States must:

(1) Identify the plans, projects or regulations subject to review, based on their significance in terms of impacts on coastal resources, potential for incompatibility with the State's coastal management program, and having greater than local significance;

(2) Identify the State agency that will conduct this review;

(3) Include the criteria by which identified plans, projects and regulations will be approved or disapproved;

(4) Have the power to approve or disapprove identifed plans, projects or regulations that are inconsistent with the management program, or the power to seek court review thereof; and

(5) Provide public notice of reviews and the opportunity for public hearing prior to rendering a decision on each case-by-case review.

[*Comment.* The public notice required by this paragraph should by provided in those communities most likely to be affected by the proposal. Such public notice should provide information on the nature of the proposal (such as size, location, type, etc.), where further information is available, and notice of hearing dates, if any.]

**§ 923.45. Air and water pollution control requirements.**

(a) Statutory Citation, Subsection 307(f):

Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Act as amended, or the Clean Air Act as amended, or (2) established by the Federal Government or any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

(b) *General Comments.* (1) Incorporation of the air and water quality requirements pursuant to the Clean Water Act, as amended (CWA) and Clean Air Act (CAA), as amended, should involve their consideration during program development, especially with respect to use determinations and designation of areas for special management. In addition, this incorporation will prove to be more meaningful if close coordination and working relationships between the State agency and the air and water quality agencies are developed and maintained throughout the program development process and after program approval.

(2) Following is a table of the most important Clean Air Act requirements. These requirements are categorized as either uniform, nationwide requirements or non-uniform requirements applicable to a specific State or local area. The first cateogry of requirements is established in the Clean Air Act or by the Environmental Protection Agency (EPA) pursuant to provisions of the CAA, and applies uniformly in all areas of the country. The second category of requirements is based on the nature of air quality problems that exist or are forecast in coastal areas, in locations where emission sources may affect air quality in coastal areas, and in other areas of a State. The majority of the second category of requirements will be included in the State Implementation Plans (SIPs) required by the Clean Air Act.

TABLE—CLEAN AIR ACT REQUIREMENTS

| Uniform, nationwide requirements. | Nonuniform, nationwide requirements (SIPs). |
|---|---|
| National ambient air quality standards. | New source review. |
| Motor vehicle emission standards (except where States have been granted a waiver by EPA). | Emissions or air quality standards more stringent than Federal standards. |
| New source performance standards. | Prevention of significant deterioration. |
| National emissions standards for hazardous air pollutants. | Attainment and maintenance of national ambient air quality standards. Other attainment or maintenance measures such as transportaion control measures. |

(3) Water quality standards are established by EPA promulgation or approval of State standards, taking into consideration public water supplies, protection and propagation of fish, shellfish and wildlife, recreation, agriculture, industry and navigation. EPA itself develops standards on effluent limitations, new source preformance standards, pre-treatment standards and toxic pollutant discharge standards.

(c) *Requirements.* (1) States must incorporate into their program, by reference or otherwise, requirements established pursuant to the Clean Water Act (CWA), as amended, and the Clean Air Act (CAA) as amended.

(2) If more stringent standards are developed; by a State or locality pursuant to the CWA or CAA, and where such standards can be enforced under State authorities, they must be incorporated, by reference or otherwise, into the State's management program.

[*Comment.* If incorporation of more stringent standards leads to the restriction or exclusion of some facilities in which there is a national interest in their siting, such exclusion or restriction is established pursuant to the requirements of the Clean Air Act and Federal Water Pollution Control Act in which there is also a national interest.]

**§ 923.46 Organizational structure.**

(a) Statutory Citation, Subsection 305(b)(6):

The management program for each coastal state shall include * * * A description of the organizational structure proposed to implement such management program including the responsibilities and interrelationships of local, areawide, state, regional and interstate agencies in the management process.

Subsection 306(c)(6):

Prior to grant approval of management program submitted by a coastal state, the Secretary shall find that * * * the State is organized to implement the management program required under paragraph (1) of this subsection.

(b) The main purpose of this requirement is to provide a clear understanding of the entities that have responsibility for administering various aspects of the management program and the interrelationship of these entities.

(c) *Requirements.* (1) States must describe the organizational structure that will be used to implement and administer the management program including a discussion of those State and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(c) (B); 306(c)(7); 306(d) (1) and (2); 306(e) (1) and (2) and 307(f)

[*Comment.* See §§ 923.27, 923.41, 923.42-923.44, 923.12 and 923.45 respectively for further discussion of the authorities contained in these subsections of the Act.]

(2) States must describe the relationship of these administering agencies to the State agency designated pursuant to subsection 306(c)(5) of the Act.

**§ 923.47 Designated State agency.**

(a) Statutory Citation, Subsection 306(c)(5):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this section.

(b) *Requirements.* (1) The Governor must designate a single State entity to receive and administer section 306 grants.

(2) This entity must have the fiscal and legal capability to accept and administer grant funds, to make contracts or other arrangements (such as passthrough grants) with participating agencies for the purpose of carrying out specific management tasks and to account for the expenditure of the implementation funds of any recipient of such monies, and

(3) This entity must have the administrative capability to monitor and evaluate the management of the State's coastal resources by the various agencies and/or local governments with specified responsibilities under the management program (irrespective of whether such entities receive section 306 funds); to make periodic reports to OCZM, the Governor, or the State legislature, as appropriate, regarding the performance of all agencies involved in the program. The entity must be capable of presenting evidence of adherence to the management program or justification for deviation as part of the review of State performance required by section 312 of the Act.

(c) *General Comments.* (1) The 306 agency designated is designed to establish a single point of accountability for prudent use of administrative funds in the furtheranoe of the management and for monitoring of management activities. Designation does not imply that this single agency need be a "super agency" or the principal implementation vehicle. It is however, the focal point for proper administration and evaluation of the State's program and the entity to which OCZM will look when monitoring and reevaluating a State's program during program implementation.

(2) The requirements for the single designated agency contained herein need not be viewed as confining or otherwise limiting the role and respon-

sibilities which may be assigned to this agency. It is up to the State to decide in what manner and to what extent the designated State agency will be involved in actual program implementation or enforcement. In determining the extent to which this agency should be involved in program implementation or enforcement, specific factors should be considered, such as the manner in which local and regional authorities are involved in program implementation, the administrative structure of the State, the authorities to be relied upon and the agencies administering such authorities. Because the designated State agency may be viewed as the best vehicle for increasing the unity and efficiency of a management program, the State may want to consider the following in arriving at a designation:

(i) Whether the designated State entity has a legislative mandate to coordinate other State or local programs, plans and/or policies within the coastal zone;

(ii) To what extent linkages already exist between the entity, other agencies, and local governments;

(iii) To what extent management or regulatory authorities affecting the coastal zone presently are administered by the agency; and

(iv) Whether the agency is equipped to handle monitoring, evaluation and enforcement responsibilities.

**§ 923.48 Documentation.**

(a) *Requirements.* Documentation in the form of a transmittal letter signed by the Governor, accompanying the management program submittal, is required to the effect that the Governor:

(1) Has reviewed and approved as State policy, the management program, and any changes thereto, submitted for the approval of the Assistant Administrator.

(2) Has designated a single State agency to receive and administer implementation grants;

(3) Attests to the fact that the State has the authorities necessary to implement the management program; and

(4) Attests to the fact that the State is organized to implement the management program.

## Subpart F—Coordination, Public Involvement and National Interest

**§ 923.50 General.**

(a) Statutory Citation, Section 303:

The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and, where possible, to restore or enhance the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint, action particularly regarding environmental problems.

(b) Coordination with governmental agencies having interests and responsibilities affecting the coastal zone, and involvement of interest groups as well as the general public is essential to the development and administration of State coastal management programs. The coordination requirements of this subpart are intended to achieve a proper balancing of diverse interests in the coastal zone. The policies of section 303 of the Act require that there be a balancing of varying, sometimes conflicting, interests, including:

(1) The preservation, protection, development and, where possible, the restoration or enhancement of coastal resources;

(2) The achievement of wise use of coastal land and water resources with full consideration for ecological, cultural, historic, and esthetic values and needs for economic development; and

(3) The involvement of the public, of Federal, State and local governments and of regional agencies in the development and implementation of coastal management programs.

(c) In order to be meaningful, coordination with and participation by various units and levels of government including regional commissions, interest groups, and the general public should begin early in the process of program development and should continue throughout on a timely basis to assure that such efforts will result in substantive inputs into a State's management program. State efforts should be devoted not only to obtaining information necessary for developing the management program but also to obtaining reactions and recommendations regarding the content of the management program and to responding to concerns by interested parties. The requirements for intergovernmental cooperation and public participation continue after program approval

(d) This Subpart deals with requirements for coordination with governmental entities, interest groups and the general public to assure that their interests are fully expressed and considered during the program development process and that procedures are created to insure continued consideration of their views during program implementation. In addition, this Subpart deals with mediation procedures for serious disagreements between States and Federal agencies that occur during program development and implementation. This Subpart addresses the requirements of the following subsections of the Act: 306(c)(1)—Opportunity for Full Participation; 306(c)(2)(A)—Plan Coordination; 306(c)(2)(B)—Continued State—Local Consultation; 306(c)(3)—Public Hearings; 306(c)(8)—Consideration of the National Interest in Facilities; 307(b)—Federal Consultation; and 307(h)—Mediation.

**§ 923.51 Federal-State consultation.**

(a) Statutory Citations, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: The state has developed and adopted a management program for its coastal zone * * * with the opportunity for full participation by relevant Federal agencies.

Subsection 307(b):

The Secretary shall not approve the management program submitted by a State prusuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered.

(b) The requirements of subsections 306(c)(1) and 307(b) of the Act and those of subsections 307 (c) and (d) establish reciprocal State-Federal relationships. In exchange for providing relevant Federal agencies with the opportunity for full participation during program development and for adequately considering the views of such agencies, States can effectuate the Federal consistency provisions of subsections 307 (c) and (d) of the Act once their programs are approved. (See 15 CFR Part 930 for a full discussion of the Federal consistency provisions of the Act.)

(c) In addition to the consideration of relevant Federal agency views required during program development, Federal agencies have the opportunity to provide further comment during the program review and approval process. (See Subpart H for details on this process.) Moreover, in the event of a serious disagreement between a relevant Federal agency and designated State agency during program development or during program implementation, the mediation provisions of subsection 307(h) of the Act are available. (See § 923.54 for details on mediation.)

(d) *Requirements.* In order to address that portion of subsection 306(c)(1) of the Act that deals with Federal agency participation, each State must:

(1) Contact each relevant Federal Agency listed in § 923.2(d) and such other Federal agencies as may be relevant, owing to a State's particular circumstances, early in the development of its management program. The purpose of such contact is to develop mutual arrangements or understandings regarding that agency's participation during program development;

(2) Provide for Federal agency input on a timely basis as the program is developed. Such input shall be related both to information required to develop the management program and to evaluation of and recommendations concerning various elements of the management program;

(3) Solicit statements from the head of Federal agencies identified in Table 1 of § 923.52(c)(1) as to their interpretation of the national interest in the planning for and siting of facilities which are more than local in nature;

(4) Summarize the nature, frequency, and timing of contacts with relevant Federal agencies;

(5) Evaluate Federal comments received during the program development process and, where appropriate in the opinion of the State, accommodate the substance of pertinent comments in the management program. States must consider and evaluate relevant Federal agency views or comments about the following:

(i) Management of coastal resources for preservation, conservation, development, enhancement or restoration purposes;

(ii) Statements of the national interest in the planning for or siting of facilities which are more than local in nature;

(iii) Uses which are subject to the management program;

(iv) Areas which are of particular concern to the management program;

(v) Boundary determinations;

(vi) Shorefront access and protecting planning, energy facility planning and erosion planning processes; and

(vii) Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(c)(2)(A) of the Act.

[*Comment.* See also section 923.56 for additional plan coordination requirements.]

(6) Indicate the nature of major comments by Federal agencies provided during program development (either by including copies of comments or by summarizing comments) and discuss any major differences or conflicts between the management program and Federal views that have not been resolved at the time of program submission.

**§ 923.52 Consideration of the national interest in facilities.**

(a) Statutory Citation, Subsection 306(c)(8):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * * The management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature. In the case of such energy facilities, the Secretary shall find that the state has given such considerations to any applicable interstate energy plan or program.

(b) The primary purpose of this requirement is to assure adequate consideration by States of the national interest involved in the planning for and siting of facilities (which are necessary to meet other than local requirements) during (1) the development of the State's management program, (2) the review and approval of the program by the Assistant Administrator, and (3) the implementation of the program as such facilities are proposed.

(c) *Requirements.* States must:

(1) Describe the national interest in the planning for and siting of facilities considered during program development.

[*Comment.* Table 1 below describes those uses that normally should be considered by states during program development and implementation as having a national interest in the planning for and siting of associated facilities.]

(2) Indicate the sources relied upon for a description of the national interest in the planning for and siting of the facilities.

[*Comment.* Other sources, which specify the national interest in the planning for and siting of facilities and which may be relied upon for articulation of this interest, include:

(i) Federal legislation, for example the Outer Continental Shelf Lands Act, the Department of Energy Reorganization Act, the Federal Aid Highways Act;

(ii) Policy statements from the President, for example the National Energy Plan; the National Environmental Message, and the National Outdoor Recreation Plan; and the President's Water Policy Message;

(iii) Plans, reports and studies from Federal, State, interstate agencies or from interstate groups, for example interstate energy plans.]

