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federal register

Tuesday
December 1, 1981

Highlights

58285 **IRA/Keogh Accounts** DIDC rescinds waiver of mandatory penalties for early withdrawal for transfers of certain time deposits.

58287 **Keogh Accounts** SEC provides exemption from registration of interests and participations issued in connection with certain plans.

58368 **Grant Programs—Health Care** HHS/HCFA cancels solicitation for research and demonstration grants.

58341 **Manufactured Homes** FHLBB proposes regulations to allow Federal savings and loan associations to become more involved in lending.

58464 **Surface Mining** Interior/SMREO proposes to amend standards and procedures for State regulatory authority inspection and enforcement, Federal inspection and enforcement, and civil penalty assessments. (Part III of this issue)

58304 **Oil and Gas Reserves** Interior/GS includes the National Petroleum Reserve in Alaska in operating regulations.

58369 Interior/BLM clarifies antitrust review information required by Justice for first lease sale for the National Petroleum Reserve in Alaska.

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

Highlights

58281 **Nuclear Power Plants and Reactors** NRC clarifies licensing requirements for storage of spent fuel in independent storage installations.

58279 NRC expedites licensing process by authorizing presiding officer to require oral answers to certain motions and service of documents by express mail.

58292 **Pipelines** DOE/FERC establishes procedures for refund of Louisiana First Use Tax.

58296 **Natural Gas** DOE/FERC issues incremental pricing acquisition cost thresholds for December 1981.

58389 **Energy** SFC adopts guidelines on disclosure and confidentiality of information.

58306 **Military Law** DOD establishes policies for enforcement of State traffic laws on military installations.

58271 **Government Employees** OPM revises back pay regulations.

58363 **Government Employees—Travel Expenses** GSA reports on cost of travel and operation of privately owned vehicles.

58315 GSA/TPUS decreases certain mileage rates for privately owned automobiles and revises list of high rate geographical areas.

58346 **Flood Insurance** Interior announces intention to propose rules on designation of undeveloped coastal barriers.

58335 **Wildlife Refuges** Interior/FWS removes regulations on establishment of wildlife development areas on land to be included in the National Wildlife Refuge System.

58351 **Vegetables** USDA/SRS implements revised acreage estimating program.

58307 **Copyright** Library of Congress prescribes methods of affixation and positions of copyright notice.

58301 **Equal Access to Justice** State adopts procedural rules.

58381 **Privacy Act Document** ICC

58391 **Sunshine Act Meetings**

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Rules and Regulations

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service

AGENCY: Office of Personnel Management

ACTION: Final regulations.

SUMMARY: This amendment provides for immediate revocation of excepted appointing authority under Schedule C when a position covered by such authority becomes vacant. Before making a new appointment under Schedule C, the agency must obtain OPM's approval for reestablishment of the excepted appointing authority.

EFFECTIVE DATE: December 1, 1981.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–6000.

SUPPLEMENTARY INFORMATION: Section 1103 of title 5, United States Code, assigns the Office of Personnel Management responsibility for securing accuracy, uniformity, and justice in the functions of the Office and for aiding the President to promote an efficient civil service and a systematic application of the merit system principles. As part of this responsibility, OPM must not only determine that exception of positions from the competitive service is appropriate, but also must ensure that exceptions already approved continue to be appropriate.

Current regulations in 5 CFR 213.3301b provide that Schedule C exception for any position is revoked when the position is vacant for more than 60 days, unless OPM approves an extension for an additional 60 days. The automatic revocation provision was adopted to keep Schedule C current and to permit periodic review of authorities for continued propriety. However, while the provision has kept Schedule C current, it has not ensured regular review of all positions for continued appropriateness of exception because many positions are filled within the current 60-day time limit. OPM has, therefore, determined that Schedule C exception should be reviewed and reestablished each time a position becomes vacant, even if it can be filled within 60 days. This amendment provides for revocation of Schedule C exception immediately upon a position becoming vacant.

Pursuant to sections 553(b)(B) and 553(d)(3) of title 5, United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking and making this amendment effective in less than 30 days. The regulation is being made effective immediately to ensure current and continued compliance with the requirement in 5 U.S.C. 1103 that OPM's use of its authority to except positions from the competitive service be fully consistent with merit principles.

E.O. 12291 Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

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

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

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

Office of Personnel Management.

Donald J. Devine

Director.

PART 213—EXCEPTED SERVICE

Accordingly, OPM revises 5 CFR 213.3301b to read as follows:

§ 213.3301b Revocation of exceptions.

(a) The exception from the competitive service for each position at GS–15 and below listed in Schedule C by OPM is revoked immediately upon the position becoming vacant.

(b) An agency shall notify the Office of Personnel Management within 3 work days after a Schedule C position at GS–15 and below has been vacated. (5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218).

[FR Doc. 81–34412 Filed 11–30–81; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 550

Pay Administration (General); Back Pay Regulations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These regulations revise the current back pay regulations to implement the back pay amendments of the Civil Service Reform Act of 1978, which provide for payment of reasonable attorney fees in back pay cases, and to clarify and simplify the current back pay regulations.

EFFECTIVE DATE: December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Donald J. Winstead, (202)–632–4634.

SUPPLEMENTARY INFORMATION: Proposed regulations were published in the **Federal Register** on February 1, 1980 (45 FR 7263–7265), for a public comment period of 60 days. A number of editorial revisions have been made in the proposed regulations, and a few substantive changes also have been made.

Analysis of Comments

The Office of Personnel Management (OPM) received written comments from 11 agencies, 4 labor organizations, 2 private interest groups, and 1 individual. Most of the comments offered specific recommendations for clarifying or modifying specific provisions of the proposed regulations. As a result, OPM has modified the proposed regulations, as discussed below. OPM will also supplement the final regulations with guidance issued through the Federal Personnel Manual (FPM) system that

will address other concerns expressed during the public comment period.

(1) Authority To Regulate

Several comments were received concerning OPM's authority to prescribe regulations affecting the entities identified as appropriate authorities in § 550.802 of the proposed regulations. In part, this reflects confusion resulting from the inadvertent omission of subsection (c) of 5 U.S.C 5596 from House Committee Print No. 95–22, "Title 5, United States Code." This subsection was not repealed or amended by the Civil Service Reform Act of 1978 (CSRA). However, Pub. L. 96–54 of August 14, 1979, amended 5 U.S.C. 5596(c) by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management". It is clear that OPM has the authority and the obligation to prescribe regulations to carry out 5 U.S.C. 5596. (The inadvertent omission of subsection (c) was corrected with the publication of House Committee Print No. 96–9.) Therefore, to the extent that an appropriate authority bases an award of back pay on 5 U.S.C. 5596, that appropriate authority is bound by the regulations prescribed by OPM to carry out this section of law.

Nevertheless, OPM is sensitive to the fact that a large number of appropriate authorities will be applying these regulations in a wide variety of contexts and under different procedures. Therefore, OPM has limited the requirements imposed upon appropriate authorities to the maximum extent possible consistent with congressional intent in enacting 5 U.S.C. 5596, as amended. OPM has rejected a number of recommendations that would have imposed unnecessary requirements upon appropriate authorities and has attempted to impose only those requirements that are necessary to carry out 5 U.S.C. 5596. This is the rationale behind the absence of specific time frames for requesting and responding to requests for payment of reasonable attorney fees and the absence of regulatory guidance concerning what is reasonable in the payment of attorney fees. Each appropriate authority is free to establish its own procedural requirements consistent with these regulations and to be guided by available precedents concerning matters such as what is reasonable in the payment of attorney fees. For the benefit of Federal agencies acting as appropriate authorities with respect to actions involving their own employees, OPM will provide further guidance through the FPM system.

(2) Scope

To clarify the coverage and applicability of the back pay regulations, OPM has modified the proposed regulations by splitting § 550.801 of the proposed regulations into two new sections—§ 550.801, "Applicability," and § 550.802, "Coverage." Subsequent sections have been renumbered accordingly. The final regulations also reflect section 3202(e)(7) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, which provides that, effective September 26, 1980, employees of the government of the District of Columbia are not covered by 5 U.S.C. 5596. The definition of "agency" in § 550.802 of the proposed regulations has been modified accordingly and appears in § 550.803 of the final regulations.)

One agency questioned the applicability of the back pay law to an employee who is found to have been affected by an unjustified or unwarranted personnel action that resulted in the *denial* of all or part of the pay, allowances, and differentials otherwise due the employee. The applicability of the back pay law in such a case is based on 5 U.S.C. 5596(b)(3), which states that the term "personnel action" includes "the omission or failure to take an action or confer a benefit." Another agency questioned the use of the phrase "reclassification * * * to a higher grade" in the definition of "unjustified or unwarranted personnel action." OPM has deleted this provision from that definition and modified § 550.801(b) of the proposed regulations to indicate that the back pay regulations do not apply to any reclassification action. (See § 550.801(b) of the final regulations.

A labor organization requested clarification concerning whether Veterans Administration employees covered by title 38, United States Code, and National Guard technicians covered by title 32, United States Code, are covered by these regulations. In both cases, the individuals are considered to be employees of an Executive agency, as defined in 5 U.S.C. 105, and are therefore covered by these regulations.

(3) Definitions

A number of comments were received concerning the definitions included in the proposed regulations. The Federal Labor Relations Authority (FLRA) indicated that the General Counsel of the FLRA should be identified as an appropriate authority. One agency requested clarification concerning the relationships among the various appropriate authorities. OPM will provide Federal agencies with further guidance concerning this matter through the FPM system.

Two comments were received suggesting that the definitions of "pay," "allowances," and "differential" found in the current back pay regulations be retained. OPM has concluded that it is impractical and unnecessary to attempt to distinguish among these three terms. The revised definition of "pay, allowances, and differentials" as "monetary and employment benefits to which an employee is entitled by statute or regulation by virtue of the performance of a Federal function" should enable agencies to determine proper back pay entitlements. For example, coverage under the Civil Service Retirement System and benefits received under the Federal employee health benefits and group life insurance programs *prior to retirement* are employment benefits to which a covered employee is entitled by virtue of the performance of a Federal function. (Benefits received following retirement are not included because they are not received for the period covered by the corrective action. However, it may become necessary to adjust such benefits following the correction of an unjustified or unwarranted personnel action.) Similarly, the special pay provided by Pub. L. 94–123 for physicians and dentists in the Department of Medicine and Surgery of the Veterans Administration is a benefit to which such employees are entitled by virtue of the performance of a Federal function. Therefore, it is considered to be part of such employees' "pay, allowances, and differentials." Additional guidance concerning the application of this definition will be provided through the FPM system.

Two agencies requested clarification of the phrase "personnel policy established by an agency" in the definition of "unjustified or unwarranted personnel action." OPM has modified this definition to clarify its intent that, to constitute the basis for a finding that an employee has been affected by an unjustified or unwarranted personnel action, a personnel policy established by an agency or through a collective bargaining agreement must be *mandatory* (i.e., nondiscretionary) in nature. One agency objected to the absence from the proposed definition of "unjustified or unwarranted personnel action" of the parenthetical explanation that follows the phrase "act of commission" in the current definition of that term. OPM has concluded that the back pay law does not exclude a

personnel action from the category of unjustified or unwarranted personnel actions solely because it was not an action taken under authority granted to an authorized official. However, only those unjustified or unwarranted personnel actions that result in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due an employee are subject to the back pay remedy provided in 5 U.S.C. 5596.

A labor organization objected to the use of the phrase "on the basis of substantive or procedural defects" in the definition of "unjustified or unwarranted personnel action." This phrase is not intended to limit the basis for a finding that an employee has been affected by an unjustified or unwarranted personnel action in any way not intended by the statute.

Finally, OPM has modified the definitions of "appropriate authority," "grievance," and "unfair labor practice," and added a new definition of "collective bargaining agreement" to reflect amendments to the back pay law made by the Foreign Service Act of 1980, Pub. L. 96-465. In addition, OPM has modified the definition of "grievance" to indicate that grievances processed under agency administrative grievance systems are covered by the back pay law.

(4) *Determining Entitlement to Back Pay*

Several comments were received concerning the determination of entitlement to back pay. OPM has carefully reviewed the proposed change in § 550.803(a) of the current back pay regulations and all the comments concerning the proposed change. Based on this review, OPM has concluded that it is not necessary to prescribe which party bears the burden of proof for determining whether an employee is entitled to back pay.

The back pay law is essentially mechanistic in operation. In other words, an employee is not entitled to back pay *unless* an appropriate authority determines that he or she has been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. To reach such a conclusion, the appropriate authority may require that an employee provide documentation that he or she was affected by an unjustified or unwarranted personnel action *and* that the action resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. Depending upon the nature of the case at hand, the appropriate authority may also require the employing agency to provide documentation that the employee was not affected by an unjustified or unwarranted personnel action or that, even if an unjustified or unwarranted personnel action occurred, it did not result in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. All such considerations are part of the process by which the appropriate authority makes a final determination.

Once a final determination has been made, however, the payment of any back pay to which the employee thus becomes entitled under 5 U.S.C. 5596 requires no further determination except with regard to the amount payable. Therefore, it is inappropriate for the back pay regulations to attempt to specify which party bears the burden of proof for determining whether an employee is entitled to back pay. OPM has modified § 550.803(a) of the proposed regulations (§ 550.804(a) of the final regulations) to reflect the minimum statutory requirement for entitlement to back pay—namely, that an appropriate authority must find that the unjustified or unwarranted personnel action resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

Three comments were received concerning the requirement in § 550.803(c) of the proposed regulations for a *written* determination that an employee has been affected by an unjustified or unwarranted personnel action. This is not a new requirement. (See § 550.803(b) of the current back pay regulations.) However, OPM strongly favors a policy of encouraging settlements in appropriate cases and is sympathetic to the concern that such a regulation may inhibit efforts to reach informal settlement. Therefore, OPM will continue to consider procedures similar to those worked out between the Federal Labor Relations Council and the General Accounting Office to permit settlement of unfair labor practices without requiring an admission of wrongdoing as a part of the settlement itself to be in compliance with the back pay regulations.

(5) Back Pay Computations

One labor organization suggested that § 550.804 of the proposed regulations, relating to back pay computations, interferes with the authority of appropriate authorities to determine how back pay will be computed. However, this regulation is necessary to ensure that awards of back pay are computed in accordance with the intent of the statute—namely, for the purpose of making an employee financially whole (to the extent possible). To this end, OPM has modified (§ 550.805(a) of the proposed regulations § 550.804(a) of the final regulations) to indicate that for the purpose of computing back pay, the employee concerned is deemed to have performed service for the employing agency during the period covered by the corrective action. For the same reason, OPM has modified the proposed regulations to provide that, in computing the amount of back pay due an employee, the agency shall deduct any erroneous payments received from the Government as a result of the unjustified or unwarranted personnel action (§ 550.805(e) of the final regulations). Such payments may include lump-sum payments for accrued annual leave, severance pay, refunds of retirement contributions, and retirement annuity payments. Such deductions are necessary to achieve the make-whole purpose of the back pay statute.

The General Accounting Office recommended a change in § 550.804(a) of the proposed regulations to ensure that an employee who earns more from other Federal employment during the period covered by corrective action is entitled to retain the additional earnings. In response to this concern, OPM proposed the addition of the phrase "under section 5596 of title 5, United States Code, and this subpart" in § 550.804(a) of the proposed regulations. The prohibition found in § 550.804(a) of the proposed regulations appears in § 550.805(b) of the final regulations, and the remaining paragraphs of § 550.805 have been relettered accordingly.

Four comments were received objecting to the exclusion from the computation of back pay of periods during which an employee was not ready, willing, and able to perform his or her duties because of an incapacitating illness or injury or during which an employee was unavailable for the performance of his or her duties. These provisions, which are also found in § 550.804(d) of the current back pay regulations, are necessary to carry out the intent of the back pay law and are found in § 550.805(c) of the final regulations.

Finally, OPM has added a new provision concerning the scheduling and use of excess annual leave restored to an employee as the result of an unjustified or unwarranted personnel action (§ 550.805(f) of the final regulations). This provision is based on the principle that no employee should be

required to schedule and use a total amount of annual leave greater than 20 percent of his or her scheduled tour of duty.

(6) Payment of Reasonable Attorney Fees

Numerous comments were received concerning various aspects of § 550.805 of the proposed regulations, relating to the payment of reasonable attorney fees. OPM has modified § 550.805(a) of the proposed regulations (§ 550.806(a) of the final regulations) to clarify its intent that requests for payment of reasonable attorney fees may be presented only to the appropriate authority that corrected or directed the correction of the unjustified or unwarranted personnel action unless the finding that provides the basis for a request for payment of reasonable attorney fees is made on appeal from a decision by an appropriate authority other than the employing agency. This provision will not inhibit efforts to reach informal settlements because the appropriate authority in such a case is the employing agency. In addition, it is important to note that appropriate authorities retain the right to establish procedures consistent with these regulations for responding to a request for payment of reasonable attorney fees. This includes the right to remand such a request to the employing agency for an initial determination, when appropriate.

Three agencies expressed concern about allowing an employee's personal representative to request payment of reasonable attorney fees. This provision does not address the question of who may *receive payment for* reasonable attorney fees. Rather, it provides that an employee's personal representative may *request payment of* reasonable attorney fees on the employee's behalf.

Four comments were received objecting to § 550.805(b) of the proposed regulations on the basis that OPM has no authority to compel an appropriate authority to provide an agency with an opportunity to respond to a request for payment of reasonable attorney fees. This provision is necessary to carry out the intent of the statutory provisions for the payment of reasonable attorney fees. It is clear that Congress did not intend to provide for payment of reasonable attorney fees in all back pay cases. It is necessary, therefore, to provide each party with an opportunity to present its case concerning whether such payment is warranted in the case at hand. Moreover, in any case in which an appropriate authority determines that such payment is warranted, it is incumbent upon that authority also to determine what amount is reasonable. Such a determination must be based on all pertinent information. Therefore, under the authority given OPM by 5 U.S.C. 5596(c), the final regulations require each appropriate authority to provide the employing agency with an opportunity to respond to a request for payment of reasonable attorney fees.

OPM received one comment expressing the belief that reasonable attorney fees should be awarded in any case in which the employee is the prevailing party. The final regulations are based on the conclusion that the incorporation of the standards established under 5 U.S.C. 7701(g) in 5 U.S.C. 5596 reflects congressional intent that reasonable attorney fees may be paid only after there has been a determination that such payment is warranted in the interest of justice except in discrimination cases. If such payment were always appropriate in non-discrimination cases, there would be no purpose to the separate requirement in 5 U.S.C. 7701(g)(1) for a determination that such payment is warranted in the interest of justice. In addition, OPM has determined that to require such a determination in some cases, but not in others, would lead to unreasonable and absurd results.

Several comments were received requesting further clarification of the phrase "in the interest of justice." OPM has modified § 550.805(c) of the proposed regulations (§ 550.806(c) of the final regulations) to indicate that the appropriate authority shall determine whether the payment of reasonable attorney fees is warranted in the interest of justice "in accordance with standards established by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code." The Merit Systems Protection Board (MSPB) has issued a series of decisions in which these standards have been clarified. OPM will provide Federal agencies with further information concerning these standards through the FPM system.

Four labor organizations objected to the requirement in § 550.805(c)(2) of the proposed regulations (§ 550.806(c)(2) of final regulations) for a specific finding setting forth the reasons the payment of reasonable attorney fees is in the interest of justice. This provision is based on the requirement in 5 U.S.C. 7701(g)(1) for a determination that such payment is warranted in the interest of justice. This regulation is necessary to carry out the intent of the statutory requirement. Otherwise, it would be impossible to ascertain the basis for a determination that the payment of reasonable attorney fees is in the interest of justice.

Four agencies requested that § 550.805(c) of the proposed regulations include the requirement that, to be eligible for payment of reasonable attorney fees, an employee must actually have *incurred* such fees. OPM has not adopted this suggestion for the following reasons. First, it is not clear that the phrase "incurred by the employee" is to be considered part of the "standards established under section 7701(g)." Second, even if this is the correct interpretation of "standards established under section 7701(g)," MSPB has interpreted the phrase "incurred by the employee" more broadly to mean "incurred by or on behalf of an employee." Finally, it is not apparent that this requirement would be meaningful in practice.

Two labor organizations objected to limiting the payment of reasonable attorney fees to services rendered by members of the Bar and paralegals or law clerks assisting members of the Bar. The purpose of this provision (§ 550.806(f) of the final regulations) is to identify the class of individuals whose services may be compensable as reasonable attorney fees. To remain in substantial conformity with the regulations promulgated by the Equal Employment Opportunity Commission to permit administrative awards of attorney fees in discrimination cases, the final regulations extend this class to include law students, when assisting members of the Bar.

Two comments were received expressing concern that the proposed regulations make no specific reference to the payment of costs and other expenses incurred by an employee. In *Michael P. O'Donnell* v. *Department of the Interior* (NY075299058), MSPB determined that attorney fees paid under 5 U.S.C. 7701(g) may properly include "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." OPM has concluded that such expenses also may be included in the payment of reasonable attorney fees under 5 U.S.C. 5596. Other expenses, such as witness fees and expenses, investigation expenses, deposition expenses, and the cost of charts and maps, may not be included in the payment of reasonable attorney fees under 5 U.S.C. 5596 because they are not paid to an attorney, but to a third party. Additional guidance concerning this matter will be provided through the FPM system.

Finally, several comments were received concerning § 550.805(f) of the proposed regulations, relating to the

review or appeal of attorney fees determinations. OPM has modified this provision (§ 550.806(g) of the final regulations) to clarify its intent that such determinations may be subject to review or appeal only if provided for by statute or regulation.

(7) Applicability of Reasonable Attorney Fees

OPM has received a number of inquiries concerning the effect of the "savings provision" of the CSRA on the payment of reasonable attorney fees in back pay cases. Section 902(b) of the CSRA provides the following:

> No provision of this Act shall affect any administrative proceedings pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

This provision was enacted to ensure continuity both in the procedures under which proceedings are initiated by Federal agencies and in the remedies available to Federal employees who are affected by unjustified or unwarranted personnel actions. Consequently, OPM has added a new paragraph (h) to § 550.806 of the final regulations to provide that the provisions concerning the payment of reasonable attorney fees do not apply to any administrative proceeding that was pending on January 11, 1979, the effective date of the back pay amendments of the CSRA.

In addition, a legislative branch agency requested clarification of the effect of the prohibition found in Pub. L. 95-391 against the use of funds appropriated by that law to provide legal representation for the House of Representatives or for any employee of a legislative branch agency without the specific authorization of Congress. OPM has determined that 5 U.S.C. 5596 constitutes specific authorization by Congress for payment of reasonable attorney fees in appropriate back pay cases. Therefore, the payment of reasonable attorney fees under 5 U.S.C. 5596 is not affected by the prohibition found in Pub. L. 95-391.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purpose of E.O. 12291, Federal Regulation, because it will not result in:

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

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

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the table of sections and text of Subpart H of Part 550 of Title 5, Code of Federal Regulations, are revised to read as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

* * * * *

Subpart H—Back Pay

Sec.

550.801 Applicability.
550.802 Coverage.
550.803 Definitions.
550.804 Determining entitlement to back pay.
550.805 Back pay computations.
550.806 Payment of reasonable attorney fees.
550.807 Prohibition against setting aside proper promotions.

* * * * *

Subpart H—Back Pay

Authority: 5 U.S.C. 5596(c).

§ 550.801 Applicability.

(a) This subpart contains regulations of the Office of Personnel Management to carry out section 5596 of title 5, United States Code, which authorizes the payment of back pay and reasonable attorney fees for the purpose of making an employee financially whole (to the extent possible) when, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance), the employee is found by an appropriate authority to have been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. This subpart should be read together with this section of law.

(b) This subpart does not apply to any reclassification action.

§ 550.802 Coverage.

(a) Except as provided in paragraph (b) of this section, this subpart applies to employees, as defined in § 550.803 of this subpart.

(b) This subpart does not apply to—

(1) Employees of the government of the District of Columbia; and

(2) Employees of the Tennessee Valley Authority.

§ 550.803 Definitions.

In this subpart:

"Agency" has the meaning given that term in section 5596(a) of title 5, United States Code.

"Appropriate authority" means an entity having authority in the case at hand to correct or direct the correction of an unjustified or unwarranted personnel action, including (a) a court, (b) the Comptroller General of the United States, (c) the Office of Personnel Management, (d) the Merit Systems Protection Board, (e) the Equal Employment Opportunity Commission, (f) the Federal Labor Relations Authority and its General Counsel, (g) the Foreign Service Labor Relations Board, (h) the Foreign Service Grievance Board, (i) an arbitrator in a binding arbitration case, and (j) the head of the employing agency or another official of the employing agency to whom such authority is delegated.

"Collective bargaining agreement" has the meaning given that term in section 7103(a)(8) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1002 of the Foreign Service Act of 1980 (22 U.S.C. 4102(4)).

"Employee" means an employee or former employee of an agency

"Grievance" has the meaning given that term in section 7103(a)(9) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1101 of the Foreign Service Act of 1980 (22 U.S.C. 4131). Such a grievance includes a grievance processed under an agency administrative grievance system established under Part 771 of this chapter.

"Pay, allowances, and differentials" means monetary and employment benefits to which an employee is entitled by statute or regulation by virtue of the performance of a Federal function.

"Unfair labor practice" means an unfair labor practice described in section 7116 of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980 (22 U.S.C. 4115).

"Unjustified or unwarranted personnel action" means an act of commission or an act of omission (i.e.,

failure to take an action or confer a benefit) that an appropriate authority subsequently determines, on the basis of substantive or procedural defects, to have been unjustified or unwarranted under applicable law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement. Such actions include personnel actions and pay actions (alone or in combination).

§ 550.804 Determining entitlement to back pay.

(a) When an appropriate authority has determined that an employee was affected by an unjustified or unwarranted personnel action, the employee shall be entitled to back pay under section 5596 of title 5, United States Code, and this subpart only if the appropriate authority finds that the unjustified or unwarranted personnel action resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

(b) The requirement for a "timely appeal" is met when—

(1) An employee or an employee's personal representative initiates an appeal or grievance under an appeal or grievance system, including appeal or grievance procedures included in a collective bargaining agreement; a claim against the Government of the United States; a discrimination complaint; or an unfair labor practice charge; and

(2) An appropriate authority accepts that appeal, grievance, claim, complaint, or charge as timely filed.

(c) The requirement for an "administrative determination" is met when an appropriate authority determines, in writing, that an employee has been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

(d) The requirement for "correction of the personnel action" is met when an appropriate authority, consistent with law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective bargaining agreement, after a review, corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee.

§ 550.805 Back pay computations.

(a) When an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due an employee—

(1) The employee shall be deemed to have performed service for the agency during the period covered by the corrective action; and

(2) The agency shall compute for the period covered by the corrective action the pay, allowances, and differentials the employee would have received if the unjustified or unwarranted personnel action had not occurred.

(b) No employee shall be granted more pay, allowances, and differentials under section 5596 of title 5, United States Code, and this subpart than he or she would have been entitled to receive if the unjustified or unwarranted personnel action had not occurred.

(c) Except as provided in paragraph (d) of this section, in computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency may not include—

(1) Any period during which an employee was not ready, willing, and able to perform his or her duties because of an incapacitating illness or injury; or

(2) Any period during which an employee was unavailable for the performance of his or her duties for reasons other than those related to, or caused by, the unjustified or unwarranted personnel action.

(d) In computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency shall grant, upon request of an employee, any sick or annual leave available to the employee for a period of incapacitation if the employee can establish that the period of incapacitation was the result of illness or injury.

(e) In computing the amount of back pay under section 5596 of title 5, United States Code, and this subpart, an agency shall deduct—

(1) Any amounts earned by an employee from other employment during the period covered by the corrective action; and

(2) Any erroneous payments received from the Government as a result of the unjustified or unwarranted personnel action, which, in the case of erroneous payments received from a Federal employee retirement system, shall be returned to the appropriate system. The agency shall include as other employment only employment engaged in by the employee to take the place of employment from which the employee has been separated by the unjustified or unwarranted personnel action.

(f) An agency shall credit annual leave restored to an employee as a result of the correction of an unjustified or unwarranted personnel action in excess of the maximum leave accumulation authorized by law to a separate leave account for use by the employee. The employee shall schedule and use annual leave in such a separate leave account as follows:

(1) A full-time employee shall schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date on which the annual leave is credited to the separate account. The agency shall extend this period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

(2) A part-time employee shall schedule and use excess annual leave in an amount equal to or less than 20 percent of the employee's scheduled tour of duty over a period of 52 calendar weeks by the end of the leave year in progress 2 years after the date on which the annual leave is credited to the separate account. The agency shall extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the employee's scheduled tour of duty over a period of 52 calendar weeks.

§ 550.806 Payment of reasonable attorney fees.

(a) An employee or an employee's personal representative may request payment of reasonable attorney fees related to an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. Such a request may be presented only to the appropriate authority that corrected or directed the correction of the unjustified or unwarranted personnel action. However, if the finding that provides the basis for a request for payment of reasonable attorney fees is made on appeal from a decision by an appropriate authority other than the employing agency, the employee or the employee's personal representative shall present the request to the appropriate authority from which the appeal was taken.

(b) The appropriate authority to which such a request is presented shall provide an opportunity for the employing agency to respond to a request for payment of reasonable attorney fees.

(c) Except as provided in paragraph (e) of this section, when an appropriate authority corrects or directs the

correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due an employee, the payment of reasonable attorney fees shall be deemed to be warranted only if—

(1) Such payment is in the interest of justice, as determined by the appropriate authority in accordance with standards established by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(2) There is a specific finding by the appropriate authority setting forth the reasons such payment is in the interest of justice.

(d) When an appropriate authority determines that such payment is warranted, it shall require payment of attorney fees in an amount determined to be reasonable by the appropriate authority. When an appropriate authority determines that such payment is not warranted, no such payment shall be required.

(e) When a determination by an appropriate authority that an employee has been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee is based on a finding of discrimination prohibited under section 2302(b)(1) of title 5, United States Code, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–5(k)).

(f) The payment of reasonable attorney fees shall be allowed only for the services of members of the Bar and for the services of law clerks, paralegals, or law students, when assisting members of the Bar. However, no payment may be allowed under section 5596 of title 5, United States Code, and this subpart for the services of any employee of the Federal Government, except as provided in section 205 of title 18, United States Code, relating to the activities of officers and employees in matters affecting the Government.

(g) A determination concerning whether the payment of reasonable attorney fees is in the interest of justice and concerning the amount of any such payment shall be subject to review or appeal only if provided for by the statute or regulation.

(h) This section does not apply to any administrative proceeding that was pending on January 11, 1979.

§ 550.807 Prohibition against setting aside proper promotions.

Nothing in section 5596 of title 5, United States Code, or this subpart shall be construed as authorizing the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

[FR Doc. 81-34310 Filed 11-30-81; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Delay in Effective Date for Required Use of Diverter-Type Mechanical Samplers

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Emergency final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is delaying the effective date of January 1, 1982, for compliance with the provisions of § 800.83(e)(3) of the regulations under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) (Act), as amended, which requires the use of diverter-type (D/T) mechanical samplers for certain official sampling, until January 1, 1983. Changing the requirement will have the effect of providing the grain industry with the option of having official inspection results on these types of carriers and movements based on samples obtained with the D/T sampler or other approved sampling methods.

EFFECTIVE DATE: December 1, 1981.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Regulations and Directives Management, USDA, FGIS, Room 1636, South Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250, telephone (202) 447–9172.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures pursuant to Secretary's Memorandum 1512–1 and Executive Order 12291. It has been determined to be nonmajor because the action will merely delay the effective date for the required use of D/T samplers for certain official sampling and therefore does not impose any new or additional requirements on the industry or other affected parties.

Kenneth A. Gilles, Administrator, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because this action does not impose any new or additional requirements upon such entities but postpones the January 1, 1982, effective date of the requirement to install D/T samplers pursuant to § 800.83(e)(3).

The Administrator has also determined that an emergency situation exists which warrants publication of this action as an emergency final rule without opportunity for a public comment period because of the need to inform, at the earliest possible date, grain elevator operators and other affected parties that the previously established effective date of January 1, 1982, is postponed until January 1, 1983. Accordingly, this action is being issued as an emergency final rule. Under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this action are impracticable, unnecessary, and contrary to the public interest; and good cause is found for making this action effective December 1, 1981.

Section 800.83 requires that, after the effective date set out in the section, each lot inspection for official grade, official factor, or official criteria on "In," "Out," or enroute bulk cargo shipments (river barges) of grain and bulk grain exported from the United States by rail or truck must be based on samples obtained from the grain with a D/T sampler. FGIS presently is considering changing this requirement to allow alternative approved sampling methods to be used for these types of carriers and movements. Changing the requirement will have the official inspection results on these types of carriers and movements based on samples obtained with the D/T sampler or other approved sampling methods.

In light of the above, it has been determined that it is in the public interest to amend § 800.83(e)(3) of the regulations to delay the effective date of January 1, 1982, until January 1, 1983.

PART 800—GENERAL REGULATIONS

§ 800.83 [Amended]

Accordingly, § 800.83(e)(3) of the regulations (7 CFR 800.83(e)(3)) is amended by changing "effective January 1, 1982" to read "effective January 1, 1983."

(Sec. 18, Pub. L. 94–582, 90 Stat. 2884 (7 U.S.C. 87e))

Done in Washington, D.C., on November 23, 1981.

Kenneth A. Gilles,

Administrator.

[FR Doc. 81-34449 Filed 11-30-81; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 907

[Naval Orange Reg. 528; Amdt. 2]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This action increases the quantity of California-Arizona navel oranges that may be shipped to market during the period November 20–26, 1981. Such action is needed to provide for orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: November 20, 1981.

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

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. This amendment is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting. A regulatory impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again on November 24, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended amendment of the quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. This amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the act to make this regulatory provision effective as specified, and handlers have been apprised of such provisions and the effective time.

Information collection requirements (reporting or recordkeeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review.

Section 907.828 Navel Orange Regulation 528 (46 FR 56775; 46 FR 57886) is amended to read as follows:

§ 907.828 Navel orange regulation 528.

* * * * *

(1) District 1: 1,056,000 cartons;
(2) District 2: Unlimited cartons;
(3) District 3: 144,000 cartons;
(4) District 4: Unlimited cartons.

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

Dated: November 25, 1981.

D. S. Kuryloski,

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

[FR Doc. 81-34497 Filed 11-30-81; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1030

Milk in the Chicago Regional Marketing Area; Temporary Revision of Shipping Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rule.

SUMMARY: This action temporarily relaxes the shipping requirements for pool supply plants under the Chicago Regional milk order for the months of December 1981 through March 1982 to prevent uneconomic shipments of milk to the market and to maintain the pool status of producers who regularly supply the market. The revisions are made in response to requests of cooperative associations of producers supplying the market.

DATE: Effective date: December 1, 1981.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, United States Department of Agriculture, Washington, D.C. 20250, 202–447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed temporary revision of shipping percentages—Issued October 29, 1981; published November 3, 1981 (46 FR 54564).

This action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified "not signficant" and, therefore, not a major action.

Also, it has been determined that the need for adjusting certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register.** However, this would not permit the completion of the procedure in time to give interested parties timely notice that supply plant shipping requirements for December 1981 would be modified. The initial request for the action was received on October 20, 1981.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to assure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1030.7(b)(5) of the Chicago Regional milk order.

Notice of proposed rulemaking was published in the **Federal Register** (46 FR 54564) concerning a proposed decrease in the shipping requirements for pool supply plants for the months of December 1981 through March 1982. The public was afforded the opportunity to comment on the proposal by submitting written data, views and arguments. Two comments were received in favor of the proposed reduction. No comments in

opposition to the proposal were received.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed, and other available information, it is hereby found and determined that for the months of December 1981 through March 1982 the supply plant shipping percentages should be lowered as follows:

Month/year	Percentage		Point change
	Present	Temporary	
December 1981	25	20	−5
January 1982	20	15	−5
February 1982	20	15	−5
March 1982	20	15	−5

Pursuant to the provisions of § 1030.7(b)(5) the supply plant shipping percentages set forth in § 1030.7(b) may be increased or decreased by up to 10 percentage points during the months of September through March to encourage additional milk shipments to pool distributing plants or to remove the need for milk shipments to such plants merely to qualify a supply plant for pooling under the order.

The Central Milk Sales Agency, representing six cooperative associations whose members provide the majority of producer milk associated with the market, requested that the supply plant shipping percentages be decreased by 5 percentage points, to 20 percent for December 1981 and 15 percent for January, February and March 1982. The Agency estimated that producer milk receipts during the winter period would be approximately 13 percent greater than last year. The Agency also indicated that since September some milk previously associated with other markets had been pooled under the Chicago order, thereby adding to available supplies.

The Agency estimated that producer milk receipts by Agency members in December 1981 will be 530 million pounds, or 13.8 percent over December 1980 receipts. Likewise, for January, February and March 1982, the Agency estimated receipts of 554, 520, and 596 million pounds, respectively, or a 13.5, 13.3, and 13.7 percent, respectively, increase over a year earlier. The Agency estimated that the qualifying shipments for December 1981 will amount to 122 million pounds, or 23.0 percent of their receipts. For January the shipments are projected to be 118 million pounds, or 21.3 percent of receipts. The February and March shipments are projected to be 106 and 112 million pounds, respectively, or 20.4 and 18.8 percent of receipts, respectively.

The Agency stated also that the expected Class I sales will be under those of one year ago. The Agency concluded that with increased supplies and decreased sales, a reduction in the shipping percentages of supply plants is warranted to prevent uneconomic and inefficient movements of milk solely for the purpose of qualifying supply plants or units of supply plants for pooling.

Two comments were received in favor and none in opposition to the temporary revision of the supply plant shipping requirements. A proprietary handler favorably commented that the revised percentages would enable his operation to handle its milk more economically. A cooperative association stated that the current marketing conditions warranted the proposed reductions. In the cooperative's view, the temporary reduction in shipping requirements would still provide adequate supplies of Class I milk for distributing plants and would help avert disorderly marketing conditions and uneconomic movements of milk simply to meet the current pool supply plant shipping percentages. Both commentors supported the 5 percentage point reduction in the shipping percentages for each month of December 1981 through March 1982.

For September and October 1981, the producer milk receipts for the market were 10 percent greater than for the same months last year while pounds of pooled Class I milk were 2.3 percent less than for the comparable period last year. From the market data available, it is estimated that for the months of December through March 1982, producer milk will be about 9 percent greater than for the same period last year and the volume of pooled Class I milk for the market will average about 1 percent less than last year. It is concluded from these data that producer milk supplies for the market, currently and prospectively, are at a substantially higher level relative to Class I sales than previously and that consideration for lowering the supply plant shipping percentages temporarily is warranted.

On the basis of available information, it is concluded that the supply plant shipping percentages should be reduced to 20 percent for the month of December 1981 and to 15 percent for the months of January, February and March 1982. Providing the reduction for all four months at this time on the basis of current information will afford all parties adequate knowledge for adjusting operations accordingly.

The shipping percentage reductions are aimed at facilitating the delivery of milk to the market from supply plants for Class I use without requiring uneconomic shipments merely for pooling purposes. It is concluded that the supply-demand conditions in the market warrant a lowering of the shipping requirements, as set forth above, on a temporary basis.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of December 1981 and January, February and March 1982;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this temporary revision. All comments received were in favor of the proposal.

Therefore, good cause exists for making this temporary revision effective December 1, 1981.

It is therefore ordered, That the aforesaid provisions of the order are hereby revised for the months of December 1981 and January, February and March 1982.

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

Effective date: December 1, 1981.

Signed at Washington, D.C. on November 24, 1981.

H. L. Forest,

Director, Dairy Division.

[FR Doc. 81-34411 Filed 11-30-81; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Expediting the NRC Hearing Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission has adopted amendments to its Rules of Practice to facilitate expedited conduct of its adjudicatory proceedings. These amendments permit the presiding officer to require oral answers to motions to compel responses to discovery requests and to require service of documents by express mail.

EFFECTIVE DATE: December 1, 1981.

FOR FURTHER INFORMATION CONTACT: Trip Rothschild, Esq., Office of the

General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (202) 634–1465.