TABLE 1

| Uses | Associated facilities | Associated Federal agencies |
|---|---|---|
| National defense and aerospace | Military bases and installations; defense manufacturing facilities; aerospace facilities. | Department of Defense, National Aeronautics and Space <Administration. |
| Energy production and transmission | Oil and gas rigs, storage, distribution and transmission facilities; power plants; deepwater ports; LNG facilities; geothermal facilities; coal mining facilities. | Department of Energy, Department of the Interior, Department of Commerce, National Oceanic and Atomospheric Administration, Department of Transportation, Corps of Engineers, Federal Energy Regulatory Commission, and Nuclear Regulatory Commission. |
| Recreation | National seashores, parks, forests; large and outstanding beaches and recreational <waterfronts. | Department of the Interior, Department of Agriculture, Department of Housing and Urban Development. |
| Transportation | Interstate highways, railroads; airports; ports; aids to navigation including Coast Guard stations. | Department of Transportation, Department of Commerce, Corps of Engineers. |

(3) Indicate how and where the consideration of the national interest is reflected in the substance of the management program. In the case of energy facilities in which there is a national interest, the program must indicate the consideration given any interstate energy plans or programs, developed pursuant to section 309 of the Act, which are applicable to or affect a State's coastal zone.

[*Comment.* Consideration of the national interest should enter into such determinations as uses subject to the management program, the type of management afforded these uses, designation of areas of particular concern and areas for preservation and restoration, and the design of the required energy facility planning process.]

(4) Describe the process for continued consideration of the national interest in the planning for and siting of facilities during program implementation, including a clear and detailed description of the administrative procedures and decisions points where such interest will be considered.

[*Comment.* A process for adequate consideration of the national interest during program implementation generally will need to involve the utilization of a State administrative process that deals with individual facility siting decisions as these facilities are proposed. Normally this process should be contained in a State permit procedure that deals with the siting of energy, recreation or transportation facilities. Accordingly, States should review their existing permit procedures and, if necessary, modify existing or develop new procedures to assure that the national interest in the planning for and siting of these facilities will be considered as part of the permit process. A process for "adequate consideration of the national interest" can and should include those important state and national resource concerns that will enter into the decisionmaking process. Table 2 below indicates types of resources for which states may want to include special consideration in their permit procedures.]

TABLE 2

| Resources | Major related Federal legislation | Associated Federal agencies |
|---|---|---|
| Water | Clean Water Act | Environmental Protection Agency, Corps of Engineers. |
| Air | Clean Air Act | Environmental Protection Agency. |
| Wetlands | Fish and Wildlife Coordination Act | Corps of Engineers, Environmental Protection Agency, Department of the Interior, Department of Commerce. |
| Endangered flora and fauna | Endangered Species Act, Marine Mammal Protection Act. | Department of the Interior, Department of Commerce, Marine Mammal Commission. |
| Flood plains and erosion hazard areas | Flood Insurance Act | Housing & Urban Development, Corps of Engineers, Department of Agriculture. |
| Barrier islands and beaches | Coastal Zone Management Act | Department of the Interior, Department of Commerce, Corps of Engineers. |
| Historic and cultural resources | National Historic Preservation Act | Advisory Council on Historic Preservation. |
| Wildlife refuges and reserves | Pitman-Robinson Act; Dingell-Johnson Act; Land and Water Conservation Fund Act. | Department of the Interior, Department of Commerce, Marine Mammal Commission. |
| Areas of unique cultural significance | National Historic Preservation Act | Advisory Council on Historic Preservation, Department of the Interior. |
| Minerals | Mineral Leasing Act, Outer Continental Shelf Lands Act. | Department of the Interior, Department of Energy, Department of Commerce. |
| Prime agricultural lands | Homestead Act | Department of Agriculture. |
| Forests | National Forest Management Act | Department of Agriculture, Department of the Interior. |
| Living marine resources | Fisheries Conservation and Management Act, Marine Mammal Protection Act. | Department of Commerce, Department of the Interior, Marine Mammal Commission. |

[*Comment.* As part of the State's procedure during program implementation for considering the national interest in particular facilities, States may request OCZM's assistance in determining the nature of the national interest in a particular facility when a request to site that facility occurs. Under this process, OCZM will solicit from relevant Federal agencies their statement of the national interest in the particular facility under consideration. OCZM will make these statements available to a State in a timely fashion so that these statements are considered under a State's procedure for consideration of the national interest involved in the siting of a particular facility.]

**§ 923.53 Federal consistency procedures.**

(a) *Requirements.* States shall include in their management program submission, as part of the body of the submission an appendix or an attachment, the procedures they will use to implement the Federal consistency requirements of subsections 307 (c) and (d) of the Act. At a minimum, the following shall be included:

(1) An indication of whether the state agency designated pursuant to subsection 306(c)(5) of the Act or a single other state agency will handle consistency review (see 15 CFR 930.18);

(2) A list of Federal license and permit activities that will be subject to review (see 15 CFR 930.53);

(3) For States anticipating coastal zone effects from Outer Continental Shelf (OCS) activities, the license and permit list also must include OCS plans which describe in detail Federal license and permit activities (see 15 CFR 930.74); and

(4) The public notice procedures to be used for certifications submitted for Federal License and permit activities and, where appropriate, for OCS plans (see 15 CFR 930.61-930.62 and 930.78).

[*Comment.* For detailed guidance on structuring implementation of the Federal consistency provisions, see 15 CFR Part 930.]

(b) Beyond the minimum requirements contained in (a) above, States have the option of including the following in their management programs:

(1) A list of Federal activities, including development projects, which in the opinion of the State agency are likely to significantly affect the coastal zone and thereby will require a Federal agency consistency determination (see 15 CFR 930.35); and

(2) A description of the types of information and data necessary to assess the consistency of Federal license and permit activities and, where appropriate, those described in detail in OCS plans (see 15 CFR 930.56 and 930.75).

**§ 923.54 Mediation.**

(a) Statutory Citation, Subsection 307(h):

In the case of serious disagreement between any Federal agency and a coastal State:

(1) in the development or the initial implementation of a management program under section 305; or

(2) in the administration of a management program approved under section 306; the Secretary, with the cooperation of the Executive Office of the President, shall seek to mediate the differences involved in such disagreement. The process of such mediation shall, with respect to any disagreement described in paragraph (2), include public hearings which shall be conducted in the local area concerned.

(b) The Act provides for the mediation of "serious disagreements" between any Federal agency and a coastal State during the development and implementation of a management program. In certain cases, mediation by the Secretary or his/her designee, with the assistance of the Executive Office of the President, may be an appropriate forum for conflict resolution. This section describes the conditions of and processes for mediation of serious disagreements that may arise during program development or implementation.

(c) State-Federal differences should be addressed initially by the parties involved. Whenever a serious disagreement cannot be resolved between the

parties concerned, either party may request the informal assistance of the Assistant Administrator in resolving the disagreement. This request shall be in writing, stating the points of disagreement and the reason therefor. A copy of the request shall be sent to the other party to the disagreement.

(d) If a serious disagreement persists, the Secretary or other head of a relevant Federal agency, or the Governor or the head of the State agency designated by the Governor as administratively responsible for program development (if a state still is receiving section 305 program development or preliminary approval grants) or for program implementation (if a State is receiving section 306 program implementation grants) may notify the secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the ageny with which the requesting agency disagrees and to the Assistant Administrator.

(e) Within 15 days following receipt of a request for mediation, the disagreeing agency shall transmit a written response to the Secretary, the agency requesting mediation and to the Assistant Administrator indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, the basis for refusal must be indicated. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to resolve the basis for refusal and persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. The Secretary will not provide mediation assistance unless all parties to the serious disagreement agree to participate.

(f) In the case of a serious disagreement that occurs during program development, if all parties agree to mediation, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, and the disagreeing Federal and State agencies. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference. Notice also shall be placed in the FEDERAL REGISTER to allow other parties an opportunity to make known to the Secretary in writing their interest in the disagreement.

(g) If the mediation efforts do not resolve the disagreement, the Assistant Administrator shall determine whether inclusion in the management program of the State agency's position in the disgreement affects the Assistant Administrator's ability to approve the State's management program. The Assistant Administrator shall communicate his/her determination in writing, with the reason(s) therefor, the parties to the disagreement.

(h) In the case of a serious disagreement that occurs during program implementation, if the parties agree to the mediation process, the Secretary shall appoint a hearing officer who shall schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing. Notice of the hearing also shall be placed in the FEDERAL REGISTER. At the time public notice is provided, the Federal and State agencies shall provide the public convenient access to public data and information related to the serious disagreement. Hearing shall be informal and shall be conducted by the hearing officer with the objective of securing, in a timely fashion, information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. Unduly long or repetitious oral presentations may be excluded at the discretion of the hearing officer. In the event of such exclusion, the party may provide the hearing officer with a written submission of the proposed oral presentation. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies. Following the close of the hearing, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

(i) Secretarial mediation efforts shall last only so long as the parties agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

(j) Mediation shall terminate: (1) At any time the parties agree to a resolution of the serious disagreement, (2) if one of the parties withdraws from mediation, (3) in the event the parties fail to reach a resolution of the serious disagreement within 15 days following Secretarial mediation efforts, and the parties do not agree to extend mediation beyond that period, or (4) for other good cause.

(k) The availability of the mediation services provided in this section is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided herein.

**§ 923.55 Full participation by state and local governments, interested parties and the general public.**

(a) Statutory Citation, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: the state has developed and adopted a management program for its coastal zone * * * with the opportunity of full participation by * * * state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private * * *

(b) *Requirements.* In addition to consultation with Federal agencies, subsection 306(c)(1) of the Act requires that the opportunity for full participation in program development be provided State agencies, local governments, regional commissions and organizations, port authorities, and other interested public or private parties. To meet this requirement with respect to governmental entities (other than Federal) and other public or private parties States must:

(1) Develops and make available general information regarding the program design, its content and its status throughout program development;

[*Comment.* Public information may take many forms:

(i) Brochures and reports made available in places of public congregation such as libraries, government buildings, stores or transit facilities;

(ii) Radio, television and personal presentations;

(iii) Press announcements;

(iv) Public meetings or hearings;

(v) Exhibits;

(vi) Telephone "hot lines;" and

(vii) Films and slide shows.]

(2) Provide a listing, as comprehensive as possible, of all governmental agencies, regional organizations, port authorities and public and private organizations likely to be affected by or to have a direct interest in the development and implementation of the management program;

(3) Indicate the nature of major comments received from interested or affected parties, identified in (2) above, and the nature of the State's response to these comments; and

(4) Hold public meetings, workshops, etc., during the course of program development at accessible locations and

convenient times, with reasonable notice and availability of materials.

[*Comment.* States may want to consider establishing advisory committees and/or technical advisory boards comprised of public citizens representing specific interest, local government representatives, and/or State and Federal agency representatives. These committees and boards may serve a number of useful purposes: providing information needed to develop the management program; serving as a conduit and evaluator of public interests and concerns; and determining major program directions.]

[*Comment.* Related requirements concerning plan coordination, continuing consultation after program approval and public hearings may be found in §§ 923.56, 923.57 and 923.58 respectively.]

**§ 923.56 Plan coordination.**

(a) Statutory Citation, Subsection 306(c)(2)(A):

Prior to granting approval to a management program submitted by a coastal state, the Secretary shall find that * * *

The State has: coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, and areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency * * *

(b) *Requirements.* States must insure that the contents of their management programs have been coordinated with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Assistant Administrator for approval. To document this coordination, the management program must:

(1) Identify local governments, areawide agencies designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, and regional or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which the management program is submitted;

(2) List or provide a summary of contacts with these entities for the purpose of coordinating the management program with plans adopted by a governmental entity as of January 1 of the year in which the management program is submitted. At a minimum, the following plans, affecting a State coastal zone, shall be reviewed: land use plans prepared pursuant to section 701 of the Housing and Urban Development Act of 1968, as amended; State and areawide waste treatment facility or management plans prepared pursuant to section 201 and 208 of the Clean Water Act, as amended; plans and designations made pursuant to the Flood Insurance Act of 1974; any applicable interstate energy plans or programs developed pursuant to section 309 of the Act; regional and interstate highway plans; plans developed by Regional Action Planning Commission; and fishery management plans developed pursuant to the Fisheries Conservation and Management Act.

[*Comment.* State and areawide clearinghouses, established pursuant to OMB Circular A-95 (revised) may be used as a means of contacting relevant local, areawide or interstate entities provided such entities are recipients of clearinghouse notices.]

(3) Identify conflicts with those plans of a regulatory nature that are unresolved at the time of program submission and the means that can be used to resolve these conflicts.

**§ 923.57 Continuing consultation.**

(a) Statutory Citation, Subsection 306(c)(B):

Prior to granting approval to a management program submitted by a coastal state, the Secretary shall find that * * *

The state has * * * established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this section and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be "effective" for purposes of this subparagraph unless it includes each of the following requirements:

(i) Such management agency is required, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, to send a notice of such management program decision to any local government whose zoning authority is affected thereby.

(ii) Any such notice shall provide that such local government may, within the 30-day period commencing on the date of receipt of such notice, submit to the management agency written comments on such management program decision, and any recommendation for alternatives thereto, if no action is taken during such period which would conflict or interfere with such management program decision unless such local government waives its rights to comment.

(iii) Such management agency, if any such comments are submitted to it, within such 30-day period, by any local government:

(I) is required to consider any such comments,

(II) is authorized, in its discretion, to hold a public hearing on such comments, and

(III) may not take any action within such 30-day period to implement the management program decision, whether or not modified on the basis of such comments.

(b) *Requirements.* (1) Establish a mechanism or mechanisms which will provide for continuing consultation and coordination after program approval between local governments, regional, areawide, multistate and other State agencies with activities in the coastal zone and the State agency designated pursuant to subsection 306(c)(5) of the Act;

[*Comment.* States may want to consider use of the OMB Circular No. A-95 (revised) Project Notification and Review System as a mechanism for continuing consultation and coordination with affected local governments, areawide, regional, interstate and other State agencies after program approval. States also may want to consider the possibility of establishing or utilizing councils, committees, or task forces with representation from affected local governments, areawide, regional, multi-state and other State agencies as a vehicle for providing continuing consultation and coordination after program approval. Such a council, when it includes local government representation, may be helpful in meeting the requirements below.]

(2) Establish a procedure whereby local governments with zoning authority are notified of State management program decisions which would conflict with any local zoning ordinance decision.

(i) "Management agency" refers to the State agency designated by the Governor pursuant to subsection 306(c)(5) of the Act and to any other State agency responsible for implementing a management program decision;

(ii) "Management program decision" refers to any major, discretionary policy decisions on the part of a management agency, such as the determination of permissible land and water uses, the designation of areas or particular concern or areas for preservation or restoration, or the decision to acquire property for public uses. Regulatory actions which are taken pursuant to these major decisions are not subject to the State-local consultation mechanisms;

[*Comment.* Examples of what might constitute a major management program decision include, but are not limited to:

(A) A state management agency decision that a certain class of wetlands may not be filled or developed;

(B) A decision prohibing the development of non-water dependent facilities along certain shoreline areas;

(C) A decision requiring that new development of the shoreline may not interfere with existing public rights of access to the sea and that new developments of a certain magnitude are required to provide public access as part of the development;

(D) A decision to acquire urban shoreland for recreational purposes; or

(E) Designation of coastal historic resources or natural areas as areas for preservation or restoration, when any of these are discretionary, and not legislatively mandated, decisions of a management agency.]

(iii) A State management program decision shall be considered to be in conflict with a local zoning ordinance if the decision is contradictory to that ordinance. A State management pro-

gram decision that consists of additional but not contradictory requirements shall not be considered to be in conflict with a local zoning ordinance, decision or other action;

(iv) "Local government" refers to those defined in section 304(10) of the Act which have some form of zoning authority.

(v) "Local zoning ordinance, decision or other action" refers to any local government land or water use action which regulates or restricts the construction, alteration of use of land, water or structures thereon or thereunder. These actions include zoning ordinances, master plans and official maps. A local government has the right to comment on a State management program decision when such decision conflicts with the above specified actions;

(vi) Notification must be in writing and must inform the local government of its right to submit comments to the State management agency in the event the proposed State management program decision conflicts with a local zoning ordinance, decision or other action. The effect of providing such notice is to stay State action to implement its management decision for at least a 30-day period unless the local government waives its right to comment.

(vii) "Waiver" of the right of local government to comment (thereby permitting a State agency to proceed immediately with implementation of the management program decision) shall result:

(A) Following State agency receipt of a written statement from a local government indicating that it either:

(*1*) Waives its right to comment; or

(*2*) Concurs with the management program decision; or

(*3*) Intends to take action which conflicts or interferes with the management program decision; or

(B) Following a public statement by a local government to the same effect as (A) above; or

(C) Following an action by a local government that conflicts or interferes with the management program decison.

[*Comment.* A waiver of the right to comment or a waiver indicating concurrence may be presumed if the local government fails to submit written comments to the State agency within the 30-day comment period. State management programs should indicate what action the State agency will take in the event a local government pursues a conflicting or interfering action. States are encouraged to develop their responses to conflicting local action within the framework of sections 306(d)(1) and 306(d)(2) of the Act. Section 306(d)(1) of the Act provides, among other things, that the State have the management authority to resolve conflicts among competing uses. Section 306(d)(2) of the Act requires that the management program provide for a method of assuring local land and water regulations within the coastal zone do not unreasonably restrict or exclude uses or regional benefit.]

[*Comment.* OCZM strongly encourages local governments not to effect a waiver by silence as this process causes needless delay in implementing a management program decision.]

(viii) The management program shall include procedures to be followed by a management agency in considering a local government's comments. These procedures shall include, at a minimum, circumstances under which the agency will exercise its discretion to hold a public hearing. Where public hearings will be held, the program must set forth notice and other hearing procedures that will be followed. Following State agency consideration of local comments (when a discretionary public hearing is not held) or following public hearing, the management agency shall provide a written response to the affected local government, affected local government, within a reasonable period of time and prior to implementation of the management program decision, on the results of the agency's consideration of public comments.

[*Comment.* In the event that a local government requests a public hearing and such a request is granted, the State management program may provide or require that the local government requesting such hearing shall provide the required public notice and/or meeting facility.]

**§ 923.58 Public hearings.**

(a) Statutory Citations, Subsection 306(c)(1):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

The state has developed and adopted a management program for its coastal zone * * * after notice * * *

Subsection 306(c)(3):

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that * * *

The state has held public hearings in the development of the management program.

Section 311:

All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

(b) *Requirements.* States shall:

(1) Hold a minimum of two public hearings during the course of program development, at least one of which will be on the total scope of the coastal management program. Hearings on the total management program do not have to be held on the actual document submitted to the Assistant Administrator for section 306 approval. However, such hearing(s) must cover the substance and content of the proposed management program in such a manner that the general public, and particularly affected parties, have a reasonable opportunity to understand the impacts of the management program. If the hearing(s) are not on the management document per se, all requests for such document must be honored and comments on the document received prior to submission of the document to the Assistant Administrator must be considered;

(2) Provide a minimum of 30 days public notice of hearing dates and locations;

[*Comment.* Announcement of the hearings should be through media designed to inform the public—not merely to provide "technical notice." In addition to any publication of legal notice as required by State law, reasonably informative news releases should be made available to the news media in the affected communities.]

[*Comment.* In many cases, the population of the coastal zone fluctuates significantly with the seasons of the year. Efforts should be made to hold hearings when those populations most likely to be affected are present.]

(3) Make available for public review, at the time of public notice, all agency materials pertinent to the hearings;

(4) Include a transcript or summary of the public hearing(s) with the State's program document or submit same within thirty (30) days following submittal of the program to the Assistant Administrator. At the same time this transcript or summary is submitted to the Assistant Administrator, it must be made available, upon request, to the public.

## Subpart G—Miscellaneous

**§ 923.60 General.**

The purposes of this subpart are to provide guidance on meeting the requirements of subsection 306(h) of the Act dealing with segmented management programs and fulfilling the requirements for an environmental impact assessment which all management program submissions, whether for a State's total coastal zone or for a segment, must contain.

**§ 923.61 Segmentation.**

(a) Statutory Citation, Section 306(h):

At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: Provided, that the state adequately provides for the ultimate coordination of the various segments of the management program into a single, unified pro-

gram, and that the unified program will be completed as soon as reasonably practicable.

(b) This section of the Act reflects a recognition that it may be desirable for a State to develop and adopt its management program in segments rather than all at once because of a relatively long coastline, developmental pressures or public support in specific areas, or earlier regional management programs already developed and adopted. It is important to note, however, that the ultimate objective of segmentation is completion of a management program for the coastal zone of the entire State in a timely fashion.

(c) A segmented management program shall not be developed solely for the purpose of protecting or controlling a single coastal resource or use.

(d) Segmentation is at the State's option, but requires the approval of the Assistant Administrator.

(e) *Requirements.* If a State intends to adopt its mangement program in two or more segments, it shall advise the Assistant Administrator as early as practicable, stating the reasons for segmenting the program, and requesting the Assistant Administrator's approval. Upon receipt of the Assistant Administrator's approval, the segment submission shall include:

(1) A geographic area on both sides of the coastal land/water interface;

(2) A timetable and budget for the timely completion of the remaining segment(s); and

(3) The management boundary for the entire coastal zone throughout the state as part of the segment submission.

[*Comment.* Where islands within a State's coastal zone form separate and valuable ecological units for which a segment of the managment program may be established with relatively few problems, the Assistant Administrator may waive this requirement.]

(4) Documentation of how the requirements of Subparts A-F are met for the segment.

**§ 923.62 Environmental assessment.**

(a) *Requirements.* All State management program submissions must contain an environmental assessment at the time of submission of the managment program to OCZM for threshold review. In accordance with the Council on Environmental Quality Regulations (FEDERAL REGISTER Vol. 43, No. 230, November 29, 1978) Sections 1506.5(a) and (b), state environmental assessments shall contain the following information:

(1) A summary of the state's management program;

[*Comment.* The summary should not exceed 10 pages and should be a descriptive statement of the management program and how it will operate. Specific references to the Federal CZMA requirements are not necessary. It is intended that this summary be part of the overall summary section of the Federal Environmental Impact Statement (EIS).]

(2) A brief discussion of the need for the State's participation in the Federal program;

[*Comment.* Since participation under the Federal CZMA is a voluntary process, States should describe briefly the reasons for applying for Federal approval. This may include the importance of Federal funding to the State, the use of Federal consistency as an additional management tool and/or that participation is mandated by State law.]

(3) A succinct description of the environment to be affected by program implementation:

[*Comment.* A description of the affected environment should not exceed 30 pages. Reference to technical documents and data which were produced or used by the State in analyzing the coastal zone may be useful. The importance of this section lies in relating the productivity and vulnerability of the coastal environment with socio-economic importance. Cross-reference should be made to relevant sections of the management program. If following format suggested in § 923.71, reference to "Framework of Program Development" would be appropriate.]

(4) A description and discussion of the major alternatives which were considered by the State in developing the coastal management program;

[*Comment.* A description of alternatives should not exceed fifteen pages and should be limited to the major or controversial alternatives that have been seriously considered and reviewed at some length by the State. Included should be the alternative of no action or non-participation in the Federal program and alternatives which raised substantial public debate as a result of consultation and public participation during program development. Usually these alternatives will relate to management techniques, boundaries and uses subject to management. To the extent these alternatives are discussed in the management program, cross-reference will suffice; environmental impacts of the proposal and the alternatives' comparative focus would be helpful.]

(5) A discussion of the environmental impacts of implementing the program;

[*Comment.* Describing the environmental impacts will vary with each state and will be a function of which type of management system will be used, whether new legislation, policies or permits were promulgated, etc. These impacts should be discussed to the levels of detail commensurate with the detail in the program. This description should not exceed 50 pages. OCZM considers that the direct impacts of the Federal action are those associated with the expenditures of Section 306 funds, the use of the Federal consistency provisions under Section 307, recognition given by the State to the siting of facilities which are in the national interest, and the thrust of a State program in attempting to achieve the national objectives identified in Sections 302 and 303 of the Act. Indirect impacts associated with the State management program, and which the State should address, include socio-economic impacts of land and water use regulations, impacts upon the natural environment and impacts that can be attributable to specific policies or control techniques. See also §§ 1502.16(c)-(h) of the CEQ regulations.]

(6) A listing of agencies or persons consulted in determining the impacts of the management program.

[*Comment.* The views of local governments, State and Federal agencies, industrial and environmental groups, etc. to their perspective on the impacts of program implementation is desirable. This normally will occur as part of the program development process. Cross-reference to the management program is sufficient.]

(b) *General Comments.* OCZM will independently evaluate the State's environmental assessment and use as much as possible in developing an EIS on the management program. An EIS will be produced for all state programs submitted for 306 approval. The timing and review procedures for the EIS are discussed in § 923.72.

## Subpart H—Review/Approval Procedures

**§ 923.70 General.**

The purpose of this Subpart is to describe the process of State program review and approval following submission of a State's management program to the Assistant Administrator. Because the review process involves preparation and dissemination of draft and final environmental impact statements and lengthy Federal agency review; States should at least anticipate that it normally will take 7 months between the time a State first submits a draft management program to OCZM for threshhold review and the point at which the Assistant Administrator makes a final decision on whether to approve the management program. Certain factors will contribute to lengthening or shortening this time table; these factors are discussed in the sections that follow. This Subpart also provides guidance on a recommended format for the program document submitted to the Assistant Administrator for review and approval. In addition, this Subpart provides criteria for providing preliminary approval of State coastal management programs pursuant to subsection 305(d) of the Act.

**§ 923.71 Recommended format for program submission.**

(a) This guidance is provided in response to requests from a number of States for a suggested format. States should note, however, that this format is not mandatory. As long as States address all the sections of the Act and associated requirements of these regulations, the presentation may be in such format as best suits their needs

provided that such format has been discussed with and agreed to by OCZM.

(b) States should include an index with their program submission that indicates where in the management program document the information can be found which is necessary to make the findings required by the Act and associated requirements of these regulations. A chart is provided below of the findings required by the Act and associated requirements of these regulations. This chart should assist States in developing the index. If States use the chart below as an index, it is recommended that a third column entitled Page Number be added to expedite review.