SUPPLEMENTARY INFORMATION: On June 8, 1981, the Commission published in the **Federal Register** (46 FR 30349) a notice of proposed rulemaking soliciting public comments on four proposed changes to its Rules of Practice, 10 CFR Part 2. The changes would (1) raise the threshold for the admission of contentions; (2) limit the number of interrogatories that a party could serve on another party, unless consent to file additional interrogatories is obtained from the presiding officer; (3) authorize the presiding officer to require that responses to motions to compel answers to discovery requests be made orally in a conference telephone call or at a prehearing conference, rather than in writing, and (4) permit the presiding officer to require service of documents by express mail. The Commission received sixty-one comments. After reviewing the comments, the Commission has adopted the proposals relating to oral responses to motions to compel answers to discovery requests, and service of documents by express mail. The Commission has adopted these proposals because they provide the presiding officer with additional means to expedite proceedings, where timely completion of the proceeding is important. The other two proposals will be addressed in subsequent **Federal Register** notices.

1. Oral Responses to Motions To Compel Responses to Discovery Requests

Under the Commission's current regulations, 10 CFR 2.730(c), parties may file responses to motions to compel answers to discovery requests. To expedite NRC proceedings, the Commission proposed amendments to its regulations which would provide the presiding officer with the discretion to order that the responses be made orally in a conference telephone call or other prehearing conference rather than in writing.

The nuclear industry commenters generally supported the proposal; intervenors generally opposed it. Both industry and intervenor commenters thought the proposed rule to be deficient because it did not provide that a written record of the arugment would be prepared. Some commenters suggested that the parties be permitted to provide the presiding officer with written summaries of their position following oral argument. Others suggested that a transcriber be made a party to the call. The commenters were concerned that, without a written record, opportunities to appeal the decision of the board could be prejudiced.

Some commenters suggested that the presiding officer should require oral responses only in those proceedings where plant construction is projected to be finished before the licensing process is completed. These commenters argued that use of oral responses should not be a routine procedure, but only used when time is of the essence.

Several commenters also suggested that if the proposed rule is adopted, it should be revised to provide that parties be given a minimum preparation time following the filing of a motion to compel before oral argument is held on the motion.

Commenters also asserted that the costs of conference telephone calls should be borne by the presiding officer, rather than the parties, and that all parties to the proceedings should be permitted to participate in the oral argument.

The Commission agrees with some of these comments and disagrees with others. Because of the difficulty in transcribing telephone calls in which several persons are participating, the Commission is not requiring that a court reporter transcribe arguments made in telephone conference calls or that minutes of the argument be prepared by the presiding officer and served on the parties. Instead the Commission has adopted a rule which provides that if the presiding officer requires oral responses, he or she shall issue a written order on the motion to compel. The order will summarize the views of the parties. This should create an adequate record for review. If a party disagrees with the presiding officer's summary of its views, it may file a motion with the presiding officer requesting that the order be modified so that it reflects accurately the views articulated by the party during the conference call. In adopting this approach the Commission is cognizant that it is not affording parties the right to submit written pleadings following oral argument. Such an approach would preclude a presiding officer from issuing an oral ruling during the conference call (which, though effective on issuance, would be followed by a written order as described above). However, if a presiding officer after hearing oral argument believes that written followup pleadings would be necessary to reach a sound decision on the motion, he or she may request such submissions.

The Commission also has not adopted the recommendation that the rule provide a standard minimum preparation time for the parties before oral argument. A party responding to a motion to compel covering one interrogatory would obviously need less time to prepare for argument than a party responding to a motion covering 25 interrogatories. Therefore, establishment of a minimum preparation time would deprive the boards of flexibility in establishing an appropriate schedule tailored to the circumstances. The Commission instead expects the presiding officer to set an appropriate schedule for oral argument on a case-by-case basis, taking into account the amount of work that will be required by the parties in preparing for oral argument.

The Commission agrees with the commenters that the presiding officer should bear the costs of the conference calls and that all interested parties should be permitted to participate in the call.

Finally, the Commission agrees that oral responses should not be used in the routine case. Oral responses should only be required where early completion of the proceeding is essential, such as in an operating license hearing where construction of the facility has been finished or may be finished prior to the completion of the hearing, in a hearing involving a request to expand spent fuel storage capacity where the plant is or may soon be operating without the benefit of a full core reserve storage capacity, or in a hearing on an operating license amendment involving a signficant hazards consideration where the issuance of the amendment is necessary for continued plant operation.

2. Use of Express Mail

Under the Commission's current rules, the presiding officer is not explicitly authorized to require service of documents by express mail (next day delivery). Accordingly, the rules provide five days for service. Use of express mail in limited circumstances would reduce the service time to two days.

The nuclear industry commenters generally supported adoption of the proposal. Intervenors in NRC proceedings opposed its adoption, emphasizing the cost of express mail. Intervenor commenters asserted that, if authorized, service by express mail should be required only when expedition is truly necessary.

Intervenor and industry commenters also pointed out that express mail service is not available in all cities, and therefore presiding officers could not require its use in some proceedings.

After reviewing the comments, the Commission has determined that on balance the arguments favoring adoption of the rule are more persuasive. The Commission emphasizes though that, because of the cost of express mail, it should only be

required in those proceedings where early completion is essential. Parties should be required to use express mail to serve documents only on those parties (or the presiding officer) which are required to respond to the pleading. For example, a party may be required to serve interrogatories by express mail on the party who must answer the interrogatories. However, there is no reason to have that document served by express mail on the other parties or the presiding officer. When ordering use of express mail, the presiding officer should afford the parties the alternative of using first-class mail and filing the document three days earlier than would be required if express mail were used.

Finally, before ordering service by express mail the presiding officer should ascertain whether it is available. In cities where express mail is not available, the presiding officer obviously cannot order its use.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that these rules will not have a significant economic impact on a substantial number of small entities. These rules affect the Commission's rules of practice and procedure by permitting expedition of the licensing process. The rules contain no recordkeeping or reporting requirements subject to the Paperwork Reduction Act.

Because the amendments are related only to matters of procedure, the Commission is making the amendments effective December 1, 1981.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Part 2, are published as a document subject to codification to be effective December 1, 1981.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

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

Authority: Secs. 161p and 181, Pub. L. 83–703, 68 Stat. 950 and 953 (42 U.S.C. 2201(p) and 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, as amended, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841); 5 U.S.C. 552; unless otherwise noted.

Sections 2.200–2.206 also issued under sec. 186, Pub. L. 83–703, 68 Stat. 955 (42 U.S.C. 2236) and sec. 206, Pub. L. 93–438, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.800–2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, as amended, Pub. L. 85–256, 71 Stat. 579, and Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039).

2. Section 2.710 is revised to read as follows:

§ 2.710 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon by mail, five (5) days shall be added to the prescribed period. Only two (2) days shall be added when a document is served by express mail.

3. In § 2.712, paragraph (c) is revised to read as follows:

§ 2.712 Service of papers, methods, proof.

* * * * *

(c) *How Service may be made.* Service may be made by personal delivery, by first class, certified or registered mail including air mail, by telegraph, or as otherwise authorized by law. Where there are numerous parties to a proceeding, the Commission may make special provision regarding the service of papers. The presiding officer may require service by express mail upon some or all parties and the presiding officer.

* * * * *

4. In § 2.730, paragraph (h) is added to read as follows:

§ 2.730 Motions.

* * * * *

(h) Where the motion in question is a motion to compel discovery under § 2.720(h)(2) or § 2.740(f), parties may file answers to the motion pursuant to paragraph (c) of this section. The presiding officer in his or her discretion, may order that the answer be given orally during a telephone conference or other prehearing conference, rather than in writing. If responses are given over the telephone the presiding officer shall issue a written order on the motion which summarizes the views presented by the parties. This does not preclude the presiding officer from issuing a prior oral ruling on the matter which is effective at the time of such ruling, provided that the terms of the ruling are incorporated in the subsequent written order.

Dated at Washington, D.C. this 25th day of November 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-34391 Filed 11-30-81; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Parts 11, 19, 20, 21, 25, 72, 75, 95, and 170

Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation; Minor Clarifying and Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This document makes minor clarifying amendments to the final rule establishing Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation. This document also makes needed conforming amendments to other parts of the Commission's regulations. The amendments are necessary to ensure proper application of the Commission's regulations.

EFFECTIVE DATE: December 1, 1981.

FOR FURTHER INFORMATION CONTACT: Dennis W. Reisenweaver, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Phone 301–443–5910).

SUPPLEMENTARY INFORMATION: This final rule amends 10 CFR Part 72 of the Commission's regulations as published in final form on November 12, 1980 (45 FR 74693) to conform the description of the general license to receive title to and own spent fuel without regard to quantity established in 10 CFR 72.6(b) to the description used for comparable general licenses in 10 CFR 31.9, 40.21 and 70.20 of the Commission's regulations. These general licenses do not authorize the general licensees to receive, possess, use or transfer any radioactive material and are therefore not subject to the provisions of 10 CFR Part 21. This change to § 72.6(b) will make clear that the provisions of Part 21, which relate to the reporting of defects and noncompliance and which apply, among others, to certain persons licensed to possess, use and/or transfer source, byproduct and/or special nuclear material, are not applicable to persons generally licensed under

§ 72.6(b). In order to recognize the establishment of the general license in 10 CFR 72.6(b), a minor corrective amendment is also made to § 72.2 which describes the scope of 10 CFR Part 72.

This final rule also makes minor conforming amendments to Parts 11, 19, 20, 21, 25, 75, 95, and 170 of the Commission's regulations to incorporate in each part, as appropriate, needed references to new Part 72.

Since the amendments are corrective and of a minor nature, good cause exists for omitting notice of proposed rulemaking and public procedure thereon as unnecessary and for making the amendments effective upon publication in the **Federal Register.**

Regulatory Flexibility Act Statement

This final rule is not subject to the provisions of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164. The Commission has determined pursuant to 5 U.S.C. 553 that a notice of proposed rulemaking need not be issued and that the rule may be promulgated in final form and become effective on the date of publication in the **Federal Register.**

Paperwork Reduction Act Statement

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 94 Stat. 2812, are not applicable to this final rule because the final rule does not contain any new or amended requirements for recordkeeping, reporting, plans or procedures, applications, or any other type of information collection.

For the reasons set out in the preamble and pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1 of the Code of Federal Regulations are published as a document subject to codification.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. Section 11.7 is amended by revising paragraph (a) to read as follows:

§ 11.7 Definitions.

* * * * *

(a) Terms defined in Parts 10, 25, 50, 70, 72, 73, and 95 of this chapter have the same meaning when used in this part.

* * * * *

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTIONS

2. Section 19.2 is revised to read as follows:

§ 19.2 Scope.

The regulations in this part appy to all persons who receive, possess, use, or transfer material licensed by the Nuclear Regulatory Commission pursuant to the regulations in Parts 30 through 35, 40, 60, 70 or 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter and persons licensed to possess power reactor spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to Part 72 of this chapter.

3. Section 19.3 is amended by revising paragraph (d) to read as follows:

§ 19.3 Definitions.

* * * * *

(d) "License" means a license issued under the regulations in Parts 30 through 35, 40, 60, 70, or 72 of this chapter, including licenses to operate a production or utilization facility pursuant to Part 50 of this chapter and licenses to possess power reactor spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to Part 72 of this chapter. "Licensee" means the holder of such a license.

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

4. Section 20.2 is revised to read as follows:

§ 20.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed pursuant to the regulations in Parts 30 through 35, 40, 60, 70, or 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter and persons licensed to possess power reactor spent fuel in an independent spent fuel storage installation (ISFSI) purusant to Part 72 of this chapter.

5. Section 20.3 is amended by revising paragraph (a)(9) to read as follows:

§ 20.3 Definitions.

(a) * * *

(9) "License" means a license issued under the regulations in Parts 30 through 35, 40, 60, 70, or 72 of this chapter. "Licensee" means the holder of such license;

* * * * *

6. Section 20.301 is amended by revising paragraph (a) to read as follows:

§ 20.301 General requirements.

No licensee shall dispose of licensed material except:

(a) By transfer to an authorized recipient as provided in the regulations in Parts 30, 40, 60, 70 or 72 of this chapter, whichever may be applicable; or

* * * * *

7. Section 20.408 is amended by redesignating paragraph (a)(5) as (a)(6) and adding paragraph (a)(5) to read as follows:

§ 20.408 Reports of personnel monitoring on termination of employment or work.

(a) * * *

(5) Possess spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to Part 72 of this chapter; or

(6) Possess or use at any one time, for processing or manufacturing for distribution pursuant to Parts 30, 32, or 33 of this Chapter, byproduct material in quantities exceeding any one of the following quantities:

* * * * *

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

8. Section 21.2 is revised to read as follows:

§ 21.2 Scope.

The regulations in this part apply, except as specifically provided otherwise in Parts 31, 34, 35, 40, 60, 70, or 72 of this chapter, to each individual, partnership, corporation, or other entity licensed pursuant to the regulations in this chapter to possess, use, and/or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel, or to construct, manufacture, possess, own, operate and/or transfer within the United States, any production or utilization facility or independent spent fuel storage installation, and to each director (see § 21.3(f)) and responsible officer (see § 21.3(j)) of such a licensee. The regulations in this part apply also to each individual, corporation, partnership or other entity doing business within the United States, and each director and responsible officer of such organization, that constructs (see § 21.3(c)) a production or utilization facility licensed for manufacture, construction or operation (see § 21.3(h)) pursuant to Part 50 of this chapter or an independent spent fuel storage installation for the storage of spent fuel

licensed pursuant to Part 72 of this chapter, or supplies (see § 21.3(l)) basic components (see § 21.3(a)) for a facility or activity licensed, other than for export, under Parts 30, 40, 50, 60, 70, 71, or 72 of this chapter. Nothing in these regulations should be deemed to preclude either an individual or a manufacturer/supplier of a commercial grade item (see § 21.3(a–1)) not subject to the regulations in this part from reporting to the Commission a known or suspected defect or failure to comply and, as authorized by law, the identity of anyone so reporting will be withheld from disclosure.[1]

9. Section 21.3 is amended by revising paragraphs (a), (a–1), and (k) to read as follows:

§ 21.3 Definitions.

As used in this part.

(a)(1) "Basic component," when applied to nuclear power reactors means a plant structure, system, component or part thereof necessary to assure (i) the integrity of the reactor coolant pressure boundary, (ii) the capability to shut down the reactor and maintain it in a safe shutdown condition, or (iii) the capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 100.11 of this chapter.

(2) "Basic component," when applied to other facilities and when applied to other activities licensed pursuant to Parts 30, 40, 50, 60, 70, 71, or 72 of this chapter, means a component, structure, system, or part thereof that is directly procured by the licensee of a facility or activity subject to the regulations in this part and in which a defect (see § 21.3(d)) or failure to comply with any applicable regulation in this chapter, order, or license issued by the Commission could create a substantial safety hazard (see § 21.3(k)).

(3) In all cases "basic component" includes design, inspection, testing, or consulting services important to safety that are associated with the component hardware, whether these services are performed by the component supplier or others.

(4) A commercial grade item is not a part of a basic component until after dedication (see § 21.3(c–1)).

(a–1) "Commercial grade item" means an item that is (1) not subject to design or specification requirements that are unique to facilities or activities licensed pursuant to Parts 30, 40, 50, 60, 70, 71, or 72 of this chapter and (2) used in applications other than facilities or activities licensed pursuant to Parts 30, 40, 50, 60, 70, 71, or 72 of this chapter and (3) to be ordered from the manufacturer/supplier on the basis of specifications set forth in the manufacturer's published product description (for example a catalog).

* * * * *

(k) "Substantial safety hazard" means a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety for any facility or activity licensed, other than for export, pursuant to Parts 30, 40, 50, 60, 70, 71, or 72 of this chapter.

* * * * *

10. Section 21.21 is amended by revising paragraph (b)(1) to read as follows:

§ 21.21 Notification of failure to comply or existence of a defect.

* * * * *

(b)(1) A director or responsible officer subject to the regulations of this part or a designated person shall notify the Commission when he obtains information reasonably indicating a failure to comply or a defect affecting (i) the construction or operation of a facility or an activity within the United States that is subject to the licensing requirements under Parts 30, 40, 50, 60, 70, 71, or 72 of this chapter and that is within his organization's responsibility or (ii) a basic component that is within his organization's responsibility and is supplied for a facility or an activity within the United States that is subject to the licensing requirements under Parts 30, 40, 50, 60, 70, 71, or 72 of this chapter. The above notification is not required if such individual has actual knowledge that the Commission has been adequately informed of such defect or such failure to comply.

* * * * *

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

11. In § 25.5 the definition of license is revised to read as follows:

§ 25.5 Definitions.

* * * * *

"License" means a license issued pursuant to 10 CFR Parts 50, 70, or 72.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL IN AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION

12. Section 72.2 is amended by revising paragraph (a) to read as follows:

§ 72.2 Scope.

(a) Except as provided in § 72.6(b), licenses issued under this part are limited to the possession of power reactor spent fuel to be stored in a complex that is designed and constructed specifically for the temporary storage of power reactor spent fuel aged for at least one year, and to the possession of other radioactive materials associated with spent fuel storage.

* * * * *

13. Section 72.6 is amended by revising paragraph (b) to read as follows:

§ 72.6 License required; types of licenses.

* * * * *

(b) A general license is hereby issued to receive title to and own spent fuel without regard to quantity. Notwithstanding any other provision of this chapter, a general licensee under this paragraph is not authorized to acquire, deliver, receive, possess, use or transfer spent fuel, except as authorized in a specific license.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

14. Section 75.4 is amended by revising paragraph (k)(3), redesignating paragraph (k)(4) as (k)(5), and adding a new paragraph (k)(4) to read as follows:

§ 75.4 Definitions.

* * * * *

(k) * * *

(3) A fuel fabrication plant;

(4) An independent spent fuel storage installation as defined in § 72.3(m) of this chapter; or

(5) Any location where the possession of more than one effective kilogram of nuclear material is licensed pursuant to Parts 40 or 70 of this chapter, or pursuant to an Agreement State license.

* * * * *

[1] NRC Regional Offices will accept collect telephone calls from individuals who wish to speak to NRC representatives concerning nuclear safety-related problems. The location and telephone numbers (for night and holidays as well as regular hours) are listed below:

Region	
I (Philadelphia)	(215) 337-5000
II (Atlanta)	(404) 221-4503
III (Chicago)	(312) 932-2500
IV (Dallas)	(817) 465-8100
V (San Francisco)	(415) 943-3700

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED AREA

15. In § 95.5 the definition of "license" is revised to read as follows:

§ 95.5 Definitions.

* * * * *

"License" means a license issued pursuant to 10 CFR Part 50, 70, or 72.

* * * * *

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

16. Section 170.2 is revised to read as follows:

§ 170.2 Scope.

Except for persons who apply for or hold the permits, licenses, or approvals exempted in § 170.11, the regulations in this part apply to a person who is an applicant for, or holder of, a specific byproduct material license issued pursuant to Parts 30 and 32–35 of this chapter, a specific source material license issued pursuant to Part 40 of this chapter, a specific special nuclear material license issued pursuant to Part 70 of this chapter, a specific license for the storage of spent fuel issued pursuant to Part 72 of this chapter, a specific approval of spent fuel casks and shipping containers issued pursuant to Part 71 of this chapter, a specific request for approval of sealed sources and devices containing byproduct material, source material, or special nuclear material, or a production or utilization facility construction permit and operating license issued pursuant to Part 50 of this chapter, to routine safety and safeguards inspections of a licensed person, to a person who applies for approval of a reference standardized design of a nuclear steam supply system or balance of plant, for review of a facility site prior to the submission of an application for a construction permit, for review of an independent spent fuel storage installation pursuant to Part 72 of this chapter, and for a special project review which the Commission completes or makes whether or not in conjunction with a license application on file or which may be filed.

17. Section 170.3 is amended by revising paragraph (c) to read as follows:

§ 170.3 Definitions.

* * * * *

(c) "Materials License" means a byproduct material license issued pursuant to Part 30 of this chapter, or a source material license issued pursuant to Part 40 of this chapter, or a special nuclear material license issued pursuant to Part 70 of this chapter, or a license for the storage of spent fuel issued pursuant to Part 72 of this chapter.

* * * * *

18. Section 170.31 is amended by revising the introductory text of subcategory 1.H and (1), (2), and (3) and subcategory 12, to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services.

* * * * *

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES

Category of materials licenses	Type of fee [1]	Fee
1. Special nuclear material: [2]		
* * * * *		
H. Licenses for receipt and storage of spent fuel of spent fuel at an independent spent fuel storage installation (ISFSI): [4]		
* * * * *		
(1) License application for an ISFSI of custom design requiring a full design review:		
* * * * *		
(2) License application for an ISFSI which references an approved standardized design:		
* * * * *		
(3) License application for an ISFSI of duplicate design—design which is identical to a previously licensed detail design:		
* * * * *		
12. Review of a standardized independent spent fuel storage installation design [4].	Application Approval [4]	12,000 107,200
* * * * *		

19. Section 170.32 is amended by revising the introductory text of subcategory 1.H and subcategory 12. to read as follows:

§ 170.32 Schedule of fees for health and safety, and safeguards inspections for materials licenses.

SCHEDULE OF MATERIALS LICENSE INSPECTION FEES

Category of materials licenses	Type of fee [1]	Fee [2]	Maximum frequency [3]
1. Special nuclear material:			
* * *			
H. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):			
(1) Licenese application for an ISFSI of custom design requiring a full design review:			

SCHEDULE OF MATERIALS LICENSE INSPECTION FEES—Continued

Category of materials licenses	Type of fee [1]	Fee [2]	Maximum frequency [3]
* * *			
(2) License application for an ISFSI which references an approved standardized design:			
* * *			
(3) License application for an ISFSI of duplicate design—a design which is identical to a previously licensed detail design:			
* * *			
12. Review of a standardized independent spent fuel storage installation design.	do		Do.

* * * * *

20. Section 170.41 is revised to read as follows:

§ 170.41 Failure by applicant or licensee to pay prescribed fees.

In any case where the Commission finds that an applicant or a licensee has failed to pay a prescribed fee required in this part, the Commission will not process any application and may suspend or revoke any license or approval involved or may issue an order with respect to licensed activities as the Commission determines to be appropriate or necessary in order to carry out the provisions of this part, Parts 30, 40, 50, 70, 71, and 72 of this chapter, and of the Act.

(Sec. 161b, i, and o, Pub. L. 83–703, 68 Stat. 948, 949, and 950, as amended, 42 U.S.C. 2201(b), (i), and (o); Secs. 201 and 206, Pub. L. 93–438, 88 Stat. 1242, as amended, and 1246, 42 U.S.C. 5841 and 5846. Amendments to Part 170 issued under authority of 31 U.S.C. 483a)

Dated at Washington, D.C. this 2d day of November 1981.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 81-34349 Filed 11-30-81; 8:45 am]

BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration published a final regulation on October 28, 1981 (46 FR 53021) addressing the special credit needs of young, beginning, and small

farmers, ranchers, and producers or harvesters of aquatic products. The final regulation also amended an existing regulation relating to the financing of specialized enterprises. Section 4.19 of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001, *et seq.*) (Act), requires Federal land bank associations and production credit associations, under district policies, to develop and implement programs for furnishing sound and constructive credit and related services to young, beginning, and small farmers and ranchers.

In accordance with § 5.18(b)(1) of the Act, the subject final regulation became effective on November 27, 1981.

EFFECTIVE DATE: November 27, 1981.

FOR FURTHER INFORMATION CONTACT: Larry H. Bacon, Deputy Governor, Office of Administration, 490 L'Enfant Plaza, SW., Washington, D.C. 20578 (202–755–2181).

(Secs. 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621, as amended, 12 U.S.C. 2243, 2246 and 2252)

Donald E. Wilkinson,

Governor.

[FR Doc. 81–34427 Filed 11–30–81; 8:45 am]

BILLING CODE 6705–01–M

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

12 CFR Part 1204

[Docket No. D–0024]

New IRA/Keogh Time Deposits

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Rescission of final rule on waiver of penalties for early withdrawal.

SUMMARY: The Depository Institutions Deregulation Committee (the "Committee") has rescinded the waiver of mandatory penalties for early withdrawal for transfers within an institution of IRA/Keogh time deposits in existence on or prior to December 1, 1981, to the new IRA/Keogh time deposit category established by the Committee at its last meeting. On the basis of information developed since its adoption, the Committee has determined that the waiver is likely to have adverse effects (in terms of increased costs) to depository institutions. Accordingly, transfers within an institution of any existing time deposit to the new IRA/Keogh category will be subject to the rules governing penalties for early withdrawal.

EFFECTIVE DATE: November 20, 1981.

FOR FURTHER INFORMATION, CONTACT: Allan Schott, Attorney-Advisor, or Elaine Boutilier, Attorney-Advisor, Department of the Treasury, (202) 566–6798 or 566–8737; Daniel L. Rhoads, Attorney, Board of Governors of the Federal Reserve System, (202) 452–3711; Rebecca H. Laird, Senior Associate General Counsel, Federal Home Loan Bank Board, (202) 377–6446; David Ansell, Attorney, Office of the Comptroller of the Currency, (202) 447–1880; Randall J. Miller, Acting Director, Office of Policy Analysis, National Credit Union Administration, (202) 357–1090; and F. Douglas Birdzell, Counsel, or Joseph A. DiNuzzo, Attorney, Federal Deposit Insurance Corporation, (202) 389–4324 or 389–4237.

SUPPLEMENTARY INFORMATION: At its meeting of September 22, 1981, the Committee adopted a final rule establishing a new IRA/Keogh time deposit category to be effective on December 1, 1981. *See* Committee Docket No. D–0024 (October 23, 1981); 46 FR 53395 (October 29, 1981). The new deposit category is to have a minimum maturity of 1½ years and no regulatory interest-rate ceiling. Accounts established under the new category may be structured to permit additions at an time without extending the maturity of the funds in the account. The Committee also waived mandatory penalties for early withdrawal for transfers within an institution from any other IRA/Keogh account in existence on or prior to December 1, 1981, to the new account category.

On the basis of information developed since its last meeting, the Committee has determined that waiver of the mandatory penalties for early withdrawal is likely to have adverse effects on the cost to depository institutions of the transferred accounts. Moreover, the effects of these increased costs would have a greater impact on thrift institutions, which already are experiencing severe pressure on earnings. These adverse effects outweigh the potential benefits to existing IRA/Keogh account depositors that would result from the waiver.

Therefore, the Committee has decided to rescind the waiver of the mandatory penalties for early withdrawal contained in the final rule on the new IRA/Keogh time deposit category. Accordingly, transfers within an institution of any existing time deposit to the new IRA/Keogh category will be subject to the rules governing penalties for early withdrawal of time deposits. This action will not affect the other provisions of the rule to be effective on December 1, 1981.

The Committee requested comments on options, including waiver of the mandatory penalties for early withdrawal, for IRA/Keogh time deposits at its meeting of December 12, 1980, and finds that further notice and public procedure pursuant to the provisions of 5 U.S.C. 553 with regard to this action are unnecessary. The Committee also finds that waiver of the deferred effective date provision of 5 U.S.C. 553 is necessary to assure rescission of the previous action before its effective date. In view of the Committee's findings, sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) are not applicable. Furthermore, because of the nature of this action, the Committee finds that good cause exists under § 1201.6(e) of the Committee's regulations for making the action effective less than 30 days from the date of publication in the **Federal Register.**

Pursuant to its authority under section 203(a) of the Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. 96–221; 12 U.S.C. 3502(a)), the Committee amends Part 1204, Chapter XII of Title 12, *Code of Federal Regulations* as set forth below:

PART 1204—INTEREST ON DEPOSITS

§ 1204.118 [Amended]

Amend § 1204.118 by removing paragraph (b) and the designation "(a)" from the first paragraph.

By order of the Committee, November 24, 1981.

Steven L. Skancke,

Executive Secretary.

[FR Doc. 81–34469 Filed 11–30–81; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 81–CE–4–AD; Amdt. 39–4273]

Beech Models 99, 99A, A99A, A99, and B99 Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of effective date of final rule.

SUMMARY: This amendment extends the effective date of Amendment 39–4235 (46 FR 51734–51736), Airworthiness Directive (AD) 81–18–08 which concerns revised operating limitations in the FAA Approved Airplane Flight Manual (AAFM) for Beech Models 99, 99A, A99A, A99 and B99 airplanes. The AD's

extended effective date provides approximately 60 days beyond the effective date of the FAA Master Minimum Equipment List (MMEL) to be issued on these Beech Model 99 airplanes for the accommodation of affected operators to develop and process Minimum Equipment Lists (MELs) with their local FAA office to this latest issue of the Beech 99 series MMEL. This reissued MMEL will be available after the Central Region's next meeting of the Flight Operations Evaluation Board (FOEB) meeting scheduled for December 1981.

DATES: Extends effective date of Amendment 39-4235, AD 81-18-08 to February 16, 1982.

SUPPLEMENTARY INFORMATION: The FAA issued an airworthiness directive, Amendment 39-4196, AD 81-18-08, on August 17, 1981, effective October 3, 1981, and revised the AD by Amendment 39-4235 (46 FR 51734-51736) effective December 2, 1981, applicable to Beech Models 99, 99A, A99A, A99 and B99 airplanes. The AD, as amended, requires the deletion of the Minimum Equipment List (MEL) and Configuration Deviation List (CDL) from the FAA Approved Airplane Flight Manual (AAFM) and the insertion therein of a new document entitled Kinds of Operations Equipment List (KOEL) in the Limitations Section of the AAFM for these Beech Model 99 airplanes. This action was taken pursuant to a notice of proposed rulemaking and is necessary to preclude unsafe operation of the airplanes with certain inoperative equipment. Consistent and in accordance with the AD, the FAA was to issue a new MMEL on these Beech Model 99 airplanes to be used as a guide by operators of these airplanes in updating their MELs or develop new MELs to the new MMEL. Issuance of the new MMEL has been unduly delayed due to various reasons. Since the new MMEL will not be issued prior to the Amendment 39-4235 effective date of December 2, 1981, there will not be sufficient time to allow operators to adjust their MELs or develop new MELs to the new MMEL. Accordingly, the FAA has determined there is a need to extend the AD effective date beyond the projected new MMEL issue date to be established at the December meeting of the Beech 99 FOEB. Therefore, the FAA believes that it is in the public interest to extend the effective date of Amendment 39-4235 until February 16, 1982. This should allow affected operators and their local FAA offices ample time to develop and process MELs on these Beech Model 99 airplanes to the above new MMEL.

FOR FURTHER INFORMATION CONTACT: Paul A. Cormaci, Aerospace Engineer, FAA, Airworthiness Standards Program, Room 1639, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-6942.

SUPPLEMENTARY INFORMATION:

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-4235, AD 81-18-08, as follows:

This amendment extends the effective date of Amendment 39-4235, AD 81-18-08 to February 16, 1982.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); 14 CFR 11.89))

Note.—Since this document involves an extension of effective date of a regulation which is not major, the FAA has determined that it is not major under Executive Order 12291, or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). This regulatory action imposes no additional burden on any persons, and the anticipated impact is so minimal that it does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on November 25, 1981.

Murray E. Smith,

Director, Central Region.

[FR Doc. 81-34456 Filed 11-30-81; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

Requirement to Specify (in Some Nuclear Non-Proliferation Cases) Subentry Letter of ECCN on Validated License Application and Reexport Request

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule requires that when an exporter fills out item 9(c) on the Application for Export License, form ITA-622P, he or she should write not only the Export Control Commodity Number (ECCN) but subentry letter as well, for items where some subentries are controlled for nuclear non-proliferation reasons and some subentries are not. This subentry letter is only required for ECCNs 1110A, 2120A, 1131A, 1205A, 1312A, 1529A, 1541A, 1555A, 1568A, 1570A, 1585A, 4585B, and 5585D. To effect this requirement, a footnote explaining the requirement is added to each of these entries in the Commodity Control List. This should speed up the processing of commodities classified in the above ECCNs when the commodities are not controlled for nuclear non-proliferation reasons.

EFFECTIVE DATE: December 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377-4811).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

Section 13(a) of the Export Administration Act of 1979 ("the Act") exempts regulations promulgated thereunder from the public participation in rulemaking procedures of the Administrative Procedure Act. Section 13(b) of the Act, which expresses the intent of Congress that to the extent practicable "regulations imposing controls on exports" be published in proposed form, is not applicable because these regulations do not impose new controls on exports. Therefore, this regulation is issued in final form. Although there is not a formal comment period, public comments on this regulation are welcome on a continuing basis.

This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Accordingly, Supplement No. 1 to § 399.1 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

For the CCL entries 1110A, 2120A, 1131A, 1205A, 1312A, 1529A, 1541A, 1555A, 1568A, 1570A, 1585A, 4585A, and 5585D, the footnote below is added after the Export Control Commodity Number (ECCN) number:

"On the Application for Export License, form ITA-622P, and the Request to Dispose of Commodities or Technical Data Previously Exported, form ITA-699P, specify, following the ECCN in item 9(c), the *subentry* letter ((a), (b), etc.) of the commodity to be exported."

(Sections 4, 13, 15, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. § 2401 *et seq.*; E.O. No. 12214 (45 FR 29783, May 6, 1980); Dept. Org. Ord. 10-3 (45 FR 6141, January 25, 1980); ITA Org.

and Func. Ords. 41–1 [45 FR 11862, February 22, 1980) and 41–4 [45 FR 65003, October 1, 1980])

Dated: November 6, 1981.

William V. Skidmore,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 81-34872 Filed 11-30-81; 8:45 am]

BILLING CODE 3510-25-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–6363]

Exemption From Registration of Interests and Participations Issued in Connection With Certain H.R. 10 Plans

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting a rule that provides an exemption from the registration requirements of the Securities Act of 1933 for interests and participations issued in connection with the tax-qualified retirement plans (commonly called "H.R. 10" or "Keogh" plans) that meet the criteria set forth in the rule. Since interests and participations issued in connection with H.R. 10 plans are not entitled to the statutory exemption from registration available to corporate tax-qualified pension plans, many H.R. 10 plans have applied to the Commission for, and received, exemptions from such registration requirements. The rule obviates the need for most, if not all, of such applications.

EFFECTIVE DATE: November 24, 1981.

FOR FURTHER INFORMATION CONTACT: Arthur J. Brown, Chief (202–272–2048) or Paul F. Roye, Esq. (202–272–3014), Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting rule 180 [17 CFR 230.180] under the Securities Act of 1933 ("Act") [15 U.S.C. 77a et seq.] to exempt from the registration requirements of section 5 of the Act [15 U.S.C. 77e] interests and participations issued to participants in connection with the H.R. 10 plans and interests, participations and securities issued to H.R. 10 plans that meet certain criteria. The reasons for proposing rule 180 are discussed thoroughly in Securities Act Release No. 6247 (October 14, 1980) [45 FR 83259, December 18, 1980]. Persons interested in more detailed discussions of the various conditions of proposed rule 180 should refer to that release.

In response to its request for comments, the Commission received 25 letters. As a result of its consideration of the comments, the Commission has determined to adopt the rule, subject to several modifications of the proposal.

Proposed rule 180 recognizes that two securities are created when an H.R. 10 plan invests in a trust or separate account, i.e., the interest of the beneficiary in the plan and the interest of the plan in the trust or separate account in which plan assets are invested.[1] In order to resolve any uncertainty regarding the status of either interests or participations in plans or interests of plans in funding media, the proposed rule would exempt both, subject to compliance with the rule, from the registration requirements of the Act.[2]

Paragraph (a) of rule 180, as proposed, would exempt interests or participations in a single trust, in a collective trust fund maintained by a bank or in a separate account maintained by an insurance company issued to H.R. 10 plans where: (1) The plan covers employees of a single employer or is a single plan covering employees of interrelated partnerships; and (2) either (i) the employer is a financially sophisticated law firm, accounting firm or investment banking firm, or (ii) the employer has secured independent expert advice in connection with its plan.

Paragraph (b) of rule 180, as proposed, would exempt any interests or participations in an H.R. 10 plan if, inter alia, the assets of such plan are invested in a single trust, in a collective trust fund maintained by a bank, in a separate account maintained by an insurance company, or by a life insurance company under an annuity contract. The H.R. 10 plan would be entitled to the exemption provided for in proposed paragraph (b) only if interests or participations in the funding media held by the plan are exempt from the registration requirements of the Act pursuant to either paragraph (a) of proposed rule 180 or any other rules, regulations or provisions of the Act or if such interests or participations in the funding media are registered under the Act.

Discussion of Comments

Expansion of the Exemption

Several commentators contend that the Commission should expand the proposed rule to provide an exemption from registration for interests or participations created in connection with all H.R. 10 plans. Other commentators express the opinion that paragraph (a) of the proposed rule should be expanded to exempt from the Act all investment media available to H.R. 10 plans. They argue that the adoption of the Employee Retirement Income Security Act of 1974 ("ERISA") [codified in scattered sections of 26, 29 U.S.C.], with its extensive disclosure requirements as well as its substantive protections, requires a finding by the Commission that a blanket exemption for all H.R. 10 plans is appropriate.

In 1970, when Congress amended section 3(a)(2) to exempt interests in bank and insurance vehicles sold to corporate pension plans, it specifically rejected an exemption for interests or participations issued in connection with Keogh plans. Congress delegated to the Commission the authority to provide an exemption for such H.R. 10 plans only upon a finding that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the policy and provisions of the Act. This was done apparently because it was believed that participants would need the protection afforded by the Act because many participants were unsophisticated in securities matters.[3] The subsequent enactment of ERISA in 1974 did not wholly eliminate the need for coverage of Keogh plan interests and participations under the Act. ERISA does not regulate matters covered by the federal securities laws, such as the

[1] In Securities Act Release No. 6188 (February 1, 1980) [45 FR 8960, February 11, 1980], and subsequently in Securities Act Release No. 6281 (January 15, 1981) [46 FR 8448, January 27, 1981], the views of the Commission's Division of Corporation Finance were discussed concerning the application of the Act to employee benefit plans. The releases were issued primarily for the purpose of resolving the uncertainty that had arisen concerning this subject as a result of the Supreme Court's decision in *International Brotherhood of Teamsters v. Daniel*, 439 U.S. 551 (1979). The view was expressed that two securities are issued in connection with H.R. 10 plans, *i.e.*, the interests of a plan in a funding medium and the interests of participants in a plan.

[2] The Commission believes that the language of the statute is broad enough to authorize it to adopt a rule recognizing that two securities are created and to provide a means for exempting both. Section 3(a)(2) of the Act [15 U.S.C. 77c(a)(2)] provides that the Commission shall exempt from the provisions of section 5 of the Act, by rule, regulation or order, any interest or participation issued in connection with a pension or profit-sharing plan that covers such self-employed persons, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

[3] S. Rep. No. 184, 91st Cong., 2d Sess. 27–28 (1970); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 44 (1970).

general requirement that the issuer of a security provide a prospectus to the purchaser of such security.[4]

The proposed rule was designed so as not to exempt those interests and participations of H.R. 10 plans where participants were unsophisticated or otherwise needed the safeguard that registration under the Act provides. Specifically, the proposed rule would require that the employer have, or obtain the advice of an expert who has, knowledge and experience in financial and business matters sufficient to enable adequate representation of the interests of plan participants. In the Commission's view, a blanket exemption would be inconsistent with the legislative history of section 3(a)(2) of the Act.[5]

Several commentators suggest that paragraph (b) of proposed rule 180 be expanded to exempt all interests or participations of covered employees in H.R. 10 plans. The exemption for the plan interest security in paragraph (b) of the proposed rule turned upon the funding vehicle for the plan being either registered or exempt from registration. On reconsideration, the Commission believes that all interests and participations of employees in H.R. 10 plans should be exempted from the registration requirements of the Act. The staff of the Commission already has taken this position as a matter of administrative discretion.[6] Accordingly, paragraph (b) of the rule has been modified to make it available unconditionally. The final rule also has been expanded to exempt employee interests in H.R. 10 plans that are annuity plans meeting the requirements of section 404(a)(2) of the Internal Revenue Code [26 U.S.C. 404(a)(2)]. While paragraph (a) of the proposed rule provided an exemption for the interest of the annuity plan in the funding media, paragraph (b) of the proposed rule did not include and exemption for an employee interest in such an annuity plan. The considerations applicable to participations issued by H.R. 10 plans which meet the requirements for qualification under section 401 of the Internal Revenue Code [26 U.S.C. 401] apply as well to those issued by annuity plans qualified under section 404(a)(2) of the Code.