TABLE 2.—*Chart—Findings Necessary for Section 306 Approval*

| Section of the Act | Associated section(s) of these regulations |
|---|---|
| Sec. 306(a) which includes the requirements of sec. 305: | |
| 305(b)(1): Boundaries | 923.31-923.34. |
| 305(b)(2): Uses subject to management | 923.11. |
| 305(b)(3): Areas of particular concern | 923.21-923.23. |
| 305(b)(4): Means of control | 923.41. |
| 305(b)(5): Guidelines on priorities of uses | 923.21. |
| 305(b)(6): Organizational structure | 923.46. |
| 305(b)(7): Shorefront planning process | 923.24. |
| 305(b)(8): Energy facility planning process | 923.13. |
| 305(b)(9): Erosion planning process | 923.25. |
| Sec. 306(c) which includes: | |
| 306(c)(1): Notice: full participation; consistent with sec. 303 | 923.3, 923.51, 923.55, and 923.58. |
| 306(c)(2)(A): Plan coordination | 923.56. |
| 306(c)(2)(B): Continuing consultation mechanisms | 923.57. |
| 306(c)(3): Public hearings | 923.58. |
| 306(c)(4): Gubernatorial review and approval | 923.48. |
| 306(c)(5): Designation of recipient agency | 923.47. |
| 306(c)(6): Organization | 923.46. |
| 306(c)(7): Authorities | 923.41. |
| 306(c)(8): Adequate consideration of national interest | 923.52. |
| 306(c)(9): Areas for preservation/restoration | 923.22. |
| Sec. 306(d) which includes: | |
| 306(d)(1): Administer regulations, control development; resolve conflicts | 923.41. |
| 306(d)(2): Powers of acquisition, if necessary | 923.41. |
| Sec. 306(e) which includes: | |
| 306(e)(1): Technique of control | 923.42-923.44. |
| 306(e)(2): Uses of regional benefit | 923.12. |
| Sec. 306(h): Segments | 923.61. |
| Sec. 307 which includes: | |
| 307(b): Adequate consideration of Federal agency views | 923.51. |
| 307(f): Incorporation of air and water quality requirements | 923.45. |
| Applicable only to segmented management programs | |

(c) OCZM recommends the following format for program submission: Summary; Framework of Program Development; Policies; 306 Requirements. OCZM also recommends the following items as appendices: Documentation of Government Consultation and Public Participation Efforts; Summaries of Required Public Hearings; Text of Relevant Legal Authorities; Environmental Assessment; and such other technical reports, maps, organizational charts or other materials a State feels would be useful in reviewing the management program. The elements of the main body of the managment program are discussed in greater detail below:

(1) Summary—This section should serve as an executive summary of the program and should describe briefly the major elements of the State's management program. This section also should include a discussion of objectives the State will seek to attain through implementation of its management program. Specific milestones and timeframes for accomplishment of these objectives should be established where possible.

(2) Framework of Program Development—This section should address the major coastal issues and problems identified during the program development process, the nature of those issues and problems, and how the management program can help to resolve them. This section should include a discussion of the major coastal natural resources and human activities which are important, unique and/or subject to intense pressures or conflicts. A brief discussion of the institutional setting within which the program was developed and some of the major considerations or alternatives that led to particular management approaches is appropriate as part of this section. In addition, there should be a brief discussion of those issues and problems which the program may not address initially but which will be taken into consideration during program implementation and/or future program refinements.

(3) Policies—This section should contain those policies that provide for a comprehensive, enforceable and predictable management program. These policies should be tied to issues and problems (discussed in (2) above) and to legal authorities (discussed in (4) below).

(4) 306 Requirements—In this section States should demonstrate that the requirements of the Act and these regulations have been met. The following contents are suggested:

(i) Boundaries—The requirements of subsection 305(b)(1) of the Act and Subpart D of these regulations should be addressed. States may want to indicate here, or as part of the EIA, major boundary alternatives considered. General maps of the management boundaries and of excluded Federal lands, if provided, are recommended for inclusion in this section (or if more easily handled as a separate appendix, their location in the appendix should be indicated in this section).

(ii) Uses Subject to Management—The requirements of subsections 305(b)(2), 305(b)(8) and 306(e)(2) of the Act and related sections 923.11-923.13 of these regulations should be addressed.

(iii) Special Management Areas—The requirements of subsections 305(b)(3), 305(b)(5), 305(b)(7), 305(b)(9), and 306(c)(9) and the associated requirements of Subpart C of these regulations should be addressed. States are encouraged to include generalized maps locating designated Areas of Particular Concern.

(iv) Authorities and Organization—The requirements of subsections 305(b)(4), 305(b)(6), 306(c)(5), 306(c)(7), 306(d), 306(e)(1) and 307(f) of the Act and the associated requirements of Subpart E of these regulations should be addressed. This should include a discussion of the administrative and legal bases that will be used to implement and insure enforcement of and compliance with the policies of the management program. This section should include, as applicable, discussion of six types of legal authorities: State legislation, State agency regulations, gubernatorial executive orders, interagency agreements, significant judicial decisions and significant constitutional provisions. With respect to the organizational structure that will be used to implement the management program, this section should include a discussion of the roles and responsibilities during the program implementation of the State agency designated pursuant to subsection 306(c)(5) of the Act and of other

State, local or regional agencies that will be involved in carrying out the management program. The relationship of the designated State agency to these other agencies also should be described.

(v) Consultation, Participation and National Interests—The requirements of subsections 306(c)(1)–(c)(3), 306(c)(8) and 307(b) of the Act and the related requirements of Subpart F of these regulations should be addressed. Included herein should be a summary of consultation efforts with relevant Federal and State agencies, local governments, regional, areawide and/or interstate entities. A summary of public information and participation during program development should be included. Also included herein should be discussions of national interest considerations; what procedures the State will use to implement the Federal consistency provisions of the Act; and what mechanisms will be used to insure continued governmental consultation and public participation after program approval. Detailed documentation regarding a number of the requirements addressed in this section can be reserved for appendices.

(vi) Miscellaneous—Normally, States will address the requirements of subsection 306(c)(4) and related § 923.48 in the gubernatorial transmittal that will accompany the program submission.

(d) For a segment submission, the same format should be used. All the requirements of the Act and these regulations apply, unless otherwise noted in § 923.61. Segment submissions also must address the requirements of subsection 306(h) of the Act and the associated requirements of § 923.61.

**§ 923.72 Review/approval procedures.**

(a) Upon submission by a State of its draft management program, OCZM is to determine if it adequately meets the requirements of the Act and these regulations. Assuming positive findings are made and major revisions to the State's draft management program are not required, OCZM will prepare a Draft Environmental Impact Statement (DEIS). The DEIS will incorporate the State's program document. This combined document, hereinafter referred to as the DEIS, will be distributed to principally affected Federal agencies, State, local and regional agencies, national interest groups and to interested individuals. Preparation of the DEIS, printing of the document, delivery to EPA, and publication in the FEDERAL REGISTER of notice of availability of the DEIS and notice of date and location of public hearing on the DEIS usually will take 45 days. Since States normally will be responsible for printing the DEIS, the time involved will vary depending on State printing capabilities.

(b) From the time of notice of availability in the FEDERAL REGISTER of the DEIS, each Federal agency, other person or entity normally has 45 days, pursuant to CEQ regulations to provide comments, if any, on the DEIS to the Assistant Administrator. During this time period, a public hearing will be held in one or more locations in the coastal State whose program is under review. At least fifteen (15) days notice, pursuant to CEQ regulations and the Administrative Procedures Act, will be provided, including announcement of availability of the DEIS. Following the public hearing(s), the comment period normally will remain open for fifteen days.

(c) Following the close of the DEIS comment period, the Assistant Administrator will review and evaluate comments received, in keeping with the requirement of subsection 307(b) of the Act to adequately consider the views of principally affected Federal agencies, and in keeping with the requirements of the National Environmental Policy Act (NEPA). Preparation of response to comments, revisions to the State's management program (if appropriate), submission of a final program, and preparation and printing of a Final Environmental Impact Statement (FEIS) normally will take a minimum of three months. Factors that will vary this time frame are: the nature of comments received on the DEIS, the nature and extent of revisions necessary to the management program, and State capabilities with respect to printing the FEIS (since States normally also will be responsible for printing the FEIS).

(d) Notice of the availability of the FEIS will be published in the FEDERAL REGISTER. The Assistant Administrator shall send a copy of such statement to each Federal agency or other person or entity which received a copy of the DEIS and to any additional persons who request a copy of the FEIS.

(e) The Assistant Administrator will review and evaluate any comments received during the thirty day review in keeping with the requirements of subsection 307(b) of the Act. The Assistant Administrator shall then approve or disapprove a State's management program. In the event of approval, the Assistant Administrator shall prepare a set of findings with respect to the requirements of the Act. These findings shall be available upon request. Notice of availability of these findings shall be published in the FEDERAL REGISTER. Principally affected Federal agencies will be sent a copy of the findings as a matter of course.

(f) In the event review of comments on the FEIS leads to a decision by the Assistant Administrator not to approve the management program, the Assistant Administrator shall so advise the State in writing, including the reason therefor. Notice of this decision also will be published in the FEDERAL REGISTER.

**§ 923.73 Miscellaneous.**

The timelines laid out in § 923.72 may be shortened if any of the following occur:

(a) Reduction of the time allotted to review environmental impact statements is proposed consistent with applicable procedures and guidelines of CEQ and their concurrence is requested. Reductions in review time normally are limited to emergency circumstances or conditions which would result in impaired program effectiveness; or

(b) A draft environmental impact statement has been issued in connection with preliminary approval pursuant to subsection 305(d) of the Act (see § 923.74 et seq.) and a supplementary or final impact statement is all that is necessary for full approval pursuant to subsection 306(a) of the Act; or

(c) In the case of segmented programs only, a determination is made that the proposed segment management program will not significantly affect the environment. In such cases a negative declaration will be prepared. The program submission still shall be sent to principally affected Federal agencies for their review and comment.

**§ 923.74 Preliminary approval.**

(a) Statutory Citation, Subsection 305(d):

> The Secretary may make a grant annually to any coastal state * * * if a coastal state has a developed management program which (A) is in compliance with the rules and regulations promulgated to carry out subsection (b), but has not been approved by the Secretary under section 306; (B) specifically identified * * * any deficiency in such program which makes it ineligible for approval * * * and has established a reasonable time schedule during which it can remedy any such deficiency; (C) specified the purposes for which the grant will be used: (D) taken or is taking adequate steps to meet any requirement under sections 306 or 307 which involves any Federal official or agency; and (E) complied with any other requirement * * * necessary and appropriate to carry out the purposes of this subsection.

(b) The basic purpose of preliminary approval is to allow a State additional time to implement fully a coastal management program which, in its design and description, meets the requirements of section 306 of the Act. In granting preliminary approval, recognition is given to the need to describe, in a subsection 305(d) work program, those deficiencies precluding section 306 approval, the specifics for remedy-

ing those deficiencies, and a timetable within which this is to occur.

(c) Another objective is to provide funding to support initial implementation of selected elements of a State's coastal management program, provided that the overall design and description of the program meets the section 306 requirements. For selected elements to be initially implemented, necessary section 306 legal authorities and administrative capabilities must be in place;

(d) A third objective is to provide a State with additional time to resolve problems, uncovered during DEIS review of a program submitted for section 306 approval, when such problems would preclude full approval.

(e) The following are examples of situations under which States may apply for preliminary approval:

(1) A State may be able to describe the legislative authority it needs in order to meet the requirements under section 306 to have an approvable program, and to draft a bill carrying this out, but not be able to enact same within the time period provided pursuant to subsection 305(c). This could be because the legislature meets only every two years, or because the process is too complicated to accomplish in a matter of months.

(2) A State program may call on local units of government to prepare their own coastal plans in accordance with State guidelines. However, one or more years may be required for these units to carry out their work. Under this example, it should be noted that, depending on the nature of the State-local relationships and existing legal authorities, this activity also can be accomplished as part of a State's subsection 305(c) program development grant or as part of a section 306 program administrative grant.

(3) A State may need to reorganize within the Executive branch before a program can gain approval and funding under section 306.

(4) A State may be encountering problems resolving differences with one or a number of Federal agencies with respect to specific aspects of its coastal management program.

(f) Preliminary approval is not seen as a necessary continuum from section 305 to section 306 status. States may move directly from subsection 305(c) (program development) grants to section 306 (program implementation) grants. Progression from subsection 305(c) status to subsection 305(d) (preliminary approval) status is not automatic, nor is progression from preliminary approval status to section 306 status automatic. Application for preliminary approval requires consultation with the Assistant Administrator to insure that the State meets the eligibility conditions and approval criteria.

(g) Preliminary approval is meant to apply to a fully described coastal management program for a State's entire coastal zone. Accordingly, segments are not eligible for approval pursuant to this subsection but shall continue to be considered under provisions of section 306 of the Act and related § 923.61 of these regulations.

(h) In order to be eligible for consideration for preliminary approval, a State must be in one of the following situations:

(1) All subsection 305(c) program development grants must have been expended and the State can describe a program that meets the basic approval criteria but there are still aspects of the program which must be instituted before section 306 approval can be given; or

(2) At any time during section 305 program development when a State has elements of its coastal management program to implement and meets the basic approval requirement (that the overall program as described would be approvable when fully implemented); or

(3) During the course of section 306 review, problems are uncovered that preclude section 306 approval but do not preclude preliminary approval.

### § 923.75 Requirements for preliminary approval.

(a) *Requirements.* For a State's coastal management program to receive preliminary approval pursuant to subsection 305(d) of the Act, the State must submit a document which:

(1) Describes the overall management program in sufficient detail that the Assistant Administrator can determine the program meets all section 305(b) requirements at the time submitted for preliminary approval and that it will meet all section 306 requirements at the time submitted for final approval;

(2) Identifies deficiencies that prohibit achievement of section 306 program approval, the means and a timetable for remedying these deficiencies.

[*Comment.* States must meet all section 305 provisions and associated regulations. Therefore, an acceptable 305(d) program can be deficient only in its lack of having translated fully described but pending implementing actions into accomplished fact.]

[*Comment.* The schedule for remedying deficiencies should be sufficiently long to be realistic, given the nature and number of deficiencies and the particulars of a State's situation. At the same time it should be sufficiently tight to insure an enhanced and expeditious state effort.]

(3) Specifies the purposes for which the subsection 305(d) grant is to be used.

[*Comment.* See § 923.98(b) regarding eligible section 305(d) grant expenditures.]

(4) Demonstrate that adequate steps have been or are being taken to meet the requirements under 306 or 307 of the Act, which involve Federal agencies. For purposes of this paragraph, the particular sections of 306 and 307 are:

(i) Subsection 306(a)(1)—identification of excluded Federal lands;

(ii) Subsection 306(c)(1)—opportunity for full participation by relevant Federal agencies. This shall include advising Federal agencies (especially at the regional level) of the State's intent to apply for preliminary approval;

(iii) Subsection 306(c)(8)—adequate consideration of the national interest, involved in planning for, and in the siting of, facilities necessary to meet requirements which are other than local in nature;

(iv) Subsection 307 (c) and (d)—development of procedures for implementing the Federal consistency requirements upon full approval of the State's program; and

(v) Subsection 307(h)(1)—participation in mediation procedures, if appropriate.

(5) Demonstrates that the necessary legal authorities and organizational capability for implementation exists at the time of preliminary approval for those elements to be implemented under subsection 305(d).

(6) Includes an Environmental Assessment.

### § 923.76 Preliminary review/approval procedures.

(a) States interested in preliminary approval should consult with the Assistant Administrator well in advance of the point at which they would like to receive such approval. As a general rule, such consultation should begin six months before approval is desired. The purpose of this consultation is to determine:

(1) If the program will be sufficiently developed, designed and described to warrant consideration for preliminary approval at the time desired;

(2) If there are any elements of the State's management program eligible for implementation funding as part of preliminary approval;

(3) The content and detail of the Environmental Assessment (EA) which must accompany the State's preliminary approval submission; and

(4) If an EIS will be necessary prior to granting preliminary approval. If the Assistant Administrator indicates that the program appears to meet the subsection 305(d) approval criteria, and if a determination is that an EIS will not be necessary prior to preliminary approval, States should plan on submitting the subsection 305(d) pro-

gram document, including an EA, two to three months prior to the desired date of approval. If the Assistant Administrator determines an EIS will be necessary prior to granting preliminary approval, States should plan on submitting the program document, including the EA shortly after this determination is made. The EIS procedures discussed in § 923.72 then will be followed. The subsection 305(d) program document should follow the general format recommended by OCZM in § 923.71. In addition, the information required in § 923.75(a) (2) and (3) with respect to describing deficiencies, timetable for remedying, and purposes for which the grant will be used must be included. The application for grant funds and the accompanying work program is separate document that may be submitted in conjunction with or subsequent to submission of the subsection 305(d) program document. The requirements for the grant application are contained in § 923.98.

(b) Upon submission by a State of a subsection 305(d) program document, the Assistant Administrator shall review the document for compliance with the approval criteria contained in § 923.75. If a State meets the approval criteria, the Assistant Administrator may award a subsection 305(d) grant and will issue a set of findings with respect to deficiencies and the timetable for their resolution.

(c) Copies of the subsection 305(d) program document and the Assistant Administrator's finding of deficiencies will be distributed to relevant Federal agencies.

(d) If a State applies for preliminary approval after formal section 306 program review has begun, preliminary approval will be issued at that point in the section 306 review process when the DEIS review reveals problems that preclude full program approval and implementation but do not preclude preliminary approval. States will be required to take into consideration those items raised by DEIS reviews as part of the subsection 305(d) work program.

## Subpart I—Amendments to and Termination of Approved Management Programs

### § 923.80 General.

(a) This subpart establishes the criteria and procedures by which amendments to approved management programs may be made. This subpart also establishes the conditions and procedures by which administrative funding may be terminated for programmatic reasons.

(b) Statutory Citations. Subsection 306(g):

> Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary under this section, pursuant to the required procedures described in subsection (c) * * * [N]o grant shall be made under this section to any coastal state after the date of such amendment of modification, until the Secretary approves such amendment or modification.

Subsection 312(b):

> The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary, and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

(c) For purposes of this subpart, amendments are defined as substantial changes in, or substantial changes to enforceable policies or authorities related to:

(1) Boundaries;

(2) Uses subject to the management program;

(3) Criteria or procedures for designating or managing areas or particular concern or areas for preservation or restoration; and

(4) Consideration of the national interest involved in the planning for and in the siting of, facilities which are necessary to meet requirements which are other than local in nature.

### § 923.81 Requests for amendments.

(a) *Requirement.* Requests for amendments shall be submitted to the Assistant Administrator by the Governor of a coastal State with an approved management program or by the head of the State agency (designated pursuant to section 306(c)(5)) if the Governor has delegated this responsibility and such delegation is part of the approved management program.

(b) *Requirements.* Amendment requests shall contain the following:

(1) Description of the proposed change, including specific pages and text of the management program that will be changed if the amendment is approved by the Assistant Administrator;

(2) Explanation of why the change is necessary and appropriate, including a discussion of the following factors, as relevant: changes in coastal zone needs, problems, issues, or priorities. This discussion also shall identify which findings, if any, made by the Assistant Administrator in approving the management program may need to be modified if the amendment is approved;

(3) Copy of public notice(s) announcing the public hearing(s) on the proposed amendments:

(i) At least one public hearing must be held on the proposed amendment, pursuant to sections 306(c)(3) of the Act;

(ii) Pursuant to section 311 of the Act, notice of such public hearing(s) must be announced at least 30 days prior to the hearing date.

[*Comment.* Where administratively possible, States should endeavor to tie the public hearing(s) on the proposed amendment to existing State hearing procedures, for example, State agency hearings required under State law prior to approval of local coastal programs. Since hearings on amendments to approved management programs are subject to a minimum 30 day notice, States may want to alter or supplement their notice procedures where these presently provide less than 30 days notice.]

(iii) At the time of the announcement, relevant agency materials pertinent to the hearing must be made available to the public;

(4) Summary of the hearing(s) comments:

(i) Where OCZM is providing Federal agency review concurrent with the notice period for the State's public hearing, this summary of hearing(s) comments may be submitted to the Assistant Administrator within 60 days after the hearing;

[*Comment.* See related discussion in paragraph (c).]

(ii) Where hearing(s) summaries are submitted as a supplement to the amendment request (as in the case described in (1) above), the Assistant Administrator will not take final action to approve or disapprove an amendment request until the hearing(s) summaries have been received and reviewed;

(5) Documentation of opportunities provided relevant Federal, State, regional and local agencies, port authorities and other interested public and private parties to participate in the development and approval at the State level of the proposed amendment.

(c) Requests for amendments should be sumitted to the Assistant Administrator whenever possible prior to final State action to implement a major program.

[*Comment.* Where a program change will be effectuated by State administrative action, such as adoption of State agency rules and regulations, the request for an amendment of the State's approved management program should occur before final State agency action in order that OCZM may coordinate its review period with that occuring at the State level.

Where a program amendment is the result of legislative action OCZM recognizes it will be more difficult to submit amendment requests as a matter of course prior to final State action. Even in these cases, nonetheless, OCZM encourages States to submit

amendment requests prior to final legislative action.]

§ 923.82 Amendment review/approval procedures.

(a) Upon submission by a State of its amendment request, OCZM will review the request to determine preliminarily if:

(1) The management program, if changed according to the amendment request, still will constitute an approvable program.

(i) For amendments affecting management program boundaries, this will involve a determination that the program, if changed, will continue to include the following areas (as defined in § 923.31(a)) within the State's coastal zone:

(A) Areas the management of which is necessary to control uses with direct and significant impacts on coastal waters;

(B) Transitional and intertidal areas;

(C) Salt marshes and wetlands;

(D) Islands;

(E) Beaches; and

(F) Waters under tidal influence.

(ii) For amendments affecting uses subject to the management program, this will involve a determination that the program, if changed, will continue to:

(A) Identify which uses are subject to the management program (see § 923.10(b)(1)); (B) Assure that policies and authorities governing the management of these uses incorporate a sufficient range of considerations to address the findings and policies of section 302 and 303 of the Act (see § 923.3(b)(1) and (2)); and (C) Assure that policies and authorities related to use management are capable of effective implementation at the time of amendment approval (see § 923.10 (b)(2)).

(D) Identify uses considered by the State to be of regional benefit and a method (or methods) of assuring local regulations do not unreasonably restrict or exclude such uses (see § 23.12(b)).

(iii) Amendments affecting criteria for designating or managing areas of particular concern, this will involve a determination that the management program, if changed, will continue to provide for:

(A) Criteria for designations (see § 923.21(b)(1));

(B) Designation of areas on a generic or site-specific basis (see § 923.21(b)(1) and (2));

(C) Description of how the management program addresses and resolves the management concerns for which areas are designated (see § 923.21(b)(3) and (4)); and

(D) Guidelines regarding priority of uses, including uses of lowest priority (see § 923.21(b)(5)).

(iv) For amendments affecting criteria for designating or managing areas for preservation or restoration, this will involve a determination that the management program, if changed, will continue to provide for criteria and procedures for designations that are for the purposes of preserving or restoring areas for their conservation, recreational, ecological or esthetic values (see § 923.22(b)).

(v) For amendments affecting procedures for considering the national interest in particular facilities, this will involve a determination that the management program, if changed, will continue to provide for:

(A) A description of the national interest in the planning for and siting of the facilities which is taken into account by the consideration procedures (see § 923.52(c)(1));

(B) The sources relied upon for such consideration (see § 923.52(c)(2));

(C) A clear and detailed description of the administrative procedures and decisions points where this interest will be considered (see § 923.52(c)(4)); and

(D) In the case of energy facilities, consideration of any applicable interstate energy plan or program developed pursuant to section 309 of the Act (see § 923.52(c)(3)).

(2) The procedural requirements of section 306(c) of the Act have been met. These procedural requirements are that:

(i) The State has developed the amendment with the opportunity for full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested public and private parties (section 306(c)(1) of the Act);

(ii) The State has coordinated the amendment with local, area-wide and interstate plans applicable to areas within the coastal zone affected by the amendment and existing on January 1 of the year in which the amendment request is submitted (section 306(c)(2));

(iii) Notice has been provided and a public hearing held on the proposed amendment (sections 306(c)(1) and (c)(3); and

(iv) The Governor or the head of the State agency, designated pursuant to section 306(c)(5), has reviewed and approved the proposed amendment (section 306(c)(4)).

(b) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would no longer constitute an approvable program, or if any of the procedural requirements of section 306(c) of the Act have not been met, the Assistant Administrator shall advise the State in writing of the reasons why the amendment request cannot be considered.

(1) Where problems exist with respect to the procedural requirements, States may redress these and resubmit its amendment request.

(2) Where problems exist with respect to basic program approvability, States also may modify their amendment request to redress the deficiencies with repect to approvability and thereafter may resubmit their amendment request.

(3) Where a State acts to implement the amendment request despite the Assistant Administrator's notification that such amendment would render the managment program unapprovable, that State may be subject to termination of program approval and withdrawal of administrative funding. (See § 923.85.)

(c) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would still constitute an approvable program and that the procedural requirements of section 306(c) of the Act have been met, the Assistant Administrator will then determine, pursuant to the National Environmental Policy Act of 1969, as amended, whether an environmental impact statement (EIS) is required.

(1) If an EIS is appropriate, OCZM will prepare and distribute a DEIS and FEIS consistent with CEQ guidelines and NOAA procedures.

(i) Following review of comments on the FEIS, the Assistant Administrator will take final action to approve or disapprove the amendment request.

(ii) Notice of the Assistant Administrator's decision will be given in the FEDERAL REGISTER. If the Assistant Administrator's decision is to approve the amendment, the notice also shall indicate that Federal consistency applies as of the time of the Assistant Administrator's approval.

(2) If an EIS is not required pursuant to CEQ guidelines and regulations, notice will be published in the FEDERAL REGISTER of the Assistant Administrator's intent to approve the amendment request.

(i) This notice will include the content of the proposed amendment; the basis for determining an EIS is not required; and a specified comment period of not less than 30 days.

(ii) If no serious disagreement is raised by the head of a Federal agency (see § 923.83) during the comment period and after taking into account all comments received, the Assistant Administrator will make a final decision on whether to approve the proposed amendment and issue notice thereof in the FEDERAL REGISER.

§ 923.83 Mediation of amendments.

(a) Section 307(h)(2) of the Act provides for mediation of "serious dis-

agreements" between a Federal agency and a coastal State during administration of an approved management program. Accordingly mediation is available to states or federal agencies when a serious disagreement regarding a proposed amendment arises.

(b) Mediation may be requested by a Governor or head of a State agency designated pursuant to section 306(c)(5) or by the head of a relevant Federal agency. Mediation is a voluntary process in which the Secretary of Commerce attempts to mediate between disagreeing parties over major problems.

(c) The specific mediation procedures to be followed when there are serious disagreements over amendments are the same as those utilized for serious disagreements during program implementation. (See § 923.54).

**§ 923.84 Routine program implementation.**

(a) Further detailing of a State's program that is the result of implementing provisions approved as part of a State's approved management program, that does not result in the type of action described in § 923.80(c), will be considered routine program implementation. Routine implementation is not subject to the amendment procedures contained in § 923.81–923.82. It is subject to mediation provisions of § 923.83.

(b) *Requirements.* (1) States shall notify OCZM of routine program implementation actions in order that OCZM may review the action to ensure it does not constititute an amendment.

(i) States have the option of notifying OCZM of routine implementation on a case-by-case basis, periodically throughout the year, or annually.

(ii) In determining when and how often to notify OCZM of such actions, States should be aware that Federal consistency will apply only after the notice required by paragraph (4) below has been provided.

(2) Concurrent with notifying OCZM, States shall provide notice to the general public and affected parties, including local governments, other State agencies and regional offices of relevant federal agencies of the notification given OCZM.

(i) This notice shall:

(A) describe the nature of the routine program implementation;

(B) indicate that the State considers it routine program implementation and has requested OCZM's concurrence in that determination; and

(C) indicate that any comments on whether or not the action does or does no constitute routine program implementation may be submitted to OCZM within 3 weeks of the date of issuance of the notice.

(ii) Where relevant Federal agencies do not maintain regional offices, notice must be provided to the headquarters office.

(3) Within 4 weeks of receipt of notice from a State, OCZM shall inform the State whether it concurs that the action constitutes routine program implementation. Failure to notify a State in writing within 4 weeks of receipt of notice shall be considered concurrence.