Restriction of the Exemption

Several commentators oppose the adoption of paragraph (a) of the proposed rule, contending that its adoption would result in abuses. As stated above, paragraph (a) would exempt interests of an H.R. 10 plan in certain investment media in which the plan invests. According to these commentators, the abuses of the proposed exemption would stem, in part, from the ability of financial institutions such as banks to engage in mass-marketing campaigns in an attempt to sell interests in their collective investment funds to numerous H.R. 10 plans. Such mass-marketing and advertising, they contend, in most instances would not be subject to restraints by the federal securities laws or to adequate protections under ERISA.

The Commission believes that the conditions incorporated in proposed rule 180 minimize the potential for abuse. By requiring that (1) the plan cover only employees of a single employer[7] or of interrelated partnerships and (2) the employers be sophisticated in financial matters or obtain expert advice,[8] it is likely that the employers adopting H.R. 10 plans will be able to protect their own interests as well as those of their employees. It is not unreasonable to rely on the sophisticated employer or the qualified expert to obtain all necessary information from sponsors of potential funding media prior to making any decision or recommendation affecting the disposition of the assets of the H.R. 10 plan. Such employer or expert can also be expected to be especially concerned about the availability of such information to participants in cases where employees are able to select the funding media under the H.R. 10 plan. Moreover, an employer which establishes a plan covering one or more common law employees and which selects the investment media will be a fiduciary under ERISA.[9] Where the employer uses an expert to assist in the selection of the funding media for the plan, such expert in many cases also would be a fiduciary under ERISA.[10] These factors, together with the fact that the sale of interests issued in connection with a plan are subject to antifraud provisions under the securities laws,[11] make it unlikely that any additional benefits would be gained from requiring interests issued in connection with such H.R. 10 plans to be registered under the Act. It should be emphasized that proposed rule 180 does not exempt all interests in which H.R. 10 plans invest from the registration requirement of the Act. It exempts only those issued to plans of employers which can be expected to provide adequate representation of the interests of plan participants.

One commentator suggests that, to prevent the mass-marketing of interests in bank collective investment funds and insurance company separate accounts, the proposed rule should be modified to add conditions that limit the exemption to plans of a certain size by reference to the number of participants and the amount of annual contributions involved. It is contended that these minimum standards of size would assure that the plans are subject to the requirements of ERISA and that the exemption is available only for interests issued to plans which clearly have the requisite capability to make the necessary investment decisions even though no statutory prospectus is delivered. However, the Commission is not prepared to impose such limitations. The suggested amendment would have the effect of decreasing the options available to small sophisticated firms when establishing H.R. 10 plans. Any cutoff with regard to the number of participants or the amount contributed would be arbitrary, because neither provides a direct test of whether the participants need the protections afforded by the registration requirements of the Act. Moreover, such minimum size standards do not ensure

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[4] Furthermore, an H.R. 10 plan covering only partners or a sole proprietor would not even be subject to the disclosure and other requirements under Title I of ERISA. *See* U.S. Dept. of Labor regulation 3-3 under ERISA [29 CFR 2510.3-3].

[5] It might be noted, however, that in many instances an exemption from the Act or from its registration requirements is available to H.R. 10 plans. Some of the exemptions that are frequently relied upon are those provided for nonpublic offerings (section 4(2) [15 U.S.C. 77d(2)] and rule 146 [17 CFR 230.146 (1980)]) and intrastate offerings (section 3(a)(11) [15 U.S.C. 77c(a)(11)] and rule 147 [17 CFR 230.147 (1980)]).

[6] In Securities Act Release No. 6188 (February 1, 1980), pt. II, A.3., the Commission pointed out that its staff has not required the registration of interests or participations in voluntary, contributory H.R. 10 plans. The release states that most plans can rely on an exemption from registration for the offer and sale of employee interests. (*See* note 5 *supra*.) The antifraud provisions of the Act, however, apply to the offer and sale of such interests to employees.

[7] For a discussion of the meaning of the term "single employer" *see* Securities Act Release No. 6188 (February 1, 1980), pt. IV, B.1.i.

[8] It should also be noted that the Commission has modified the language of the proposed rule to require that the qualified expert be unaffiliated with the entity funding the plan.

[9] ERISA 404 [29 U.S.C. 1104]. ERISA 3(21)(A) [29 U.S.C. 1002].

[10] *Id. See also* U.S. Dept. of Labor regulation 3-21 under ERISA [29 CFR 2510.3-21].

[11] Section 17 of the Act [15 U.S.C. 77q], as well as the provisions of section 10(b) under the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78j(b)] and rule 10b-5 [17 CFR 240.10b-5] thereunder will be applicable to interests and participations in H.R. 10 plans. Section 17(c) of the Act makes the provisions of section 17 of the Act applicable to interests and participations in H.R. 10 plans. Section 10(b) of the Exchange Act applies to interests and participations in H.R. 10 plans because that section applies to any security even if not registered on a national securities exchange.

that the plan would be subject to the disclosure, reporting and fiduciary obligations of ERISA.[12] An H.R. 10 plan is covered under Title I of ERISA only if it covers one or more common law employees, in addition to self-employed individuals.[13]

Single Trust

Several commentators state that there is uncertainly as to whether a single trust must be maintained by a bank. The exemption is available regardless of whether the single trust is maintained by a bank. In October, 1980, section 3(a)(2) of the Act was itself amended to eliminate any confusion in this regard,[14] and the language of the rule is the same as the amended language of section 3(a)(2).

Multiple Investments

Some commentators suggest that paragraphs (a) and (b) of the proposed rule permit the inference that investment in more than one trust, bank collective trust fund or separate account would not be covered by the rule. Such a restrictive interpretation of the rule, however, is not reasonable. The language of paragraph (a) of the proposed rule parallels the language of section 3(a)(2) of the Act exempting interests and participations in various funding media for corporate pension plans. The Commission is of the opinion that the language of the statute and the proposed rule contemplates investment in more than one trust, bank collective trust fund or separate account. Indeed, in the H.R. 10 context, the Commission has granted several orders of exemption for plans whose assets are invested in more than one investment medium.[15]

Special Investments

Another commentator urged that the proposed rule be broadened to allow H.R. 10 plans to participate in bank common trust fund[16] which invest solely in money market instruments without the safeguards which proposed rule 180 would impose. It is contended that the requirements of the proposed rule are not necessary for bank common trust funds composed solely of money market instruments because the element of investment decision is not as high as in the case of equity or fixed-income common trust funds. The Commission believes that any such distinction based on the investment portfolios of the trust funds is unsound. Under the statutes administered by the Commission, no similar overall regulatory distinction exists among pools of securities based on the type or quality of such securities. A blanket exemption for such "money market" common trust funds could leave unsophisticated investors without adequate disclosure to make an informed decision as to whether a bank common trust fund investing in money market instruments is appropriate for their particular H.R. 10 plan. In this respect, the relative safety of the portfolio securities does not eliminate the interest of an investor in many other characteristics of the fund, such as expenses and portfolio valuation procedures.

Master and Prototype Plans

Several commentators expressed uncertainty as to whether the rule would exempt interests and participations issued in connection with master or prototype plans[17] sponsored by banks or insurance companies. As stated above, the legislative history of section 3(a)(2) of the Act indicates that, in excluding interests in H.R. 10 plans from the exemption from registration provided by that provision, Congress was concerned that sponsoring financial institutions would mass-market their products to numerous unrelated self-employed persons for whom such plans might not be suitable.[18] Recognizing this concern, proposed rule 180 includes a condition that the plan cover employees of a single employer or be a single plan covering employees of interrelated partnerships.[19] However, the single plan requirement does not prohibit the use of plans adopted through the use of master or prototype documents. In the Commission's view a sole proprietorship or partnership which executes a master or prototype document in connection with its adoption of an H.R. 10 plan is sufficiently protected so long as the employer is financially sophisticated or obtains the assistance of an expert as described below.

Eligible Firms

Subsection (a)(2) of proposed rule 180 would require as a condition for exemption either that the employer be a "law firm, accounting firm or investment banking firm that is engaged in furnishing services of a type that involves such knowledge and experience in financial and business matters that the employer is able to represent adequately its interests and those of its employees" or that the employer obtain the "advice of an expert that (A) is not affiliated directly or indirectly with the employer and (B) is, by virtue of its knowledge and experience in financial and business matters, able to represent adequately the interests of the employer and its employees."

Several commentators state that employers other than law firms, accounting firms and investment banking firms should be permitted to represent themselves without independent experts. They contend that there are employers in certain other areas that are sufficiently sophisticated in financial and business matters to protect their own interests and the interests of their employees. Pension consulting organizations specializing in the adoption and administration of qualified plans and investment advisory firms are cited as examples of the type of organization which should be included within the scope of the rule.

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[12] 29 U.S.C. 101–111, 401–414 (1980).

[13] *See* note 4 *supra*. *See e.g.*, Securities Act Release No. 5989 (October 31, 1978), concerning Milbank, Tweed, Hadley & McCloy who filed an application for a Commission order exempting interests in its H.R. 10 plan. Since the plan covered only the applicants' partners, the disclosure requirements of ERISA were not applicable.

[14] Section 3(a)(2) of the Act conditionally exempts "any interest or participation in a single trust fund or in a collective trust fund maintained by a bank." Prior to the amendment of section 3(a)(2) in the Small Business Investment Incentive Act of 1980 (Pub. L. No. 96-477, 94 Stat. 2275 (Oct. 21, 1980), the language was unclear as to whether a single trust had to be maintained by a bank in order for the exemption to be available. However, the legislative history made it clear that Congress intended in drafting this section to conform it in all material respects to section 3(c)(11) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(11)]. Moreover, the Commission had interpreted section 3(a)(2) as not requiring that a single trust be maintained by a bank. *See* Securities Act Release No. 6188 Part IV, B.3.a. (February 1, 1980).

[15] *See e.g.*, Morrison & Foerster Retirement Plan, Securities Act Release No. 6226 (July 21, 1980); Wilkie, Farr & Gallagher Pension Plan for Partners and Associates, Securities Act Release No. 6217 (June 24, 1980); and Squire, Sanders & Dempsey Retirement Plan for Partners, Securities Act Release No. 6154 (November 27, 1979).

[16] A common trust fund is maintained by a bank as an investment vehicle solely for trusts, estates or similar entities for which the bank acts in a bona fide fiduciary capacity, such as that of trustee, executor, administrator or guardian. H.R. Rep. No. 1382, 91st Cong., 3d Sess. 43 (1970).

[17] The term "master plan" refers to a standardized form of plan with a related form of trust or custodial agreement, administered by the sponsoring organization for the purpose of providing plan benefits on a standardized basis. The term "prototype plan" refers to a standardized form of plan with or without a related form of trust or custodial agreement which is made available by the sponsoring organization for use without change by employers who wish to adopt the plan. In the case of a prototype plan, the organization supplying the standard plan form does not administer the plan. *See* CCH Pension Plan Guide ¶9567.

[18] *See* note 3 *supra*.

[19] The Commission has granted exemptive orders under section 3(a)(2) to several partnerships which encompass individual offices in various cities because they do not appear to present the risks with which Congress was concerned. *See e.g.*, Sidley & Austin, Securities Act Release No. 6052 (April 6, 1979); Stroock & Stroock & Lavan, Securities Act Release No. 6063 (April 27, 1979).

The commentators point out that these consultants or advisers may be the very entities furnishing an unsophisticated employer with expert advice thereby enabling that employer to satisfy the sophistication requirements of the rule. Since there appears to be no policy reason to require such entities to retain unrelated experts, we have revised the language of the rule so as to extend the exemption to pension consultants and investment advisory firms.

Paragraph (a)(2)(ii) of rule 180, as proposed, would enable an unsophisticated employer to qualify for the exemption by obtaining the services of a qualified expert who is knowledgeable and experienced in financial and business matters and who is not directly or indirectly affiliated with the employer. In obtaining the advice of the expert, the employer must consider in good faith the recommendations of such expert in setting up its H.R. 10 plan. The expert can be expected to advise the employer about the same matters which we would expect the financially sophisticated employer to consider, including among other things the terms of the plan; the accounting, investment advice and administrative services necessary for the establishment of the plan; the information which will be provided to its employees, including information that would have been provided under the requirements of the Act and information necessary for their decision making on investment media or other matters; and the qualifications of persons managing the investment media.

Several commentators criticize the requirement that the expert be independent of the employer. One commentator states that it should not be relevant whether the expert adviser to an unsophisticated employer is related or not. On the other hand, several commentators contend that the expert providing advice should be independent not only of the employer, but also of the financial institution funding the plan.

The requirement that the expert be independent of the employer was included in the proposed rule because it was thought that the interests of the employer and its employees could best be represented when the expert provides totally unbiased advice regarding the provisions of the plan and the investment of fund assets. Upon reconsideration, however, requiring the expert to be independent of the employer appears to be unnecessary. On the other hand, requiring independence from the financial institution funding the plan appears appropriate to help assure the reliability of such advice and avoid the potential for abuse. Otherwise, the expert could be, for example, an officer of a bank maintaining a collective investment fund which is being offered to the employer as the investment medium for plan assets. Thus, the final rule has been revised to require that those furnishing expert advice be independent not of the employer, but of the financial institution providing the funding vehicle for the plan.[20]

Several commentators also requests clarification of how the independence of the expert would be measured. In order to avoid ambiguity with respect to the issue of affiliation in the rule, the Commission has deleted the subclause "affiliated directly or indirectly" in (a)(2)(ii)(A) of the proposed rule and substituted the subclause "an affiliated person of." "Affiliated person" has been defined in the rule to include those persons defined as such in section 2(a)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(3)][21] as well as persons having a material business relationship with the financial institution providing a funding vehicle for the plan. Thus, for example, a controlling shareholder, an officer, a partner or an employee of, or a salesman for, either a firm managing the funding vehicle for the plan or a firm distributing the interests or securities of such funding vehicle would not qualify as an independent expert for purposes of the rule. The Commission's intent is to assure that the unsophisticated employer and its employees be represented by, or at least obtain the advice of, an expert which has no conflict of interest in providing such representation or advice.

One commentator expressed concern about the ability of the financial institution managing the funding medium whose interests are issued to the H.R. 10 plan to know that the employer has "sufficient expertise" or has obtained advice of a "qualified" expert. It proposed that the financial institution be able to rely on the employer to certify that sufficient financial expertise exists in the employer or that a qualified expert has been retained by an unsophisticated employer. The rule has been amended to require only that the issuer have reasonable grounds to believe, and in fact believe, immediately prior to any sale that the employer is of the type described in paragraph (a)(3) of the rule. As such, certification by the employer should ordinarily be sufficient unless the issuer knows or should have known that such certification was false or otherwise improper.

Finally, to conform with the amendments to section 3(a)(2) of the Act adopted in Pub. L. 96–477 (Oct. 21, 1980), the phrase "in a separate account maintained by an insurance company" in paragraph (a) of the rule has been replaced by "any security arising out of a contract issued by an insurance company."

In summary, Rule 180 is adopted to provide an exemption from the registration provisions of the Act for both the participants' interests in the H.R. 10 plan itself and the plan's interest in the collective investment vehicles in which such plan invests its assets. Paragraph (a) of rule 180 exempts interests or participations in a single trust, collective trust fund maintained by a bank or any securities arising out of a contract issued by an insurance company sold to H.R. 10 plans where: (1) The plan covers employees of a single employer or employees of interrelated partnerships; and (2) either (i) the employer is a financially sophisticated law firm, accounting firm, investment banking firm, pension consultant or investment advisory firm, or (ii) the employer has secured independent expert advice in connection with its plan.

Paragraph (b) of rule 180 exempts from the registration requirements of the Act any interest or particpation of a participant in an H.R. 10 plan.[22]

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[20] One commentator suggested that the requirement relating to experts be expanded to provide that the expert must be knowledgeable not only in financial and business matters, but also in pension matters. The Commission believes that such an additional requirement is unnecessary. Since expert advice will be required only with respect to the choice of funding media, financial and business knowledge on the part of the expert should be sufficient to protect plan participants even if the expert is not knowledgeable in other aspects of pension matters, such as vesting requirements.

[21] An affiliated person is defined in section 2(a)(3) of the Investment Company Act as:

(A) any person directly or indirectly owning, controlling or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

[22] It should be noted that any interest or participation in a H.R. 10 plan would be outside the coverage of the Act if such interests or participations are not securities, e.g., property interests such as traditional life insurance policies.

Authority, Effective Date

The Commission adopts rule 180 pursuant to the provisions of sections 3(a)(2) and 19(a) (15 U.S.C. 77c(a)(2) and 77s(a)) of the Act. Because the rulemaking is exemptive in nature, the foregoing adoption becomes effective on November 24, 1981 (5 U.S.C. 553(d)(1)).

Text of Amended Rule

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

I. Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 230.180 as follows:

§ 230.180 Exemption from registration of interests and participations issued in connection with certain H.R. 10 plans.

(a) Any interest or participation in a single trust fund or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, issued to an employee benefit plan shall be exempt from the provisions of section 5 of the Act if the following terms and conditions are met:

(1) The plan covers employees, some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, and is either: (i) A pension or profit-sharing plan which meets the requirements for qualification under section 401 of such Code, or (ii) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code;

(2) The plan covers only employees of a single employer or employees of interrelated partnerships; and

(3) The issuer of such interest, participation or security shall have reasonable grounds to believe and, after making reasonable inquiry, shall believe immediately prior to any issuance that:

(i) The employer is a law firm, accounting firm, investment banking firm, pension consulting firm or investment advisory firm that is engaged in furnishing services of a type that involve such knowledge and experience in financial and business matters that the employer is able to represent adequately its interests and those of its employees; or

(ii) In connection with the plan, the employer prior to adopting the plan obtains the advice of a person or entity that (A) is not a financial institution providing any funding vehicle for the plan, and is neither an affiliated person as defined in section 2(a)(3) of the Investment Company Act of 1940 of, nor a person who has a material business relationship with, a financial institution providing a funding vehicle for the plan; and (B) is, by virtue of knowledge and experience in financial and business matters, able to represent adequately the interests of the employer and its employees.

(b) Any interest or participation issued to a participant in either a pension or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954 or an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, and which covers employees, some or all of whom are employees within the meaning of section 401(c)(1) of such Code, shall be exempt from the provisions of section 5 of the Act.

By the Commission.

George A. Fitzsimmons,

Secretary.

November 24, 1981.

[FR Doc. 81-34422 Filed 11-30-81; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 240

[Release No. 34-18279]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its rules governing delegation of authority with respect to the Securities Exchange Act of 1934 (the "Act") to delegate authority to the Director of the Division of Market Regulation to extend for up to sixty days the Division's consideration of certain notices filed by self-regulatory organizations.

EFFECTIVE DATE: January 1, 1982.

FOR FURTHER INFORMATION CONTACT: H. Steven Holtzman, Esq., Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities Exchange Commission, Washington, D.C. 20549, (202) 272-2842.

SUPPLEMENTARY INFORMATION: Securities Exchange Act Rule 19h-1 (17 CFR 240.19h-1) (the "Rule") relates to notices filed by self-regulatory organizations ("SRO's") with the Commission concerning proposed admissions to, or continuances in, membership or participation in an SRO or association with a member of persons subject to statutory disqualifications. Paragraph (a)(7) of the Rule, as amended effective January 1, 1982, provides that the Commission may, by written notice to an SRO, extend for up to sixty days its consideration of the merits of a proposed admission to an SRO when circumstances require a period of deliberation longer than thirty days. The Commission believes that it would facilitate the processing of admission notices under Rule 19h-1 if authority to extend the time period for consideration of a proposed admission were delegated to the Director of the Division of Market Regulation. Accordingly, the Commission, acting pursuant to the Act of August 20, 1962, Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), as amended by the Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 163 (June 4, 1975), hereby amends Section 200.30-3 (17 CFR 200.30-3) of the Commission's rules relating to general organization by amending paragraph (a)(4) to delegate to the Director of the Division of Market Regulation authority to grant extensions of time for consideration of notices for admission filed pursuant Rule 19h-1.

The Commission finds, in accordance with 5 U.S.C. 553(b)(A) of the Administrative Procedure Act, that the foregoing action relates solely to agency organization, procedure, or practice and that notice and public procedures in accordance with 5 U.S.C. 553 are not necessary, pursuant to subsection (b) thereof. In addition, the Commission finds that the foregoing action does not impose any burden on competition.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Part 200 of Title 17 of the Code of Federal Regulations is amended by revising paragraph (a)(4) of § 200.30-3 to read as follows:

§ 200.30-3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(4) Pursuant to Rule 19h-1 (§ 240.19h-1 of this chapter):

(i) To grant applications with respect to membership in, association with a member of, or participation in, a self-regulatory organization and for other relief as to persons who are subject to an applicable disqualification where such relationships or other relief have been approved or recommended by a self-regulatory organization;

(ii) To extend the time for Commission consideration of notices for admission to membership or participation in a self-regulatory organization or association with a member of persons subject to a

statutory disqualification pursuant to paragraph (a)(7) of that rule.

* * * * *

By the Commission.

George A. Fitzsimmons,

Secretary.

November 20, 1981.

[FR Doc. 81-34423 Filed 11-30-81; 8:45 am]

BILLING CODE 6010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket Nos. RM78-23 and RM81-37; Order No. 194]

Regulations Implementing Procedures for Refund of Louisiana First Use Tax

Issued November 20, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission amends and issues as final regulations the interim regulations contained in paragraph (h) of 18 CFR 154.38 relating to recovery and pass-through of Louisiana First Use Tax by interstate pipelines. The regulations are amended in paragraphs (h)(3), which applies to any interstate pipeline which paid the First Use Tax directly to Louisiana ("primary pipelines"), and (h)(9), which applies to any pipeline which receives First Use Tax refunds from other pipelines ("secondary pipelines"), to clarify the refund allocation methodology. Otherwise, the interim rules are being issued as final rules as originally promulgated.

The rules for primary and secondary pipelines were issued in separate dockets. Since the changes effected in the final rules are relatively minor, the Commission combines the two dockets in issuing the final rules.

EFFECTIVE DATES: The final rules are effective upon issuance as of the effective dates of the interim rules: July 17, 1981 for primary pipelines, 18 CFR 154.38(h)(3); July 22, 1981 for secondary pipelines, 18 CFR 154.38(h)(9).

FOR FURTHER INFORMATION CONTACT:

Fredrick L. Jaffe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-9221.

Sherri L. Booye, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-5378.

SUPPLEMENTARY INFORMATION:

In the matter of Final Rule: Clarification of Regulations Implementing Procedures for Refund of Louisiana First Use Tax by Primary and Secondary Pipelines.

By this rule, the Federal Energy Regulatory Commission (Commission) is amending and issuing as final regulations the interim regulations contained in paragraph (h) of 18 CFR 154.38 relating to recovery and pass-through of Louisiana First Use Tax by interstate pipelines. The regulations are amended in paragraphs (h)(3), which applies to any interstate pipeline which paid the First Use Tax directly to Louisiana ("primary pipelines"), and (h)(9), which applies to any pipeline which receives First Use Tax refunds from other pipelines ("secondary pipelines"), to clarify the refund allocation methodology. Otherwise the interim rules are being issued as final rules as originally promulgated.

The rules for primary and secondary pipelines were issued in separate dockets. Since the changes effected in the final rule are relatively minor, we are combining the two dockets for the final rule.

I. Background

On July 17, 1981 and July 22, 1981, the Commission issued interim regulations [1] which established procedures for refund by the primary and secondary pipelines of Louisiana First Use Tax revenues collected by Louisiana and the interest accrued thereon. The Commission asked interested persons to submit comments to those regulations by August 12, 1981. In response to those requests, the Commission received three comments that raised issues affecting primary and secondary pipelines.

II. Discussion of Comments

One party requested waiver of a portion of the refund methodology prescribed for primary pipelines in § 154.38(h)(3)(vi) for determining the jurisdictional portion of all refunds. However, because our response to the request for waiver will apply to all pipelines, we are treating the request as a comment. The commenter points out an inconsistency in the allocation methodology for primary pipelines. While § 154.38(h)(3)(iv)(*a*) of the interim regulations requires allocation of the jurisdictional portion of the refund received on the basis of the amounts paid by each jurisdictional customer as recorded in the pipeline books and records, subparagraph (vi)(*c*) determines the *jurisdictional portion* on the basis of volumes of gas sold with LFUT charges attached. The commenter states that the Commission should allow both the determination of the jurisdictional portion and the allocation of this jurisdictional portion to be based upon the amounts paid as reflected in the pipelines books and records.

Another commenter raised an issue regarding the allocation of refunds between jurisdictional and non-jurisdictional customers applicable to primary and secondary pipelines. The commenter is concerned that the Commission has required that refunds be based upon only those customers who paid the tax rather than based upon the volumes on which the tax was charged. In effect, the commenter believes that under the regulation, if a non-jurisdictional customer did not pay the tax and, under the terms of a fixed rate contract, the pipeline paid the tax, the pipeline would be denied its share of the refund and the pipeline would be required to prorate its share of the refund among its jurisdictional customers. Specifically, the commenter cites the following language of § 154.30(h)(9)(vi)(*c*) as causing the ambiguity:

> The denominator of which is the total volume sold by such pipeline to all customers during such period which were subject to First Use Tax charges.

Another commenter objected to the cash flow-through procedures required in the interim rules when, as in its case, the refunds are extremely small and requested waiver of the provisions. The Commission has treated this objection as a petition for waiver rather than as a comment to the interim rules. Accordingly, the Commission has separately considered the request and has issued an order granting the petitioner's waiver request.[2]

III. Correction and Clarification

In its interim regulations, the Commission inadvertently failed to permit primary pipelines both to determine the jurisdictional portion and to allocate the jurisdictional portion so determined on the basis of the amounts paid as reflected in the books and records of the pipeline. Accordingly, we amend the language in paragraphs (h)(3)(iv) (*a*)(*b*) and (*c*) to make this intention clear.

The Commission intended § 154.38(h)(3)(vi)(*c*) affecting primary

[1] "Regulations Implementing Procedures for Refund of Louisiana First Use Tax by Primary Pipelines," Interim Rule, 46 FR 38681 (July 29, 1981) and "Regulations Implementing Procedures for Refund of Louisiana First Use Tax by Secondary Pipelines," 46 FR 38906 (July 30, 1981).

[2] "Order Granting Waiver of Interim Rules Subject to Conditions", (Issued September 30, 1981).

pipelines, and § 154.33(h)(9)(vi)(*b*), affecting secondary pipelines, to require that pipelines apportion refunds among jurisdictional customers on the same basis as was used to allocate LFUT costs when incurred. In light of this affirmation of our original intent, we clarify the interim language in paragraph (h)(3)(vi)(*c*) and paragraph (h)(9)(vi)(*b*) to eliminate any possible ambiguity that the refunds must be apportioned on any other basis than what was originally intended.

The Commission also corrects a typographical error in paragraph (h)(3)(vi).

IV. Effective Date

Because the amendments effect no substantive change in the interim rules, but are necessary only for correction and clarification, the amendments are being made effective as of the date the interim regulations became effective.

(Natural Gas Act, 15 U.S.C. 717–717(n); Department of Energy Organization Act, 42 U.S.C. 7101–7352; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, the interim rules amending § 154.38(h) Part 154 of Title 18 Code of Federal Regulations published in 46 FR 38681 (July 29, 1981), 18 CFR 154.38(h)(3), and 46 FR 38906 (July 30, 1981), 18 CFR 154.38(h)(9), are deemed to be final. In addition, § 154.38(h), Part 154 of Title 18 Code of Federal Regulations, is amended as set forth below. Because this amendment effects no substantive changes, it is effective upon issuance as of the effective dates of the interim rules—July 17, 1981 for primary pipelines and July 22, 1981 for secondary pipelines.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

Section 154.38 is amended by revising paragraphs (h)(3)(vi)(*c*) and (h)(9)(vi)(*b*) as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(h) *Pipeline recovery of the State of Louisiana First Use Tax.* * * *

(3) * * *

(vi) Any LFUT funds received by a pipeline shall be flowed through to each jurisdictional customer of such pipeline in amounts in the following manner:

(*a*) if the amount the pipeline collected pursuant to its First Use Tax tariff provision may be determined readily and expediously from its books and records, then, using the jurisdictional portion determined from such books and records, multiply the jurisdictional portion of the total amount of each LFUT fund refund received by the pipeline by the ratio of the LFUT tracker amount which the pipeline billed the customer for the period from April, 1979, through April, 1981, pursuant to its Louisiana First Use Tax tariff provision to the total amount which the pipeline billed as a LFUT tracker during the same period pursuant to that tariff provision; or

(*b*) if paragraph (h)(3)(vi)(*a*) of this section does not apply, then multiply the jurisdicational portion, as defined in paragraph (h)(3)(vi)(*c*), of the total amount of each refund received by the pipeline by the ratio of the total commodity billing determinants of the customer during the period from April, 1979, through April, 1981, to the pipeline's total jurisdictional commodity billing determinants during that period.

(*c*) if paragraph (h)(3)(vi)(*b*) applies, the jurisdictional portion of each refund received by a pipeline shall be computed by multiplying the amount so received by a fraction, the numerator of which is the total volume sold by such pipeline to jurisdictional customers during the period from April, 1979, through April, 1981 which were subject to First Use Tax charges and the denominator of which is the total volume subject to First Use Tax charges sold by such pipeline to all customers during such period.

* * * * *

(9) * * *

(vi) * * *

(*b*) the jurisdictional portion of each refund received by a pipeline shall be computed by multiplying the amount so received by a fraction, the numerator of which is the total volume sold by such pipeline to jurisdictional customers during the period from April, 1979, through April, 1981 which were subject to First Use Tax charges and the denominator of which is the total volume subject to First Use Tax charges sold by such pipeline to all customers during such period.

[FR Doc. 81-34415 Filed 11-30-81; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76 (Texas-12)

High-Cost Gas Produced from Tight Formations; Final Rule

Issued: November 20, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recomendation of the Railroad Commission of Texas that the Frio Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective November 20, 1981.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8307, or Walter Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

The Commission hereby amends § 271.703(d) of its regulations to include the Frio Formation in Texas as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, OPPR, issued July 30, 1981 (46 FR 40044, August 6, 1981) [1] based on a recommendation by the Railroad Commission of Texas (Texas) in accordance with § 271.703(c) that the Frio Formation be designated as a tight formation.

Evidence submitted by Texas supports the assertion that the Frio Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Texas recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices available immediately establishes good cause to waive the thirty-day publication period.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18,

[1] Comments were invited and one favorable comment was received. No party requested a public hearing and no hearing was held.

Code of Federal Regulations, is amended as set forth below, effective November 20, 1981.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703 is amended by adding new paragraph (d)(57) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, subindexed as indicated, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

* * * * *

(57) *The Frio Formation in Texas.* RM79–76 (Texas—12).

(i) *Delineation of formation.*—The Frio Formation is encountered in the LaSal Vieja (8 9680–9935) Field, located in the central portion of Willacy County, Texas Railroad District No. 4.

(ii) *Depth.* The top of the Frio Formation is located at approximately 9,635 feet below sea level and extends to approximately 9,887 feet, giving it a maximum thickness of 252 feet.

[FR Doc. 81–34413 Filed 11–30–81; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No. RM79–76 (Oklahoma–1)]

High-Cost Gas Produced From Tight Formations; Final Rule

Issued: November 20, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Oklahoma Corporation Commission that the Atoka Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective November 20, 1981.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8307, or John Roy Johnson, (202) 357–8731.

SUPPLEMENTARY INFORMATION: The Commission hereby amends § 271.703(d) of its regulations to include the Atoka Formation in Oklahoma as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, OPPR, issued August 25, 1981 (46 FR 43845, September 1, 1981)[1] based on a recommendation by the Oklahoma Corporation Commission (Oklahoma) in accordance with § 271.703(c) that the Atoka Formation be designated as a tight formation.

Evidence submitted by Oklahoma supports the assertion that the Atoka Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Oklahoma recommendation as amended.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices available immediately establishes good cause to waive the thirty-day publication period.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, is amended as set forth below, effective November 20, 1981.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703 is amended by adding new paragraph (d)(59) to read as follows:

[1] Comments were invited on the proposed rule and none were received. No party requested a hearing and no hearing was held.

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, subindexed as indicated, and is also located in the official files of the jurisdictional agency that submitted the recommendation.* * *

(59) *Atoka Formation in Oklahoma.* RM79–76 (Oklahoma–1).

(i) *Delineation of formation.* The Atoka formation is found in Washita County, Oklahoma, in Township 9 North, Range 14 West, Sections 2 through 11; Township 9 North, Range 15 West, Sections 1 through 3, 11 and 12; Township 10 North, Range 14 West, Section 5 through 8, 17 through 21, and 27 through 35; Township 10 North, Range 15 West, Sections 6 through 30, 33 through 36; Township 10 North, Range 16 West, Sections 1 through 5, 8 through 14, 24 and 25; Township 11 North, Range 16 West, Sections 16, 20 through 22, 27 through 29, and 32 through 35.

(ii) *Depth.* The Atoka formation is defined as the uppermost sandstone development in the Atoka Series of the Lower Pennsylvania System which underlies the Cherokee/Red Fork Group and overlies the post-13 Finger Lime shale. The average depth to the Atoka formation is approximately 14,800 feet.

[FR Doc. 81–34414 Filed 11–30–81; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No. RM79–76 (Colorado–14)]

High-Cost Gas Produced From Tight Formations; Final Rule

Issued November 20, 1981

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to

submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Colorado Oil and Gas Conservation Commission that the Dakota Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective November 20, 1981.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8307, or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION: The Commission hereby amends § 271.703(d) of its regulations to include the Dakota Formation in Colorado as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was first proposed in a Notice of Proposed Rulemaking by the Director, OPPR, issued May 4, 1981 (46 FR 25643, May 8, 1981)[1] based on a recommendation by the Colorado Oil and Gas Conservation Commission (Colorado) in accordance with § 271.703(c) that the Dakota Formation be designated as a tight formation. On August 11, 1981, Colorado filed an amendment to its recommendation containing additional data is support of the recommendation. The amendment also deleted some acreage from the recommendation, as Colorado had found that expected production from wells in this area would be in excess of the production guideline found in § 271.703(c)(2)(i)(B). Notice of the deletion of acreage was given by the Commission in a Notice of Proposed Rulemaking issued on August 25, 1981 (46 FR 43843, September 1, 1981.)

Evidence submitted by Colorado supports the assertion that the Dakota Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Colorado recommendation as amended.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices available immediately establishes good cause to waive the thirty-day publication period.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342; Administrative Procedure Act, 5 U.S.C. 553)

[1] Comments were invited and one comment supporting the recommendation was received. No party requested a public hearing and no hearing was held.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, is amended as set forth below, effective November 20, 1981.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703 is amended by adding new paragraph (d)(58) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, subindexed as indicated, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

* * * * *

(58) *The Dakota Formation in Colorado.* RM79–76 (Colorado—14).

(i) *Delineation of formation.* The Dakota Formation is found in Mesa and Garfield Counties, Colorado, Township 7 South, Ranges 96 through 98 West, all Sections; Township 7 South, Range 99 West, Sections 1, 2, 11 through 14, 23, 24; Township 8 South, Ranges 96 through 98 West, all Sections; Township 8 South, Range 99 West, Sections 1 through 3, 10 through 16, 17; Tract 53, Section 20; Tract 53, 56, Section 21, all except Tract 55, Sections 22 through 28, 29; Tract 56, Sections 31 through 36; Township 8 South, Range 100 West, Sections 27, 28, 33 through 36; Township 9 South, Ranges 96 through 99 West, all Sections; Township 9 South, Range 100 West, Sections 1 through 4, 9 through 14, 23 through 26, 36; Township 10 South, Ranges 96 through 98 West, all Sections; Township 10 South, Range 99 West, Sections 1 through 18, 22 through 27, 34, 35, 36; Township 11 South, Range 97 West, Sections 1 through 12, 17 through 20; Township 11 South, Range 98 West, Sections 1 through 14, 23, 24; Township 11 South, Range 99 West, Sections 1, 2, 11, 12.

(ii) *Depth.* The Dakota Formation occurs at an average measured depth of 7,705 feet.

[FR Doc. 81–34416 Filed 11–30–81; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 271

[Docket No. RM 79–76 (Virginia–1); Order No. 191]

High-Cost Gas Produced From Tight Formations; Adoption of Designation Recommendation

Issued: November 20, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Virginia Department of Labor and Industry, Division of Mines and Quarries that the Berea Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective November 20, 1981.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8307, or Walter Lawson (202) 357–8556.

SUPPLEMENTARY INFORMATION: The Commission hereby amends § 271.703(d) of its regulations to include the Berea Formation in Virginia as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, OPPR, issued July 30, 1981 (46 FR 40044, August 6, 1981)[1] based on a recommendation by the Virginia Department of Labor and Industry, Division of Mines and Quarries (Virginia) in accordance with § 271.703(c) that the Berea Formation be designated as a tight formation.

Evidence submitted by Virginia supports the assertion that the Berea Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Virginia recommendation.

[1] Comments were invited and none were received. No party requested a public hearing and no hearing was held.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices available immediately establishes good cause to waive the thirty-day publication period.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective November 20, 1981.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 27—CEILING PRICES

Section 271.703 is amended by adding new paragraph (d)(56) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, subindexed as indicated, and is also located in the official files of the jurisdictional agency that submitted the recommendation.* * *

(56) *The Berea Formation in Virginia.* RM79–76 (Virginia-1).

(i) *Delineation of formation.* The Berea Formation is found in the Plateau Region of southwestern Virginia, an area including all of Dickenson County, and parts of Lee, Scott, Wise, Russell Buchanan and Tazewell Counties, Virginia.

(ii) *Depth.* The thickness of the Berea Formation ranges from 20 feet to 125 feet, thickening toward the central portion of the Plateau Region. The depth to the top of the Berea Formation ranges from 3,365 feet in northern Buchanan County to 6,028 feet in eastern Buchanan County.

[FR Doc. 81-34371 Filed 11-30-81; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 282

[Docket No. RP79–14]

Incremental Pricing Regulations Implementing the Incremental Pricing Provision of the Natural Gas Policy Act of 1978; Publication of Incremental Pricing Acquisition Cost Thresholds

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

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

EFFECTIVE DATE: December 1, 1981.

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

SUPPLEMENTARY INFORMATION:

In the matter of publication of prescribed incremental pricing acquisition cost threshold of the NGPA of 1978.

Issued: November 23, 1981.

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

Pursuant to that mandate and pursuant to § 375.307(l) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of December 1981 is issued by the publication of a price table for the applicable month.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
	Calendar Year 1980											
Incremental pricing threshold	$1.702	$1.738	$1.750	$1.762	$1.776	$1.790	$1.804	$1.819	$1.834	$1.849	$1.860	$1.377
NGPA section 102 threshold	2.358	2.381	2.404	2.428	2.453	2.478	2.504	2.532	2.560	2.588	2.614	2.640
NGPA section 109 threshold	1.786	1.799	1.812	1.825	1.839	1.853	1.867	1.883	1.899	1.915	1.929	1.943
130 pct of No. 2 fuel oil in New York City threshold	7.170	7.260	7.410	7.110	7.380	8.040	7.640	7.380	7.400	7.400	7.450	7.530
Calendar Year 1981												
Incremental pricing threshold	$1.891	$1.908	$1.925	$1.942	$1.954	$1.967	$1.980	$1.990	$2.000	$2.010	$2.025	$2.041
NGPA section 102 threshold	2.667	2.698	2.729	2.761	2.767	2.813	2.840	2.863	2.886	2.909	2.940	2.971
NGPA section 109 threshold	1.957	1.975	1.993	2.011	2.024	2.037	2.050	2.060	2.070	2.080	2.096	2.112
130 pct of No. 2 fuel oil in New York City threshold	7.610	7.760	8.260	9.010	9.510	9.430	9.360	9.260	8.860	8.700	8.930	8.990

[FR Doc. 81-34428 Filed 11-30-81; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 80F-0011]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Zinc Methionine Sulfate Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of zinc methionine sulfate tablets as a means of providing dietary zinc. This action is based on a petition filed by Zinpro Corp.

DATES: Effective December 1, 1981; objections by December 31, 1981.

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

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 22, 1980 (45 FR 11911), FDA announced that a food additive petition (FAP 7A3268) had been filed by the Zinpro Corp., 303 Hazeltine Gates Office Park, Chaska, MN 55318, proposing that the food additive regulations be amended to provide for the safe use of zinc methionine sulfate tablets as a means of providing dietary zinc.

FDA has evaluated data in the petition and other relevant material and concludes that zinc methionine sulfate in tablet form is safe under its prescribed conditions of use and that the food additive regulations should be amended as set forth below.

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 172 is amended in Subpart D by adding new § 172.399, to read as follows:

§ 172.399 Zinc methionine sulfate.

Zinc methionine sulfate, CAS Reg. No. 56329-42-1, may be safely used in accordance with the following prescribed conditions:

(a) The additive is the product of the reaction between equimolar amounts of zinc sulfate and DL-methionine in purified water.

(b) The additive meets the following specifications:

Zinc content—19 to 22 percent

$C_5H_{11}NO_2S$ "DL-methionine"—46 to 50 percent.

Cadmium—not more than 0.05 part per million.

(c) The additive is used in tablet form as a source of dietary zinc.

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 31, 1981, submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective December 1, 1981.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: November 23, 1981.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-34226 Filed 11-30-81; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 177

[Docket No. 80F-0073]

Indirect Food Additives; Polymers Bis (Isocyanatomethyl) Benezene and Bis(Isocyanatomethyl) Cyclohexane

Correction

In FR Doc. 81-33508 appearing on page 57033 in the issue of Friday, November 20, 1981, make the following correction:

On page 57033, in the third column, the part heading for Part 177 should have read

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

BILLING CODE 1505-01-M

21 CFR Parts 430, 436, and 440

[Docket No. 81N-0291]

Antibiotic Drugs; Sterile Mezlocillin Sodium Monohydrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for the certification of a new antibiotic drug, sterile mezlocillin sodium monohydrate. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective December 1, 1981; comments, notice of participation, and request for hearing by December 31, 1981; data, information, and analyses to justify a hearing by February 1, 1982.

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

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new antibiotic drug, sterile mezlocillin sodium monohydrate. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when the drug is used as

directed in the labeling and that the regulations should be amended in Parts 430, 436, and 440 (21 CFR Parts 430, 436, and 440) to provide for its certification.

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

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Parts 430, 436, and 440 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended:

a. In § 430.5 by adding paragraphs (a)(72) and (b)(72) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(72) *Mezlocillin.* The term "mezlocillin master standard" means a specific lot of mezlocillin that is designated by the Commissioner as the standard of comparison in determining the potency of the mezlocillin working standard.

(b) * * *

(72) *Mezlocillin.* The term "mezlocillin working standard" means a specific lot of a homogeneous preparation of mezlocillin.

(b) In § 430.6, by adding paragraph (b)(74) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(74) *Mezlocillin.* The term "microgram" applied to mezlocillin means the mezlocillin activity (potency) contained in 1.1086 micrograms of the mezlocillin master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended:

a. In § 436.33(b) by alphabetically inserting a new item into the table as follows:

§ 436.33 Safety test.

* * * * *

(b) * * *

Antibiotic drug	Test dose: Diluent (diluent number as listed in § 436.31)	Test dose: Concentration in units or milligrams of activity per milliliter	Test dose: Volume in milliliters to be administered to each mouse	Test dose: Route of administration as described in paragraph (c) of this section
*	*	*	*	*
Mezlocillin	1	100 mg	.5	Intravenous.
*	*	*	*	*

b. In § 436.204(b)(2) by alphabetically inserting a new item into the table as follows:

§ 436.204 Iodometric assay.

* * * * * * * * *

(b) * * *

(2) * * *

Antibiotic	Initial solvent	Diluent (solution number as listed in § 436.101(a))	Final concentration in units or milligrams of activity per milliliter of sample
*	*	*	*
Mezlocillin	None	Distilled water	2.0 mg
*	*	*	*

* * * * * * * *

PART 440—PENICILLIN ANTIBIOTIC DRUGS

3. Part 440 is amended:

a. By adding new § 440.37a to read as follows:

§ 440.37a Sterile mezlocillin sodium monohydrate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Sterile mezlocillin sodium monohydrate is the monohydrate sodium salt of (2*S*, 5*R*, 6*R*,)-3,3-dimethyl-6-[(*R*)-2-[3-(methylsulfonyl)-2-oxo-1-imidazolidine-carboxamido]-2-phenylacetamido]-7-oxo-4-thia-1-azabicyclo[3.2.0] heptane-2-carboxylic acid. It is so purified and dried that:

(i) It contains not less than 838 micrograms and not more than 978 micrograms of mezlocillin per milligram on an anhydrous basis. If it is packaged for dispensing, its mezlocillin content is not less than 90 percent and not more than 115 percent of the number of milligrams of mezlocillin that it is represented to contain.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) It passes the safety test.

(v) Its moisture content is not more than 6.0 percent.

(vi) Its pH in an aqueous solution containing 100 milligrams per milliliter is not less than 4.5 and not more than 8.0.

(vii) The specific rotation in an aqueous solution containing 10 milligrams of mezlocillin per milliliter at 25° C is 185°±10°.

(viii) It gives a positive identity test for mezlocillin.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, safety, moisture, pH, specific rotation, and identity.

(ii) Samples required:

(*a*) If it is packaged for repacking or for use in the manufacture of another drug:

(*1*) For all tests except sterility: 10 packages, each containing approximately 300 milligrams; and 5 packages, each containing approximately 1 gram.

(*2*) For sterility testing: 20 packages, each containing approximately 300 milligrams.

(*b*) If it is packaged for dispensing:

(*1*) For all tests except sterility: A minimum of 15 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.* Use either of the following methods; however, the results obtained

from the hydroxylamine colorimetric assay shall be conclusive.

(i) *Hydroxylamine colorimetric assay.* Proceed as directed in § 442.40(b)(1)(ii) of this chapter, except:

(*a*) *Buffer.* In lieu of the buffer described in § 442.40(b)(1)(ii)(*b*)(*2*) of this chapter, use the buffer prepared as follows: Dissolve 200 grams of primary standard tris (hydroxymethyl) aminomethane in sufficient distilled water to make 1 liter. Filter before use.

(*b*) *Preparation of working standard solution.* Dissolve and dilute an accurately weighed portion of the mezlocillin working standard with sufficient distilled water to obtain a concentration of 2.0 milligrams of mezlocillin per milliliter.

(*c*) *Preparation of sample solution.* Dissolve an accurately weighed portion of the sample with sufficient distilled water to obtain a stock solution of convenient concentration; also, if packaged for dispensing, reconstitute as directed in the labeling using distilled water in lieu of the reconstituting fluid. Then using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single dose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute with distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with distilled water to a concentration of 2.0 milligrams of mezlocillin per milliliter (estimated).

(*d*) *Calculations*—(*1*) Calculate the mezlocillin content in micrograms per milligram as follows:

$$\text{Micrograms of mezlocillin per milligram of sample} = \frac{A_u \times P_s}{A_s \times W_u}$$

where:

A_u = Absorbance of sample solution;
P_s = Potency of working standard solution in micrograms per milliliter;
A_s = Absorbance of working standard solution;
W_u = Milligrams of sample per milliliter of sample solution.

(*2*) Calculate the mezlocillin content of the single-dose vial as follows:

$$\text{Milligrams of mezlocillin per single-dose vial} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Absorbance of sample solution;
P_s = Potency of working standard solution in micrograms per milliliter;
A_s = Absorbance of working standard solution;
d = Dilution factor of the sample.

(*3*) Calculate the mezlocillin content of the multiple-dose vial as follows:

$$\text{Milligrams of mezlocillin per multiple-dose vial} = \frac{A_u \times P_s \times d}{A_s \times 1.000 \times n}$$

where:

A_u = Absorbance of sample solution;
P_s = Potency of working standard solution in micrograms per milliliter;
A_s = Absorbance of working standard solution;
d = Dilution factor of the sample.
n = Volume of sample solution assayed.

(ii) *Iodometric assay.* Proceed as directed in § 436.204 of this chapter.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 100 milligrams of mezlocillin per milliliter.

(4) *Safety.* Proceed as directed in § 436.33 of this chapter.

(5) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(6) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 100 milligrams of mezlocillin per milliliter.

(7) *Specific rotation.* Dilute an accurately weighed sample with sufficient distilled water to obtain a concentration of approximately 10 milligrams of mezlocillin per milliliter. Proceed as directed in § 436.210 of this chapter, using a 1-decimeter polarimeter tube.

(8) *Identity.* Proceed as directed in § 436.311 of this chapter, diluting the sample with distilled water to a concentration of 4 milligrams of mezlocillin per milliliter, except:

(i) Use the mezlocillin working standard and dilute with distilled water to a concentration of 4 milligrams of mezlocillin per milligram;

(ii) In lieu of the ninhydrin spray solution, after the plate is dried with a current of warm air, expose the plate to iodine vapors for about 30 seconds; and

(iii) Mezlocillin has an R_f value of about 0.67.

b. By adding new § 440.237 to read as follows:

§ 440.237 Sterile mezlocillin sodium monohydrate.

The requirements for certification and the tests and methods of assay for sterile mezlocillin sodium monohydrate packaged for dispensing are described in § 440.37a.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective upon the date of publication in the **Federal Register** (December 1, 1981). However, interested persons may, on or before December 31, 1981, submit written comments on this rule to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before December 31, 1981, a written notice of participation and request for hearing, and (2) on or before February 1, 1982, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

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

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

Effective date. This regulation shall be effective December 1, 1981.

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

Dated: November 19, 1981.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 81-34164 Filed 11-30-81; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) sponsored by American Hoechst Corp., providing for safe and effective use of bambermycins premixes for manufacture of complete turkey feeds used for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: December 1, 1981.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV–147), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: American Hoechst Corp., Route 202–206 North, Somerville, NJ 08876, filed a supplemental NADA (44–759) providing for safe and effective use of bambermycins (Flavomycin) premixes containing 2 or 10 grams of bambermycins activity per pound for the manufacture of complete turkey feeds containing 2 grams per ton for increased rate of weight gain and improved feed efficiency, or 1 to 2 grams per ton for improved feed efficiency only. Bambermycins are currently approved for use in broilers and swine as reflected in § 558.95 *Bambermycins* (21 CFR 558.95). Use of bambermycins in turkeys is based on data from clinical and nonclinical studies demonstrating safety and effectiveness to the target animal and safety to humans from residues in the edible tissues of treated animals. The supplemental NADA is approved, and the regulations are amended accordingly.

Under the Bureau of Veterinary Medicine's proposed supplemental approval policy (42 FR 64367; December 23, 1977), approval of this supplemental NADA required a complete reevaluation of safety data supporting the NADA. The studies submitted were judged to be acceptable for demonstrating safety and effectiveness of bambermycins under the recommended conditions of use. Standards prescribed in the agency's proposal of March 20, 1979 (44 FR 17070) on chemcial compounds in food-producing animals were not applied to either the pure antibiotic or the biomass portion of the product. Approval of the pure antibiotic portion is based on alternative criteria that ensure that the product is safe and on factors that justify the equitable treatment of this sponsor that completed drug development testing in accordance with existing scientific standards before March 20, 1979. Data supporting safety of the biomass portion of this product were derived according to criteria now in the process of being modified. The agency has concluded that because the sponsor has so conclusively demonstrated the safety of bambermycins for this use under criteria in effect until very recently, the approval should be granted without requiring additional studies to be conducted according to any modified criteria.

The available toxicity data of bambermycins demonstrate that a residue of 0.1 part per million (ppm) in the edible tissues of turkeys is safe. No measurable microbiologically active residues of bambermycins were found at zero-day withdrawal in muscle, liver, kidney, skin, and fat of turkeys fed up to 100 milligrams (mg) of the drug per kilogram of feed (a fifty-fold overdose). This supplemental NADA is approved under § 556.1(a)(4) (21 CFR 556.1(a)(4)), on a no-tolerance basis.

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment. Therefore, an environmental impact statement will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding may be seen in the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (address above).

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) (formerly 5.1; see 46 FR 26052; May 11, 1981) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.95 by revising paragraph (b)(1) and by adding new paragraph (e)(3), to read as follows:

§ 558.95 Bambermycins.

* * * * *

(b) *Approvals.* (1) Premix levels of 2 and 10 grams of bambermycins activity per pound have been granted to 012799 in § 510.600(c) of this chapter for use in paragraph (e)(1), (2) (i) and (ii), and (3) of this section.

* * * * *

(e) * * *

(3) *Growing turkeys.* It is used as follows:

(i) *Amount per ton.* 1 to 2 grams.

(*a*) *Indications for use.* For improved feed efficiency.

(*b*) *Limitations.* Feed continuously as the sole ration.

(ii) *Amount per ton.* 2 grams.

(*a*) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

(*b*) *Limitations.* Feed continuously as sole ration.

Effective date. December 1, 1981.

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

Dated: November 23, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81-34227 Filed 11-30-81; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

Office of the Secretary

22 CFR Part 134

[Dept. Reg. 108.813]

Equal Access to Justice Act; Implementation

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: In compliance with the Equal Access to Justice Act, the Department of State hereby is adopting implementing regulations which establish procedures for making awards of attorney fees and other expenses under the Act. The Act, which takes effect October 1, 1981, provides for the award of attorney fees and other expenses to individuals and small businesses who prevail against the Federal Government in certain administrative and court proceedings. The Department of State regulations follow the model rules adopted by the Administrative Conference of the United States, with conforming changes.

EFFECTIVE DATE: October 1, 1981.

ADDRESS: Written comments should be addressed to Assistant Legal Adviser for Management, Office of the Legal Adviser, U.S. Department of State, Washington, D.C. 20520, or delivered to Room 4427A, 2201 C Street, N.W., Washington, D.C. between 9 a.m. and 4 p.m., Monday through Friday. Copies of written comments received will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 4427A, 2201 C Street, N.W., Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT: Paul M. Coran, Office of the Legal Adviser, Department of State, 2201 C Street, N.W., Washington, D.C. 20520, (202) 632-3022.

SUPPLEMENTARY INFORMATION: On June 25, 1981, the Chairman of the Administrative Conference of the United States issued model rules for Federal agency implementation of the Equal Access to Justice Act, Pub. L. 96-481, 94 Stat. 2325 (46 FR 32900). Draft model rules had been published for comment in the **Federal Register** on March 10, 1981 (46 FR 15895). The regulations adopted by the Department of State in this document follow closely the Administrative Conference model rules. The Department of State has made certain minor adjustments to adapt the model rules to its own use. Generally, the words "Department of State" have been inserted where the words "this agency" appeared in the model rules. Covered proceedings, those relative to controlling export of defense articles through administrative sanctions pursuant to 22 U.S.C. 2778 and 50 U.S.C. App. 2410(c)(2)(B), have been listed. In addition, the model rules' provision regarding "awards against other agencies" was deleted because the Department of State does not conduct any covered proceedings in which another agency would participate. The model provision on delegation of authority to make awards has been revised to provide that the official authorized to render the final decision on behalf of the Department of State in a proceeding (ordinarily the Hearing Commissioner) is also authorized to take final action under the Equal Access to Justice Act for the same proceeding.

Regulatory Flexibility

In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Department of State has determined that these rules will not have a significant economic impact upon a substantial number of small entities. The Equal Access to Justice Act itself may have such an impact, since it applies to individuals and small business entities. The Act represents a Congressional determination that small entities should not bear the burden of litigation where the Government's position is not substantially justified. The Rules simply implement the Act in carrying out Congressional intention, and do not, by themselves, impose significant economic burdens or benefits. The Department of State notes the efforts of the Administrative Conference to "produce a scheme that is as clean, simple and straight forward as possible * * *" (46 FR at 32900). The record-keeping requirements of the rules (see sec. 134.13) appear to add little burden to small business, since such records should ordinarily be kept in the course of adjudication. Thus the rules will not have a significant negative impact on small businesses.

Because the Equal Access to Justice Act takes effect on October 1, 1981, it is necessary that this rule be effective on that date. The rule is largely identical to the model rules, which were adopted following public notice and comment. However, comments on the coverage of the rule, as well as any other comments, are invited and will be given serious attention.

In consideration of the foregoing, Subchapter N of Title 22, Code of Federal Regulations, is amended by adding a new Part 134 as follows:

PART 134—EQUAL ACCESS TO JUSTICE ACT; IMPLEMENTATION

Subpart A—General Provisions

Sec.
134.1 Purpose of these rules.
134.2 When the Act applies.
134.3 Proceedings covered.
134.4 Eligibility of applicants.
134.5 Standards for awards.
134.6 Allowable fees and expenses.
134.7 Rulemaking on maximum rates for attorney fees.
134.8 Official authorized to take final action under the Act.

Subpart B—Information Required From Applicants

134.11 Contents of application.
134.12 Net worth exhibit.
134.13 Documentation of fees and expenses.
134.14 When application may be filed.

Subpart C—Procedures for Considering Applications

134.21 Filing and service of documents.
134.22 Answer to application.
134.23 Reply.
134.24 Comments by other parties.
134.25 Settlement.
134.26 Further proceedings.
134.27 Decision.
134.28 Further Department of State review.
134.29 Judicial Review.
134.30 Payment of award.

Authority: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

Subpart A—General Provisions

§ 134.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Department of State. An eligible party may receive an award when it prevails over the Department of State, unless the Department of State's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Department will observe to make them.

§ 134.2 When the Act applies.

The Act applies to any adversary adjudication pending before the Department of State at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when

they were initiated or when final agency action occurs.

§ 134.3 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Department of State. These are adjudications under 5 U.S.C. 554 in which the position of the Department of State is presented by an attorney or other representative who enters an appearance and participates in the proceeding. For the Department of State, the type of proceeding covered are proceedings relative to controlling export of defense articles through administrative sanctions pursuant to 22 U.S.C. 2778 and 50 U.S.C. App. 2410 (c)(2)(B).

(b) The Department of State may also designate a proceeding not listed in paragraph (a) of this section as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 134.4 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show by clear and convincing evidence that it meets all conditions of eligibility set out in this subpart and in subpart B and must submit additional information to verify its eligibility upon order by the adjudicative officer.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 134.5 Standard for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on the Department of State which may avoid an award by showing that its position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 134.6 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Department of State pays expert witnesses, which is generally $50.00 per hour. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) the time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

§ 134.7 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the

Department of State may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some or all of the types of proceedings covered by this part. The Department of State will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may request the Department of State to initiate a rulemaking proceeding to increase the maximum rate for attorney fees. The request should identify the rate the person believes the Department of State should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Department of State will respond to the request within 60 days after it is filed, by determining to initiate a rulemaking proceeding, denying the request, or taking other appropriate action.

§ 134.8 Official authorized to take final action under the Act.

The Department of State official who renders the final agency decision in a covered proceeding is authorized to take final action on matters pertaining to the Equal Access to Justice Act as applied to the proceeding.

Subpart B—Information Required From Applicants

§ 134.11 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Department of State in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualfies under such section; or

(2) It states on the application that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Department of State to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of prejury that the information provided in the application is true and correct.

§ 134.12 Net worth exhibit.

(a) Each applicant except a qualifed tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 960.4(f)) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in his part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information", accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 551(b) (1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Department of State established procedures under the Freedom of Information Act, Part 6 of this title.

§ 134.13 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 134.14 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Department of State's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the later of (1) the date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer or intermediate review board becomes administratively final; (2) issuance of an order disposing of any petitions for reconsideration of the Department of State's final order in the proceeding; (3) if no petition for reconsideration is filed, the last date on which such a petition could have been filed; or (4) issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject

to a petition for reconsideration or to a petition for judicial review; or (5) completion of judicial action on the underlying controversy and any subsequent Department of State action pursuant to judicial mandate.

Subpart C—Procedures for Considering Applications

§ 134.21 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 134.12(b) for confidential financial information.

§ 134.22 Answer to application.

(a) Within 30 days after service of an application, counsel representing the Department of State may file an answer to the application. Unless the Department of State counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30 day period may be treated as a consent to the award requested.

(b) If the Department of State counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by Department of State counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Department of State position. If the answer is based on any alleged facts not already in the record of the proceeding the Department of State shall include with the answer either supporting affidavits or a request for further proceedings under § 134.26.

§ 134.23 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 134.26.

§ 134.24 Comments by other parties.

Any party to a proceeding other than the applicant and Department of State may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comment.

§ 134.25 Settlement.

The applicant and the Department of State may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and Department of State counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 134.26 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Department of State counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 134.27 Decision.

The adjudicative officer shall issue an initial decision on the application as promptly as possible after completion of proceedings on the application. The decision shall include written fundings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Department of State position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against the Department of State and another agency, the decision shall allocate responsibility for payment of any award made between the Department of State and the other agency, and shall explain the reasons for the allocation made.

§ 134.28 Further Department of State review.

Either the applicant or Department of State counsel may seek review of the initial decision. If neither the applicant nor the Department of State counsel seeks review, the initial decision shall become a final decision of the Department of State 30 days after it is issued. If review is taken the Judicial Officer will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§ 134.29 Judicial review.

Judicial review of final Department of State decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 134.30 Payment of award.

An applicant seeking payment of an award shall submit to the Comptroller or other disbursing official of the Department of State a copy of the final decision granting the award accompanied by a statement that the applicant will not seek review of the decision in the United States courts. Requests for payment should be sent to: Executive Director, Office of the Comptroller, Room 1328, Department of State, 2201 C Street, N.W., Washington, D.C. 20520. The Department of State will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Dated: October 19, 1981.

Richard T. Kennedy,

Under Secretary for Management.

[FR Doc. 81-34433 Filed 11-30-81; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 221

Oil and Gas Operating Regulations

AGENCY: Geological Survey, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking will amend Part 221 to broaden the applicability of the part to include oil and gas operations on the National Petroleum Reserve, Alaska (NPR–A) and to include a reference to the statutory

authority for such operations in this designated area. In addition, obsolete references to the Secretary of the Navy and an obsolete Naval Petroleum Reserve form will be eliminated.

EFFECTIVE DATE: December 31, 1981.

ADDRESS: Acting Deputy Division Chief for Onshore Minerals Regulation, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 650, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Daniels, Chief, Branch of Fluid Minerals Management, (703) 860-7535, (FTS) 928-7535, or Mr. Stephen H. Spector, Branch of Rules and Procedures, (703) 860-6259, (FTS) 928-6259.

SUPPLEMENTARY INFORMATION: The principal authors of this final rulemaking are Stephen H. Spector, Branch of Rules and Procedures, Office of the Deputy Division Chief for Onshore Minerals Regulation, Conservation Division, U.S. Geological Survey, Reston, Virginia, and William James Weber, Office of the Deputy Conservation Manager, Onshore Minerals, U.S. Geological Survey, Anchorage, Alaska.

The final rulemaking is intended to provide regulations to govern industry operations on oil and gas leases issued in NPR-A without the need for separate rules.

The Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514, 94 Stat. 2964), directs the Secretary of the Interior to conduct an expeditious program of competitive leasing of oil and gas in the National Petroleum Reserve, Alaska (NPR-A), appropriates funds for such leasing, and outlines procedures to be followed in the issuance of the leases. In order to exercise regulatory jurisdiction over the operations which will commence after the issuance of the leases, it is necessary to specifically establish operating regulations.

The regulations in Part 221 govern development and production of oil and gas contained in lands that are owned or controlled by the United States and are under the jurisdiction of the Secretary of the Interior (30 CFR 221.1). This final rulemaking will specifically incorporate within the scope of the existing operating regulations, oil and gas leases issued for lands within NPR-A. It has not had prior publication as proposed rulemaking because it is basically administrative in nature and no substantial changes are made to the operating regulations at this time. The September 10, 1981, **Federal Register** Notice (46 FR 45205), published by the Bureau of Land Management (BLM), making the NPR-A lease form available for public review and comment, specifically states that leases issued pursuant to the form are subject to the operating regulations in 30 CFR Part 221. The comments received by the BLM raise no objection to the use of existing operating regulations for leases issued for lands within NPR-A. The changes being made in Part 221 by this rulemaking merely conform the regulations in this part to the BLM lease form. Other minor changes correct references that have been obsolete by statutory amendments and changed conditions. Finally, the entire Part 221 is the subject of a separate rulemaking published as proposed rulemaking November 17, 1981 (46 FR 56564). Individuals may comment upon the effect of each of the regulations in Part 221 upon operations in the NPR-A as part of this separate, comprehensive rulemaking. For the above reasons, it is determined that publication of the present rulemaking as a proposed rulemaking is unnecessary under 5 U.S.C. 553(b).

The FY 1981 Appropriation Act provides the Department of the Interior with the authority to lease areas within NPR-A for oil and gas. While this authority necessitates the adoption of new procedures to accommodate leasing of NPR-A lands, it has been concluded that no substantive changes are required at this time in the existing onshore oil and gas operating regulations, 30 CFR Part 221. This conclusion is based on the belief that, in general, exploration, development, and producing operations within NPR-A will utilize technology and operating procedures which closely parallel those which have been used on Federal lands elsewhere on the North Slope. The existing 30 CFR Part 221 regulations have served effectively in regulating those activities. Adequate authority exists in these regulations, in the related guidelines, and in existing cooperative procedures for the U.S. Geological Survey, in consultation with other involved Agencies, to impose such conditions as are considered necessary to ensure that operations within NPR-A will be carried out in an environmentally acceptable manner. If any specific provision is determined to be required for operations in NPR-A prior to the revision of Part 221 in its entirety, this can be addressed by orders, notices to lessees and operators, or by the imposition of special stipulations as a condition of approval. Accordingly, it has been determined that the circumstances do not justify the promulgation of new and separate operating regulations for NPR-A, and that the most efficient approach is to amend the existing 30 CFR Part 221 regulations to make them applicable to NPR-A.

Obsolete references to jurisdiction over the naval petroleum reserves, which were transferred from the Department of the Navy to the Department of Energy by the Department of Energy Organization Act of 1977, 42 U.S.C. 7101, 7156, are also being corrected in this rulemaking. The references to "the Secretary of Navy" in §§ 221.1 and 221.2 are being replaced by "the Secretary of Energy." Section 221.64 is modified to eliminate reference to a naval petroleum reserve form which the Department of Energy indicates is no longer used.

The information collection requirements contained in the current Part 221 which are hereby made applicable to NPR-A have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned the following clearance numbers:

Form No.	Name	OMB No.
9-330	Well Completion or Recompletion Report and Log.	1028-0004
9-329/9-329A	Monthly Report of Operation (and Continuation).	1028-0005
9-361	Monthly Report of Sale and Royalty.	1028-0006
9-614A	Rental and Royalty Remittance Advice.	1028-0007
9-331	Sundry Notice and Reports on Wells.	1028-0011
9-331C	Application for Permit to Drill, Deepen, or Plug Back.	1028-0012

A new section designated 221.2-1, *Information Collection*, will be added to Part 221 as part of the comprehensive rulemaking currently underway and therefore is not added to the part at this time.

It is hereby determined that modification of these provisions does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291 and 43 CFR Part 14. The Department has also certified that this rulemaking will not have a significant economic impact on a substantial number of small entities, thus a small entity flexibility analysis is not required.

Under the authority of the Department of Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514, 94 Stat. 2964), and the Department of Energy Organization Act (42 U.S.C. 7101, 7156),

Part 221, Chapter II; Title 30 of the Code of Federal Regulations is amended as set forth below.

Dated: November 9, 1981.

William P. Pendley,

Assistant Secretary of the Interior.

PART 221—OIL AND GAS OPERATING REGULATIONS

1. Part 221 is amended by revising the Authority provision to read as follows:

Authority: Sec. 3, 28 Stat. 795, secs. 18, 14, 27, 28, 32, 41 Stat. 426, 442, as amended, 448, as amended, 449, as amended, 450 sec. 7, 42 Stat. 1450, 43 Stat. 244, sec. 6, 46 Stat. 374, sec. 39, 47 Stat. 798, as amended, sec. 40, 48 Stat. 977, sec. 3, 49 Stat. 679, 40 Stat. 842, as amended, sec. 4, 52 Stat. 348, sec. 10, 61 Stat. 915, 94 Stat. 2964; 25 U.S.C. 397, 356, 30 U.S.C. 223, 184, 185, 189, 236, 25 U.S.C. 398, 30 U.S.C. 306, 209, 229a, 236a, 221; 25 U.S.C. 396d, 30 U.S.C. 359, 42 U.S.C. 7101, 7156.

2. Section 221.1 is revised to read as follows:

§ 221.1 Introduction.

The regulations in this part will govern the development and production of deposits of oil, gas, and casinghead or natural gasoline, including propane, butane and other hydrocarbons, and fluids, and lands containing such deposits owned or controlled by the United States, under jurisdiction of the Secretary by law or administrative arrangement, including the National Petroleum Reserve in Alaska. The regulations in this part shall be administered under the Director of the Geological Survey, except that as to lands within naval petroleum reserves, they shall be administered under such official as the Secretary of Energy shall designate.

3. Section 221.2 is amended by revising paragraph (a) and adding new paragraph (q) to read as follows:

§ 221.2 Definitions.

* * * * *

(a) *Secretary.* The Secretary of the Interior, except where lands in naval petroleum reserves are involved, and in that case the Secretary of Energy.

* * * * *

(q) *National Petroleum Reserve in Alaska.* The area also known as NPR–A which was designated by section 102 of the Naval Petroleum Reserve Production Act of 1976 (90 Stat. 303) and established by Executive Order of the President, dated February 27, 1933, except for tract Number 1 as described in Public Land Order 2344, dated April 24, 1961.

4. Section 221.64 is revised to read as follows:

§ 221.64 Royalty and rental remittance (Naval Petroleum Reserves).

Remittance covering payments of royalty or rental on naval petroleum reserves must be accomplished by necessary identification information and sent direct to the Director, Naval Petroleum Reserves in California.

[FR Doc. 81-34430 Filed 11-30-81; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 210

[DOD Directive 5525.4][1]

Enforcement of State Traffic Laws on DOD Installations

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Department of Defense published a directive governing the enforcement on DOD installations of those state traffic laws that cannot be assimilated under the Assimilative Crimes Act. This directive sets forth policies and standards under authority delegated to Secretary of the Defense by the Administrator, General Services Administration.

EFFECTIVE DATE: November 2, 1981.

FOR FURTHER INFORMATION CONTACT: Colonel John L. Fugh, USA, Office of the Deputy Assistant Secretary of Defense (Military Personnel and Force Management), the Pentagon, Room 3C980, Washington, D.C. 20301, telephone 202–697–9283.

SUPPLEMENTARY INFORMATION: In FR Doc. 81–24112, appearing in the **Federal Register** (46 FR 42083) on August 19, 1981, the Office of the Secretary of Defense published a proposed rule on this subject matter. No comments from the public were received, and the directive, after some editorial improvements, was signed by the Deputy Secretary of Defense on November 2, 1981.

Accordingly, Chapter I of Title 32 of the Code of Federal Regulations is amended by adding Part 210, reading as follows:

PART 210—ENFORCEMENT OF STATE TRAFFIC LAWS ON DOD INSTALLATIONS

Sec.

210.1 Purpose.
210.2 Applicability and Scope.
210.3 Policy.
210.4 Responsibilities.

Authority: 63 Stat. 377, as amended, 18 U.S.C. 13; 40 U.S.C. 318a through d., 40 U.S.C. 612.

§ 210.1 Purpose.

This part establishes policies pursuant to the requirements of DOD Directive 6055.4,[1] "Department of Defense Traffic Safety Program," November 7, 1978, and to authority delegated to the Secretary of Defense under Enclosure 1 for the enforcement, on DOD military installations, of those state vehicular and pedestrian traffic laws that cannot be assimilated under U.S.C., Title 18, Section 13.

§ 210.2 Applicability and Scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies.

(b) The provisions encompass all persons who operate or control a motor vehicle or otherwise use the streets of a military installation over which the United States exercises exclusive or concurrent legislative jurisdiction.

(c) The provisions govern only vehicular and traffic offenses or infractions that cannot be assimilated under U.S.C. Title 18, Section 13, thereby precluding application of state laws to traffic offenses committed on military installations.

§ 210.3 Policy.

(a) It is the policy of the Department of Defense that an effective, comprehensive traffic safety program be established and maintained at all military installations as prescribed in DOD Directive 6055.4.[1]

(b) State vehicular and pedestrian traffic laws that are now or may hereafter be in effect shall be expressly adopted and made applicable on military installations to the extent provided by this part. All persons on a military installation shall comply with the vehicular and pedestrian traffic laws of the state in which the installation is located.

(c) A person found guilty of violating, on a military installation, any state vehicular or pedestrian traffic law made applicable to the installation under the provisions of this part is subject to a fine of not more than $50 or imprisonment

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attention: Code 301.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attention: Code 301.

for not more than 30 days, or both, for each violation (40 U.S.C. 318c).

(d) This part does not limit the application of any federal law or regulation or, under 18 U.S.C. 13 any state law made applicable to offenses committed on military installations.

(e) A copy of this part shall be posted in an appropriate place on the DoD installation concerned.

§ 210.4 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) shall modify this part as appropriate.

(b) Secretaries of the Military Departments shall comply with this part.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

November 25, 1981.

Enclosure 1

General Services Administration (D-81-).

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to assist in controlling vehicular and pedestrian traffic on military installations in the United States.

2. *Effective date.* This delegation became effective on March 20, 1981.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the Act of June 1, 1948 (62 Stat. 281), as amended, authority is hereby delegated to the Secretary of Defense to make all needful rules and regulations, and to attach to these rules and regulations such reasonable penalties, not to exceed those prescribed in 40 U.S.C. 318c, as will ensure their enforcement for governing vehicular and pedestrian traffic on military installations of the Department of Defense, as defined in 40 U.S.C. 612, in the United States and over which the United States has exclusive or concurrent legislative jurisdiction.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the limitations and requirements of the above-cited acts, and the policies, procedures, and controls prescribed by the General Services Administration.

4. *Effect on other directives.* FPMR Temporary Regulation D-28 is revoked.

Dated: June 24, 1981.

Gerald P. Carmen,

Administrator.

[FR Doc. 81-34399 Filed 11-30-81; 8:45 am]

BILLING CODE 3810-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket Rm 77-14A]

Methods of Affixation and Positions of the Copyright Notice

AGENCY: Library of Congress, Copyright Office.

ACTION: Final Regulation.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting a final regulation implementing section 401(c) of the Copyright Act of 1976, title 17 of the United States Code. That section directs the Register of Copyrights to "prescribe by regulation, as examples, specific methods of affixation and positions of the copyright notice on various types of works" that will satisfy the requirment that the copyright notice "be affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright." The effect of the regulation is to provide examples of methods of affixation and positions for the guidance of persons seeking to affix the notice in a manner and location that will comply with the statutory requirements.

EFFECTIVE DATE: December 1, 1981.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

SUPPLEMENTARY INFORMATION: Section 401 of the Copyright Act of 1976, title 17 of the United States Code, establishes the basic requirement that notice of copyright shall appear on "visually-perceptible copies."[1] Section 401(a) provides generally[2] that:

> Whenever a work protected under this title is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section shall be placed on all publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device.

Subsection (b) of section 401 sets out the required form of notice for visually perceptible copies (generally, the symbol (C), the word "Copyright," or the abbreviation "Copr.", the year of first pubication, and the name of the owner of copyright).

"Position of notice" is dealt with in section 401(c). It provides:

> The notice shall be affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright. The Register of Copyrights shall prescribe by regulation, as examples, specific methods of affixation and positions of the notice on various types of works that will satisfy this requirement, but these specifications shall not be considered exhaustive.

In commenting on this subsection, both legislative reports on the Copyright Act of 1976 [3] declared:

> By providing simply that the notice "shall be affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright," subsection (c) follows the flexible approach of the Universal Copyright Convention. The further provision empowering the Register of Copyrights to set forth in regulations a list of examples of

[1] The requirements for the copyright notice to appear on "phonorecords of sound recordings" are contained in section 402, a provision to some extent paralleling section 401. Subsection (c) of section 402 provides that "the notice shall be placed on the surface of the phonorecord, or on the phonorecord label or container, in such manner and location as to give reasonable notice of the claim of copyright." Unlike section 401, section 402 contains no provisions under which the Register of Copyrights is called upon to issue regulations setting forth methods of affixation and positions of notice on various types of sound recordings. This final rule therefore deals only with notices under section 401; that is, notices on "publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device." It should be noted that the notice requirements of section 402 apply only to sound recordings considered as copyrightable works in themselves; for musical, dramatic, and literary works that are issued to the public in the form of phonorecords, there is no requirement that a copyright notice relating to such works must appear on the phonorecords.

[2] This general requirement for notice of copyright on visually-perceptible copies is expanded by section 403, dealing with publications incorporating United States Government works; also, it is amplified by section 404, with respect to contributions to collective works, and its is qualified by sections 405 and 406, which concern omissions and errors in notice.

[3] S. Rep. No. 94-473, 94th Cong., 1st Sess., Nov. 20, 1975, at 127; H.R. Rep. No. 94-1476, 94th Cong., 2d Sess., Sept. 3, 1976, at 144.

"specific methods of affixation and positions of the notice on various types of works that will satisfy this requirement" will offer substantial guidance and avoid a good deal of uncertainty. A notice placed or affixed in accordance with the regulations would clearly meet the requirements but, since the Register's specifications are not to "be considered exhaustive," a notice placed or affixed in some other way might also comply with the law if it were found to "give reasonable notice" of the copyright claim.

The provision of the Universal Copyright Convention ("U.C.C.") referred to in the legislative reports is found in paragraph 1 of Article III of the Convention signed at Geneva in 1952 (and revised without change on this point at Paris in 1971). The U.C.C. notice shall be "placed in such manner and location as to give reasonable notice of claim of copyright."

The legislation enacted in 1954 to permit U.S. adherence to the U.C.C. (Act of August 31, 1954, 68 Stat. 1030, effective September 16, 1955) amended section 9 of the Copyright Code (17 U.S.C.) then in effect to allow use of the flexible U.C.C. notice on copies of foreign works qualifying under the Convention.

In 1957 the second session of the Intergovernmental Copyright Committee (established under Article XI of the Universal Copyright Convention) adopted an "Advisory Statement"[4] expressing the view that the following positions of the copyright notice would generaly satisfy the provisions of Article III, paragraph 1, of the Convention:

—In the case of *books or pamphlets*, on the title page or the page immediately following, or at the end of the book or pamphlet,

—In the case of a *single sheet*, on either of the sides,

—In the case of *printed music*, on the title page or first page of music, or at the end of the printed music,

—In the case of *newspapers, magazines or other periodicals*, under the main title or the "masthead",

—In the case of *maps, prints, or photographs*, on their face side, either on the actual map or picture (but somewhere near the title or the margin) or on the margin,

—In the case of *independent parts of a whole* (if a separate copyright is claimed in the independent parts), under the title of the independent part,

—In the case of *motion pictures*, on the frames which carry its title (whether appearing at the beginning or the end) or credits * * *[5]

[4] Records of the Second Session of the Intergovernmental Copyright Committee (IGC/II/25, 1957) at 18–20.

[5] *Ibid.* at 19.

This advisory opinion included, in its list of acceptable locations, all of the specific positions provided for U.S. works in the Copyright Code then in effect, and also included a number of other acceptable locations.

On December 23, 1977, the Copyright Office published in the **Federal Register** [42 FR 64374] a proposal to adopt new regulation § 201.20 setting forth examples of acceptable methods of affixation and positions of the copyright notice on various types of works. Proposed § 201.20 included as acceptable locations: (1) All of the locations specified in the U.S. copyright law in effect before 1978; (2) all of the locations listed in the IGCC Advisory Opinion of 1957; and (3) additional examples based on the Copyright Office's experience in examining copyright notices as part of the registration system in effect since 1909. Twenty-three comments were received in response to the Notice of Proposed Rulemaking. After careful consideration of all the comments, the Office has decided to adopt the proposed regulation with several changes. A discussion of the major substantive comments appears below.

1. *Applicability of the regulation.* Paragraph (a)(2) of the proposed regulation provides:

> The provisions of this section are only applicable to works first published on or after the effective date of this section. The adequacy of a copyright notice on works first published before such date shall be determined by the law in effect at the time of first publication.

One comment noted that the proposed rule incorrectly limits the application of the regulation since Sec. 108 of the Transitional and Supplementary Provisions of the Act states:

> The notice provisions of sections 401 through 403 of title 17 as amended by the first section of this Act apply to all copies or phonorecords *publicly distributed on or after January 1, 1978.* However, in the case of a work published before January 1, 1978, compliance with the notice provisions of title 17 either as it existed on December 31, 1977, or as amended by the first section of this Act, is adequate with respect to copies publicly distributed after December 31, 1977 (emphasis added).