(4) Where OCZM concurs, a State then must provide notice of this fact to the general public and affected parties, including local governments, other State agencies and relevant Federal agencies.

(i) This notice shall:

(A) indicate the date on which the State received concurrence from OCZM that the action constitutes routine program implementation;

(B) reference the earlier notice (required in paragraph (2) above) for a description of the content of the implementation action; and

(C) indicate if Federal consistency applies as of the date of the notice called for is this paragraph.

(ii) Federal consistency shall not be required until this notice has been provided.

(5) Where OCZM does not concur, a State will be advised to submit the action as an amendment, subject to the provisions of §§ 923.81–923.82.

**§ 923.85 Termination and withdrawal of administrative funding.**

(a) Statutory Citation, Subsection 312(b):

The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

(b) In addition to the provisions contained in OMB Circular A-102 relating to termination and withdrawal of funding awarded pursuant to a grant award, the Assistant Administrator may recommend to the NOAA Grants Office that section 306 grant funding be terminated and withdrawn if the Assistant Administrator determines that:

(1) A State has failed or is failing to adhere to and was or is not justified in deviating from its approved management program; and

(2) The State has been provided notice of intent to terminate and withdraw funding; and

(3) That State has been provided an opportunity to demonstrate adherence, or justification for program alteration.

(c) Situations which may lead to notice of intent to terminate and withdraw funding include:

(1) In evaluating a State's performance as part of the continuing review function pursuant to section 312 of the Act, the assistant Administrator determines that the State has not adhered to its management program approved pursuant to section 306 of the Act, and such lack of adherence is not justified.

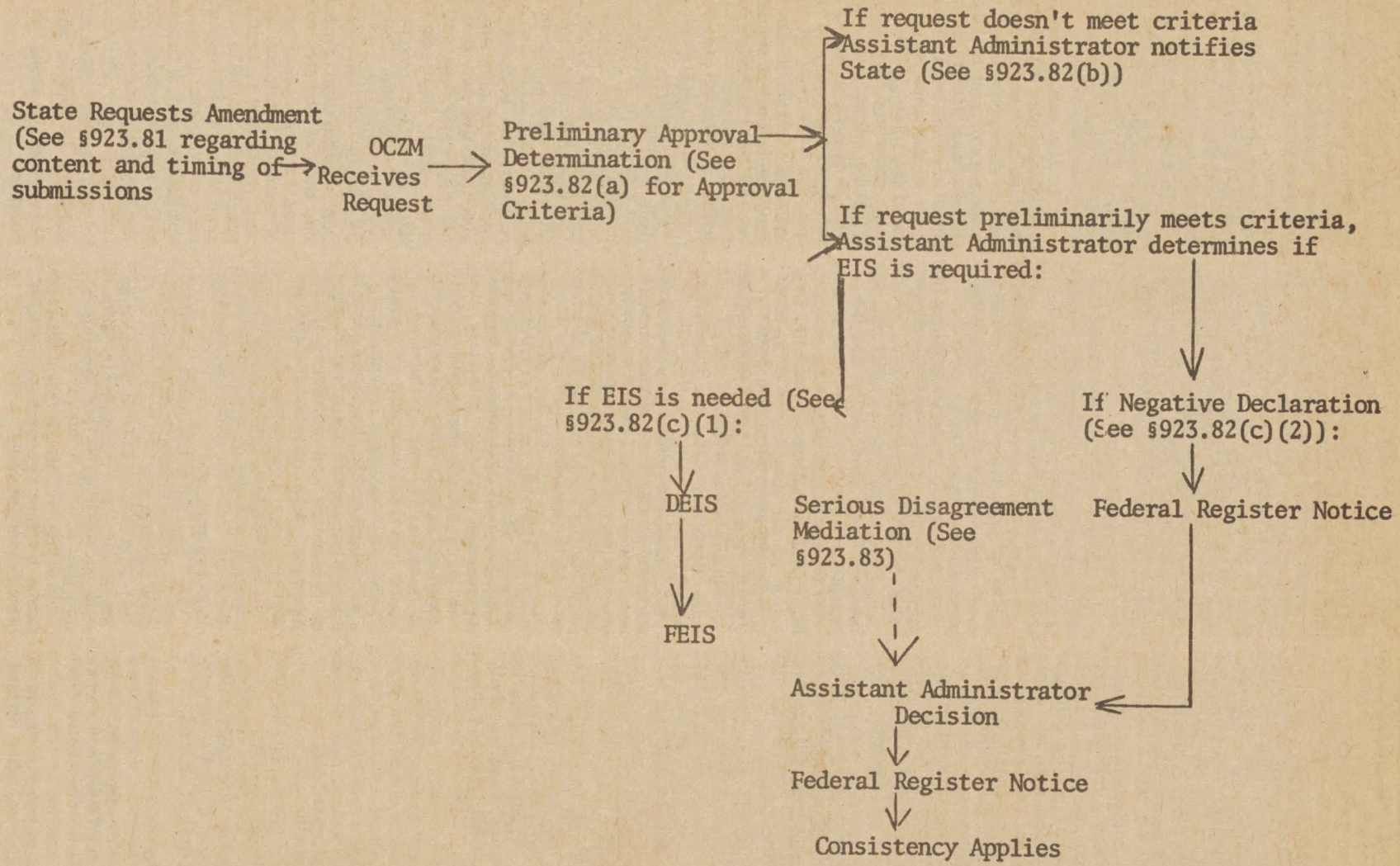
(2) In going through the amendment process, a State acts to implement that amendment prior to approval by the Assisitant Administrator; or

(3) In being notified by OCZM that an action the State considered to be routine program implementation is deemed by OCZM to be an amendment, the State does not submit such action for amendment.

(d) In the event there is cause for terminating and withdrawing section 306 funding, a notice in the form of written documents from the Assistant Administrator and the NOAA Grants Office to the Governor of the State in question or the head of the designated State agency shall be provided advising of the intent to terminate and approve grant and to withdraw any unexpended portions of funding assistance. Included in this notice will be the reasons for the proposed termination and withdrawal of funds as well as notice of opportunity for the State to present evidence of adherence or justification for alteration of its program. Such opportunity to present evidence is referred to in subsection 312(b) of the Act shall consist of a thirty day period, commencing on receipt of notice, within which the State may respond by providing written materials demonstrating adherence to or justification for altering its program. Within this thirty day period, a State may request additional time beyond the thirty day period to present evidence of adherence or justification for alteration. Such additional time shall not extend beyond a subsequent thirty days from receipt the termination of the first thirty day period. In total then, a State may have a miximum of sixty days, from receipt of notice, in which to respond. Following receipt and evaluation of a State's evidence with respect to adherence or justification for alteration, a final determination shall be made by NOAA with respect to termination and withdrawal of funding assistance. If termination and withdrawal of funding is deemed appropriate, the NOAA Grants Office shall take appropriate Action to terminate or withdraw funds. If funding is terminated and withdrawn pursuant to this section notice shall be placed in the FEDERAL REGISTER. Once funding is terminate and withdrawn pursuant to this section Federal consistency pursuant to section 307 of the Act shall cease to apply to that State's program.

CHART

AMENDMENT PROCESS



## Subpart J—Applications for Program Development or Implementation Grants

### § 923.90 General.

(a) The primary purpose of development grants made pursuant to section 305 of the Act is to assist coastal States in the development of comprehensive coastal management programs that can be approved by the Assistant Adminstrator. The primary purpose of implementation grants made pursuant to section 306 of the Act is to assist coastal States in implementing coastal management programs following their approval. The purpose of the guidelines in this subpart is to define the procedures by which grantees apply for and administer grants under the Act. These guidelines shall be used and interpreted in conjunction with the Office of Management and Budget Circular A-102, Administrative Requirements for Grants-in-Aid to State and local governments, and other directives from the NOAA and OCZM grants offices.

(b) Grants awarded to a State must be expended for the development or administration, as appropriate, of a management program that meets the requirements of the Act.

(c) All applications for funding under sections 305 or 306 of the Act, including proposed work programs, funding priorities and allocations are subject to the administrative discretion of the Assistant Administrator.

(d) Grants shall not exceed eighty per cent of the annual total cost of the program.

(e) For purposes of this subpart, the term "development grant" means a grant awarded pursuant to subsection 305(a) of the Act. "Administrative grant" and "implementation grant" are used interchangeably and mean grants awarded pursuant to subsections 306(a) or (h) of the Act.

(f) All application and preapplication forms are to be requested from and submitted to:

National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, Grants and Loans Operations Staff, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

### § 923.91 State responsibility.

(a) Applications for program grants shall be submitted by the Governor of a participating State or by the head of the State entity designated by the Governor pursuant to subsection 306(c)(5) of the Act.

(b) In the case of section 305 grant, the application shall designate a single State agency or entity to receive development grants and to be responsible for development of the State's coastal management program. The designee need not be that entity designated by the Governor pursuant to subsection 306(c)(5) of the Act as the single agency to receive and administer implementation grants.

(c) One State application will cover all program activities for which funds under this Act and matching State funds are provided, irrespective of whether these activities will be carried out by State agencies, areawide or regional agencies, local governments, or interstate entities.

(d) The designated State entity is fiscally responsible for all expenditures made under the grant, including expenditures by subgrantees and contractors.

### § 923.92 Allocation.

(a) Statutory Citations, Subsections 305(g):

With the approval of the Secretary, any coastal state may allocate to any local government, to any areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, to any regional agency, or to any interstate agency, a portion of any grant received by it under this section for the purpose of carrying out the provisions of this section.

Subsection 306(f):

With the approval of the Secretary, a state may allocate to a local government, an areawide agency designated under section 204 Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section: Provided, that such allocation shall not relieve the state of the responsibility of ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

(b) A State may allocate a portion or portions of its grant to other State agencies, local governments, areawide or regional agencies, interstate entities, of Indian tribes. If the work to result from such allocation(s) contributes to the effective development or implementation of the State's management program:

(1) *Local governments.* Should a State desire to allocate a portion of its grant to a local government, units of general-purpose local government are preferred over special-purpose units of local government.

(2) *Local governments.* Where a State will be relying on direct State controls as provided for in subsection 306(e)(1)(B) of the Act, pass-throughs to local governments for local planning, regulatory or administrative efforts under a section 306 grant cannot be made, unless they are subject to adequate State overview and are part of the approved management program. Where the approved management program provides for specified local activities or one-time projects, again subject to adequate State overview, then a proportional amount of administrative grant funds can be allocated to local governments.

(3) *Areawide agencies.* If a State wishes, it may allocate a portion of its administrative grant to an areawide agency, and absent State law to the contrary, preference shall be given to those agencies recognized or designated as areawide comprehensive planning or development agencies under the provisions of the Office of Management and Budget Circular No. A-95, under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(4) *Indian Tribes.* In furtherance of the policy enunciated in § 923.33(b)(2), individual tribes or groups of tribes may be considered regional agencies and may be allocated a portion of a State's grant for the development of independent tribal coastal management programs or the implementation of specific management projects provided that:

(i) The State certifies that such tribal programs or projects are compatible with its approved coastal management policies; and

(ii) On excluded tribal lands, the State demonstrates that the tribal program or project would or could directly affect the State's coastal zone.

### § 923.93 Geographic segments.

(a) Application procedures for a grant to be awarded pursuant to subsection 306(h) of the Act for a geographic segment of a State's coastal zone are the same as those set forth in this subpart for a grant to administer the approved management program of the entire coastal zone of a State.

(b) When a State has a program for a geographic segment of its coastal zone approved pursuant to subsection 306(h) of the Act, that portion of a State's coastal zone not awarded segment approval will continue to be eligible for section 305 grants until authorization for such funds terminates.

### § 923.94 Eligible implementation costs.

(a) Costs claimed must be beneficial and necessary to the objectives of the grant project. As used herein the terms cost and grant project pertain to both the Federal and the matching share. Allowability of costs will be determined in accordance with the provisions of Federal Management Circular (FMC) 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments.

(b) Federal funds awarded pursuant to section 306 of the Act may not be used for land acquisition purposes and may not be used for construction purposes except as described in paragraph (d) below.

(c) The primary purpose for which implementation funds, pursuant to section 306 of the Act, are to be used is to assure effective implementation and administration of the management program, including especially administrative actions to carry out and enforce program policies, authorities and other management techniques. Implementation activities should be related to achieving substantive results in the following 4 major areas, which are derived from the policies and findings of §§ 302 and 303 of the Act:

(1) Protection of significant natural coastal resources, and areas including, as appropriate, wetlands, beaches, dunes, barrier islands, reefs and fisheries.

(2) Management of coastal development to:

(i) Prevent or mitigate loss of life and property in such coastal hazard areas as floodplains, erosion-prone areas, areas subject to subsidence or saltwater intrusion;

(ii) Provide priorities for water-dependent uses such as ports, fishing facilities and water-dependent energy facilities; and

(iii) Identify environmentally acceptable sites for dredge spoil disposal.

(3) Increase in public access for recreational purposes, including revitalization of urban waterfront and protection and restoration, where possible, of important historic, cultural and aesthetic coastal resources.

(4) Improvement in the predictability and efficiency of governmental decisionmaking especially with respect to permitting.

(d) Implementation funding may be applied to the management of designated areas of particular concern, especially areas designated for preservation or restoration purposes pursuant to § 306(c)(9) of the Act. Within areas designated for the purpose of restoring or preserving their ecological or conservation values, section 306 funds may be spent for projects involving expendable materials (as for example, seeds to be used as a non-structural erosion control technique or, for another example, materials to restore lighthouses designated as areas for restoration). All costs associated with such projects may not exceed a total of $50,000 per grant, except in the case of a demonstration grant which may be negotiated with and approved by the Assistant Administrator. In addition the following conditions must be met:

(1) The project must be consistent with and fulfill the objectives of a related policy (or policies) in the State's management program;

(2) Basic program administration requirements discussed in paragraph (c) are provided for;

(3) No other sources of funding are readily available; and

(4) An explanation is provided of how the area will be maintained and operated once preserved or restored.