The Copyright Office agrees with this observation in part and we have revised paragraph (a)(2) to make clear that the provisions of § 201.20 are applicable to "copies publicly distributed" on or after the effective date of the regulation. However, the Office has also specified that the regulation does not govern the form of the notice, and we have retained the point that the adequacy or legal sufficiency of the notice is governed by the law in effect at the time of first publication.

Comments submitted on behalf of several professional sports leagues expressed concern that the voluntary affixation of copyright notice on unpublished television transmission programs may be interpreted erroneously to constitute an admission that the notice is required, or that the copyright owner must satisfy other requirements imposed upon published works. The comments requested that paragraph (a)(2) be amended to declare that presence of a copyright notice should not be construed as evidence that the work containing notice has, in fact, been published or as an admission that notice is required.

The Copyright Office has not acceded to this request. Section 401(a) of the Act specifies that the obligation to affix the copyright notice to copies of a work is triggered by *publication* of the work in the United States or elsewhere by authority of the copyright owner. Furthermore, paragraph (b)(2) of section 401 requires that the notice shall include the year of *first publication* of the work. Although affixation of copyright notice on unpublished works may not necessarily evidence publication, it would be beyond the regulatory authority of section 401(c) to impose the requested restriction. The Office has decided it would not be appropriate to resort to the general regulatory authority of section 702 in this case. We do note that the mere act of transmission does not constitute publication as defined in section 101 of the Copyright Act.

Another comment suggested that an additional clause be added to paragraph (a)(2) to read as follows:

> The adequacy of a copyright notice on works first bearing a copyright notice after such date but which would not have required such notice except for the definition of 'Publication' in new 17 U.S.C. Sec. 101 shall be determined by the provisions of this section.

The Office has expressed its view that the law in effect at the time of first publication governs the legal sufficiency of the notice. Presumably, the same principle applies with respect to the definition of publication, if differences exist between the current Act and the former law. We believe that it is unnecessary to include this point in this regulation.

2. *Title page.* One comment suggested that the definition of "title page" in paragraph (b)(5) of the regulation be broadened to include those cases where the title page consists of two consecutive pages facing each other wherein part of the title is on the left-

hand page and the remaining part of the title is on the right-hand page. The Copyright Office has amended the regulation in accordance with this suggestion.

3. *Manner of affixation and position generally.* Paragraph (c)(1) of the proposed regulation states:

> In all cases dealt with in this section, the acceptability of a notice depends upon its being permanently legible to an ordinary user of the work, and affixed to the copies in such manner and position that is it not concealed from view upon reasonable examination.

One commentator expressed the view that imposition of a "permanently legible" requirement imposes an unrealistic and superhuman standard. Instead, a standard based on the notice being "designed to be legible to an ordinary user of the work under normal conditions of use" was suggested. The Copyright Office has not adopted the first part of this suggestion because it would essentially impose a standard of subjective intent, which we consider undesirable. However, we have adopted the concluding phrase, "under normal conditions of use."

4. *Works published in book form.* Paragraph (d) of the proposed regulation lists eight general examples of acceptable positions of the copyright notice. A comment submitted by the Special Libraries Associations suggested the elimination of four of the eight general examples. First, the comment proposed deletion of paragraphs (d)(3) and (d)(4) pertaining to a copyright notice affixed to:

> (3) Either side of the front cover, if any; or if there is no front cover, either side of the front page of the copies; [or]
> (4) Either side of the back cover, if any, or if there is no back cover, either side of the back page of the copies.

The comment noted that copies of a work often are rebound during library use. This rebinding, they indicate, occasionally may block the visibility of the copyright notice.

The Copyright Office does not believe that this possibility warrants the elimination of these two positions which ordinarily would give reasonable notice of the claim of copyright. If rebinding becomes necessary, and if such rebinding obscures the notice, care could be exercised to assure that the notice is reprinted on the new binding or added in some other acceptable location. Section 405(c) expressly provides that the removal or obliteration of the notice from publicly distributed copies without the authorization of the copyright owner has no affect on copyright protection.

The comment also proposed elimination of paragraphs (d)(7) and (d)(8) concerning a copyright notice located on:

> (7) Any page between the front page and the first page of the main body of the work, if: (i) There are no more than ten pages between the front page and the first page of the main body of the work; and (ii) the notice is reproduced prominently and is set apart from other matter on the page where it appears; [or]
> (8) Any page between the last page of the main body of the work and the back page, if: (i) There are no more than ten pages between the last page of the main body of the work and the back page; and (ii) the notice is reproduced prominently and is set apart from the other matter on the page where it appears.

The comment pointed out that libraries often must determine the copyright status of many publications, particularly with respect to the guidelines developed pursuant to sections 107 and 108 of the Act. The commentator expressed the opinion that designating the above two locations as acceptable positions of the copyright notice could increase the burdens placed on librarians and library users both in terms of time and labor.

The Copyright Office agrees that a librarian or library user should not be forced to embark on a "treasure hunt" in search of a copyright notice. However, the Office also believes that limiting the examination to no more than the first or last ten pages of a work will not prove onerous provided "the notice is reproduced prominently and is set apart from the other matter on the page where it appears."

Finally, the comment suggested that the examples of acceptable positions of the copyright notice be designated in descending order of preference. The Office has not adopted this suggestion. Section 401(c) of the Act directs the Register of Copyrights to prescribe examples of specific positions that will "give reasonable notice of the claim of copyright." The Office believes that ranking various positions in preferential order would be inconsistent with this mandate.

5. *Works published as an issue of a periodical or serial.* In addition to the eight general examples of acceptable positions of the copyright notice for works published in book form, paragraph (d)(9) of the proposed regulation provides an alternative example specifically designed for a work published as an issue of a periodical or serial. The Special Libraries Association recommended that this provision be the exclusive example governing these types of works. The Office believes that this example, taken alone, is too limitative for these purposes and has, therefore, not adopted this recommendation.

Another comment, on the other hand, contended that this example was overly restrictive since many periodicals carry their notice at the bottom of the masthead page, rather than "as a part of, or adjacent to, the masthead." Upon reconsideration, the Office agrees. Accordingly, we have added another example to paragraph (d)(9) providing that in the case of a work published as an issue of a periodical or serial, a notice is acceptable if it is located "on the page containing the masthead if the notice is reproduced prominently and is set apart from the other matter appearing on the page."

6. *Contributions to collective works.* Section 404 of the Act permits separate contributions to a collective work to bear their own notices of copyright. Paragraph (f) of the proposed regulations prescribes examples of acceptable locations of the notice for these separate contributions. The first clause of paragraph (f) states, in part:

> Where the separate contribution is reproduced on a single page, a notice is acceptable if it appears: * * * (iii) on the same page if, through format, wording, or both, the application of the notice to the particular contribution is made clear.

A comment submitted by the Authors League of America, Inc. voiced concern that qualifying the acceptability of a notice position by the above clause could cast doubt unfairly on the validity of some notices. In particular, they questioned what "format" or "wording" would be necessary where the contribution is the *only one* appearing on a single page.

In this situation, placement of the copyright notice either at the top or the bottom of the page would be considered acceptable. Where several contributions appear on a single page, however, a notice that is neither located under the title of the contribution nor adjacent to the contribution should, "through format, wording, or both," be identified as referring to a specific contribution. Included among the various methods by which this can be accomplished are: repeating the title of the contribution above, below or adjacent to the notice; itemizing particular contributions appearing on a single page numerically or alphabetically, and accompying the notice with the proper identifying symbol; and cross-referencing contributions and copyright notices visually by arrows or other graphics which would lead the reader of the contribution naturally to the copyright notice.

The second clause of paragraph (f) states:

> Where the separate contribution is reproduced on more than one page of the collective work, a notice is acceptable if it appears: (i) Under a title appearing at or near the beginning of the contribution; (ii) on the first page of the main body of the contribution; (iii) immediately following the end of the contribution; or (iv) on any of the pages where the contribution appears if: (A) The contribution is reproduced on no more than twenty pages of the collective work; (B) the notice is reproduced prominently and is set apart from other matter on the page where it appears; and (C) through format, wording, or both, the application of the notice to the particular contribution is made clear.

The Authors League made several comments relating to this provision.

First, they inquired whether a notice affixed to the first page of the main body of a contribution would be acceptable if located anywhere on the page. Several examples included in the regulation refer to affixing the copyright notice to a particular page or leaf of copies of a work. Unless a specific example further qualifies the particular location of the notice, for instance, "the notice is reproduced prominently and is set apart from the other matter on the page where it appears," a notice would be acceptable if it is located anywhere on the page or leaf.

Second, the Authors League criticized the fourth example in clause (f)(2) which permits notice to be affixed "on any of the pages where the contribution appears" so long as the three conditions set forth in subparts (A), (B), and (C) are met. The League suggested that the three conditions be eliminated as being vague and unnecessary.

The Copyright Office has not adopted this suggestion. These conditions need only be met where the notice does not appear either under a title appearing at or near the beginning of the contribution, on the first page of the main body of the contribution, or immediately following the end of the contribution. Where the notice is not affixed in any of these three positions, but rather, is affixed "on any of the pages where the contribution appears", the Office believes that certain additional safeguards should be required to assure that the notice can be readily found and is not "buried" on one of the inner pages of the article.

The fourth clause of paragraph (f) permits the notice to be placed on pages where a separate contribution itself does *not* appear "if the notice appears clearly in juxtaposition with a separate listing of the contribution by full title and author." One comment questioned the necessity of identifying the separate contribution by the author in addition to the "full" title. Furthermore, the commentator noted that requiring the "full" title could jeopardize the validity of the notice in cases where a minor omission in the title has occurred. After careful consideration, the Office has decided to amend this provision by requiring merely identification of the contribution by title.

Another comment suggested that the Copyright Office provide an alternative identification in cases where the contribution is untitled. We have adopted this suggestion by adding the following clause just preceding subpart (i): "or if the contribution is untitled, by a description reasonably identifying the contribution." The description should explain that the work is untitled and should indicate the specific subject matter of the work, include the name of the author, and provide other appropriate methods of identification, if any.

7. *Works reproduced in machine-readable copies.* Paragrapah (g) of the proposed regulation identifies four examples of acceptable methods of affixation and position of the copyright notice for works reproduced in machine-readable copies. One comment submitted on behalf of a computer manufacturer noted that the basic 48 character print matrix for computer mechanical printers does not include the symbol ©. Accordingly, the comment urged that the final regulation provide that an affixation consisting of a "(c)", would constitute an acceptable substitute for the symbol ©.

Section 401(b)(1) of the Act specifies that one of the elements contained in the notice shall be "the symbol © (the letter C in a circle), or the word 'Copyright', or the abbreviation 'Copr.' " The Copyright Office has no authority to alter this requirement. We have therefore not adopted the suggestion of the computer manufacturer. Furthermore, although the print matrices may not presently be equipped to print the symbol ©, they can presumably, print either of the alternative indicia, ©, or the abbreviation "Copr."

8. *Motion pictures and other audiovisual works.* Paragraph (h) of the proposed regulation provides:

> The following constitute examples of acceptable methods of affixation and positions of the copyright notice on motion pictures and other audiovisual works: A notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it appears whenever the work is performed in its entirety, and that is located: (i) With or near the title; (ii) with the cast, credits, and similar information; (iii) at or immediately following the beginning of the work; or (iv) at or immediately preceding the end of the work.

A comment submitted by a copyright owner of motion pictures suggested the elimination of the requirement that the notice appear "whenever the work is performed in its entirety." The commentator expressed the view that this requirement exceeds the conditions for an acceptable copyright notice set forth in section 401 of the Act since it makes it incumbent upon a copyright owner to include in any licensing arrangement a provision insuring that the licensee will display the notice whenever the work is performed in its entirety. Although the Copyright Office disagrees with the contractual implications perceived by the commentator, we have decided to modify this clause by inserting the words "ordinarily would" before "appear" in the final regulation to clarify this point.

The comment also inquired as to whether affixing the notice "at or immediately preceding the end of the work" would permit the interruption of a story by a commercial advertisement before the final credits (including the notice) are presented. The Copyright Office interprets the provision as permitting an interruption for a commercial advertisement (as well a interruptions for noncommercial, public service or other annoucements) prior to completion of the work. We believe it is unnecessary, however, to amend the regulation on this point.

Comments submitted on behalf of professional sports leagues requested that the Copyright Office consider adopting a procedure by which a notice could be made aurally, rather than visually. Section 401 of the Act provides, however, that the notice shall *appear* on the copies. The Copyright Office believes that an aural copyright notice does not satisfy the notice requirements of the Act.

The Copyright Office received several comments on behalf of the advertising industry concerning the position of the notice on audiovisual works. The comments emphasized the limited time constraints placed upon most advertisers in which to put across an idea to the viewing audience. Placement of the copyright notice on part of the commercial that is broadcast, they contended, could divert the attention of the audience away from the advertiser's primary message. Accordingly, they proposed several examples of acceptable methods of affixation and positions of the copyright notice for television commercials which would not

necessitate the viewing of the notice by the television audience.

After consideration of this problem, and in recognition of the unique nature of these types of works, the Copyright Office has decided to add a new provision to paragraph (h) of the final regulation to read as follows:

> In the case of an untitled motion picture or other audiovisual work whose duration is sixty seconds or less, in addition to any of the locations listed in paragraph (h)(1) of this section, a notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it ordinarily would appear to the projectionist or broadcaster when preparing the work for performance, is acceptable if it is located on the leader of the film or tape immediately preceding the beginning of the work.

This provision will permit the placement of the notice on the film or tape immediately preceding the beginning of the commercial under the condition that the notice ordinarily appear to the projectionist or broadcaster either during threading of the film or tape or during cueing of the film or tape of the work for performance. This condition will conform with paragraph (c)(1) f the final regulation which requires that, in all cases, the notice be "permanently legible to an ordinary user of the work under normal conditions of use, and affixed to the copies in such manner and position that, when affixed, it is not concealed from view upon reasonable examination."

Other examples proposed in the comments would have permitted the notice to be affixed on the cassette housing of the film or tape or on the film or tape itself in such position that, when broadcast, the notice would appear in an area known as "TV Safe" zone, located outside the normal picture zone, of the television tube. The Copyright Office does not believe that either proposal adequately assures giving "reasonable notice of the claim of copyright" in the case of works that reach the public through television, theatrical or other exhibition.

Upon reconsideration, however, the Office has decided to specify the permanent container of a film or tape as an appropriate position for the notice on audiovisual works marketed in copies to the general public for private use. Such audiovisual works are distributed to the public in a manner that is analogous to the distribution of sound recordings. Notice on the permanent container therefore seems reasonable for such audiovisual works by analogy to the positions prescribed by statute for sound recordings.

9. *Pictorial, graphic, and sculptural works.* Paragraph (i) of the regulation specifies several examples of acceptable methods of affixation and positions of the copyright notice on various forms of pictorial, graphic, and sculptural works. These works often are incorporated in useful articles. One comment suggested several modifications in the regulation to provide greater latitude in affixing the copyright notice on works that are permanently attached to or incorporated in useful articles. In addition to the examples specified in paragraph (i) of the proposed regulation, the commentator requested that a copyright notice be considered generally acceptable when affixed to:

> Any useful article or any other article to which the copies are permanently attached, or in which they are permanently housed or incorporated.

The Copyright Office has not adopted this suggestion. Indiscriminant placement of the copyright notice anywhere on a useful article incorporating a copyrighted work may lead persons mistakenly to conclude that copyright protection extends to the entire useful article. The Office does not believe that practices leading to this incorrect conclusion should be encouraged through this regulation. It should be recalled, however, that the examples specified in the regulation are not to be considered exhaustive of methods of affixation and positions giving reasonable notice of the claim of copyright.

Paragraphs (i)(1) and (2) of the proposed regulation require that, for pictorial, graphic, and sculptural works reproduced in two-dimensional or three-dimensional copies, the notice be affixed either directly to the work "or by means of a label cemented, sewn, or otherwise permanently secured" to copies of the work.

The standard of "permanency", which is also reflected in other parts of paragraph (i), was objected to in several comments. These comments contended that requiring "permanency" would impose on copyright owners an unrealistic condition. One of the comments suggested that this standard be replaced in the final regulations with one based on "durability, so as to withstand normal use."

With one exception, the Copyright Office has decided to adopt this suggestion throughout paragraph (i).[6] This exception concerns affixation of the copyright notice on receptacles in which the work is "permanently housed." Section 401(a) of the Act requires that notice "shall be *placed* on all publicly distributed copies * * *." The Office does not believe that affixation of the notice on a receptacle or countainer in which a work may be "durably housed", but which is intended to be discarded when the work is put in use, would comply with the requirements of this provision.

Another comment requested that the Copyright Office clarify the type of receptacle or container that would be considered a "permanent house" of a copyrighted work. The Office interprets a "permanent house" to include receptacles or containers which are ordinarily intended to remain with the copyrighted work before and after, and possibly during, its use. Common examples would include game or puzzle boxes; containers for children's toys; and storage spaces for certain sculptural works that are intended to be used in conjunction with the display of the works.

Paragraph (i)(3) of the proposed regulation states:

> Where, because of the size or physical characteristics of the material in which copies ae reproduced, it is impossible or extremely impracticable to affix a notice to the copies directly or by means of a permanent label, a notice is acceptable if it appears on a tag that is of durable material and that is attached to the copy with sufficient permanency that it will remain with the copy during the entire time it is passing through commerce.

In accordance with the above discussion, the standard of *permanency* in this provision has been replaced with one based on *durability*.

Several comments noted that this provision may be applicable to consumable products, such as cakes, cookies, and frozen confections ("ice cream pops") as well as to small pieces of jewelry. The commentators have indicated that attachment of a durable tag containing notice to these types of works may be as impracticable as affixing the notice directly to the work. Instead, they have requested that, in these cases, the Copyright Office consider as acceptable a notice appearing on a wrapper or container in which such copies of a work may be enclosed. Since the Copyright Office does not believe that affixation of the notice in this manner clearly would comply with the requirements of section 401(a) of the Act, we have denied this request.

Another comment asked us to consider a position of the copyright notice for "cookie cutters and molds which incorporate copyrighted works and for the products which are made with the cutters and molds." The comment indicated that although it is

[6] Paragraph (g)(4) of the final regulation also has been amended accordingly.

possible to affix a legible notice on the cutters and molds, it would be "impossible or extremely impractical" to have a notice on the cutters and molds in reverse form which will reproduce in a legible form on the cookies produced with the cutters and on the figures produced with the molds. The comment requested that paragraph (i)(3) be amended to state:

> * * * A notice affixed to the mold directly or by means of a label cemented or otherwise permanently secured to any visible portion of the mold is acceptable both for the mold itself and the copies of the copyrighted works reproduced from the mold.

The Copyright Office does not believe that the mere placement of the notice on a mold would satisfy clearly the requirements of the Act with respect to the copies reproduced from the mold under the authority of the copyright owner, and, therefore, we have not adopted this suggestion.

Paragraph (i)(4) of the proposed regulation includes several examples of acceptable methods of affixation and positions of the copyright notice for works reproduced in copies consisting of sheetlike or strip materials bearing multiple or continuous reproductions of the work. The second clause of this provision permits the notice to be applied "to the margins, selvage, or reverse side of the material at frequent and regular intervals." One comment suggested that, in view of the difficulty in defining *frequent and regular intervals*, and determining the absence or presence of a *reverse side*, it would be simpler and more direct to require the affixation of a notice which is *visible* during the entire time the copies are passing through the normal channels of commerce, and place upon any vendor of a portion of the work where the copyright notice does not appear, the obligation to apply the copyright notice to any subdivisional portion sold, under penalty of being an infringer if the subportion sold does not have a copyright notice applied to it.

The Copyright Office has not adopted this request. Merely to require that the notice be "visible" while the work passes through the normal channels of commerce would be too general a standard to satisfy the mandate placed upon the Copyright Office in section 401(c) of the Act. Further, it would be beyond our statutory authority to impose obligations on a vendor of the work accompanied by legal implications for lack of compliance not specified in the Act.

Finally, section 101 of the Act defines "copies" as:

> * * * Material objects, other than phonorecords, in which a work is fixed by any method now known or later perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. *The term "copies" includes the material object, other than a phonorecord, in which the work is first fixed.* (Emphasis added.)

Notwithstanding the emphasized language, the Copyright Office received several comments questioning whether paragraph (i) applied to pictorial, graphic, and sculptural works in their original form. The Office affirms that this provision applies to the original form of a work, if published, and it is unnecessary to amend the text of the regulation.

PART 201—GENERAL PROVISIONS

In consideration of the foregoing, Part 201 of 37 CFR, Chapter II, is amended by adding a new § 201.20 which reads as follows:

§ 201.20 Methods of affixation and positions of the copyright notice on various types of works.

(a) *General.* (1) This section specifies examples of methods of affixation and positions of the copyright notice on various types of works that will satisfy the notice requirement of section 401(c) of title 17 of the United States Code, as amended by Pub. L. 94–553. A notice considered "acceptable" under this regulation shall be considered to satisfy the requirement of that section that it be "affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright." As provided by that section, the examples specified in this regulation shall not be considered exhaustive of methods of affixation and positions giving reasonable notice of the claim of copyright.

(2) The provisions of this section are applicable to copies publicly distributed on or after December 1, 1981. This section does not establish any rules concerning the form of the notice or the legal sufficiency of particular notices, except with respect to methods of affixation and positions of notice. The adequacy or legal sufficiency of a copyright notice is determined by the law in effect at the time of first publication of the work.

(b) *Definitions.* For the purposes of this section:

(1) The terms "audiovisual works," "collective works," "copies," "device," "fixed," "machine," "motion picture," "pictorial, graphic, and sculptural works," and their variant forms, have the meanings given to them in section 101 of title 17.

(2) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94–553.

(3) In the case of a work consisting preponderantly of leaves on which the work is printed or otherwise reproduced on both sides, a "page" is one side of a leaf; where the preponderance of the leaves are printed on one side only, the terms "page" and "leaf" mean the same.

(4) A work is published in "book form" if the copies embodying it consist of multiple leaves bound, fastened, or assembled in a predetermined order, as, for example, a volume, booklet, pamphlet, or multipage folder. For the purpose of this section, a work need not consist of textual matter in order to be considered published in "book form."

(5) A "title page" is a page, or two consecutive pages facing each other, appearing at or near the front of the copies of a work published in book form, on which the complete title of the work is prominently stated and on which the names of the author or authors, the name of the publisher, the place of publication, or some combination of them, are given.

(6) The meaning of the terms "front," "back," "first," "last," and "following," when used in connection with works published in book form, will vary in relation to the physical form of the copies, depending upon the particular language in which the work is written.

(7) In the case of a work published in book form with a hard or soft cover, the "front page" and "back page" of the copies are the outsides of the front and back covers; where there is no cover, the "front page," and "back page" are the pages visible at the front and back of the copies before they are opened.

(8) A "masthead" is a body of information appearing in approximately the same location in most issues of a newspaper, magazine, journal, review, or other periodical or serial, typically containing the title of the periodical or serial, information about the staff, periodicity of issues, operation, and subscription and editorial policies, of the publication.

(9) A "single-leaf work" is a work published in copies consisting of a single leaf, including copies on which the work is printed or otherwise reproduced on either one side or on both sides of the leaf, and also folders which, without cutting or tearing the copies, can be opened out to form a single leaf. For the purpose of this section, a work need not consist of textual matter in order to be considered a "single-leaf work."

(c) *Manner of Affixation and Position Generally.* (1) In all cases dealt with in this section, the acceptability of a notice

depends upon its being permanently legible to an ordinary user of the work under normal conditions of use, and affixed to the copies in such manner and position that, when affixed, it is not concealed from view upon reasonable examination.

(2) Where, in a particular case, a notice does not appear in one of the precise locations prescribed in this section but a person looking in one of those locations would be reasonably certain to find a notice in another somewhat different location, that notice will be acceptable under this section.

(d) *Works Published in Book Form.* In the case of works published in book form, a notice reproduced on the copies in any of the following positions is acceptable:

(1) The title page, if any;

(2) The page immediately following the title page, if any;

(3) Either side of the front cover, if any; or, if there is no front cover, either side of the front leaf of the copies;

(4) Either side of the back cover, if any; or, if there is no back cover, either side of the back leaf of the copies;

(5) The first page of the main body of the work;

(6) The last page of the main body of the work;

(7) Any page between the front page and the first page of the main body of the work, if: (i) There are no more than ten pages between the front page and the first page of the main body of the work; and (ii) the notice is reproduced prominently and is set apart from other matter on the page where it appears;

(8) Any page between the last page of the main body of the work and back page, if: (i) There are no more than ten pages between the last page of the main body of the work and the back page; and (ii) the notice is reproduced prominently and is set apart from the other matter on the page where it appears.

(9) In the case of a work published as an issue of a periodical or serial, in addition to any of the locations listed in paragraphs (d)(1) through (8) of this section, a notice is acceptable if it is located: (i) As a part of, or adjacent to, the masthead; (ii) on the page containing the masthead if the notice is reproduced prominently and is set apart from the other matter appearing on the page; or (iii) adjacent to a prominent heading, appearing at or near the front of the issue, containing the title of the periodical or serial and any combination of the volume and issue number and date of the issue.

(10) In the case of a musical work, in addition to any of the locations listed in paragraphs (d)(1) through (9) of this section, a notice is acceptable if it is located on the first page of music.

(e) *Single-Leaf Works.* In the case of single-leaf works, a notice reproduced on the copies anywhere on the front or back of the leaf is acceptable.

(f) *Contributions to Collective Works.* For a separate contribution to a collective work to be considered to "bear its own notice of copyright," as provided by 17 U.S.C. 404, a notice reproduced on the copies in any of the following positions is acceptable:

(1) Where the separate contribution is reproduced on a single page, a notice is acceptable if it appears: (i) Under the title of the contribution on that page; (ii) adjacent to the contribution; or (iii) on the same page if, through format, wording, or both, the application of the notice to the particular contribution is made clear;

(2) Where the separate contribution is reproduced on more than one page of the collective work, a notice is acceptable if it appears: (i) Under a title appearing at or near the beginning of the contribution; (ii) on the first page of the main body of the contribution; (iii) immediately following the end of the contribution; or (iv) on any of the pages where the contribution appears, if: (A) The contribution is reproduced on no more than twenty pages of the collective work; (B) the notice is reproduced prominently and is set apart from other matter on the page where it appears; and (C) through format, wording, or both, the application of the notice to the particular contribution is made clear;

(3) Where the separate contribution is a musical work, in addition to any of the locations listed in paragraphs (f)(1) and (2) of this section, a notice is acceptable if it is located on the first page of music of the contribution;

(4) As an alternative to placing the notice on one of the pages where a separate contribution itself appears, the contribution is considered to "bear its own notice" if the notice appears clearly in juxtaposition with a separate listing of the contribution by title, or if the contribution is untitled, by a description reasonably identifying the contribution: (i) on the page bearing the copyright notice for the collective work as a whole, if any; or (ii) in a clearly identified and readily-accessible table of contents or listing of acknowledgements appearing near the front or back of the collective work as a whole.

(g) *Works Reproduced in Machine-Readable Copies.* For works reproduced in machine-readable copies (such as magnetic tapes or disks, punched cards, or the like, from which the work cannot ordinarily be visually perceived except with the aid of a machine or device,[1] each of the following constitute examples of acceptable methods of affixation and position of notice:

(1) A notice emodied in the copies in machine-readable form in such a manner that on visually perceptible printouts it appears either with or near the title, or at the end of the work;

(2) A notice that is displayed at the user's terminal at sign on;

(3) A notice that is continuously on terminal display; or

(4) A legible notice reproduced durably, so as to withstand normal use, on a gummed or other label securely affixed to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copies.

(h) *Motion Pictures and Other Audiovisual Works.* (1) The following constitute examples of acceptable methods of affixation and positions of the copyright notice on motion pictures and other audiovisual works: A notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it ordinarily would appear whenever the work is performed in its entirety, and that is located: (i) with or near the title; (ii) with the cast, credits, and similar information; (iii) at or immediately following the beginning of the work; or (iv) at or immediately preceding the end of the work.

(2) In the case of an untitled motion picture or other audiovisual work whose duration is sixty seconds or less, in addition to any of the locations listed in paragraph (h)(1) of this section, a notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it ordinarily would appear to the projectionist or broadcaster when preparing the work for performance, is acceptable if it is located on the leader of the film or tape immediately preceding the beginning of the work.

(3) In the case of a motion picture or other audiovisual work that is distributed to the public for private use, the notice may be affixed, in addition to

[1] Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform) and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category.

the locations specified in paragraph (h)(1) of this section, on the housing or container, if it is a permanent receptacle for the work.

(i) *Pictorial, Graphic, and Sculptural Works.* The following constitute examples of acceptable methods of affixation and positions of the copyright notice on various forms of pictorial, graphic, and sculptural works:

(1) Where a work is reproduced in two-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, of the front or back of the copies, or to any backing, mounting, matting, framing, or other material to which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed, is acceptable.

(2) Where a work is reproduced in three-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, to any visible portion of the work, or to any base, mounting, framing, or other material on which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed, is acceptable.

(3) Where, because of the size or physical characteristics of the material in which the work is reproduced in copies, it is impossible or extremely impracticable to affix a notice to the copies directly or by means of a durable label, a notice is acceptable if it appears on a tag that is of durable material, so as to withstand normal use, and that is attached to the copy with sufficient durability that it will remain with the copy while it is passing through its normal channels of commerce.

(4) Where a work is reproduced in copies consisting of sheet-like or strip material bearing multiple or continuous reproductions of the work, the notice may be applied: (i) To the reproduction itself; (ii) to the margin, selvage, or reverse side of the material at frequent and regular intervals; or (iii) if the material contains neither a selvage nor a reverse side, to tags or labels, attached to the copies and to any spools, reels, or containers housing them in such a way that a notice is visible while the copies are passing through their normal channels of commerce.

(5) If the work is permanently housed in a container, such as a game or puzzle box, a notice reproduced on the permanent container is acceptable.

(17 U.S.C. 401, 702)

Dated: November 17, 1981.

David Ladd,

Register of Copyrights.

Approved:

William J. Welsh,

Acting Librarian of Congress.

[FR Doc. 81-34379 Filed 11-30-81; 8:45 am]

BILLING CODE 1410-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP OF2404/R365; PH-FRL-1995-2]

Nitrapyrin; Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the soil microbiocide nitrapyrin and its metabolite in or on the raw agricultural commodities rice grain at 0.2 ppm and rice straw at 2.0 ppm. This regulation was requested by Dow Chemical Co. This regulation establishes the maximum permissible level for residues of nitrapyrin in or on the commodities.

EFFECTIVE DATE: Effective on December 1, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of October 29, 1980 (45 FR 71678) that Dow Chemical Co., PO Box 1706, Midland, MI 48640, has submitted a pesticide petition (PP OF2404) to EPA. The petition proposed that 40 CFR 180.350 be amended by the establishment of tolerances for the residues of the soil microbiocide nitrapyrin [2-chloro-6-(trichloromethyl) pyridine] and its metabolite, 6-chloropicolinic acid in or on the raw agricultural commodity rice grain at 0.05 part per million (ppm). Dow Chemical Co. subsequently amended the petition (46 FR 51643, October 21, 1981) by increasing the proposed tolerance of 0.05 ppm to 0.2 in or on rice grain and adding the commodity rice straw at 2.0 ppm.

No comments were received in response to the notices of filing.

The data submitted in this petition and other relevant material have been evaluated. The data included metabolism studies in plants, dogs, and rats; plant residue studies; 90-day dog and rat feeding studies (parent compound-nitrapyrin) with no-observable-effect level (NOEL) of 600 ppm and 300 ppm respectively; 90-day dog and rat feeding studies (metabolite 6-chloropicolinic acid) with a NOEL of 2,000 ppm and 300 ppm, respectively; a rat acute oral toxicity study with a lethal dose (LD_{50}) equal to 1.23 grams (g)/kilogram (kg) of body weight (bw); 2-year dog and rat feeding studies (metabolite) with a NOEL greater than 2,000 ppm and equal to 300 ppm respectively; a 3-generation rat reproduction study (metabolite) with a reproductive NOEL of 1,000 ppm and a rat teratology study (metabolite) with no teratogenic potential noted at 1,000 ppm; and a 2-year rat oncogenicity study (metabolite) with no oncogenic potential noted at 300 ppm (same study as above 2-year rat feeding study). An oncogenicity study in a second species is lacking and needed to reinforce the present findings. Dow Chemical Co., has agreed to submit the second oncongenicity study by January 1, 1983. A second teratology study using a second species dosed by gavage will be required.

Tolerances have been previously established for residues of the metabolite 6-chloropicolinic acid ranging from 0.05 ppm in the meat byproducts of cattle, goats, hogs, horses, poultry, and sheep to 1.0 ppm on cottonseed. Because nitrapyrin *per se* has been found to be a part of the residue on some crops, § 180.350 is being revised to express the tolerances in terms of combined residues of nitrapyrin and its metabolite 6-chloropicolinic acid.

The already established tolerances for the various commodities in this regulation are adequate to cover the combined residues of nitrapyrin and its metabolite.

Based upon the NOEL of 300 ppm in the rat 2-year feeding study, the acceptable daily intake (ADI) has been set at 0.15 mg/kg of bw/day with a maximum permissible intake (MPI) of 9/mg/day/60 kg person. The previously established and proposed tolerances for nitrapyrin utilize 0.38 percent of the ADI.

There are no regulatory actions pending against the registration of this chemcial. The metabolism of nitrapyrin

in plants and animals is adequately understood. Analytical methods for nitrapyrin and its 6-chloropicolinic acid metabolite (gas-liquid chromatography using an electron capture detector) are available for enforcement purposes.

The pesticide is considered useful for the purpose for which tolerances are sought, and it is concluded that the tolerance for residues of nitrapyrin and its 6-chloropicolinic acid metabolite in or on the raw agricultural commodities will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, on or before December 31, 1981, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708, (A-110), 401 M St., SW., Washington, DC 20460. Such objections must be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Aalysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirement of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that the regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

Effective on: December 1, 1981.

(Sec. 409(c)(1), 72 Stat. 1786, 21 U.S.C. 348(c)(1))

Dated: November 17, 1981.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore 40 CFR 180.350 is revised as follows:

§ 180.350 Nitrapyrin; tolerances for residues.

Tolerances are established for the combined residues of the soil microbiocide nitrapyrin [2-chloro-6-(trichloromethyl) pyridine] and its metabolite, 6-chloropicolinic acid in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.05(N)
Cattle, mbyp	0.05(N)
Cattle, meat	0.05(N)
Corn, fodder	1.0
Corn, forage	1.0
Corn, grain	0.1(N)
Corn, fresh (including sweet K+CWHR	1.1(N)
Cottonseed	1.0
Goats, fat	0.05(N)
Goats, mbyp	0.05(N)
Goats, meat	0.05(N)
Hogs, fat	0.05(N)
Hogs, mbyp	0.05(N)
Hogs, meat	0.05(N)
Horses, fat	0.05(N)
Horses, mbyp	0.05(N)
Horses, meat	0.05(N)
Poultry, fat	0.05(N)
Poultry, mbyp	0.05(N)
Poultry, meat	0.05(N)
Rice, grain	0.2
Rice, straw	2.0
Sheep, fat	0.05(N)
Sheep, mbyp	0.05(N)
Sheep, meat	0.05(N)
Sorghum, fodder	0.5
Sorghum, forage	0.1(N)
Sorghum, grain	0.1(N)
Wheat, forage	0.5
Wheat, grain	0.1(N)
Wheat, straw	0.5

[FR Doc. 81-34366 Filed 11-30-81; 8:45 am]

BILLING CODE 6560-32-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-7

[GSA Bulletin FPMR A-40, Supp. 2]

Changes to Federal Travel Regulations

AGENCY: Transportation and Public Utilities Service, GSA.

ACTION: Final rule.

SUMMARY: GSA has issued GSA Bulletin FPMR A-40, Supplement 2, transmitting changed pages to amend the Federal Travel Regulations (FTR), FPMR 101-7, to (a) decrease the mileage rate from 22.5 to 20.0 cents per mile for use of a privately owned automobile under certain circumstances and (b) revise the listing of high rate geographical areas. These FTR changes reflect the results of GSA's recent report to the Congress on the investigations of the cost of travel and the operation of privately owned vehicles. GSA is required by statute to conduct these cost investigations and report the results to the Congress annually. The report to the Congress is published as a notice document in this **Federal Register.**

DATES: Effective December 6 1981.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Jones, Federal Travel Management Division (202-275-0651).

SUPPLEMENTARY INFORMATION: 1. The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

PART 101-7 FEDERAL TRAVEL REGULATIONS

2. Accordingly, the Federal Travel Regulations which are incorporated by reference in Part 101-7, are amended as follows:

a. Paragraphs 1-4.2a(2) and 1-4.2c (1) and (2) are revised to reflect a decrease in the mileage rate from 22.5 to 20.0 cents per mile for the use of privately owned automobiles in certain circumstances.

b. The HRGA listing previously found in paragraph 1-8.6 is revised to designate additional HRGA's and to increase the maximum actual subsistence expense rate and/or redefine the boundaries of certain existing HRGA's. The HRGA listing is moved to appendix 1-A.

Note.—The GSA has published the revised HRGA listing as a notice document in this **Federal Register.**

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

Dated: November 10, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-34329 Filed 11-30-81; 8:45 a.m.]

BILLING CODE 6820-AM-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[Circular No. 2493]

Application Procedures; Alaska Oil and Gas Leasing

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This procedural rulemaking is to notify the public that all oil and gas leasing responsibilities for Alaska will reside in the Alaska State Office in Anchorage and not in the Fairbanks District Office. Therefore, all applications and documents pertaining to oil and gas leasing must be filed in the Alaska State Office in Anchorage and not in the Fairbanks District Office. This rulemaking also notifies the public of the new mailing address of the Colorado State Office.

EFFECTIVE DATE: December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Jan Homant, (202) 343-7753.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

November 25, 1981.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), § 1821.2-1, subpart 1826, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as follows.

PART 1820—APPLICATION PROCEDURES

§ 1821.2-1 [Amended]

1. Paragraph (d) is amended by:

(a) Amending Office and Area of Jurisdiction of the Alaska State Office to read: Alaska State Office, 701 "C" Street, Box 13, Anchorage, Alaska 99513—Southern Alaska, plus *all* oil and gas leasing.[1]

(b) Amending Office and Area of Jurisdiction of the Fairbanks District Office to read: Fairbanks District Office, N. Post of Ft. Wainwright, P.O. Box 1150, Fairbanks, Alaska 99707—Northern Alaska except for oil and gas leasing.[1]

(c) Amending the address of the Colorado State Office to read: Colorado State Office, 1037 20th Street, Denver Colorado 80202—Colorado.

[FR Doc. 81-34432 Filed 11-30-81 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA 6199]

National Flood Insurance Program; Changes in Special Flood Hazard Areas; Florida, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Associate Director, State and Local Programs and Support reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0220.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Map(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection. Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.4 (Presently appearing at its former Section 24 CFR 1915).

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

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).

These elevations, together with the flood plain management measures required by 60.3 (presently appearing at its former § 1910.3) of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Florida: St. Lucie	City of Fort Pierce	*News Tribune*: Sept. 11, 1981; Sept. 18, 1981	The Honorable Buell Brown, Mayor, City of Fort Pierce, City Hall, P.O. Box 1480, Fort Pierce, FL 33450.	Aug. 19, 1981	120286C
Iowa: Muscatine	City of Muscatine	*The Muscatine Journal*: Aug. 24, 1981; Aug. 25, 1981	The Honorable Evelyn L. Schauland, Mayor, City of Muscatine, Third and Sycamore, Muscatine, IA 52761.	Aug. 26, 1981	190213B

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Kansas: Leavenworth	(Unincorporated areas)	*The Leavenworth Times*: Aug. 17, 1981; Aug. 18, 1981	Mr. Louis A. Klemp, Chairman, Board of Commissioners, Leavenworth County Courthouse, Fourth and Walnut, Leavenworth, KS 66048.	Aug. 18, 1981	200186C
Missouri: Clay and Jackson	City of Independence	*The Examiner*: Aug. 18, 1981; Aug. 19, 1981	The Honorable E. Lee Comer, Jr., Mayor, City of Independence, 103 North Main, Independence, MO 64050.	Aug. 18, 1981	290172B
Nebraska: Burt	City of Tekamah	*The Burt County Plaindealer*: Aug. 13, 1981; Aug. 20, 1981.	The Honorable Carl L. Schroeder, Mayor, City of Tekamah, P.O. Box 143, Tekamah, NB 68061.	Aug. 11, 1981	310024D
Pennsylvania: Bradford	Borough of Monroe	*The Daily Review*: Aug. 21, 1981; Aug. 28, 1981	Honorable Paul F. Thrasher, Mayor, Borough of Monroe, R.D. 1, Monroeton, PA 18832	Aug. 28, 1981	420170B
Washington:					
King	City of Issaquah	*The Issaquah Press*: Sept. 9, 1981; Sept. 16, 1981	The Honorable H. G. Herrington, Mayor, City of Issaquah, P.O. Box M, Issaquah, WA 98027.	Aug. 25, 1981 (68-B).	530079B
Kitsap	City of Poulsbo	*Kitsap County Herald*: Aug. 12, 1981; Aug. 19, 1981	The Honorable Clyde C. Caldart, Mayor, City of Poulsbo; 127 Jensen Way, P.O. Box 98, Poulsbo, WA 98370.	Aug. 11, 1981	530241C
Connecticut:					
Hartford	City of Hartford	*The Hartford Courant*: Oct. 2, 1981; Oct. 9, 1981	The Honorable George A. Athanson, Mayor, City of Hartford, City Hall, Hartford, CT 06103	Sept. 24, 1981	095060A
Hartford	Town of West Hartford	*The Hartford Courant*: Sept. 18, 1981; Sept. 25, 1981	The Honorable Ann Streeter, Mayor, Town of West Hartford, 28 S. Main Street, West Hartford, CT 06107.	Sept. 25, 1981	095082B
Texas: Tarrant	City of North Richland Hills	*Mid-Cities Daily News*: Sept. 21, 1981; Sept. 22, 1981	The Honorable Dick Faram, Mayor, City of North Richland Hills, P.O. Box 18609, North Richland Hills, TX 76118.	Sept. 8, 1981 (66-B).	480607B
Alabama: Autauga and Elmore	City of Prattville	*The Prattville Progress*: Oct. 15, 1981; Oct. 22, 1981	The Honorable C. M. Gray, Mayor, City of Prattville, P.O. Box 277, Prattville, Alabama 36067.	Oct. 23, 1981	010002C
California:					
Santa Clara	City of Gilroy	*The Gilroy-Morgan Hill Dispatch*: Oct. 14, 1981; Oct. 16, 1981.	The Honorable Norman B. Goodrich, Mayor, City of Gilroy, 7390 Rosanna Street, P.O. Box 66, Gilroy, CA 95020.	Oct. 6, 1981	060340C
Yolo	City of Woodland	*The Daily Democrat*: Oct. 14, 1981; Oct. 15, 1981	The Honorable Harry O. Walker, Mayor, City of Woodland, 300 First Street, Woodland, CA 95695.	Oct. 13, 1981	060426B
Colorado: Morgan	City of Brush	*The Brush News-Tribune*: Oct. 14, 1981; Oct. 21, 1981	The Honorable Raymond M. Paulsen, Mayor, City of Brush, 600 Edison Street, P.O. Box 363, Brush, CO 80723.	Oct. 13, 1981	080130C
Connecticut: Hartford	Town of East Hartford	*The East Harford Gazette*: Oct. 14, 1981; Oct. 21, 1981	The Honorable George A. Dagon, Mayor, Town of East Hartford, 740 East Main Street, East Hartford, CT 06108.	Oct. 23, 1981	090026D
Florida:					
Orange	City of Apopka	*The Apopka Chief*: Oct. 16, 1981; Oct. 23, 1981	Mr. Thomas E. Richeson, P.E., P.O. Drawer 1229, Apopka, Florida 32703.	Oct. 23, 1981	120180C
Hillsborough	Hillsborough County	*Tampa Tribune*: Nov. 6, 1981; Nov. 13, 1981	The Honorable Jan Platt, Chairperson, County Commissioners, Hillsborough County, P.O. Box 1110, Tampa, Florida 33601.	Oct. 8, 1981	120112B
Palm Beach	Village of Palm Springs	*The Evening Times*: Oct. 16, 1981; Oct. 23, 1981	Mr. Arthur F. Rudford, Director of Public Works, Village of Palm Springs, 226 Cypress Lane, Palm Springs, FL 33461.	Oct. 23, 1981	120223C
Osceola	City of St. Cloud	*The St. Cloud Times*: Oct. 15, 1981; Oct. 22, 1981	The Honorable Sarah Lewis, Mayor, City of St. Cloud, City Hall, 1300 9th Street, St. Cloud, FL 32769.	Oct. 23, 1981	120191C
Iowa: Iowa	City of Marengo	*The Pioneer-Republican*: Oct. 15, 1981; Oct. 22, 1981	The Honorable Otto Maas, Mayor, City of Marengo, 153 East Main Street, Marengo, IA 52301.	Oct. 13, 1981	190157C
Illinois:					
Jersey	City of Grafton	*Democrat News*: Oct. 13, 1981; Oct. 20, 1981	Honorable Gerald Naim, City of Grafton, Box 251, City Hall, Grafton, IL 62037.	Oct. 23, 1981	170314C

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
McLean	City of LeRoy	*LeRoy Journal*: Sept. 24, 1981; Oct. 1, 1981	Honorable Jack Moss, City of LeRoy, 111 East Center Street, LeRoy, IL 61752.	Oct. 2, 1981	170499C.
Kansas:					
Harvey	City of Burrton	*Burrton Graphic*: Oct. 15, 1981; Oct. 22, 1981	The Honorable Brian Boston, Mayor, City of Burrton, P.O. Box 146, Burrton, KS 67020.	Oct. 13, 1981	200130C.
Johnson	City of Gardner	*The Gardner News*: Oct. 14, 1981; Oct. 21, 1981	The Honorable Phyllis Thomen, Mayor, City of Gardner, 112 South Elm Street, Gardner, KS 66030.	Oct. 13, 1981	200164C.
Michigan: Newaygo	City of Fremont	*Fremont Times Indicator*: Sept. 23, 1981; Sept. 30, 1981.	Henry Van Dop, City Manager, City of Fremont, 101 East Main Street, Fremont, MI 49412.	Oct. 2, 1981	260167C.
Minnesota:					
Stearns	City of Cold Spring	*Cold Spring Record*: Sept. 24, 1981; Oct. 1, 1981	James Trueman, Clerk-Treasurer, City of Cold Spring, 27 Red River South, Cold Spring, MN 56320.	Oct. 2, 1981	270444C.
Roseau	City of Roseau	*Roseau Times Region*: Oct. 20, 1981; Oct. 27, 1981	Honorable Milton Ameson, City of Roseau, Box 307, Roseau, MN 56751.	Oct. 30, 1981	270414C.
New Hampshire:					
Merrimack	Town of Bow	*The Concord Monitor*: Oct. 9, 1981; Oct. 16, 1981	Ms. Sarah Swenson, Chairman, Board of Selectmen, Town of Bow, 10 Grandview Road, Bow, New Hampshire 03301	Oct. 16, 1981	330107C.
North Carolina:					
Carteret	Carteret County	*Carteret County News Times*: Nov. 19, 1981; Nov. 26, 1981.	The Honorable Mary Sue Noe, County Commissioner, Carteret County Courthouse, P.O. Drawer 630, Beaufort, NC 28516.	Oct. 19, 1981	370043A.
Cleveland	City of Shelby	*The Shelby Daily Star*: Oct. 16, 1981; Oct. 23, 1981	The Honorable George W. Clay, Jr., Mayor, City of Shelby, City Hall, P.O. Box 207, Shelby, North Carolina 28150.	Oct. 23, 1981	370064C.
Oklahoma: Rogers	(Unincorporated area)	*The Claremore Progress*: Oct. 14, 1981; Oct. 15, 1981	Mr. Elmer L. McGuire, Chairman, Rogers County Commissioners, County Courthouse, 219 South Missouri, Claremore, OK 74017.	Oct. 5, 1981 (66-B).	405379A.
Pennsylvania:					
Berks	Township of Cumru	*Reading Eagle Times*: Oct. 23, 1981; Oct. 30, 1981	Edgar J. Zerbe, President-Commissioner, Township of Cumru, R.D. 3005, Welsh Road, Mohnton, PA 19540.	Oct. 30, 1981	420130B.
Chester	Township of Thornbury	*West Chester Daily Local Times*: Oct. 9, 1981; Oct. 16, 1981.	Harold Smithson, Secretary, Thornbury Township Supervisors, P.O. Box 11, Westtown, PA 19395.	Oct. 16, 1981	420290C.
Rhode Island: Bristol	Town of Barrington	*Barrington Times*: Nov. 13, 1981; Nov. 20, 1981	Mr. Robert J. Schiedler, Town Manager, Town Hall, 283 County Road, Barrington, RI 02806.	Oct. 29, 1981 (66-B).	445392C.
Texas: Bandera	City of Bandera	*The Bandera Bulletin*: Oct. 15, 1981; Oct. 22, 1981	The Honorable W. D. Smith, Mayor, City of Bandera, P.O. Box 896, Bandera, TX 78003.	Oct. 13, 1981	480021C.
Virginia: Independent City	City of Radford	*Radford News Journal*: Oct. 2, 1981; Oct. 9, 1981	Robert Ashbury, City Manager, City of Radford, 619 Second Street, Radford, VA 24141.	Oct. 9, 1981	510127B.
Wisconsin:					
Waukesha	Village of Menomonee Falls	*Menomonee Falls News*: Oct. 1, 1981; Oct. 8, 1981	Frederick Gottlieb, Village Manager, West 156 North, 8480 Pilgrim Road, Menomonee Falls, WI 53051.	Oct. 9, 1981	550493C.
St. Croix	Village of North Hudson	*Hudson Star Observer*: Oct. 1, 1981; Oct. 8, 1981	Honorable Wally Gregarson, Village of North Hudson, 309 7th Street North, North Hudson, WI 54176.	Oct. 9, 1981	555568C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(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; Executive Order 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 4, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-34143 Filed 11-30-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations; Alabama, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to 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 community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., National Flood Insurance Program, (202) 287–0270, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determination of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection 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 44 CFR Part 67). 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 Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the Provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

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

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	Unincorporated areas of Etowah County (FEMA-6074)	Coosa River	Just upstream of State Highway 177	*514
		Big Wills Creek	Just upstream of U.S. Highway 59	*531
			Just upstream of U.S. Highway 431 and 278	*556
		Little Wills Creek	Just upstream of Madison Avenue	*529
		Dry Creek	Just upstream of Pleasant Valley Road	*514
		Airport Tributary	Approximately 7,000 feet upstream of State Highway 77.	*523
		Black Creek	Just upstream of Delmont Drive	*718
Maps available for inspection at Etowah County Courthouse, 800 Forrest Avenue, Gadsden, Alabama 35901.				
Colorado	Collbran (town) Mesa County (FEMA-6121)	Plateau Creek	20 feet downstream from center of Main Street over channel	*5,984
		Grove Creek	Downstream edge of Park Street over channel	*5,966
Maps available for inspection at Town Hall, Collbran, Colorado.				
Illinois	(Unincorporated), Du Page County (Docket No. FEMA-5920)	Des Plaines River	At the southern county boundary	*594
			At the eastern county boundary	*598
		East Branch Du Page River	At the southern county boundary	*649
			Just upstream of 75th Street	*655
			About 0.23 mile upstream of Maple Avenue	*664
			About 0.23 mile downstream of State Route 5	*669
			About 00 feet downstream of State Route 53, near Arboretum Road.	*672
			About 0.17 mile upstream from the confluence of East Branch Tributary No. 4.	*682
			Just upstream of the State Route 53 second crossing	*687
			Just upstream of St. Charles Road	*692
			Just upstream of North Avenue	*696
			About 1.1 miles upstream of North Avenue	*701
			Just upstream of Illinois Central Gulf Railroad	*711
			About 0.98 mile upstream of Illinois Central Gulf Railroad.	*712
		East Branch Tributary No. 1	Mouth at East Branch Du Page River	*694
			About 710 feet downstream of Swift Road	*697
			About 600 feet downstream of Swift Road	*700
			Just upstream of Swift Road	*706
			About 100 feet upstream of North Avenue	*719
		East Branch Tributary No. 2	About 1,200 feet downstream of Eastern Avenue	*693
			About 100 feet upstream of Eastern Avenue	*705
			Just downstream of Goodrich Avenue	*715
			Just upstream of Park Boulevard	*716
			About 290 feet upstream of Main Street	*724
		East Branch Tributary No. 4	About 450 feet downstream of Sunny Brook Road	*680
			Just upstream of Bryant Road	*710

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 1,000 feet upstream of Bryant Road	*715
			Just upstream of 22nd Street	*728
			About 0.27 mile upstream of Sheffield Road	*731
			About 2,100 feet upstream of Sheffield Road	*736
		East Branch Tributary No. 5	Mouth at East Branch Du Page River	*671
			About 0.16 mile upstream of mouth	*671
			About 0.20 mile upstream of mouth	*679
			About 0.38 mile upstream of mouth	*680
			About 370 feet downstream of Arboretum Road	*686
			About 320 feet upstream of Arboretum Road	*689
			About 0.29 mile upstream of Arboretum Road	*692
			About 60 feet downstream of Leask Lane	*697
			About 0.19 mile upstream of Leask Lane	*703
			About 0.42 mile upstream of Leask Lane	*714
			About 0.17 mile downstream of Butterfield Road	*725
			Just downstream of Butterfield Road	*740
			Just upstream of Butterfield Road	*746
			About 100 feet upstream of Naperville-Wheaton Road	*750
		East Branch Tributary No. 7	About 660 feet upstream of mouth	*656
			Just upstream of Greene Road	*668
			About 0.20 mile upstream of Greene Road	*669
			Just upstream of Palomino Drive	*726
		West Branch Du Page River	At the southern county boundary	*646
			About 0.55 mile upstream of the southern county boundary.	*650
			About 0.29 mile downstream of 75th Stree	*655
			Just downstream of 75th Street	*657
			About 320 feet upstream of Hobson Road	*660
			About 0.70 mile upstream of Hobson Road	*662
			About 1.2 miles downstream of Ogden Avenue	*677
			Just upstream of Ogden Avenue	*681
			Just downstream of Fawell Dam	*682
			Just upstream of Fawell Dam	*691
			Just upstream of State Route 5	*692
			About 0.29 mile downstream of Williams Street	*698
			About 750 feet downstream of Geneva Road	*720
			Just upstream of abandoned railroad located about 0.71 mile downstream of North Avenue.	*726
			Just downstream of St. Charles Road	*730
			About 290 feet upstream of Army Trail Road	*738
			Just upstream of the Illinois Central Gulf Railroad located about 0.35 mile upstream of Schick Road.	*746
			Just upstream of Jefferson Road	*767
			About 400 feet downstream of Lake Street	*774
			About 100 feet downstream of the Chicago, Milwaukee, St. Paul and Pacific Railroad.	*781
			At the northern county boundary	*785
		West Branch Tributary No. 1	About 0.44 mile of downstream of Cloverdale Road	*769
			Just downstream of Cloverdale Road	*770
			Just upstream of Gary Avenue	*772
		West Branch Tributary No. 2	About 1,000 feet downstream of Stearns Road	*762
			About 750 feet downstream of Stearns Road	*765
			Just upstream of Stearns Road	*767
			About 0.68 mile upstream of Stearns Road	*779
			About 1.09 miles upstream of Stearns Road	*782
		West Branch Tributary No. 3	Mouth at West Branch Du Page River	*726
			About 0.14 mile downstream of Prince Crossing Road	*726
			Just downstream of Prince Crossing Road	*729
			Just upstream of Prince Crossing Road	*733
			About 25 feet upstream of Chicago and North Western Railroad.	*734
			About 0.49 mile upstream of Chicago and North Western Railroad.	*735
			About 580 feet downstream of Woodcrest Drive	*750
			Just downstream of Woodcrest Drive	*751
		West Branch Tributary No. 4	Mouth at West Branch Du Page River	*726
			About 0.21 mile upstream of mouth	*727
			Just downstream of North Avenue	*735
			Just upstream of North Avenue	*738
			Just upstream of St. Charles Road	*740
			About 0.34 mile upstream of Timber Lane	*746
		West Branch Tributary No. 5	Mouth at West Branch Du Page River	*710
			Just upstream of Lester Street	*710
			Just upstream of Bolles Avenue	*717
			Just downstream of Donald Avenue	*718
			About 50 feet upstream of Chicago and North Western Railroad.	*725
		West Branch Tributary No. 6	Mouth at West Branch Du Page River	*660
			About 350 feet upstream of mouth	*660
			About 0.47 mile upstream of mouth	*685
		West Branch Tributary No. 7	Mouth at West Branch Du Page River	*657
			About 360 feet upstream of mouth	*657
			Just upstream of unnamed road, about 470 feet downstream of Oxford Lane.	*669
			About 0.28 mile upstream of Oxford Lane	*687
		Brewster Creek	Just upstream of Munger Road	*774
			About 0.28 mile upstream of Munger Road	*774
		Ferry Creek	Mouth at West Branch Du Page River	*661

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 1,200 feet upstream of Ferry Road	*692
			About 0.7 mile upstream of Ferry Road	*695
			About 650 feet downstream of Home Avenue	*707
			About 200 feet downstream of Home Avenue	*708
			Just downstream of Home Avenue	*711
			About 80 feet upstream of State Route 59	*712
			About 0.4 mile upstream of State Route 59	*716
		Ferry Creek Tributary No. 1	Mouth at Ferry Creek	*691
			About 850 feet upstream of River Road	*692
			About 0.46 mile upstream of McDowell Road	*704
		Klein Creek	About 0.43 mile above mouth	*722
			About 320 feet downstream of Farm Road	*725
			About 250 feet upstream of Farm Road	*729
			Just upstream of County Farm Road	*735
			About 0.23 mile upstream of County Farm Road	*736
			Just upstream of St. Charles Road	*743
			Just upstream of Kuhn Road	*746
			About 0.29 mile upstream of Kuhn Road	*748
			Just upstream of Lies Road	*755
			About 110 feet downstream of Illinois Central Gulf Railroad	*756
			Just upstream of Illinois Central Gulf Railroad	*761
			Just downstream of Schmale Road	*767
			About 0.30 mile upstream of Schmale Road	*769
		Klein Creek Tributary No. 1	About 240 feet upstream of mouth	*722
			About 100 feet upstream of Prairie Road	*726
			About 0.23 mile upstream of Prairie Road	*726
			About 600 feet downstream of County Farm Road	*738
			Just upstream of County Farm Road	*738
			About 710 feet upstream of Center Avenue	*752
			Just upstream of Pleasant Hill Road	*767
		Klein Creek Tributary No. 3	Mouth at Klein Creek	*756
			Just upstream of unnamed bridge, about 1,000 feet upstream of Gary Avenue	*762
			About 0.41 mile upstream of Gary Avenue	*767
		Kress Creek	About 0.34 mile above the mouth	*706
			About 600 feet downstream of Joy Road	*715
			Just upstream of Joy Road	*720
			Just upstream of Elgin, Joliet and Eastern Railway	*724
			Just upstream of Town Road	*727
			About 0.5 mile upstream of Town Road	*728
			Just upstream of Road A	*734
			Just upstream of Burlington Northern Railroad	*738
			Just downstream of Roosevelt Road	*745
			Just upstream of Indian Boundary Road	*750
			About 50 feet upstream of Industrial Drive	*753
			About 70 feet upstream of Powis Road	*756
		Unnamed Tributary to Kress Creek	Just upstream of Town Road	*736
			About 170 feet upstream of Town Road	*737
		Lacy Creek	About 0.26 mile above the mouth	*677
			About 0.77 mile downstream of Finley Road	*679
			About 0.54 mile downstream of Finley Road	*682
			Just upstream of Finley Road	*689
			About 400 feet downstream of Highland Avenue	*697
			About 0.42 mile upstream of Highland Avenue	*697
		Meacham Creek	Just downstream of Medinah Country Club Road	*703
			About 0.51 mile upstream of Medinah Country Club Road	*705
			Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*714
			Just downstream of Medinah Road	*716
		Norton Creek Tributary	Just upstream of Chicago and North Western Railroad	*745
			Just downstream of Powis Road	*747
			Just upstream of Powis Road	*749
		Prentiss Creek	About 830 feet upstream of mouth	*658
			About 150 feet upstream of State Route 53	*665
			About 1,850 feet upstream of State Route 53	*669
			About 200 feet upstream of Hobson Road	*697
			About 0.36 mile upstream of Hobson Road	*700
			About 0.75 mile upstream of Hobson Road	*709
		St. Joseph Creek	Just upstream of Main Street	*670
			About 0.65 mile upstream of Burlington Northern Railroad	*680
			About 0.6 mile downstream of Lee Street	*693
			About 0.4 mile upstream of Lee Street	*698
			Just upstream of 59th Street	*730
			Just downstream of 61st Street	*734
		Salt Creek	About 1,800 feet downstream of Roosevelt Road	*661
			Just upstream of the Illinois Central Gulf Railroad	*672
			About 0.91 mile upstream of Interstate 90	*677
			About 0.82 mile downstream of Thorndale Avenue	*680
			At the northern county boundary	*683
		Sawmill Creek	About 0.20 mile upstream of mouth	*595
			About 0.17 mile downstream of Eastwood Drive	*652
			About 150 feet downstream from confluence of Sawmill Creek Tributary No. 1	*674
			At the southern corporate limits of the City of Darien	*688
		Sawmill Creek Tributary No. 1	Mouth at Sawmill Creek	*675

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 200 feet upstream of Clarendon Hills Road	*695
			Just downstream of 79th Street	*700
		Sawmill Creek Tributary No. 3	Mouth at Des Plaines River	*594
			About 760 feet upstream of Atchison, Topeka and Santa Fe Railroad.	*598
			Just upstream of Forest Preserve Road	*618
			About 900 feet upstream of Forest Preserve Road	*632
			About 80 feet downstream of Bluff Road	*647
			Just upstream of Bluff Road	*652
			Just upstream of Front Street	*657
			About 900 feet upstream of Cass Avenue	*670
			About 1,750 feet downstream of 91st Street	*701
			Just upstream of 91st Street	*706
		Wards Creek	Mouth at Sawmill Creek	*666
			About 0.28 mile downstream of Interstate 55	*689
			About 320 feet upstream of Interstate 55	*704
			About 1.10 miles upstream of Interstate 55	*727
		Winfield Creek	About 150 feet downstream of Roosevelt Road	*720
			Just upstream of Roosevelt Road	*722
			About 2.75 miles upstream of mouth	*727
			About 2.98 miles upstream of mouth	*728
			About 1,180 feet downstream of Gary Avenue	*732
			About 1,055 feet upstream of Gary Avenue	*732
			About 0.56 mile downstream of Bloomingdale Road	*747
			About 0.21 mile downstream of Bloomingdale Road	*748
			About 100 feet downstream of Bloomingdale Road	*756
			Just downstream of Bloomingdale Road	*764
		Ginger Creek	At the downstream Oak Brook corporate limit	*684
			About 1,600 feet downstream of concrete dam	*688
			About 950 feet downstream of concrete dam	*693
			About 850 feet upstream of concrete dam	*695
			About 950 feet upstream of concrete dam	*699
		Crabtree Creek	Just upstream of State Route 53	*661
			About 0.34 mile upstream of State Route 53	*676
		Unnamed Creek North of 22nd Street	About 0.76 mile upstream of mouth	*694
			About 1.02 miles upstream of mouth	*703
		Waubansee Creek	About 8.01 miles upstream of mouth	*678
			About 8.06 miles upstream of mouth	*679
		Winding Creek	About 0.65 mile downstream of Modaff Road	*672
			About 580 feet downstream of Modaff Road	*685
			Just downstream of Modaff Road	*686
		Sugar Creek	About 940 feet downstream of Ardmore Avenue	*672
			Just downstream of Ardmore Avenue	*679
		Spring Brook No. 1	About 150 feet downstream of Morris Court	*699
			Just upstream of Pamela Road	*707
			Just downstream of Essex Road	*720
			About 0.75 mile upstream of Essex Road	*724
			Just downstream of Gables Boulevard	*726
			About 180 feet upstream of Hawthorne Lane	*730
		Spring Brook No. 2	At the county boundary	*657
			Just upstream of Naperville Road	*668
			About 1.16 miles upstream of Naperville Road	*673
			Just upstream of 75th Street	*682
			Just upstream of Ogden Avenue	*691
		Tributary A	About 0.23 mile downstream of Warrenville Road	*683
			About 100 feet downstream of Warrenville Road	*690
			Just downstream of Warrenville Road	*696
		Tributary B	About 160 feet upstream of mouth	*677
			Just upstream of Burlington Northern Railroad	*685
			About 1,400 feet upstream of mouth	*685
		Armitage Ditch	Mouth at East Branch Du Page River	*698
			About 1,220 feet upstream of mouth	*707
		63rd Street Ditch	About 2,200 feet downstream of Madison Street	*691
			About 1,900 feet downstream of Madison Street	*693
			Just upstream of Madison Street	*711
			About 3,800 feet upstream of Madison Street	*719
		Spring Brook	About 500 feet upstream of Interstate 90	*668
			About 1,850 feet upstream of State Route 53	*689
			About 900 feet downstream of Pine Avenue	*749
			About 2,800 feet upstream of Pine Avenue	*779
		Westwood Creek	At Addison Avenue	*676

Maps available for inspection at the Planning Commission Office, Du Page Center, 421 North County Farm Road, Wheaton, Illinois.

Illinois	(Uninc.) Madison County (Docket No. FEMA-6121)	Wood River	At mouth	*437
			At confluence of East Fork Wood River	*437
		East Fork Wood River	At confluence of West Fork Wood River	*437
			About 1,100 feet upstream of confluence of West Fork Wood River.	*437
			About 1,000 feet downstream of State Route 140	*446
			About 2,000 feet upstream of Fosterburg Road	*503
		Stanley Creek	At mouth	*449
			About 2,650 feet upstream of Doyana Street	*454
			About 3,450 feet upstream of Culp Lane	*486
		West Fork Wood River	About 600 feet downstream of Harris Road	*460
			About 2,200 feet upstream of Straube Lane	*523
		Honeycut Branch	At mouth	*472

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 300 feet upstream of County Road 52	*494
			About 2.2 miles upstream of County Road 52	*517
		Tributary E	About 0.75 mile upstream of mouth	*451
			Just downstream of Valley Drive	*468
			Just upstream of Valley Drive	*494
			Just downstream of Oaklane Road	*500
			Just upstream of Oaklane Road	*505
		Tributary F	About 3,250 feet upstream of mouth	*451
			About 1,100 feet upstream of confluence of Tributary G.	*475
		Tributary G	At mouth	*464
			About 180 feet downstream of Sitze Street	*480
			Just upstream of Sitze Street	*493
		Tributary X	At mouth	*487
			Just downstream of Straube Lane	*524
			At northern county boundary	*550
		Tributary Z	At mouth	*473
			Just upstream of Melody Lane	*484
		Cahokia Creek	At mouth	*436
			At confluence of Indian Creek	*441
			Just downstream of State Route 159	*457
			About 600 feet upstream of State Route 140	*473
			Just downstream of Bode Road	*507
		Indian Creek	About 600 feet downstream of Old Edwardsville Road	*446
			About 800 feet upstream of Rock Hill Road	*460
			Just upstream of State Route 140	*460
			Just upstream of Moro-Holiday Shores Drive	*498
		Paddock Creek	At mouth	*472
			At confluence of Joulters Creek	*476
			Just upstream of St. James Drive	*485
			About 250 feet upstream of Yorkville Road	*516
			Just downstream of northern county boundary	*563
		Mississippi River	Just downstream of McKinley Bridge	*430
			Just upstream of Interstate 270	*434
			About 5.0 miles upstream of U.S. Route 67	*438
		Joulters Creek	Just downstream of dam at Holiday Lake	*477
			Just upstream of dam at Holiday Lake	*508
			About 600 feet upstream of Waikiki Drive	*512
			Just downstream of Renken Road	*556
			Just upstream of Renken Road	*564
			About 450 feet upstream of Renken Road	*566
		Sherry Creek	About 3,000 feet downstream of Moro-Holiday Shores Drive.	*478
			About 700 feet upstream of Sherry Creek Road	*492
		East Fork Sherry Creek	Mouth at Sherry Creek	*496
			About 100 feet upstream of Renken Road	*505
		Mooney Creek	At mouth	*458
			About 1,225 feet downstream of Chicago and North Western Railroad.	*458
			About 125 feet downstream of Chicago and North Western Railroad.	*463
			About 150 feet upstream of Chicago and North Western Railroad.	*473
			Just downstream of Schwartz Road	*485
		Canteen Creek	About 0.8 mile downstream of Conrail (City of Collinsville corporate limits).	*484
			Just downstream of Conrail	*490
			About 1,000 feet upstream of Lebanon Road	*495
			Just downstream of Frontage Road (downstream of Interstate 70).	*519
			About 0.6 mile upstream of Interstate 70	*528
		Silver Creek	At downstream county boundary	*454
			About 1,000 feet upstream of Interstate 70	*474
			About 900 feet upstream of State Route 4	*507
			About 4 miles upstream of County Road 27	*544
		East Fork Silver Creek	At mouth	*455
			About 100 feet downstream of Conrail	*457
			Just upstream of U.S. Route 40	*462
			At confluence of Sugar Fork	*468
			Just downstream of Highland Silver Lake Dam	*486
			Just upstream of Highland Silver Lake Dam	*506
			About 1.0 mile upstream of Pocahontas Road	*517
		Sugar Fork	Just upstream of mouth	*468
			About 200 feet downstream of Lower Marine Road	*480
			About 4,800 feet upstream of Mayer Road	*497
		Silver Creek Tributary No. 1	At mouth	*508
			About 200 feet upstream of County Road 13	*511
			About 1.85 miles upstream of County Road 13	*528
		Silver Creek Tributary No. 2	At mouth	*518
			About 200 feet downstream of Brandt Road	*528
			Just downstream of Missouri Pacific Railroad	*567
		Ponding From Rainfall	Just downstream of State Route 143, about 1.5 miles northwest of Indian Creek crossing.	*434
			Just upstream of State Route 143, about 1.5 miles northwest of Indian Creek crossing.	*435
			Just east of Woodland Drive, south of 9th Street	*498

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Area bounded by Cahokia Creek on south, Illinois Central Gulf Railroad on north, 1.0 mile east of and 1.0 mile west of State Route 111.	*428
			An area bounded on the north by Interstate 270, on the south by Norfolk and Western Railway, and on the west by a drainage ditch running south from the Illinois Terminal Railroad.	*422
			An area bounded on the north by Interstate 270, on the south by Norfolk and Western Railway, and on the east by a drainage ditch running south from the Illinois Terminal Railroad.	*423
			An area bounded on the north by Poag Road, on the west by State Route 111, on the south by Interstate 270, and on the east by Sand Road.	*423
			An area northwest of Poag Road, southeast of Illinois Central Railroad, and surrounding Cemetery Road.	*425
			An area lying between State Route 111, Oldenburg Road, Cahokia Creek, and Illinois Central Gulf Railroad.	*425
			An area lying just to the southeast of the Illinois Central Gulf Railroad switchyard, and northwest of Poag Road.	*425
			An area adjacent to a drainage ditch running between Poag Road and the intersection of State Route 111 and Interstate 270.	*424
			An area adjacent to a drainage ditch running southeast from the intersection of State Route 111 and Interstate 270 to Illinois Terminal Railroad.	*423
			Adjacent to and including Long Lake, in the vicinity of the Village of Pontoon Beach.	*417
			An area lying north of Cahokia Creek, south of Madison Avenue, east of Burlington Northern Railroad, and west of Hedge Road.	*428
			An area bounded on the north and east by Breckenridge Road, on the west by Alton and Southern Railway, and on the south by Pontoon Avenue within the City of Granite.	*417
			Low lying areas to the west of Alton and Southern Railway, north of the City of Granite, and southeast of State Route 203.	*419
			An area adjacent to and east of State Route 111, and just north of Georgetown Drive.	*419
			An area including and adjacent to McDonough Lake, west of State Route 157 and east of Cahokia Canal.	*417
			A low-lying area between Cahokia Canal and State Route 162, about 1,500 feet southeast of State Route 162, and northeast of Horseshoe Lake Road.	*411
			About 500 feet southeast of State Route 162 and adjacent to Lake Drive.	*415
			Between Alton and Southern Railway, Norfolk and Western Railway, and the southern Village of Pontoon Beach corporate limits.	*417
			An area south of U.S. Route 40 and west of Canteen Creek.	*421
			An area south of U.S. Route 40 and southwest of Canteen Creek.	*419
			An area south of U.S. Route 40, completely surrounded by incorporated areas of City of Collinsville.	*419
			Just west of City of Collinsville corporate limits and about 1,000 feet south of Interstate 70.	*419
			Just north of City of Collinsville corporate limits and east of Black Lane.	*419
	Maps available for inspection at the Building Environmental and Zoning Department, 103 Purcell, Edwardsville, Illinois.			
Illinois	(Uninc.) Will County (Docket No. FEMA-6000)	Des Plaines River	At downstream county boundary	*510
			Just downstream of Brandon Lock and Dam	*515
			Just upstream of Brandon Lock and Dam	*540
			At downstream City of Crestihll corporate limits	*545
			About 1,100 feet downstream of Stateville Road	*552
			About 1,200 feet downstream of Ninth Street	*562
			About 200 feet downstream of Materials Service Road and Dam.	*568
			About 100 feet upstream of Materials Service Road and Dam.	*572
			About 100 feet upstream of 135th Street	*586
			At upstream county boundary	*592
		Kankakee River	Just upstream of County Line Road	*510
			Just downstream of Atchison, Topeka and Santa Fe Railroad.	*512
			Just upstream of Illinois Central Gulf Railroad	*513
			About 300 feet downstream of U.S. Route 66	*517
			At confluence of Prairie Creek	*523
			At downstream City of Wilmington corporate limit	*531
			About 1.0 mile upstream of Wilmington Dam	*540
			Just upstream of Norfolk and Western Railway	*548
			About 1,200 feet upstream of confluence of Ryans Creek.	*551

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Forked Creek	About 4,100 feet downstream Kahler Road	*546
			About 100 feet upstream of Kahler Road	*548
			About 1,100 feet upstream of Ballou Road	*553
			About 1,400 feet downstream of Norfolk and Western Railway.	*556
			About 100 feet upstream of Norfolk and Western Railway.	*558
			Just downstream of Ritchie Road	*559
			About 2,300 feet upstream of Ritchie Road	*560
		Lily Cache Creek	Mouth at Du Page River	*592
			Just upstream of U.S. Route 30	*593
			About 200 feet upstream of Renwick Road	*595
			About 100 feet upstream of Lockport Road	*598
			About 2,000 feet upstream of Lockport Road	*599
			About 300 feet downstream of Railroad Spur	*602
			Just downstream of Taylor Road	*604
			About 600 feet upstream of Taylor Road	*606
			About 200 feet downstream of State Route 126	*610
			Just downstream of Quarry Road	*614
			Just upstream of Quarry Road	*616
			Just downstream of Essington Road	*622
			Just upstream of Essington Road	*623
			About 250 feet downstream of 127th Street	*626
			About 450 feet upstream of 127th Street	*628
			About 650 feet downstream of 119th Street	*632
			About 300 feet upstream of 119th Street	*634
			About 250 feet downstream of Weber Road	*648
			About 500 feet upstream of Naperville Road	*656
			About 1.0 mile upstream of Naperville Road	*662
			Just upstream of Schmidt Road	*672
			Just 1,000 feet upstream of Schmidt Road	*674
			About 600 feet upstream of Preston Drive	*723
			About 300 feet downstream of Murphy Road	*726
			About 1,700 feet upstream of Murphy Road	*730
			Just downstream of Boughton Road	*738
			At upstream county boundary	*741
		Lily Cache Tributary	Mouth at Lily Cache Creek	*673
			About 250 feet upstream of Woodcreek Road	*680
			About 150 feet upstream of Village of Bolingbrook corporate limits.	*694
		Fiddyment Creek	Just upstream Illinois Central Gulf Railroad	*584
			Just downstream of State Street	*594
			Just upstream of Oak Street	*623
			Just downstream of Farrell Road	*656
		Spring Creek	About 700 feet upstream of Elgin, Joliet and Eastern Railway.	*595
			About 1,000 feet downstream of Farrell Road	*620
			About 100 feet downstream of Farrell Road	*625
			About 350 feet upstream of Farrell Road	*628
			About 450 feet downstream of farm bridge	*632
			Just upstream of farm bridge	*635
			About 2,500 feet upstream of Gougar Road	*638
			Just downstream of Cedar Road	*668
			Just downstream of Bruce Road	*670
			Just upstream of Bruce Road	*675
			Just upstream of Parker Road	*679
			At upstream county boundary	*685
		Spring Creek Tributary	About 2,100 feet downstream of Voiletta Avenue	*594
			Just upstream of Voiletta Avenue	*623
			About 2,400 feet upstream of Voiletta Street	*645
		Plum Creek	Just upstream of Stegar Road	*645
			About 3,600 upstream feet of Stegar Road	*646
			Just downstream of Faithhorn Road	*668
			About 8,000 feet upstream of Faithhorn Road	*675
			About 11,600 feet upstream of Faithhorn Road	*682
			About 500 feet downstream of Unnamed Road	*688
			About 100 feet upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*692
			Just downstream of State Route 1	*707
		Thorn Creek	About 1.15 miles downstream of Monee Road	*698
			About 0.28 mile upstream of Monee Road	*720
		Deer Creek	About 4,700 feet downstream of Kings Road	*696
			Just upstream of Kings Road	*710
			About 3,000 feet downstream of Western Avenue (downstream crossing)	*727
			About 100 feet upstream of Exchange Road	*738
			About 1.6 miles upstream of Exchange Road	*744
		Hickory Creek	Mouth at Des Plaines River	*517
			About 800 feet downstream of McKinley Avenue	*521
			About 250 feet downstream of Gardner Street	*532
			About 800 feet upstream of Elgin, Joliet and Eastern Railway.	*563
			About 3,500 feet upstream of Elgin, Joliet and Eastern Railway.	*572
			Just downstream of Lincoln Highway	*580
			Just upstream of Interstate 80	*612
			Just upstream of Vine Street	*622

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 350 feet downstream of Norfolk and Western Railway.	*637
			Just upstream of Chicago, Rock Island and Pacific Railroad.	*648
			Just downstream of Wolf Road	*663
		Sugar Run	Just upstream of Illinois Central Gulf Railroad (downstream crossing).	*540
			Just downstream of Illinois Central Gulf Railroad (upstream crossing).	*552
			About 250 feet downstream of State Route 53	*564
			Just upstream of Mills Road	*570
			Just downstream of Wildwood Lane	*588
			About 100 feet upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*598
			Just downstream of Old Manhattan Road	*622
		Long Run	About 1,700 feet downstream of State Route 171	*644
			About 300 feet upstream of Cedar Road	*660
			Just downstream of Will Cook Road	*686
		Sunnyland Drain	Just downstream of Caton Farm Road	*591
			Just upstream of U.S. Route 30	*606
			Just upstream of Gaylord Road	*619
			About 100 feet upstream of Elgin, Joliet and Eastern Railway.	*625
		Sunnyland Drain Tributary	Just upstream U.S. Route 30	*606
			Just upstream of Elgin, Joliet and Eastern Railway	*610
		Hammel Creek	About 1,500 feet downstream of Raven Road	*597
			Just downstream of River Road	*617
		Naperville Road Tributary	Mouth at Lily Cache Creek	*652
			Just downstream of Naperville Road	*656
			About 100 feet upstream of Naperville Road	*659
			About 1,650 feet upstream of Lily Cache Lane	*664
		Manhattan Road Ditch	Mouth at Sugar Run	*607
			About 70 feet downstream of Manhattan Road	*612
			About 300 feet upstream of Elgin, Joliet and Eastern Railway.	*615
		Du Page River	Just upstream of U.S. Route 6	*523
			About 500 feet upstream of Shepley Road	*540
			About 1,000 feet upstream of Chicago, Rock Island and Pacific Railroad.	*545
			About 200 feet upstream of Interstate 80	*556
			About 1,100 feet upstream of Sell Road	*568
			About 300 feet upstream of Black Road	*584
			Just upstream of State Route 59	*594
			About 1,200 feet upstream of Renwick Road	*599
			About 100 feet downstream of 111th Street	*622
		West Branch Du Page River	Confluence of East Branch Du Page River	*632
			About 1.6 miles upstream of confluence of East Branch Du Page River.	*641
		East Branch Du Page River	Confluence with Du Page River	*632
			About 450 feet upstream of Joliet Road	*636
			About 100 feet downstream of Schmith Road	*644
			At upstream county boundary	*649
		Rock Run	Just upstream of confluence with Illinois and Michigan Canal.	*530
			About 100 feet downstream of Chicago, Rock Island and Pacific Railroad.	*543
			About 100 feet upstream of Chicago, Rock Island and Pacific Railroad.	*546
			About 1,000 feet downstream of confluence of Rock Run Slough.	*550
			About 300 feet upstream of Houbolt Road	*572
			About 1,800 feet upstream of Black Road	*576
			About 2,800 feet upstream of Essington Road	*581
		Rock Run Tributary No. 1	About 125 feet downstream of Essington Road	*581
			About 75 feet upstream of Rosary Lane	*586
			Just upstream of Cassie Drive	*596
			About 300 feet upstream of Barber Lane	*606
		Rock Run Tributary No. 2	At confluence with Rock Run	*575
			About 40 feet upstream of Timberline Road	*600
			About 180 feet upstream of Essington Road	*613
		Rock Run Tributary No. 3	At confluence with Rock Run	*575
			Just upstream Cemetary entrance (downstream crossing).	*598
			About 1,700 feet upstream of Rebecca Road	*619
		Rock Run Slough	Confluence with Rock Run	*554
			Just downstream of Troy Street	*572
			At divergence from Rock Run	*576
		Rock Run South	At City of Joliet corporate limits (about 700 feet downstream of private road).	*516
			Just upstream of Chicago, Rock Island and Pacific Railroad.	*522
			About 2,350 feet upstream of Chicago, Rock Island and Pacific Railroad.	*522

Maps available for inspection at the County Planning Commission, County Building, 14 West Jefferson Street, Joliet, Illinois. Send comments to Honorable Lyman Tieman, Chairman of the County Board, Will County, County Building, 14 West Jefferson Street, Joliet, Illinois 60431.