(e) Section 306 funding in support of any of these purposes, except as limited in paragraph (d) above, may be used to fund:

(1) Personnel costs,

(2) Supplies and overhead,

(3) Equipment (subject to the limitations in paragraph (f) below), and

(4) Feasibility studies and preliminary engineering reports. A feasibility study is defined as a document, independent of a particular design solution for a project, which presents an analysis of the economic practicality of the project. A preliminary engineering report is defined as a document which presents both engineering criteria, in sufficient detail to form the basis for the preparation of final design documents and detailed engineering cost estimates. Detailed architectural drawings and engineering specifications are eligible costs if:

(i) They are directly related to preservation and restoration projects discussed in (d) above;

(ii) They are for projects which are not in APC's but are directly related to the State's management program and the State can provide written documentation to OCZM that the other sources of funding have been secured to complete such projects.

(f) Equipment purchases by the grantee of more than one thousand (1,000) dollars per item require NOAA approval prior to purchase. Equipment purchases by sub-awardees may be approved by the grantee. Such purchases may be deemed eligible costs if the State:

(1) Has examined lease, rental or other non-purchase alternatives and purchase represents an equal or lesser cost alternative, and

(2) The equipment is essential to management activities that are anticipated to continue for more than 1 year.

(g) States are encouraged to coordinate administrative funding requests with funding possibilities pursuant to sections 308, 309, 310 and 315 of the Act. When in doubt as to the appropriate section of the Act under which to request funding, States should consult with OCZM. States should consult with OCZM on technical aspects of consolidating requests into a single application.

### § 923.95 Application for initial program development or implementation grants.

(a) The form SF-424, and an Application for Federal Assistance (Non-Construction Programs) constitutes the formal application. An original and two (2) copies must be submitted 45 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with A-95 requirements including the resolution of any problems raised by the proposed project. Grants will not be awarded until A-55 requirements have been completed.

(b) States have the option of using a Preapplication for Federal Assistance. If used, the Preapplication must be submitted 120 days prior to the beginning date of the requested grant. The Preapplication shall include documentation, signed by the Governor, designating the State office, agency, or entity to apply for the administer the grant. The SF-424 and Preapplication for Federal Assistance, should be transmitted to the appropriate clearinghouses at the time it is submitted to OCZM.

(c) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein, the terms "cost" and "grant project" pertain to both the Federal grant and the matching share. Allowability of costs will be determined in accordance with the provisions of FMC 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments. Eligible implementation costs also shall be determined in accordance with § 923.94 of these regulations.

(d) In Part IV—Program Narrative of the Form SF-424, the applicant shall describe clearly and briefly the activities that will be undertaken with grant funds in support of implementation and administration of the management program. This description shall include:

(1) An identification of those elements of the approved management program that are to be supported in whole or in part by the Federal and the matching share,

(2) A clear statement of the major tasks required to implement each element,

(3) For each task:

(i) Specify how it will be accomplished and by whom;

(ii) Identify any sub-awardees (other State agencies, local governments, individuals, etc.) that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of the sub-awards for each allocation. Identify, if any, that portion of the task that will be carried out under contract with private firms or individuals and indicate the estimated cost of such contract(s);

(iii) Indicate the estimated total cost. Also indicate the estimated total person-months if any, allocated to the task from the applicant's staff;

(iv) Indicate the percent estimated to be completed during the grant period.

(4) The sum of all task costs in subparagraph (3) above should equal the total estimated grant project cost.

(5) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff who will be assigned to the grant project. Also indicate the number assigned full time and the member assigned less than full time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project.

**§ 923.96 Applications for subsequent program development grants.**

(a) Subsequent development grants will follow the procedures set forth in § 923.95. Additionally, the program design discussed in § 923.95(d) shall be updated to:

(1) Describe the anticipated design and content of the management program, including the major issues the program will address, and the policies and management techniques that will be proposed to address these issues;

(2) Describe how the past year's work contributed to the accomplishment of the overall program design and specifically to meeting the requirements for program approval;

(3) Examine and assess the need, if any, to modify the overall program design or the program's goals and objectives or both in view of the above or any emerging opportunities or problems; and

(4) Indicate when the State will submit a management program to the Assistant Administrator for review and final approval pursuant to section 306 of the Act or for preliminary approval pursuant to subsection 305(d) of the Act.

(b) In evaluating whether a State is making satisfactory progress toward completion of an approvable management program which is necessary to establish eligibility for subsequent grants, the Assistant Administrator will consider:

(1) The progress made toward meeting management program goals and objectives;

(2) The progress demonstrated in completing the past year's work program;

(3) The cumulative progress toward meeting the requirements for preliminary or final approval of a coastal management program;

(4) The applicability of the proposed work program to fulfillment of the requirements for final approval; and

(5) The effectiveness of mechanisms for insuring public participation and consultation with affected Federal, State, regional and local agencies in program development.

**§ 923.97 Applications for subsequent program implementation grants.**

(a) Second and subsequent year applications will follow the procedures set forth in § 923.95 except that:

(1) The Governor's document designating the State agency to receive and administer the grant is not required unless there has been an approved change of designation; and

(2) Copies of the approved management program and approved changes are not required.

(b) No award for continued funding pursuant to section 306 will be made until an evaluation of the State's program pursuant to § 312 of the Act has been conducted and findings have been made by the Assistant Administrator.

**§ 923.98 Applications for preliminary approval grants.**

(a) The primary purposes of preliminary approval grants are to assist a State in insuring ultimate implementation of a fully developed program design and to provide for initial implementation of approved management elements. The purpose of these guidelines is to define the procedures by which grantees apply for and administer grants under the Act.

(b) The following represent allowable subsection 305(d) costs:

(1) Resolving section 306 deficiencies;

(2) Implementing those portions of a State's coastal management program for which sufficient authorities and organizational structures are in place;

(3) Updating coastal management programs if this updating would be an allowable cost after section 306 approval.

(c) The Form SF-424 and the Application for Federal Assistance (Non-Construction Programs), constitutes the formal application. An original and two (2) copies must be submitted at least 45 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with A-95 requirements including the resolution of any problems raised by the proposed project. A grant will not be awarded until A-95 requirements have been completed.

(d) In Part IV, Program Narrative of the Form SF-424, the applicant should respond to the following requirements:

(1) Set forth a work program describing the activities to be undertaken during the grant period. This work program shall include:

(i) A precise description of each major task to be undertaken to resolve section 306 deficiencies, and a specific timetable for remedying these deficiencies;

(ii) a precise description of implementation activities for approved management components, including a demonstration that these implementation funds will not be applied outside the approval coastal management boundaries;

(iii) A precise description of any other tasks necessary for and allowable under subsection 305(d);

(iv) For each task, identify any subawardees that will be allocated responsibility for carrying out all or portions of the tasks, and indicate the estimated cost of the subaward for each allocation, Identify, if any, that portion of the task that will be carried out under contract with consultants and indicate the estimated cost of such contract(s); and

(v) For each task, indicate the estimated total cost. Also, indicate the estimated total person-months of effort, if any, allocated to the task from the applicant's staff.

(2) The sum of all task cost in the above paragraph should equal the total estimated grant project cost.

(3) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff that will be assigned to the grant project. Also indicate the number assigned full time and the number assigned less than full time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project.

**§ 923.99 Approval of applications.**

(a) The application for a grant by any coastal State which complies with the policies and requirements of the Act and these guidelines shall be approved by the Assistant Administrator, assuming available funding.

(b) Should an application be found deficient, the Assistant Administrator will notify the applicant in detail of any deficiency when an application fails to conform to the requirements of the Act or these regulations. Conferences may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) The Assistant Administrator may, upon finding of extenuating circumstances relating to applications for assistance, waive appropriate administrative requirements contained in this subpart.

**§923.100 Grant amendments.**

(a) Actions which require an amendment to a grant award such as a request for additional Federal funds, changes in the amount of the non-Federal share, changes in the approved project budget as specified in Attachment K of OMB Circular A-102, or extension of the grant period must be submitted to the Assistant Administrator and approved in writing

by him/her and the NOAA Grants Officer prior to initiation of the contemplated change. Such requests should be submitted at least 30 days prior to the proposed effective date of the change and, if appropriate, accompanied by evidence of compliance with A-95 requirements.

(b) NOAA shall acknowledge receipt of the grantee's request within the ten (10) working days of receipt of the correspondence. This notification shall indicate NOAA's decision regarding the request; or indicate a time-frame within which a decision will be made.

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federal register

WEDNESDAY, MARCH 28, 1979

PART III




# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Health Care Financing Administration

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# HEALTH FINANCING RESEARCH AND DEMONSTRATION GRANTS

[4110-35-M]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Health Care Financing Administration

### HEALTH FINANCING RESEARCH AND DEMONSTRATION GRANTS


SUMMARY

This Notice supersedes the original Notice published in the FEDERAL REGISTER on April 13, 1978 (43 FR 15594) and;

1. revises the priority areas for grants,

2. changes the original schedule for submittal, review and funding of grant applications from quarterly to semi-annual and

3. clarifies that Section 1115 "Waiver-Only" projects are subject to the same formal review process as are all other grant applications.


AVAILABILITY OF GRANTS

The Office of Policy, Planning and Research (OPPR) of the Health Care Financing Administration (HCFA) has funds for research and demonstrations. Applications for grants may be made by nonprofit or public organizations and institutions (including state agencies responsible for administering the Medicaid Program). Grants may be made for research, planning or conduct of demonstrations, conferences, or data collection activities.

GENERAL POLICY CONSIDERATIONS

The grant activities we fund are intended to assist in the resolution of major health financing policy and program issues and to assist in developing new methods for the administration of HCFA programs. In general we will consider funding projects which:

Develop or demonstrate new financing mechanisms or controls, management or administrative procedures, service delivery concepts or technological innovations designed to improve HCFA programs, or

Develop knowledge about the basic nature of costs and inflation in the health care field or the economic and behavioral relationships between health care financing methods and the activities in the health care sector.

Applicants who have ideas in either of these general areas are encouraged to develop them into complete applications.

There are several areas of interest and concern which are considered as priority. These areas are not exhaustive of our interests.

Applications which fit one of the priority areas will be considered as "solicited." Applications which do not fit one of the areas will be considered if they fit within the two general areas described above. However, there is no guarantee that there will be sufficient funds to make awards in all the topics. These applications will have to compete with one another and across areas.

HCFA PRIORITY AREAS FOR GRANTS

The 17 areas announced in the April 13, 1978 Notice are being consolidated. Two of these priority areas have been eliminated; Clinical Efficacy Studies and Health Education/Consumer Awareness.

The new priority areas are:

—Beneficiary Awareness in Consuming Health Care Services
—Beneficiary Impact and Data Base Development
—Fraud and Abuse
—Health Systems Organization
—Hospital Costs
—Industrial Organization Reimbursement
—Integrated Data Systems
—Long Term Care
—Long Term Care Demonstrations
—Long Term Care Research
—Physician Reimbursement
—Quality and Effectiveness

An explanation of the new priority areas will be published in a brochure which will be available from:

Program Support Office, Office of Policy, Planning, and Research, Health Care Financing Administration, Department of Health, Education, and Welfare, Room 5046 Switzer Building, 330 C Street, Southwest, Washington, D.C. 20201.

This brochure is the basic source for information on the content of the current priority areas for this grants program. As changes are made in these priority areas new editions of the brochure will be prepared and made available.

DURATION OF FUNDING

Grants are awarded for a period of 1 year, and may be continued on a non-competing basis generally for up to 5 years if originally awarded as a multiple year project. Continuation funding is contingent upon the availability of future year funds, the meeting of project objectives, and the continued relievance of the project to the declared interests of HCFA.

GENERAL CRITERIA FOR FUNDING NEW PROJECTS

The Associate Administrator for Policy, Planning and Research determines which projects will be funded. These decisions are based on the recommendations of technical review panels and on the comments of other Department components and outside individuals or organizations. More specifically, the factors that are considered in arriving at the award decision are:

1. Whether the project addresses an area of declared interest, and the relevance of the anticipated results to HCFR programs or general issues, involving HCFA programs.

2. The adequacy and creativity of the research design and questions, the validity and appropriateness of the methods and data bases(s) proposed, and the experience and competence of the researchers.

3. Whether the knowledge base, project design or methodology is such that the project can be carried out within the times specified.

4. Whether the proposed project methodology is rigorous and consistent with what is generally agreed to be the state of the art.

5. Whether the overall budget, the personnel resources to be used, and the facilities and equipment are appropriate for the project and to the concern of HCFA for that issue.

6. If it is a demonstration project it shows a commitment of the parties necessary to the success of the planned project.

PROJECT REQUIREMENTS

In addition to meeting the general criteria described above the application must meet the following requirements.

1. The project goals and objectives must be clearly stated and be measurable.

2. The research design, including the questions to be addressed, the methods and the data to be used must be explicitly described. The methodology must be well defined and scientifically valid.

3. A demonstration project must include a demonstration design, objectives and proposed analytical and evaluation methods.

4. The relevance of the findings to HCFA policy concerns should be discussed.

5. Tasks and milestones must be clearly described and scheduled.

6. The application must specify the availability of the data to be used. If data are to be collected, the discussion shoud describe the nature of the data sought, the sample design and size, controls (if any) and the problems that might be encountered. Data that are collected under a HCFA grant must be available to anyone the Project Officer designates at any time and only to those individuals or organizations designated by the Project Officer. The applications must assure the confidentiality of data and the protection of the privacy of individuals when the data allow for such identification.