Kansas	(C), Americus, Lyon County (Docket No. FEMA-6121)	Pester Creek	About 0.6 mile downstream of Walnut Street	*1,143

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 1,500 feet upstream of Sycamore Street	*1,155
Maps available for inspection at the City Hall, P.O. Box 187, Americus, Kansas.				
Maine	Baileyville, town, Washington County (Docket No. FEMA-6079).	St. Croix River	Downstream corporate limits	*93
			Confluence with Wapsaconhagan Brook	*103
			2,500' upstream of confluence with Wapsaconhagan Brook.	*108
		Wapsaconhagan Brook	Confluence with St. Croix River	*103
			120' downstream of Main Street	*109
			80' upstream of Main Street	*117
			80' upstream of U.S. Route 1	*124
			2,330' upstream of U.S. Route 1	*134
			8,000' upstream of U.S. Route 1	*144
			13,000' upstream of U.S. Route 1	*154
Maps available for inspection at the Baileyville Town Office on Broadway Street, Baileyville, Maine.				
Maine	Harrison, town, Cumberland County (Docket No. FEMA-6121).	Crooked River	Approximately 520' downstream of Scribner's Mill Dam	*331
			Upstream of Scribner's Mill Dam	*345
			Approximately 3,450' downstream of Bolster's Mills Dam.	*351
			Upstream of Bolster's Mills Road	*378
			Approximately 100' downstream of Ryefield Bridge Road.	*382
			Approximately 1,600' downstream of State Route 117	*387
			Approximately 700' upstream of State Route 117	*400
		Crystal Lake Brook	Confluence with Long Lake	*274
			Crystal Lake Dam	*300
		Crystal Lake	Entire shoreline	*300
		Long Lake	Entire shoreline within Harrison	*274
Maps available for inspection at the Town Office, Harrison, Maine.				
Michigan	(Twp.), Charleston, Kalamazoo County (Docket No. FEMA-6094).	Kalamazoo River	About 3,000 feet downstream of Climax Road	*785
			About 800 feet upstream of U.S. Highway 12	*787
			About 1.0 mile downstream of Conrail	*793
			About 500 feet downstream of Conrail	*794
Maps available for inspection at the Township Hall, 1499 South 38th Street, Galesburg, Michigan.				
Michigan	(Twp.), Williamstown, Ingham County (Docket No. FEMA-6121.	Red Cedar River	About 0.35 mile downstream of Grand River Avenue	*852
			About 500 feet upstream of Zimmer Road	*860
			About 1.1 miles upstream of South Putnam Street	*868
		Unnamed Tributary	Mouth at Red Cedar River	*864
			Just upstream of Williamston Road	*868
Maps available for inspection at the Township Hall, 4990 North Zimmer Road, Williamston, Michigan.				
Minnesota	(C), Dover, Olmsted County (Docket No. FEMA-6122)	South Fork Whitewater River	Approximately 100 feet downstream of downstream corporate limit.	*1,136
			Approximately 50 feet downstream of the Chicago and North Western Railroad.	*1,139
			Approximately 100 feet upstream of the Chicago and North Western Railroad.	*1,142
			Approximately 1,000 feet upstream of County Highway 10.	*1,144
		Tributary B	Approximately 80 feet downstream of the Chicago and North Western Railroad.	*1,144
			Approximately 750 feet upstream of the Chicago and North Western Railroad.	*1,146
Maps available for inspection at the City Hall, P.O. Box 116, Dover, Minnesota.				
Minnesota	(C), Dundas, Rice County (Docket No. FEMA-6122)	Cannon River	About 3,400 feet downstream of Hester Street	*917
			About 4,400 feet upstream of Hester Street	*926
		Cannon River Overbank Channel	About 1,430 feet downstream of County Road 1	*917
			Just downstream of East Street	*923
			About 900 feet upstream of East Street	*926
Maps available for inspection at the City Hall, P.O. Box 75, Dundas, Minnesota.				
Minnesota	(C), Medicine Lake, Hennepin County (Docket No. FEMA-6122).	Medicine Lake	Within corporate limits	*890
		Bassett Creek	About 200 feet downstream of Chicago and North Western Railroad.	*868
			Just upstream of Chicago and North Western Railroad	*868
Maps available for inspection at the City Hall, 10609 S. Shore Drive, Medicine Lake, Minnesota.				
Minnesota	(C), St. Charles, Winona County (Docket No. FEMA-6122).	South Fork Whitewater River	At downstream corporate limits	*1,104
			At upstream county boundary	*1,112
		Tributary C	At mouth	*1,108
			About 275 feet upstream of Third Street	*1,112
			About 630 feet downstream of Chicago and North Western Railroad.	*1,147
			Just downstream of Chicago and North Western Railroad.	*1,154

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the City Hall, 1242 Whitewater Avenue, St., Charles, Minnesota.				
Missouri	(Unincorporated), Cass County (Docket No. FEMA-6122).	West Fork—East Creek	Just upstream from State Route Y	*942
			About 3,000 feet upstream from State Route Y	*957
			About 100 feet upstream of corporate limit (about 5,900 feet upstream of 187th Street).	*981
		Poney Creek	Approximately 7,460 feet downstream from Old State Route 0.	*823
			Just downstream from Old State Route 0	*834
			About 2,800 feet upstream of State Highway 0	*843
		Muddy Creek	About 2,900 feet above mouth	*842
			About 6,100 feet upstream of confluence of Muddy Creek Tributary No. 1.	*856
			About 860 feet downstream from Orchard Road	*890
			About 2,300 feet upstream from Orchard Road	*900
		Muddy Creek—Tributary No. 1	At mouth	*846
			Just downstream from State Route 2	*851
			Just upstream from State Highway 2	*855
			About 5,350 feet upstream of State Highway 2	*868
Maps available for inspection at the County Clerk's Office, Cass County Courthouse, Harrisonville, Missouri.				
Nebraska	(Unincorporated), Dakota County (Docket No. FEMA-6122).	Missouri River	Downstream county boundary	*1,070
			Downstream extraterritorial limits of city of Dakota City	*1,081
			About 2.4 miles downstream of confluence of Elk Creek.	*1,092
			Upstream county boundary	*1,100
		Pigeon Creek	About 1,300 feet downstream of U.S. Highway 77	*1,094
			At eastern village of Hubbard extraterritorial limits	*1,130
			At southwestern village of Hubbard extraterritorial limits.	*1,171
			South line of section 33, T. 28 N., R. 7 E	*1,226
		Elk Creek	About 270 feet downstream of village of Jackson west extraterritorial limits.	*1,133
			Just upstream of Burlington Northern Railroad	*1,150
			About 6,300 feet upstream of Burlington Northern Railroad.	*1,159
Maps available for inspection at the County Clerk's Office, Dakota County Courthouse, Dakota City, Nebraska.				
Nebraska	(C), Waverly, Lancaster County (Docket No. FEMA-6122).	Salt Creek	Just downstream North 141st Street	*1,111
			Confluence of Ash Hollow Ditch	*1,115
			About 3,400 feet upstream of North 120th Street	*1,120
		Ash Hollow Ditch	About 1,600 feet downstream of U.S. Highway 6	*1,115
			Just upstream of U.S. Highway 6	*1,121
			Just downstream of Interstate 80	*1,140
Maps available for inspection at the City Hall, P.O. Box 427, Waverly, Nebraska.				
New Hampshire	Epping, town, Rockingham County (Docket No. FEMA-5938).	Lamprey River	Downstream corporate limits	*95
			Upstream side of State Route 87	*103
			Upstream side of State Route 125	*110
			Upstream side of Main Street	*112
			Downstream side of Blake Road	*134
			Upstream side of Blake Road	*138
			Upstream side of Bunker Pond Dam	*148
			Downstream side of State Route 101	*155
			Upstream corporate limits	*164
Maps available for inspection at the Town Office, Epping, New Hampshire.				
New Hampshire	Hampton Falls, town, Rockingham County (Docket No. FEMA-6073).	Atlantic Ocean	Entire Hampton Falls shoreline	*9
Maps available for inspection at the Town Office, Exeter Road, Hampton Falls, New Hampshire.				
New Hampshire	Raymond, town, Rockingham County (Docket No. FEMA-6012).	Lamprey River	Downstream corporate limits	*160
			Downstream side of State Route 102	*167
			Approximately 1,000' upstream of State Route 107	*180
			Upstream side of Epping Road	*188
			Approximately 800' upstream of Langford Road	*196
			Downstream side of State Route 101	*209
			Upstream corporate limits	*217
Maps available for inspection at the Town Office, Epping Street, Raymond, New Hampshire.				
New Jersey	Bordentown, township, Burlington County (Docket No. FEMA-6080).	Delaware River	Downstream corporate limits	*12
			Confluence of Crosswicks Creek	*14
		Blacks Creek	Confluence with Crosswicks Creek	*14
			U.S. Route 206 (upstream side)	*15
		Crosswicks Creek	Confluence with Delaware River	*14
			Upstream corporate limits	*19
Maps available for inspection at the Office of the Township Administrator, Township Building, Municipal Drive, Bordentown, New Jersey.				
New Jersey	Colts Neck, township, Monmouth County (Docket No. FEMA-6094).	Hockhockson Brook	Confluence with Pine Brook	*47
			Upstream of Hockhockson Road	*53
		Barren Neck Creek	Downstream of downstream private road	*46
			Downstream of Long Bridge Road	*52
			Approximately 1,600' upstream of Long Bridge Road	*63
		Big Brook	Approximately 2,630' downstream of Cross Road	*38
			Approximately 2,500' upstream of Cross Road	*49
			Approximately 3,400' upstream of State Route 34	*60

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 3,400' upstream of State Route 34	*60
		Mine Brook	Confluence with Yellow Brook	*43
			Downstream of State Route 34	*57
			Downstream of Hominy Hill Road	*78
			Downstream of Mercer Road	*91
		Yellow Brook	Upstream of Muhlenbrink Road	*39
			Downstream of State Route 34	*49
			Upstream of Heyers Mill Road	*60
			Downstream of private road	*73
			Upstream of dam No. 1	*85
			Upstream corporation limits	*99
		Marl Brook	Confluence with Mine Brook	*66
			Approximately 4,940' upstream of confluence with Mine Brook.	*84
		Tributary to Yellow Brook	Confluence with Yellow Brook	*64
			Downstream of Cedar Drive	*7
			Upstream side of upstream lake embankment	*84
		Pine Brook	Downstream corporate limits	*35
			Confluence with Hockhockson Brook	*48
		Willow Brook	Confluence with Hop Brook	*41
			Approximately 2,000' upstream of Willow Brook Road	*46
			Upstream of South Street	*62
			Downstream of Main Street	*75
Maps available for inspection at the Municipal Building, Cedar Drive, Colts Neck, New Jersey.				
New Jersey	Saddle Brook (township), Bergen County (FEMA-6122).	Saddle River	350 feet upstream of centerline of Market Street	*40
			feet upstream of centerlnio of Garden State Parkway	43
		Coalberg Brook	100 feet upstream of centerline of U.S. Route 80	*44
			50 feet upstream of centerline of Market Street	*47
		Coalberg Brook Tributary	At confluence with Coalberg Brook	*47
Maps avilable for inspection at Town Hall, Saddle Brook, New Jersey.				
New Jersey	Tewksbury, township, Hunterdon County (Docket No. FEMA-6094)I52Lamington River.		Downstream corporate limits	*116
			wnstream Lamington Road	129
			Confluence of Cold Brook	*133
			Black River Road (downstream crossing, upstream side)D*150.	
			Black River Road (upstream crossing, upstream side)	*162
			Approximately 2,20' upstream McCans Mill Road	*173
			Approximately 7,040' upstream McCans Mill Road	*193
			Confluence of Tributary A	*213
			Upstream corporate limits	*254
		Rockaway Creek	Downstream corporate limits	*125
			Oldwick Road (upstream side)	*146
			Interstate Route 78 (upstream side)	*159
			Rockaway Road (first crossing, upstream side)	*182
			Potterstown Road (upstream side)	*204
			Meadow Lane (upstream side)	*263
			Rockaway Road (fourth crossing, upstream side)	*322
			Approximately 2,040' upstream Rockaway Road (fourth crossing).	*361
			Rockaway Road (fifth crossing)	*414
			Confluence of Tributary B	*423
			Approximately 3,400' upstream confluence of Tributary B	*479
			Approximately 1,090' downstream abandoned road	*529
			Mountain Road (upstream side)	*585
			Saw Mill Road (upstream side)	*622
			Farmersville Road (upstream side)	*667
			Approximately 3,000' upstream Farmersville Road	*695
			Fairmount Road West (downstream side)	*726
		South Branch Raritan River	Downstream corporate limits	*475
			Stone Dam Ruins (upstream side)	*483
			Upstream corporate limits	*488
		Tributary A	Confluence with Lamington River	*213
			McCans Mill Road (upstream side)	*221
			Approximately 1,400' upstream McCans Mill Road	*241
			Approximately 950' downstream Homestead Road	*271
			Homestead Road (upstream side)	*293
			Hollow Brook Road extended (downstream side)	*308
		Tributary B	Confluence with Rockaway Creek	*423
			Guinea Hollow Road (upstream side)	*450
			Approximately 1,440' upstream Guinea Hollow Road	*477
Maps available for inspection at the Tewksbury Municipal Building, Water Street, Tewksbury, New Jersey.				
New Jersey	Tinton Falls, borough, Monmouth County (Docket No. FEMA-6094).	Jumping Brook	Downstream corporate limits	*73
			Upstream of Asbury Avenue	*79
			Upstream of privale drive	*91
		Pine Brook	Confluence with Swimming River	*12
			Downstream of Tinton Avenue	*18
			Upstream of Tinton Avenue	*35
			Downstream of private road	*45
			Upstream corporate limits	*48
		Swimming River	Downstream corporate limits	*9
			Downstream of Normandy Road	*13
			Upstream of Government Railroad crossing	*23

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream corporate limits	*23
		Shark River	Downstream corporate limits	*32
			Upstream of dam	*47
			Upstream of State Route 33	*57
			Downstream of Shark River Road	*75
		Parkers Creek	Downstream corporate limits	*12
			Downstream of Conrail crossing	*16
Maps available for inspection at the Office of the Borough Administrator, Municipal Building, 556 Tinton Avenue, Tinton Falls, New Jersey.				
New Jersey	Union, township, Hunterdon County (Docket No. FEMA-6094).	Mulhockaway Creek	Confluence with Spruce Run Reservoir	*275
			Van Syckles Corner Road (upstream side)	*309
			Baptist Church Road (upstream side) (downstream crossing)	*351
			Conrail Railroad (upstream side)	*452
			Gravel Hill Road (downstream side)	*512
		Tributary A to the South Branch Raritan River.	Pittstown Road (upstream side)	*215
			Dam (downstream side)	*267
			Dam (upstream side)	*279
			Approximately 150' upstream of Conrail crossing	*291
		Tributary B to Mulhockaway Creek	Confluence with Mulhockaway Creek	*262
			Van Syckles Corner Road (upstream side)	*297
			Upstream corporate limits	*348
		Tributary C to Mulhockaway Creek	Van Syckles Corner Road (upstream side)	*301
			Upstream corporate limits	*369
		Tributary D to Mulhockaway Creek	Confluence with Mulhockaway Creek	*291
			Approximately 200' downstream of County Route 173	*334
		Tributary E to Mulhockaway Creek	Confluence with Tributary D to Mulhockaway Creek	*299
			Approximately 200' downstream of County Route 173	*337
		Tributary F Mulhockaway Creek	Confluence with Mulhockaway Creek	*373
			Approximately 200' upstream of Baptist Church Road	*391
		Spruce Run	Approximately 430' upstream of confluence with Spruce Run Reservoir.	*275
			Upstream corporate limits	*313
Maps available for inspection at Union Township Municipal Building, Jutland Road, Hampton, New Jersey.				
New York	Bridgewater, village, Oneida County (Docket No. FEMA-6094).	West Branch Unadilla River	Downstream corporate limits	*1,175
			Upstream corporate limits	*1,181
Maps available for inspection at the residence of the Village Clerk, Mrs. Beatrice Roberts, Route 8 South, Bridgewater, New York.				
New York	Fulton, city, Oswego County (Docket No. FEMA-6080)	Lake Neatahwanta	Entire shoreline within community	*373
		Oswego River	Downstream corporate limits	*318
			Confluence of Waterhouse Creek	*318
			Downstream Lock No. 3	*326
			Approximately 100' upstream Lock No. 3	*344
			Downstream Lock No. 2	*346
			Upstream Lock No. 2	*358
			Upstream corporate limits	*358
		Tannery Creek	Downsteam corporate limits	*360
			Upstream Hannibal Street	*371
			Confluence of Lake Neatahwanta	*373
		Waterhouse Creek	Confluence with Oswego River	*318
			Downstream North Sixth Street	*321
			Approximately 75' upstream North Sixth Street	*331
			Downstream dam	*340
			Upstream dam	*348
			Upstream corporate limits	*354
Maps available for inspection at the Office of the City Engineer, Municipal Building, South First Street, Fulton, New York.				
New York	Geneva, city, Ontario and Seneca Counties (Docket No. FEMA-6080)	Castle Creek	Confluence with Seneca Lake	*449
			Upstream Conrail	*461
			Upstream of Hammond Lane	*477
			Downstream of Castle Street	*487
			Downstream of Brook Street	*513
			2,600' upstream of Brook Street	*547
		Marsh Creek	Confluence with Seneca Lake	*449
			Upstream of East North Street	*454
			Upstream corporate limits	*455
Maps available for inspection at the Office of the City Engineer, City Hall, 47 Castle Street, Geneva, New York.				
New York	Mendon, town, Monroe County (Docket No. FEMA-6080).	Irondequoit Creek	Downstream corporate limits	*511
			Mile Square Road (upstream side)	*537
			Approximately 4,000' upstream of Mile Square Road	*553
			Mendon-Ionia Road (upstream side)	*569
			West Bloomfield-Pittsford Road (upstream side)	*578
			Taylor Road (upstream side)	*585
			Cheese Factory Road (upstream side)	*607
			Chamberlain Road (extended)	*625
			Boughton Hill Road (upstream side)	*655
			Approximately 1,000' upstream of Boughton Hill Road	*657
		Honeoye Creek	Downstream corporate limits	*555
			Plains Road (upstream side)	*558
			Approximately 4,400' upstream of Plains Road	*565
			Approximately 3,200' downstream of Sibley Road	*571
			Sibley Road (upstream side)	*580
			Upstream crossing of Conrail	*596

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 2,800' upstream of Conrail crossing (upstream crossing).	*600
			Upstream corporate limits	*670
		Tributary A	Confluence with Irondequoit Creek	*572
			Rush-Mendon Road (upstream side)	*589
			West Bloomfield-Pittsford Road (upstream side)	*592
			Approximately 1,100' upstream of West Bloomfield-Pittsford Road.	*598
		Tributary B	Confluence with Irondequoit Creek	*576
			Pond Road Dam (upstream side)	*597
			Approximately 3,000' upstream of Pond Road Dam	*603
			Mendon Center Road (upstream side)	*623
			Approximately 3,100' upstream of Mendon Center Road.	*641
		Tributary C	Confluence with Irondequoit Creek	*604
			West Bloomfield-Pittsford Road (upstream side)	*608
			Lanning Road (upstream side)	*618
			Approximately 3,800' upstream of Lanning Road	*629
			Approximately 600' upstream of Boughton Hill Road	*658
		Tributary D	Confluence with Tributary C	*618
			Approximately 1,300' downstream of Boughton Hill Road.	*630
			Approximately 550' upstream of Boughton Hill Road	*646
		Tributary E	Confluence with Irondequoit Creek	*607
			Approximately 2,100' upstream of West Bloomfield-Pittsford Road.	*625
			Approximately 500' upstream of Boughton Hill Road	*649
		Tributary F	Downstream corporate limits	*543
			New York State Thruway (upstream side)	*569
			Approximately 1,000' upstream of Cole Road	*572
Maps available for inspection at the Mendon Town Hall, 9 North Main Street, Honeoye Falls, New York.				
New York	Morrisville, village, Madison County (Docket No. FEMA-6094)	Callahan Brook	Downstream corporate limits	*1,263
			Upstream of dam	*1,274i22
			Upstream corporate limits	*1,285
Maps available for inspection at the Office of the Village Clerk, 22 East Maple Avenue, Morrisville, New York.				
New York	New Paltz, village, Ulster County (Docket No. FEMA-6094.	Wallkill River	Tributary 13	*193
			State Route 299 bridge	*194
Maps available for inspection at the Village Hall, 25 Platterskill Avenue, New Paltz, New York.				
New York	Pomona, village, Rockland County (Docket No. FEMA-6094).	South Branch Minisceongo Creek	At most downstream corporate limits	*378
			Upstream of dam	*389
			Downstream of Quaker Road	*394
			At most upstream corporate limits	*416
			1,350' downstream of East Village	*407
Maps available for inspection at the Village Hall, Camp Hill Road, Pomona, New York.				
New York	Tuxedo, town, Orange County (Docket No. FEMA-6094).	Ramapo River	Downstream corporate limits	*397
			Downstream of dam	*412
			Upstream of dam	*433
			400' downstream of Conrail bridge (1st crossing)	*436
			130' downstream of Conrail bridge (1st crossing)	*444
			Upstream of Conrail bridge	*452
			Confluence of Warwick Brook	*462
			8,600' downstream of Arden Valley Road	*472
			3,940' downstream of Arden Valley Road	*482
			1,930' downstream of Arden Valley Road	*492
			180' downstream of Arden Valley Road	*502
			150' upstream of Arden Valley Road	*504
			Upstream corporate limits	*515
		Indian Kill	Palisades Interstate Park Boundary	*611
			500' upstream of Palisades Interstate Park Boundary	*621
			55' downstream of Sylvan Way	*631
			Upstream of Sylvan Way	*641
			320' upstream of Sylvan Way	*651
			590' upstream of Sylvan Way	*661
			320' downstream of dirt road	*671
			390' upstream of dirt road	*681
			490' downstream of dam (first)	*691
			Downstream of dam (first)	*694
			Upstream of dam (first)	*714
			Upstream of private drive (second)	*722
			750' downstream of dam (second)	*733
			600' downstream of dam (second)	*743
			460' downstream of dam (second)	*754
			360' downstream of dam (second)	*762
			Downstream of dam (second)	*770
			Upstream of dam (second)	*779
			830' upstream of Greenwood Lake Road (third crossing).	*789
			Downstream of Benjamin Meadow Road	*795
			Upstream of Benjamin Meadow Road	*805
		Warwick Brook	Confluence with Ramapo River	*462
			Downstream corporate limits	*471

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream coporate limits	*502
			470' upstream of upstream corporate limits	*512
			810' upstream of upstream corporate limits	*522
			1,130' upstream of upstream corporate limits	*532
			1,460' upstream of upstream corporate limits	*542
			1,960' upstream of upstream corporate limits	*552
			2,890' upstream of upstream corporate limits	*562
			3,290' upstream of upstream corporate limits	*572
			3,600' upstream of upstream corporate limits	*582
			3,840' upstream of upstream corporate limits	*592
			4,100' upstream of upstream corporate limits	*602
			4,350' upstream of upstream corporate limits	*612
			4,710' upstream of upstream corporate limits	*622
			670' downstream of Warwick Turnpike	*632
			230' downstream of Warwick Turnpike	*642
			Downstream of Warwick Turnpike	*651
			390' upstream of Warwick Turnpike	*661
			Downstream of private road	*670
			Upstream of private road	*680
			Upstream of Long Swamp Road	*684
		Summit Brook	Confluence with Ringwood River	*427
			950' upstream of Route 84	*437
			1,870' upstream of Route 84	*447
			170' downstream of Scottmine Road	*457
			130' downstream of Access Road (first)	*467
			170' downstream of dam (first)	*477
			270' upstream of South Gate Road	*487
			910' downstream of Access Road (fifth)	*497
			Upstream of access road (fifth)	*506
			Upstream of Pine Hill Drive	*516
			700' downstream of Brook Road	*526
			Upstream of Brook Road	*536
			790' upstream of Brook Road	*545
			400' downstream of Southgate Road (second crossing).	*556
			Upstream of East Lake Road	*563
		Ringwood River	Downstream corporate limits	*421
			Confluence of Summit Brook	*427
Maps available for inspection at the Town Hall, Route 17, Tuxedo, New York.				
New York	Volney, town, Oswego County (Docket No. FEMA-6094).	Oswego River	Downstream corporate limits	*296
			Upstream of lock and dam No. 5	*314
			Downstream Fulton corporate limits	*318
			Upstream Fulton corporate limits	*358
			Upstream corporate limits	*361
		Waterhouse Creek	Corporate limits	*333
			Downstream of dam and spillway	*340
			Upstream of foot bridge	*348
			Upstream of dirt road	*354
Maps available for inspection at the residence of the Town Clerk, County Route 6, R.D. 2, Fulton, New York.				
Ohio	(V) Portage, Wood County (Docket No. FEMA-6122)	North Branch Portage River	About 0.5 mile downstream of Conrail	*676
			About 0.35 mile upstream of U.S. Route 25	*679
Maps available for inspection at the Mayor's Office, Town Hall, Portage, Ohio.				
Oklahoma	Town of Gans, Sequoyah County (FEMA-6067)	Onion Creek	Just downstream of Kobel Avenue (low water crossing).	*516
			At confluence with Onion Creek Tributary	*524
Maps available for inspection at Town Hall, Gans, Oklahoma 74936.				
Oklahoma	Town of Howe, LeFlore County (FEMA-6067)	Morris Creek	Intersection of Rock Street and North Railroad Street	*476
		Morris Tributary	Just upstream of Second Street	*481
			Approximately 300' downstream of U.S. Highway 59 (corporate limits).	*487
Maps available for inspection at City Hall, Howe, Oklahoma 74940.				
Oklahoma	Town of Hulbert, Cherokee County (FEMA-6073)	Double Spring Creek	Just upstream of State Highway 51	*598
			Just upstream of Birch Street	*609
		Stream A	Just upstream of Main Street	*598
		Stream B	Just upstream of State Highway 80	*589
Maps available for inspection at Town Hall, Main Street, Hulbert, Oklahoma 74441.				
Oklahoma	Town of Kiefer, Creek County (FEMA-6073)	Childres Creek	Just upstream of county road	*674
			Just upstream of State Highway 67	*661
Maps available for inspection at Town Hall, Ohio Avenue, Kiefer, Oklahoma 74041.				
Oklahoma	Town of Moffett, Sequoyah County (FEMA-6067)	Arkansas River	Just upstream of U.S. Highway 64	*420
Maps available for inspection at City Hall, Moffett, Oklahoma 74946.				
Oklahoma	Town of Mounds, Creek County (FEMA-6080)	North Duck Creek	Just upstream of St. Louis-San Francisco Railroad	*726
		Middle Duck Creek	Just upstream of Cemetery Road	*707
		Stream A	Just upstream of 8th Street	*724
Maps available for inspection at City Hall, Mounds, Oklahoma 74047.				

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Oklahoma	Town of Muldrow, Sequoyah County (FEMA-6073)	Little Skin Bayou	Just upstream of U.S. Highway 64	*463
		Poague Branch	Approximately 400 feet upstream of Bland Street	*481
			Just upstream of U.S. Highway 64	*494
	Maps available for inspection at Town Hall, 100 South Main Street, Muldrow, Oklahoma 74948.			
Pennsylvania	Perry, township, Fayette County (Docket No. FEMA-6027.	Youghiogheny River	Downstream corporate limits	*790
			Upstream corporate limits	*810
		Washington Run	Downstream corporate limits	*965
			Confluence with Tributary A	*984
			Upstream of Front Street	*995
			Approximately 1,380' upstream of Front Street	*1,006
		Tributary A	Confluence with Washington Run	*984
			Approximately 310' upstream of Front Street	*1,011
	Maps available for inspection at the Perry Municipal Building, Star Junction, Pennsylvania.			
Texas	Town of Prairie View, Waller County (FEMA-6122)	Ponds Creek	Just upstream of Brooks Road	*219
			Just upstream of Bean Road	*225
		Mound Creek	Just upstream of U.S. Highway 290	*256
	Maps available for inspection at Town Hall, Prairie View, Texas 77445.			
Texas	City of Rosenberg, Fort Bend County (FEMA-6122)	North Branch of Dry Creek	Just downstream of Laurel Avenue	*98
			Just upstream of Laurel Avenue	*99
		Dry Creek	Approximately 250 feet upstream of Louise Avenue	*98
			Approximately 200 feet downstream of Fourth Street	*99
			Just downstream of State Highway 36	*100
		Seabourne Creek	Just upstream of Bernard Avenue extended	*98
			Just downstream of Grundwald Heights Blvd. extended	*99
		Brazos River	Just upstream of 6th Street extended	*93
	Maps available for inpsection at City Hall, 2110 South Fourth Street, Rosenberg, Texas 77471.			
Vermont	Waterbury, town, Washington County (Docket No. FEMA-6080).	Winooski River	Downstream corporate limits	*353
			stream of Bolton Falls Dam	*405
			Upstream Central Vermont Railway	*419
			Upstream corporate limits	*433
		Thatcher Brook	Downstream corporate limits	*503
			Downstream of Laurel Road	*575
			Upstream Guptil Road (1st crossing)	*587
			Upstream Guptil Road (2d crossing)	*592
			Upstream Guptil Road (3d crossing)	*610
			Approximately 75' upstream from Guptil Road (4th crossing).	*643
	Maps available for inspection at the Town Offices, 43 South Main Street, Waterbury, Vermont.			
Vermont	Waterbury, village, Washington County (Docket No. FEMA-6080).	Winooski River	Downstream corporate limits	*421
			Winooski Street (upstream side)	*425
			Upstream corporate limits	*428
		Thatcher Brook	Confluence with Winooski River	*423
			Interstate 89 (upstream side)	*430
			Interstate 89 off ramp (upstream side)	*440
			Dam approximately 310' upstream of Interstate 89 off ramp.	*454
			Dam approximately 400' downstream of Stowe Street	*492
			Stowe Street (downstream side)	*499
			Corporate limits	*504
	Maps available for inspection at the Waterbury Municipal Offices, Waterbury, Vermont.			
Virginia	City of Bristol (Independent City) (FEMA-5738)	Beaver Creek	Just upstream of Moore Street	*1,675
			Just upstream of Elm Street	*1,698
			Just upstream of Lee Highway	*1,805
		Little Creek	Just upstream of Euclid Avenue (U.S. Highway 421)	*1,683
			Just downstream of Island Road	*1,728
		Susong Branch	Just upstream of Euclid Avenue (U.S. Highway 421)	*1,683
			Just upstream of Randolph Avenue	*1,693
		Mumpower Creek	Just upstream of Madison Street	*1,705
			Just upstream of Meadow Drive	*1,722
			Just downstream of Chesterhills Estates Road	*1,763
	Maps available for inspection at City Hall, Bristol, Virginia 24201.			
Washington	Kittitas (town), Kittitas County (FEMA-6122)	Caribou Creek	100 feet upstream from center of Badger Creek Road	*1,633
		Cook Creek	Intersection of Third Avenue and Pierce Street	#1
	Maps available for inspection at Town Hall, Kittitas, Washington.			
Washington	Lewis County (Unincorporated Areas) (FEMA-6000)	Skookumchuck River	50 feet downstream from center of JW Downing Road	*201
		Chehalis River	Intersection of Southgate Drive and Oakland Avenue	*159
			300 feet upstream from center of Elk Creek Road	*307
			300 feet upstream from center of State Highway 6	*366
		South Fork Chehalis River	50 feet upstream from center of Boistfort Road	*227
		Newaukum River	Intersection of Taylor Road (South) and Jackson Highway.	*261
		South Fork Newaukum River	100 feet upstream from center of Gish Road	*378
		North Fork Newaukum River	200 feet upstream from center of North Fork Road	*271
		Middle Fork Newaukum River	200 feet downstream from center of Tauscher Road	*300

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Tilton River	Intersection of State Highway 7 and Lester Road	*940
		South Fork Tilton River	Intersection of river and center of State Highway 7	*1,040
		Cispus River	Intersection of Park Lane and Finwood Drive (North)	*1,192
		Cowlitz River	Intersection of Main Street and U.S. Highway 12	*#3
			Intersection of Ray Road (West) and Ray Road	*100
			Intersection of Cipus Road and Woods Creek Road	*868
		China Creek	Intersection of Halliday Road and Uttle Hanaford Road	*191
		Coffee Creek	250 feet upstream from center of Lowery Lane	*206
		Dillenbaugh Creek	Intersection of creek and center of Bishop Road	*200
		Berwick Creek	50 feet downstream from center of Jackson Highway	*268
		Hanaford Creek	200 feet downstream from center of Big Hanaford Road.	*202
		Salzer Creek	Intersection of Alvord Road and State Street East	*176
		Salzer Creek Middle Fork	200 feet downstream from center of Salzer Valley Road.	*192
		Salzer Creek South Fork	Intersection of Proffitt Road and Salzer Road	*189
		Salzer Creek North Fork	100 feet upstream from center of Salzer Valley Road	*193
		Lake Creek (Tributary to South Fork Chehalis River).	400 feet downstream from center of King Road	*236
		Elk Creek	200 feet upstream from center of Elk Creek Road	*307
		Lake Creek (Tributary to Tilton River)[53150 feet downstream from center of Temple Road.	*936	
		Big Creek	Intersection of Nisqually Way and Osborn Road	*1,756
		Oloqua Creek	100 feet upstream from center of Annonen Road	*132
			50 feet upstream from center of North Military Road	*449
		Mineral Creek	Intersection of creek and center of Mineral Creek Road.	*1,428
		Roundtop Creek	25 feet upstream from center of Mineral Creek Road	*1,393
		Lacamas Creek	Intersection of Frost Road and Jackson Highway	*352
		Siler Creek	100 feet upstream from center of Cispus Road	*904
		No Name Creek (Tributary to Siler Creek).	300 feet downstream from center of Cispus Road	*914
		Surrey Creek	The area south of Silverbrook Road, 800 feet west of the intersection of the creek and Silverbrook Road.	*908
		Silver Creek	50 feet upstream from center of U.S. Highway 12	*915
		Hall Creek	50 feet downstream from center of Snyder Road	*1,054
		Coal Creek	50 feet upstream from center of Coal Creek Road	*203
Maps available for inspection at Planning Department, 344 West Main, Chehalis, Washington.				
West Virginia	Belle, town, Kanawha County (Docket No. FEMA-6089).	Kanawha River	Downstream corporate limits	*602
			Upstream corporate limits	*603
Maps available for inspection at the Town Offices, Dupont and 11th Street, Belle, West Virginia.				
West Virginia	Marmet, town, Kanawha County (Docket No. FEMA-6094).	Kanawha River	Downstream corporate limits	*600
			Upstream corporate limits	*602
Maps available for inspection at the Town Hall, 9208 McCorkle Avenue, Marmet, West Virginia.				
West Virginia	Nitro, city, Kanawha and Putnam Counties (Docket No. FEMA-6089).	Kanawha River	Downstream corporate limits	*586
			East Nitro Bridge (upstream)	*588
			Upstream corporate limits	*589
		Armour Creek	Downstream corporate limits	*585
			Escoe Drive (upstream)	*589
			Interstate 64 (upstream)	*592
			3d private road (upstream)	*604
			Upstream corporate limits	*624
		Blakes Creek	Confluence with Armour Creek	*586
			Third Avenue (upstream)	*590
			South 21st Street (upstream)	*598
			Private road (upstream)	*604
Maps available for inspection at the City Hall, 20th Street and Second Avenue, Nitro, West Virginia.				
West Virginia	Smithers, town, Fayette and Kanawha Counties (Docket No. FEMA-6094).	Kanawha River	Downstream corporate limits	*625
			Confluence of Smithers Creek	*626
			Upstream corporate limits	*630
		Smithers Creek	Confluence with Kanawha River	*626
			Bridge Street (upstream side)	*636
			County Route 2/2 (upstream side)	*655
Maps available for inspection at the City Hall, 176½ Michigan Avenue, Smithers, West Virginia.				
West Virginia	Weston, city, Lewis County (Docket No. FEMA-6122)	West Fork River	Downstream corporate limits	*1,016
			Fourth Street bridge (upstream side)	*1,018
			Upstream crossing of Chessie System bridge	*1,020
			Approximately 0.5 mile upstream of State Route 24 bridge.	*1,022
		Polk Creek	River Avenue bridge (upstream side)	*1,017
			Howell Street bridge (upstream side)	*1,018
			Approximately 0.2 mile upstream of Kuntz Avenue bridge.	*1,022
		Stonecoal Creek	Confluence with West Fork River	*1,018
			Upstream corporate limits	*1,019
Maps available for inspection at the Municipal Building, Weston, West Virginia.				
Wisconsin	(C), Edgerton, Rock County (Docket No. FEMA-6122)	Saunders Creek	About 2,300 feet downstream of Fulton Street	*799
			Just upstream of Fulton Street	*810

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
			Just upstream of Randolph Street	*816
			At the county boundary	*822
Maps available for inspection at the Office of the Village Clerk, City Hall, 12 Albion Street, Edgerton, Wisconsin.				
Wisconsin	(V), West Salem, La Crosse County (Docket No. FEMA-5978).	La Crosse River	Downstream corporate limit	*687
			Upstream corporate limit	*690
		Lake Neshonoc	Shoreline	*702
Maps available for inspection at the Office of the Village Clerk, Village Hall, 902 E. Garland, West Salem, Wisconsin.				

(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; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: November 10, 1981.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 81-34145 Filed 11-30-81; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Wildlife Development Areas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service is removing those regulations found at 50 CFR 20.141–20.143 entitled "Wildlife Development Areas" which provide for the establishment of wildlife development areas on land to be included at a later date within the National Wildlife Refuge System. The procedures of these sections have been used only once since their inception on May 1, 1947, and the program has thus far provided insignificant benefit with no expectation of providing any benefit in the future.

EFFECTIVE DATE: December 31, 1981.

FOR FURTHER INFORMATION CONTACT: John T. Webb, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, telephone (202) 343–9242.

SUPPLEMENTARY INFORMATION: In 1947 the Service promulgated regulations entitled "Wildlife Development Areas," 50 CFR 20.141–20.143, which established an optional procedure for the management of land by the owner of a possessory estate who has conveyed a future interest in the land to the United States for refuge purposes. Under this procedure, the owner of a possessory interest may engage in the shooting of migratory birds and take measures to maintain and increase the waterfowl population of the area if these are done in compliance with a development program approved by the Secretary of Interior. The regulations also provide notice and hearing procedures for violation of a development program and revocation of program approval. The intended purpose of this section is to enhance the development of future wildlife refuge areas and protect wildlife on those lands.