7. The Application should show the qualifications and experience of the personnel and demonstrate how their qualifications make the individuals capable of performing the tasks in the project. The application should also show how the personnel are to be organized in the project; who will be responsible for which portions of the project and what lines of authority will exist.

8. The application should show the availability of adequate facilities and equipment for the project or clearly state how these are to be obtained.

9. The budget must be developed in detail with justifications and explanations for the amounts requested. The estimated costs must be reasonable considering the anticipated results. Applicants should directly share in the costs of the projects (see Application Procedures, 2 *Grant Policies* below).

10. Funds will not be available for construction or remodeling; or for project activities that take place before the applicant has received official notification of HCFA approval of the project.

11. Experiments and demonstration projects must have a proposed evaluation com-

ponent. This must describe data collection and analysis procedures for an evaluation that will assess the degree to which the objectives of the project were met. The evaluation component may, at the discretion of the HCFA, be separately funded. Therefore, the evaluation effort should be separately and distinctly budgeted.

12. Sections 1115 and 222 projects that require waivers must define the services, list the waivers, discuss the implications if such waivers are granted, state the effect on Federal, State and local laws as well as the effect (beneficial or adverse) on beneficiaries enrolled in the project.

13. Plans for utilization of the project's results should be discussed along with the deliverable products and the points in the project schedule when these reports/products will be available.

14. The application must assure the applicant's willingness to comply with the human subjects regualtions by the inclusion of a completed form HEW-596 (Rev. 1975) "Protection of Human Subjects" (45 CFR Part 46).

### Review of the Applications

The review process will consist of two phases. During the first phase applications will be separated into two groups, those that are relevant to the interests of HCFA and those that are not. The criteria used for this decision will be whether the project fits within the language of HCFA's general interest appearing in the first paragraph of "General Policy Considerations" of this Notice. The first group will be screened for completeness and assigned to review panels; the second group will be returned to the applicants. The second phase will consist of the review, ranking and award. The review will be conducted by a panel of not less than three experts (who are not staff members of OPPR).

There will be at least one panel for each area of interest. A OPPR/HCFA Project Officer will coordinate the panel's review but will not vote. This individual will also prepare the panel's recommendation to the Director, Office of Policy, Planning and Research. The panel's recommendations will contain numerical ratings, ranking of acceptable projects and a written assessment of each application.

### Section 1115 Projects

Under section 1115(a)(1) of the Act, compliance with statutory State Medicaid Plan requirements may be waived to enable a State Medicaid agency to carry out a significant demonstration project which will further the general objectives of the Medicaid program.

To assure that all HCFA decisions on waivers reflect our needs and priorities and so that we can properly analyze the results of such projects, section 1115 applications which only seek waivers of HCFA regulations are reviewed as are other grant applications. The closing, review and award dates established for grant applications will be used as well for section 1115 waiver-only projects unless otherwise stated in a Federal Register Notice.

All requirements of the Social Security Act, the Code of Federal Regulations and other issuances that pertain to the Title XIX categorical program are applicable to a project approved under section 1115, except as specifically waived.

When a State Medicaid agency applies for a section 1115 project special attention should be given to the preparation of the budget. These budgets are substantially more extensive than the budget for other grant applications (see HCFA-PG-11A, Instructions for Completion of Federal Assistance Application, form HCFA-PG-11).

### Number and Size of Awards

Awards may range from $25,000 to $1,000,000, in total cost. Most grants will range between $25,000 and $250,000 per year and range from 1 to 5 years. The number of awards in the priority areas will depend on the size of the highest quality/greatest interest applications.

The number and size of awards will depend on the availability of funds and on the need of projects that are continuing from prior years.

### Authorities

The authorities for these grants are:

Social Security Act, Title XI, and Sections 1110 and 1115.
Section 222(a) of the Social Security Amendments of 1972.
Section 402(a) of Social Security Amendments of 1967.
Public Health Act, Section 1526(a), as restricted by Section 1521(b)(3).
Public Health Act, Section 1533(a), as it relates to Section 1533(d).

### Application Procedures

1. *Applications forms.* A standard application form has been developed for the HCFA research and demonstration grant program. Application kits and guidance for the completion of the forms are available from:

Health Care Financing Administration, Project Grants Branch, 4200-C Mary E. Switzer Building, 330 C Street SW., Washington, D.C. 20201, telephone 202-245-0671.

The application should include, in the project title, the solicited area to which the applicant is responding. The solicited area designation should also be clearly marked on the outside of the package/envelope. If the application is unsolicited (not in response to any of the priority areas) the project title should include the phrase, ". . . an unsolicited grant application" and the package/envelope should indicate the same.

2. *Grant Policies.* The funding of grants is made through a competitive process based on a choice of proposals submitted in response to this notice. All grantees are expected to share directly (not in-kind) in the costs of the projects. This sharing should not be less than 5 percent of the total project cost.

Other policies in terms of grantee responsibilities, awarding and payment procedures, special provisions and assurances may be found in the following documents that are included in the application kit:

Project Grants Policy Handbook, DHEW Publication No. (SRS) 76-04001
45 Code of Federal Regulations, Part 74; Administration of Grants

3. *Closing Dates and Times.* Because of the time required to carry out a complete review and reach decisions on grant application funding while continuing to manage existing grants and contracts, we are changing from a quarterly to a semi-annual schedule. Accordingly, we will regularly process grant applications twice a year with award decisions being announced in January and July.

For fiscal year 1979 the second and last closing date will be Monday, June 4, 1979. For fiscal year 1980 the closing dates are Monday, October 1, 1979 and Monday, April 7, 1980. For all dates the closing time is not later than 3:00 PM Washington, D.C. time.

(Applications which were received in response to the previously announced January 8, 1979 closing are being held for review with applications to be received by June 4, 1979.)

A summary of this schedule is as follows:

| Closings | Reviews | Award Decisions |
|---|---|---|
| June 4, 1979 | July/August | September. |
| October 1, 1979 | November/December. | January. |
| April 7, 1980 | May/June | July. |

Applications received after these cut-off dates will not be considered unless they were sent by Registered, Certified or Express mail 5 working days in advance of the specified dates. The postmark on the package will establish the date the application was mailed. Late applications will be carried over until the next closing date unless the applicant notifies the Project Grants Branch that it is being withdrawn.

Applications received for the second cycle in any fiscal year will be reviewed with the intent of making awards in the fourth quarter of that fiscal year. However, these applications may be held for award in the first quarter of the subsequent fiscal year.

(Catalog of Federal Domestic Assistance Program No. 13.766 Health Financing Research, Demonstrations and Experiments)

Dated: March 23, 1979.

Leonard D. Schaeffer,
*Administrator, Health Care Financing Administration.*

[FR Doc. 79-9329 Filed 3-27-79; 8:45 am]

federal register

WEDNESDAY, MARCH 28, 1979

PART IV

# NATIONAL ARCHIVES AND RECORDS SERVICE

## Office of the Federal Register

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# INCORPORATION BY REFERENCE

### Publication Procedures

[68-20-27-M]

## Title 1—General Provisions

## CHAPTER II—OFFICE OF THE FEDERAL REGISTER

## PART 51—INCORPORATION BY REFERENCE

### Publication Procedures

AGENCY: Office of the Federal Register.

ACTION: Final rule.

SUMMARY: The Office of the Federal Register (OFR) amends its regulations on incorporation by reference to require that agencies follow new procedures to maintain approval of their incorporations by reference in the Code of Federal Regulations (CFR). These amendments are necessary for the OFR to compile inventories of all materials approved for incorporation by reference and to keep those materials approved for incorporation by reference up-to-date.

EFFECTIVE DATE: April 27, 1979.

FOR FURTHER INFORMATION CONTACT:

Ann Stevens, Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408, 202-523-4534.

SUPPLEMENTARY INFORMATION:

### BACKGROUND

Under certain circumstances, a Federal agency may comply with the requirement that regulations must be published in the FEDERAL REGISTER by referring to materials that have already been published elsewhere. Use of this device, called "incorporation by reference," was authorized in 1966 by the Congress in 5 U.S.C. 552(a) to reduce the volume of material published in the FEDERAL REGISTER and the CFR. The legal effect of incorporation by reference is that the material is treated as though it were actually published in full in the FEDERAL REGISTER and the CFR.

Under § 552(a), the Director of the FEDERAL REGISTER is authorized to decide when an agency may incorporate material by reference. The Director was given this authority to insure that use of incorporation by reference did not undermine the notice-giving function of the FEDERAL REGISTER system created by the Federal Register Act of 1935 (44 U.S.C. Ch. 15). To carry out this objective, the OFR established procedures in 1967 that agencies must follow before an incorporation by reference will be approved (32 FR 7899). These procedures, as amended, appear in Title 1, Part 51 of the CFR. One of the most important of the required procedures is the filing of the incorporated material with the OFR. The filing requirement is consistent with the policy behind the Federal Register Act that the OFR be the central depository of all Government regulatory documents.

### PROCEDURES

In this document, we announce new procedures that agencies must follow to continue the Director's approval of material previously incorporated by reference. We developed these procedures: (1) to make it easier for the public to identify incorporated material; and (2) to insure that only material currently enforced by the agency is incorporated by reference.

#### IDENTIFICATION OF INCORPORATED MATERIALS

Before 1967, some agencies used the incorporation by reference device even though it was not explicitly authorized by statute. There are numerous examples of these pre-1967 incorporations by reference throughout the CFR. There are also numerous examples of incorporations by reference published after 1967 that were not approved by the Director of the Federal Register. Neither of these incorporations by reference have the legal standing that is available under 5 U.S.C. 552(a) and 1 CFR Part 51.

While the OFR established procedures for incorporation by reference in 1967 (32 FR 7899), we did not require agencies to file a copy of incorporated materals with us until 1973 (37 FR 23614). Therefore, we do not have a complete file of all materials that we have approved for incorporation by reference. We have since determined that a complete file of incorporated material is necessary to enable us to carry out our central depository function under the Federal Register Act.

We receive numerous inquiries from the public and from Government agencies about material that has been approved for incorporation by reference. The new procedures will help us handle these inquiries effectively and maintain and publish in the FEDERAL REGISTER an inventory of all material incorporated by reference. This inventory was recommended in the Administrative Conference of the United States Recommendation 78-4, Federal Agency Interaction with Private Standards-setting Organizations in Health and Safety Regulations (44 FR 1357). We also plan to list incorporated material at relevant parts throughout the CFR. This agency listing is necessary for historical research purposes. It will reflect exactly what material was incorporated by reference on a given date after July 1, 1980, and will help researchers determine what was in effect on that date.

We believe that the most effective way to assure the accuracy of this inventory is to withdraw all existing incorporations by reference and to require agencies that wish to do so to apply again to the Director for approval to incorporate by reference.

#### MAINTENANCE OF MATERIALS

Much of the material that has been incorporated by reference has been revised since its approval. Agencies that wish to apply these revisions are required by 1 CFR and §§ 51.5 and 51.8 to send us any revisions of the material and to publish a document in the FEDERAL REGISTER giving the public notice of these revisions. However, not all agencies follow this procedure. As a result, there are numerous references in the early editions of the CFR to materials that have been revised, even though the agency enforces the later edition.

We believe that withdrawal of all existing approvals of incorporations by reference is the most effective way to insure that only material currently enforced by the agency is incorporated by reference. If agencies reapply for incorporation by reference approval, we will review material submitted to determine if it is still eligible for incorporation by reference in light of our experience since 1967 and in light of recent trends toward increased public participation in the rulemaking process.

To assure that the system is kept up-to-date after material is approved and that we periodically review the eligibility of this material, we developed new procedures for maintaining incorporations by reference. These procedures require agencies to submit to the Director a list identifying all incorporated material enforced by the agency and the date of its last revision. This information will be published in relevant portions of the CFR.

#### PUBLICATION AS A FINAL RULE

The public will be affected by these procedures only to the extent that they will benefit from publication of the inventories of incorporated materials and from the maintenance of material approved for incorporation by reference. Since the procedures outlined in this document relate to agency management they are exempt from the notice and comment requirements of 5 U.S.C. 553.

FRED J. EMERY,
*Director, Office of the Federal Register.*

MARCH 23, 1979.

Accordingly, under the authority vested in the Office of the Federal Register by 5 U.S.C. 552(a), 1 CFR

Part 51 is amended by adding a new section 51.13 to read as follows:

**§ 51.13. Procedures for approval and maintenance of incorporations by reference.**

(a) The Director withdraws approval of all material incorporated by reference in the *Code of Federal Regulations* (CFR) effective on the following dates:

| Incorporations by reference appearing in | Are withdrawn on |
|---|---|
| CFR Titles 1 through 16..... | January 1, 1981 |
| CFR Titles 17 through 27..... | April 1, 1981 |
| CFR Titles 28 through 41..... | July 1, 1980 |
| CFR Titles 42 through 50..... | October 1, 1980 |

(b) Each agency that wishes material incorporated by reference in the CFR to be effective after the dates set forth in paragraph (a) of this section shall—

(1) Request the Director's approval as required by this Part and send with the request a copy of the material to be incorporated by reference unless the material is on file with the Office of the Federal Register and is currently enforced by the agency; or

(2) Submit to the Director a list of that material and the date of its last revision unless the material is on file with the Office of the Federal Register and is currently enforced by the agency.

(c) Each agency that wishes material incorporated by reference in the CFR to remain effective shall annually submit to the Director a list of that material and the date of its last revision. The agency shall submit this list at least 30 days before the revision date of the CFR title in which the incorporation by reference appears.

[FR Doc. 79-9578 Filed 3-27-79; 8:45 am]

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