The regulations have been proven unnecessary. The application of this subpart is limited solely to owners of possessory estates who have conveyed a future interest to the United States for refuge purposes. As a result the procedure has been used only on one occasion and the benefits have thus far been negligible. Further, if the procedure had been invoked more frequently, the insignificant benefits derived would have been outweighed by the administrative cost and difficulty in overseeing the development programs. For these reasons, the Service is discontinuing the program.

On July 11, 1979, a proposal to delete 50 CFR 20.141–20.143 was published in the **Federal Register** (44 FR 40534–40535). This proposal invited interested persons to participate in the rulemaking and submit comments. No comments were received by the Service.

Determination of Effects

In accordance with Executive Order 12291 entitled "Federal Regulation," the Department of the Interior has determined that this final rule is not major. This determination is discussed in more detail in a Determination of Effects prepared by the Service. A copy of that document may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT." Because this rule was proposed before January 1, 1981, the Regulatory Flexibility Act (Pub. L. 96–354) does not apply.

The primary author of this final rule is John T. Webb, Division of Law Enforcement, Fish and Wildlife Service.

Regulations Promulgation

For the reasons set out in the preamble, Part 20, Subchapter B, Chapter I of Title 50, *Code of Federal Regulations* is amended as follows:

PART 20—MIGRATORY BIRD HUNTING

1. The authority citation for Part 20 reads as follows:

Authority: Migratory Bird Treaty Act, Sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); Sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

2. Amend the Table of Contents for Part 20 by removing and reserving Subpart M and by removing §§ 20.141, 20.142, and 20.143 under Subpart M.

Subpart M—[Reserved]

§§ 20.141–20.143 [Removed]

3. Remove and reserve Subpart M. Remove §§ 20.141, 20.142, and 20.143.

J. Craig Potter,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

October 30, 1981.

[FR Doc. 81-34357 Filed 11-30-81; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

Foreign Fishing

AGENCY: National Oceanic and Atmospheric Administration, (NOAA)/ Commerce.

ACTION: Notice of reinstatement of DAH, reserve, and TALFF specifications.

SUMMARY: The NOAA announces that initial specifications for two fisheries are reinstated for 1982. During 1981, NOAA apportioned fish from reserve among domestic and foreign fishermen, and transferred some of the estimated domestic harvest to foreign fishermen. Under the management plans, the initial specifications are reinstated at the beginning of a fishing year.

EFFECTIVE DATE: January 1, 1982.

FOR FURTHER INFORMATION CONTACT: Robert McVey, Director, Alaska Region, National Marine Fisheries Service, Room 453, Federal Building, 709 West 9th Street, Juneau, Alaska 99802, (907) 586-7221.

SUPPLEMENTARY INFORMATION: This notice reinstates specifications for two fisheries in the United States fishery conservation zone (FCZ) for 1982.

These specifications are set out for the Gulf of Alaska Groundfish Fishery at 45 FR 73486 (November 5, 1980) and for the Trawl and Herring Gillnet Fishery of the Eastern Bering Sea and Northeast Pacific Ocean at 46 FR 20822 (January 8, 1981).

The public is advised that the total allowable level of foreign fishing (TALFF) for Pacific ocean perch in the eastern area of the Gulf of Alaska may be reduced to 200 mt (Amendment 10 to the Gulf of Alaska FMP), in the spring of 1982, because of the poor condition of the stock.

PART 611—FOREIGN FISHING

1. The authority citation is:

Authority: 16 U.S.C. 1821 and 1855.

2. For reasons in the preamble, 50 CFR Part 611 is amended by revising the title of appendix 1 and the entries 4A and 4E, to read as follows:

Dated: November 20, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

APPENDIX 1.—OPTIMUM YIELD (OY), ESTIMATED DOMESTIC ANNUAL HARVEST (DAH), ESTIMATED DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), DOMESTIC NON-PROCESSED FISH (DNP), AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. OY = DAH + RESERVES + TALFF. DAH = DAP + JVP + DNP

Species	Species code	Areas	OY	DAH	DAP	DNP	JVP	Reserve	TALFF
* * *	*	* * *	*	*					
4. Alaska fisheries:									
A. Bering Sea and Aleutian Islands groundfish fishery:									
Pollock	701	Bering Sea [1]	1,000,000	19,550	10,500	9,050	.....	50,000	930,450
		Aleutians [2]	100,000	0	0	0	.....	0	100,000
Yellowfin sole	720		117,000	26,200	1,200	25,000	.....	5,850	84,950
Turbots	721, 118		90,000	1,075	1,000	75	.....	4,500	84,425
Other flatfish	129		61,000	4,200	1,200	3,000	.....	3,050	53,750
Pacific ocean perch [3]	780	Bering Sea [4]	3,250	1,380	550	830	.....	162	1,708
		Aleutians [5]	7,500	1,380	550	830	.....	375	5,745
Other rockfish	849		7,727	1,550	1,100	450	.....	500	5,677
Sablefish	709	Bering Sea [4]	3,500	700	500	200	.....	350	2,450
		Aleutians [5]	1,500	709	500	200	.....	150	650
Pacific cod	702		78,700	43,265	26,000	17,065	200	3,935	31,500
Atka mackerel	207		24,800	100	0	100	.....	1,240	23,460
Squid	509		10,000	50	0	50	.....	500	9,450
Other species [6]	499		74,249	2,000	1,800	200	.....	3,712	68,537
* * *	*	* * *	*	*					
E. Gulf of Alaska groundfish fishery:									
Pollock	701	Western [7]	57,000	5,775	25	5,750	.....	11,400	39,825
		Central [7]	95,200	13,320	5,380	7,940	.....	19,040	62,840
		Eastern [8]	16,600	2,215	695	1,520	.....	3,320	11,065
		Total	168,800	21,310				33,760	113,730
Pacific cod	702	Western	16,560	1,980	240	1,040	600	3,312	11,368
		Central	33,540	6,050	3,480	1,370	1,200	6,708	20,782
		Eastern	9,900	2,070	280	590	1,200	1,980	5,850
		Total	60,000	10,000				12,000	38,000
Flounders	129	Western	10,400	700	100	600		2,080	7,620
		Central	14,700	1,120	300	820		2,940	10,640
		Eastern	8,400	1,360	900	460		1,680	5,360
		Total	33,500	3,180				6,700	23,620
Pacific ocean perch [3]	780	Western	2,700	345	25	320		540	1,815
		Central	7,900	1,255	295	960		1,580	5,065
		Eastern	14,400	1,315	80	1,235		2,880	10,206
		Total	25,000	2,915				5,000	17,085
Other rockfish [9]		Total	7,600	900	700	200	.....	1,520	5,180
Sablefish [7]	700	Western	2,100	270	100	170	.....	420	1,410
		Central	3,800	1,220	1,000	220	.....	760	1,820
		Yakutat district [8]	3,400	1,380	1,180	200	.....	1,420	600
		Southeast outside district [7]	3,000	2,910	2,820	90	.....	0	90
		Total	12,300	5,780			.....	2,600	3,920
* * *	*	* * *	*	*					
Atka mackerel	207	Western	4,678	290	0	290	.....	936	3,452
		Central	20,836	1,069	0	1,069	.....	4,167	15,589
		Eastern	3,186	700	0	700	.....	637	1,849
		Total	28,700	2,070				5,740	20,890
Squid	509	Total	5,000	150	0	150	.....	1,000	3,850
Other species [6]		Total	16,200	1,720	300	620	800	3,240	11,240
Thornyhead rockfish	749	Total	3,750	6	6	0	.....	750	2,994

[FR Doc. 81-34140 Filed 11-30-81; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 46, No. 230
Tuesday, December 1, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR 1004

[Docket No. AO-160-A57]

Milk in the Middle Atlantic Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends certain changes in the Middle Atlantic milk order based on industry proposals considered at a public hearing in September 1981. These changes would reduce for part of the year the proportion of receipts at a distributing plant which must be disposed of as Class I milk, while increasing the percentage of producer milk which may be diverted to nonpool plants. Also, plants that process the market's reserve milk supplies and meet pool performance requirements during certain months of the year would continue to be automatically qualified for pooling for the remaining months. The recommended changes are necessary to reflect current marketing conditions and to assure orderly marketing in the Middle Atlantic order area.

DATE: Comments are due on or before December 16, 1981.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, 202/447-6273.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued August 18, 1981: published August 21, 1981 (46 FR 42486).

Order Suspending Certain Provisions: Issued September 30, 1981; published October 6, 1981 (46 FR 49102).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Middle Atlantic marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, on or before December 16, 1981. The exceptions should be filed in four copies. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The Proposed amendments set forth below are based on the record of a public hearing held at Philadelphia, Pennsylvania, on September 15, 1981, pursuant to notice thereof issued August 18, 1981 (46 FR 42486).

The material issues on the record of the hearing relate to:

1. Performance standards for pool distributing plants.

2. Application of the automatic pool plant qualification provision to pool plants other than supply plants.

3. Allowable diversions of producer milk to nonpool plants.

(a) Allowable diversions of individual producers' milk.

(b) Allowable diversions of all producer milk handled by a cooperative association or proprietary handler.

Finds and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Performance standards for pool distributing plants.* The percentage of receipts disposed of as Class I milk that is now required of pool distributing plants should be changed from 40 percent each month of the year to 30 percent for each month of March through August, with the performance standard remaining at 40 percent for the months of September through February.

A proprietary handler receiving milk from nonmember producers proposed that the Class I disposition standard for pool distributing plants be reduced to 30 percent of the plant's receipts for each month of the year. The handler's representative claimed that without such a reduction the handler would be unable to meet the pooling requirements since his Class I utilization percentage is expected to fall short of 40 percent. He asserted that failure of the handler to maintain pooled status would force him to cease his fluid milk operations. The witness pointed out that this handler's declining percentage of Class I use follows the same trend observable in the market as a whole, although admittedly to a greater degree. The frequent suspensions in recent years of distributing plant performance standards for the Middle Atlantic order to facilitate the continued pooling of the milk of producers normally associated with the market were cited as evidence that those standards are too high. A reduction of those standards, he claimed, would obviate the need for continued suspensions.

A representative of a federation of cooperatives supplying over 60 percent of the milk priced under Order 4 testified in opposition to any reduction of the distributing plant performance requirements. This witness stated that the marketwide Class I utilization is adequate to accommodate the pooling of reserve supplies associated with the market's fluid needs under the present

40 percent performance standard during the months of September through February. Pooling of the seasonal increase in production in the months of March through August, the witness explained, could be accommodated by adoption of the proposal to include all types of plants in the provision for automatic pooling during those months if such plants were pool plants in each of the previous months of September through February. A principal objection voiced in opposition to the proposed reduction of pooling standards was the possible association with the market of additional supplies of milk not needed as reserve supplies. Such additional supplies, it was feared, would reduce overall returns to producers already associated with the market.

This decision takes official notice of the commercial fact that the proponent of reduced distributing plant performance standards discontinued operating a distributing plant a short time after the hearing. However, the problem addressed by the handler's proposal is reflective of market conditions in general, and still may serve as a valid basis for re-examining pool plant performance standards.

Before October 1978, the performance standard required of pool distributing plants was that 50 percent of receipts be used as Class I milk during each month of the year. It was found necessary to suspend those standards for June and July 1976 and May through August 1977, as some handlers experienced difficulty in meeting the 50 percent requirement. A hearing was held in October 1977 at which testimony was given to the effect that producer receipts had been increasing significantly since a marketing area expansion in June 1975, while Class I utilization remained relatively unchanged. As a result, the percentage of producer milk used in Class I had declined from 61 percent in June 1975 to 54 percent in June 1977. No problems had been encountered in operating within the 50 percent performance requirement during the months of September through February, and the Class I utilization percentage had remained above 60 percent for those months. As a result of the October 1977 hearing, performance standards for pool distributing plants were reduced for the months of March through August from 50 percent to 40 percent. The 50 percent standard for September through February was left unchanged.

By October 1978, when the amendments resulting from the previous hearing became effective, some distributing plant operators were encountering difficulty in maintaining their Class I dispositions at 50 percent of their receipts during the months of September through February. The largest distributing plant regulated under Order 4 had become regulated under Order 2, and as a result Class I utilization by Order 4 handlers had declined considerably without a proportionate decline in production. From September–October 1977 to September–October 1978, Class I use as a percent of producer receipts fell from 61 percent to 57 percent. These developments had necessitated the suspension of the 50 percent performance standard for September 1978 through February 1979, and caused handlers to propose a reduction in the performance requirement for September through February from 50 percent to 40 percent. The proposal was adopted on the basis of reduced Class I use, and in May 1979 a 40 percent performance standard for all months became effective. An additional proposal at the October 1978 hearing requested the reduction of the 40 percent standard for March through August to 30 percent. It was determined that such a reduction was not necessary at that time.

After the most recent amendment to distributing plant performance standards in May 1979, handlers continued to experience difficulty in meeting pooling qualifications. Performance standards were suspended for May through August 1980, and for March through August 1981. As a result of a request for emergency suspension at this hearing, pooling requirements were further suspended for September 1981 through February 1982. Although the expected inability of distributing plants to meet pooling standards can be relieved by suspension of those requirements, such suspensions are emergency actions which should be minimized by providing lower pooling standards.

For the months of September through February, it appears that a 40 percent performance standard is liberal enough to assure continued inclusion in the marketwide pool of producers normally associated with the market. For the September 1977 through February 1978 period, when handlers found it possible to operate without suspension of the 50 percent performance standard, Class I utilization averaged 60 percent, with a low of 59 percent. The reduction to a 40 percent standard for those months was requested a year later when Class I use dipped to 55 percent in December 1978. Class I use during September 1980 through February 1981 averaged 52 percent with a low of 50 percent. As in the 1977–78 period, this spread of 10 percentage points between the performance standard and the lowest marketwide Class I utilization experienced in the period should cause distributing plant operators no difficulty in maintaining their pool status.

Since the proceeding in which performance standards for March through August were reduced from 50 to 40 percent, the Class I utilization percentage for that period has fallen from 55 percent in 1977 to 46 percent in 1981. In view of these changes, a 40 percent requirement for the months of March through August is too high for distributing plant operators to operate within consistently. Such a requirement most likely would make it necessary for some handlers to request frequent suspension of the standard in order to remain pooled.

The proposal to include distributing plants in the provision allowing supply plants meeting pool qualifications during the months of September through February to be automatically qualified for the months of March through August is not adopted in this decision. Furthermore, the opportunity for handlers to attach additional supplies of surplus milk to the market because of a reduction in March through August performance standards would be minimal in view of the fact that standards for September through February are to remain at 40 percent. Accordingly, the proposal to reduce the performance standard for pool distributing plants to 30 percent should be adopted for the months of March through August.

2. *Application of the automatic pool plant qualification provision to pool plants other than supply plants.* Application of the order provision which allows a supply plant meeting pooling qualifications for the months of September through February to remain pooled during the following March through August period should be expanded to include reserve processing plants, but not distributing plants. A proprietary handler proposed that the provision be amended to include all pool plants which meet performance standards for the months of September through February, and that proposal was supported by a federation of cooperative associations. Witnesses for both parties testified that inclusion of all types of plants in this provision would assure that all producers normally associated with the market would continue to have their milk pooled. The market's declining Class I use and increased volume of milk production were cited as the principal factors which might be expected to prevent handlers from

meeting performance requirements in the months of seasonally heavy milk production.

The rationale for the inclusion of the automatic pooling provision in the Middle Atlantic order is the reduced demand for supply plant milk during the generally flush production months of the year. The reserve milk handled by supply plants is an integral part of the market's supply for class I use during the short production months. During the months of flush production, however, the direct farm supply received at a pool distributing plant is more likely to be sufficient to supply its Class I requirements. At that time, requiring qualifying shipments from supply plants may force handlers to resort to uneconomic movements of milk in order to remain pooled. The automatic pooling provision is designed to make such uneconomic movements unnecessary.

A major proportion of the reserve milk supply for the market is processed at the reserve processing plants pooled under the order. A reserve processing plant operated by a proprietary handler, a cooperative association, or a federation of cooperatives which does not meet performance standards as a pool distributing or pool supply may be a pool plant if a specified percentage of the milk handled by the plant operator or cooperative is delivered to pool distributing plants. By balancing surplus milk supplies and requirements for fluid milk, reserve processing plants perform much the same function as supply plants in this market. Therefore, the provision that allows plants performing a substantial reserve supply role to be automatically qualified during the flush production months should be made applicable to them as well as to supply plants.

Application of the automatic pooling provision to distributing plants should not be necessary. Distributing plants generally do not carry reserve supplies of milk for the market and thus are not affected as greatly by seasonal fluctuations of production as are supply plants and reserve processing plants. The reduction in distributing plant performance standards for the months of March through August should be adequate to solve any problems caused by fluctuations in production which are encountered by distributing plants in their role as handlers of producer milk.

3. *Diversion provisions.* The order should be amended to increase allowable diversions of producer milk to nonpool plants to 30 percent of a handler's milk supply which is received at all pool plants during any month of September through February. A proposal to increase the number of days' production for each producer that may be diverted to nonpool plants during those months should not be adopted.

The order now provides that a handler's total monthly diversions to nonpool plants during September through February may not exceed 25 percent of the producer milk delivered by the handler to pool plants during the month. Alternatively, up to 18 days' production of each dairy farmer may be diverted during the month to nonpool plants. No diversion limitations apply during the months of March through August.

The increased percentage of allowable diversions was proposed by a cooperative association and supported by the federation of cooperatives of which it is a member and by another cooperative association. The witness testifying on behalf of the proposal stated that as production has expanded and the number of plants processing Class I milk has declined, it has been necessary to place more reliance on nonpool plants for handling the reserve supplies of the market. Estimated deliveries by this cooperative association for August 1981–July 1982 to three nonpool plants in Pennsylvania were projected at 24 percent over deliveries to those plants in 1977. Due to these factors, the cooperative claims it is necessary to modify the diversion limit in order to accommodate efficient handling and pooling of milk production of its members, which is an important part of the necessary reserve milk supply for the market. There was no testimony in opposition to the requested increase of allowable diversions to nonpool plants.

Testimony given at the hearing relating to current levels of production, Class I use, and the capacity of the market's reserve processing plants to handle surplus milk indicates that failure to increase the diversion allowance is likely to result in uneconomic movements of milk during the September through February period in order to qualify it for pooling. Since 1971 when the present diversion allowances were determined, production in the Middle Atlantic market has increased more than 25 percent, while the amount of producer milk used in Class I has increased just over 1 percent. As a result, from 1971 to 1980 Class I utilization of producer milk in the market declined from 63.6 percent to 51.5 percent. During this same period, handlers have followed a trend of bottling milk on fewer days of the week. Most bottling plants have tended to require milk only on those days that they are bottling due to demand patterns of schools and supermarkets. Consequently, a large proportion of the milk received on heavy bottling days may be required to meet the demand for fluid needs while milk received from farms on other days of the week is almost entirely surplus. In view of these facts, it is hardly surprising that provisions for disposing of surplus milk considered appropriate in 1971 have since become inadequate. The allowance for diversions to nonpool plants in September through February should therefore be increased from 25 to 30 percent of a handler's milk received at pool plants.

The proposal to increase a producer's allowable days of production diverted to a nonpool plant from 18 to 21 was made by the same proprietary handler who proposed reducing distributing plant performance standards to 30 percent for all months of the year. Twenty-one days' diverted production would correspond to the 70 percent of receipts supplemental to the 30-percent Class I disposition required by the proposal. The cooperative federation opposed this proposal as they did the 30-percent performance standard with which it correlates. Because the 30-percent pool qualification has not been adopted for the months of September through February to which the diversion allowances apply, there should be no change in the days' production of each producer's milk which may be diverted to nonpool plants.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

Findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous finding and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict

with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the mimimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes to industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Middle Atlantic marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. In § 1004.7 paragraphs (a) and (e) are revised to read as follows:

§ 1004.7 Pool plant.

* * * * *

(a) A plant from which during the month a volume not less than 40 percent in the months of September through February, and 30 percent in the months of March through August, of its receipts described in subparagraph (1) or (2) of this paragraph is disposed of as Class I milk (except filled milk) and a volume not less than 15 percent of such receipts is disposed of as route disposition (other than as filled milk) in the marketing area.

* * * * *

(e) Subject to the conditions of paragraph (e)(1) of this section, a plant that was qualified pursuant to paragraph (b), (c), or (d) of this section during each of the immediately preceding months of September through February shall remain so qualified during the following months of March through August, unless written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated a nonpool plant for such month and each subsequent month of such period during which it does not otherwise qualify pursuant to said paragraph (b), (c), or (d):

* * * * *

2. In § 1004.12 paragraph (d)(2) (i) and (ii) is revised to read as follows:

§ 1004.12 Producer.

* * * * *

(d) * * *

(2) * * *

(i) All of the diversions of milk of members of a cooperative association to nonpool plants are for the account of such cooperative association and the amount of member milk so diverted does not exceed 30 percent of the volume of milk of all members of such cooperative association received at all pool plants during such month.

(ii) All of the diversions of milk of dairy farmers who are not members of a cooperative association diverting milk for its own account during the month are diversions by a handler in his capacity as the operator of a pool plant from which the quantity of such nonmember milk so diverted does not exceed 30 percent of the total of such nonmember milk delivered to such handler during the month.

* * * * *

Signed at Washington, D.C., on November 25, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-34425 Filed 11-30-81; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Petitions for Rulemaking; Issuance of Quarterly Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of quarterly report.

SUMMARY: The Nuclear Regulatory Commission has issued the September 30, 1981, Quarterly Report on Petitions for Rulemaking. This report is issued in accordance with 10 CFR 2.802 and is a quarterly summary of petitions for rulemaking that are pending final action.

ADDRESSES: A copy of this report, designated NRC Petitions for Rulemaking—September 30, 1981, is available for inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

Requests for single copies of this report, or a request to be placed on an automatic distribution list for single copies of future reports, should be made in writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, Telephone: 301-492-7086.

Dated at Bethesda, Md., this 29th day of October 1981.

For the Nuclear Regulatory Commission.

J. M. Felton,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 81-34342 Filed 11-30-81; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 456

[Docket No. CAS-RM-81-130]

Residential Conservation Service Program; Extension of Comment Period and Change in Hearing Dates

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Extension of comment period and change in Washington, D.C., hearing dates.

SUMMARY: On November 12, 1981, the Department of Energy published proposed amendments to the Residential Conservation Service Program (46 FR 55836). Because of the requests received, the Department is extending the comment period and postponing the hearing dates for the Washington, D.C., hearing from December 14 and 15 to January 11 and 12 in order to provide additional time to comment on the proposed rule.

DATES: Written comments on the proposed rule must be received by January 20, 1982, 4:30 p.m., e.s.t., in order

to insure their consideration. The public hearing in Washington, D.C. will be held beginning at 9:00 a.m. on January 11 and 12, 1982, at the location specified below. Requests to speak must be received no later than 4:30 p.m. on January 5, 1982. The dates for the Chicago and San Francisco hearings remain unchanged.

ADDRESSES: The Washington, D.C. hearing will be held in the DOE Auditorium, GE–086, Forrestal Building, 1000 Independence Avenue, S.W.

All written comments and requests to speak should be addressed to Conservation and Renewable Energy, Office of Hearings and Dockets, Mail Station, 6B–025, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585; or phone (202) 252–9319. All other details on the comment and hearing procedures are included in the November 12 **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Mark Friedrichs or Dan Quigley, Building Services Division, Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, S.W., Room 8F–055, Mail Stop CE–115, Washington, D.C. 20585, (202) 252–1650.

Issued in Washington, D.C., November 20, 1981.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 81-34309 Filed 11-30-81; 8:45 am]

BILLING CODE 6450-01-M

10 CFR Part 456

[Docket No. CAS-RM-81-130]

Residential Conservation Service Program

Correction

In FR Doc. 81–32458 appearing on page 55836 in the issue of Thursday, November 12, 1981, make the following corrections in **Appendix I to Part 456—Program Measures,** paragraph (e), *Table of Program Measures by State,* on pages 55860 through 55870:

State	HUD/MPS region	Fuel	Measure	Correct indicator
Arizona	6	Electric	Solar domestic water heater.	C.
Hawaii	1	Gas	Water heater insulation.	RC.
Iowa	6	Electric	Solar domestic water heater.	
Iowa	7	Electric	Solar domestic water heater.	
Iowa	8	Electric	Solar domestic water heater.	
Iowa	6	Electric	Replacement solar pool heater.	C.
Iowa	7	Electric	Replacement solar pool heater.	C.
Iowa	8	Electric	Replacement solar pool heater.	C.
New Hampshire.	7	Heat pump.	Duct insulation	RC.
New Mexico.	5	Electric	Replacement solar pool heater.	
New Mexico.	5	Electric	Solar domestic water heater.	C.
New York.	6	Gas	Duct insulation	R.
New York.	7	Gas	Duct insulation	R.
North Carolina.	3	Oil	Replacement heating system.	
North Carolina.	3	Oil	Replacement oil burner.	C.
North Carolina.	4	Heat pump.	Wind energy	
Ohio	6	Gas	Wall insulation	C.
Ohio	6	Electric	Storm or thermal doors.	
Ohio	6	Electric	Heat reflective and heat absorbing window materials.	R.
Ohio	6	Electric	Replacement solar pool heater.	C.
Ohio	6	Oil	Replacement solar pool heater.	C.
Ohio	6	Heat pump.	Replacement solar pool heater.	C.
Ohio	7	Heat pump.	Replacement solar pool heater.	C.
Ohio	6	Electric	Wind energy	
Ohio	6	Oil	Wind energy	
Ohio	6	Heat pump.	Wind energy	
Oklahoma.	5	Electric	Wind energy	XY.
Oklahoma.	5	Heat pump.	Wind energy	XY.
Pennsylvania.	6	Electric	Pipe insulation	RC.
Vermont	8	Heat pump.	Heat reflective and heat absorbing window materials.	R.
Virginia	6	Electric	Storm or thermal windows.	C.
Virginia	6	Electric	Storm op thermal doors.	
Virginia	6	Electric	Heat reflective and heat absorbing window materials.	RC.
Virginia	6	Electric	Replacement heating system.	C.
Wyoming	7	Oil	Replacement solar pool heater.	C.

Also, on page 55867, the portion of the table for North Dakota was inadvertently placed between Ohio and Oklahoma and should have appeared alphabetically after North Carolina.

BILLING CODE 1505-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 81-678]

Manufactured Home Loans

Dated: November 12, 1981.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank board is proposing to amend the regulations for Federal savings and loan associations to liberalize the manufactured home lending rules. The proposal would allow Federal associations to become more involved in this lending activity.

DATE: Comments must be received by: January 18, 1982.

ADDRESS: Send comments to the Public Information Officer, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Office of General Counsel ((202) 377–6442), at the above address.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board proposes to amend the regulations governing mobile home lending by Federally-chartered savings and loan associations to: (1) Allow associations to finance insurance premiums as part of a mobile home loan; (2) eliminate the percentage-of-assets limit on mobile home lending; (3) remove certain restrictions on the purchase of interests in out-of-territory mobile home loans; and (4) effect certain terminology changes. These amendments will enable Federal associations to finance more affordable housing profitably and help meet the housing needs of the lower- and moderate-income residents of their communities.

A. *Insurance Premium Financing.* Under current regulations, Federal associations are prohibited from financing, as part of a mobile home loan, insurance premiums other than three-year premiums for vendors' single-interest coverage and physical damage insurance. 12 CFR 545.7–6(e)(2)(iv) (1981). As a result of this prohibition, associations may not finance premiums for credit life and disability insurance and may therefore impair their loan customers' ability to obtain these insurance products. An additional consequence of the restriction is that associations are foreclosed from

receiving the commission income generated by credit life placements.

The insurance premium financing ban was introduced into the mobile home lending regulations in 1979, in connection with substantial liberalization of those regulations. *See* 44 FR 45116 (Aug. 1, 1979). At that time, the Board took the position that only insurance coverage essential to the protection of all parties should be financed. *Id.* at 45118. Insurance other than physical damage and vendors' single-interest coverage was determined not to be in this category and therefore could not be financed. It was suggested in the preamble to the regulation that the appropriate method of making these forms of coverage available would be to escrow funds for premiums.

This restriction, however, may make credit life and disability insurance unavailable to the consumer who finances a mobile home through a Federal association. Credit life and disability generally are single-premium policies for multi-year coverage; in order to obtain the insurance, the consumer must pay for the policy at its inception. Often the only way for the consumer to afford the large premium is to finance it. While there are other types of life and disability insurance coverage that consumers could obtain, credit life policies may be desired by consumers because of the convenience of obtaining them in connection with their housing loans, and because physical examinations generally are not required. The Board also notes that credit life insurance provides an additional measure of security to the association as well as to the borrower.

The Board's restriction also serves to place Federal associations at a disadvantage in comparison to lenders that are able to freely finance premiums. Therefore, the Board proposes to delete the restriction found in the current regulation with respect to premium financing and to remove the requirement that financed premiums for physical damage and vendors' single-interest insurance not exceed three years. Under the Board's proposal, the amount of the premiums for credit life and disability, physical damage, and vendors' single-interest insurance could be considered part of the buyer's total costs for purposes of determining the permissible loan amount.

The Board notes that the proposed amendment brings out an inconsistency between the requirements imposed on the offering of insurance services in connection with real estate mortgages and manufactured home loans. Under Insurance Regulation 563.35(b), insured institutions are required to give borrowers notice of their right to freely select the provider of insurance services in connection with loans secured by an owner-occupied home. 12 CFR 563.35(b). Manufactured home loans are not covered by this rule. The Board requests comment on whether the insurance services notice requirements should be equalized for both types of loans.

B. *Percentage-of-Assets Limitations.* The Board's mobile home lending regulations impose a 20-percent-of-assets limitation on this type of residential lending, although there is no longer a statutory requirement to do so. 12 C.F.R. § 545.7–6(b) (1980). Since many Federals wish to become more involved in mobile home lending, the Board proposes to remove the current 20-percent-of-assets limitation.

C. *Out-of-Territory Purchases.* Section 545.7–6(e)(3) prohibits Federal associations from purchasing interests in retail mobile home chattel paper where the security property is located outside the association's normal lending territory unless the seller is a Federally-insured depository institution. This limitation was imposed to ensure regulatory oversight of loan origination and servicing and roughly paralleled the former limitations on the purchase of out-of-territory mortgage interests. In view of the relaxation of those rules, the Board proposes to delete the requirement that associations only purchase interests from Federally-insured institutions. This change will allow associations to take advantage of out-of-territory lending opportunities without the interposition of middlemen.

D. *Terminology Changes.* In the Depository Institutions Deregulation and Monetary Control Act, Congress revised the Home Owners' Loan Act to change references from mobile homes to manufactured homes. Subsequently, Congress also decided to delete all Federal statutory references to mobile homes in favor of the term manufactured homes. Housing and Community Development Act of 1980 § 308, Pub. L. No. 96–399, 94 Stat. 1640. In the interests of uniformity, the Board proposes to adopt the term manufactured home in its regulations. The Board also proposes to delete its definition of mobile home in favor of a reference to the statutory definition of manufactured homes in the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401–26.[1] This revision will promote uniformity in terminology and ease regulatory compliance.

The Board is also proposing to make a technical amendment to the definition of manufactured home chattel paper to clarify that the scope of that term includes installment loan contracts on manufactured homes.

E. *Regulatory Flexibility.* The Board has determined that these proposed amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities. Each of the proposed amendments is enabling, not restrictive. They will not impose increased costs or expenses on Federal associations. Therefore, the Board concludes that a regulatory flexibility analysis is unnecessary.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 545, Subchapter C, Part 584, Subchapter F, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. Revise paragraph (a)(1) of § 545.7–6 to read as follows:

§ 545.7–6 Manufactured home financing.

(a) *Definitions used in this Part.* (1) "Manufactured home" shall have the same definition as that contained in the National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(6).

2. Amend paragraph (a)(2) of § 545.7–6 by adding the phrase "an installment sales contract on a manufactured home or" after the word "evidencing".

3. Amend paragraph (b) of § 545.7–6 by removing the phrase "up to 20 percent of assets" and add at the end of that paragraph the phrase "without limitation as to percentage of assets."

4. Amend paragraph (e)(2)(iv) of § 545.7–6 by striking the word "and" and the period from the first clause of that section and adding the phrase", and premiums for related insurance." and by removing the second sentence thereof.

5. Amend paragraph (e)(3) by removing the phrase "shall be an institution whose accounts or deposits

[1] The current version of that definition states:

(6) "manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary [of HUD] and complies with the standards established under this chapter.

* * *

are insured by a Federal agency or a service corporation thereof and the seller."

6. Amend § 545.7–6 by removing the phrase "mobile home(s)" wherever it appears and replacing it with the phrase "manufactured home(s)."

§ 545.9–1 [Amended]

7. Amend paragraph (c)(1)(i) of § 545.9–1 by removing the phrase "mobile homes" and replacing it with the phrase "manufactured homes.".

SUBCHAPTER F—SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

§ 584.2–1 [Amended]

8. Revise paragraph (b)(1)(ii) of § 584.2–1 by removing the phrase "mobile home" and replacing it with the phrase "manufactured home".

(Home Owners' Loan Act Section 5(c), 12 U.S.C. 1464(c), as amended by Depository Institutions Deregulation and Monetary Control Act § 401, 94 Stat. 153)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 81–34429 Filed 11–30–81; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 148

[Docket No. 81N–0272]

Quick Frozen Blueberries; Advance Notice of Proposed Rulemaking on Possible Establishment of a Standard

Correction

In FR Doc. 81–30470, appearing at page 51926 in the issue of Friday, October 23, 1981, the designation "CAC/RS 103–1978" should have appeared above the heading "Recommended International Standard for Quick Frozen Blueberries" in the second column of page 51927.

BILLING CODE 1505–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 5H5097/P73B; PH–FRL–1994–3]

Diquat; Proposed Food Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice reproposes that 21 CFR 193.160 be amended by extending the current regulation to permit additional uses of diquat in reservoirs, marshes, bayous, drainage ditches, canals, rivers, and streams that are quiescent or slow-moving with a tolerance limitation of 0.01 part per million for diquat in potable water. The proposal was submitted by the Department of the Army. This amendment to the regulations would establish the maximum permissible level for residues of diquat in potable water.

DATE: Written comments must be received on or before February 1, 1982.

ADDRESS: Written comments to: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of March 5, 1981 (46 FR 15281) that the Department of the Army and Chevron Chemical Co. had petitioned the EPA to establish a regulation permitting residues of diquat in potable water.

The notice proposed that Subpart A of 21 CFR Part 193 be amended by revising § 193.160 to read as follows:

§ 193.160 Diquat.

(a) A tolerance of 0.01 ppm is established for residues of the herbicide diquat (6,7-dihydrodipyrido (1,2-a:2',1'-c) pyrazidiinium) derived from application of the dibromide salt in potable water resulting from the application of the pesticide for control of aquatic weeds in ponds, lakes, reservoirs, marshes, bayous, drainage ditches, canals, streams, and rivers which are slow-moving or quiescent in programs of the Corps of Engineers or other federal or State public agencies. These agencies or contractors under their direct control will make certain that the treated water will not be used for animal consumption, swimming, spraying, domestic purposes, or for irrigation for 14 days post-treatment or until approved analysis shows that the water does not contain more than 0.01 ppm of diquat (calculated as the cation) and that no treatment will be made where commercial processing of fish is practiced.

(b) A tolerance of 0.01 ppm is established for residues of the herbicide diquat (6,7-dihydrodipyrido (1,2-a:2',1'-c) pyrazidiinium) (calculated as the cation) derived from application of the dibromide salt in potable water resulting from the application of the pesticide in ponds, lakes, and drainage ditches where there is little or no outflow of water and which are totally under the control of the user. The applicator will make certain that treated water will not be used for animal consumption, swimming, spraying, irrigation, or domestic purposes for 14 days posttreatment. These applications of diquat are not to be used in aquatic sites in Florida.

A correction document was published in the **Federal Register** of April 22, 1981 (46 FR 22907).

No requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

Comments on the proposed rule were received from twenty different parties. Four of the commenters expressed support of the proposed rule without reservation. The remaining sixteen commenters expressed support for establishing the rule, but stated reservations about the text at several places in the proposal. The major issues revolved around the following three points:

(1) Ten commenters requested clarification of the restriction under § 193.160(a) concerning commercial processing of fish. The restriction is included because the Agency has residue data showing higher levels of diquat in fish viscera than in the edible portions for which the tolerance is intended. The Agency is concerned that the viscera residues will concentrate during processing to fish protein concentrate or fish meal. However, the Agency is not attempting to limit diquat use in situations where private or commercial fishing occurs. The Agency has, therefore, clarified the restriction to read: "* * * no treatment will be made where commercial processing of fish, resulting in the production of fish protein concentrate is fish meal, is practiced."

(2) Eleven commenters opposed or requested clarification of the restriction under § 193.160(b) prohibiting private applicator use of diquat in ponds, lakes, and drainage ditches in Florida. Two commenters cited diquat's propensity to bind readily to soil particles. They reasoned that this property would mitigate against diquat residues transferring from treated sites to other bodies of water. Private use of diquat in aquatic situations is acceptable where the user can follow label directions prescribed to assure that residues in drinking water, irrigated crops, fish and shellfish are within established limits. The Agency considers all bodies of water in Florida to be interconnected because of the high water table. The Agency does not, therefore, consider any body of water to be totally under control of the user. One commenter suggested that "totally" be omitted from the restriction because it implies the absolute. The Agency does not believe that omitting the word "totally" would

change the sense of the restriction, which is that the applicators have control of the treated water. We do believe the term is useful in reinforcing our intent to restrict private applicator use of diquat in lakes, ponds, and drainage ditches and thus, have retained it with this reproposal. The restriction will not prohibit the use of diquat in any aquatic site in Florida. It will limit diquat use in Florida to persons described under paragraph § 193.160(a). The Agency will reconsider the restriction if adequate data from field trials or documented evidence from actual use are presented to show that diquat residues will not transfer through the shallow water aquifers typical of Florida (particularly sandy soils). The Agency is modifying the restriction so that it clearly applies to private applicator use as follows: "§ 193.160(b) * * * "For the purposes of this paragraph only [§ 193.160(b)], these applications of diquat are not to be used in aquatic sites in Florida."

(3) Five commenters requested addition of the category licensed or certified applicators to the user groups cited under § 193.160 (a) (licensees of Federal or State public agencies). These commenters were concerned that the proposed languge was too restrictive with regard to who could apply diquat to the listed aquatic sites under such programs. The Agency's position is that appropriate Federal or State agencies administering public water management programs should determine which categories or groups of applicators are qualified and can adhere to the restrictions on diquat aquatic use described in § 193.169(a).

Water management district personnel, municipal officials, applicators certified for aquatic pesticides use and other trained, experienced applicators may be eligible as licensees. The agency concludes that addition of the category licensed applicators would be consistent with the regulation described in § 193.160(a). The pertinent language, therefore, is revised to read as follows: "§ 193.160(a) xxx. These agencies or contractors or licensees under their direct control xxx". The proposed tolerance represents 12.73 percent of the maximal permitted intake (MPI) for diquat residues. These values are based on a no-observable-effect level (NOEL) of 10 ppm (0.5 mg/kg of body weight; 2-year rat feeding study), a safety factor of 100, and an MPI of 0.3000 mg/day for a 60 kg person. Since the production of cataracts in experimental animals is the most sensitive indicator of diquat toxicity, the NOEL quoted above is the noncataractogenic level.

The evaluation of the scientific data supporting this proposed regulation is presented in the **Federal Register** of March 5, 1981 (46 FR 15281).

As discussed in the Agency's proposal of March 5, 1981, the Agency will, at a later date, establish regulations under the Safe Drinking Water Act to limit concentrations of pesticides in drinking water. Until these regulations are established, the Agency will continue to rely on food additive tolerances established under section 409 of the Federal Food, Drug, and Cosmetic Act to describe limits on residues in drinking water resulting from direct applications of pesticides in aquatic situations. The establishment of a diquat tolerance for potable water is not intended to substitute for, nor will it preclude the subsequent development, if necessary, of a national drinking water standard (Maximum Containment Level (MCL)) for this chemical, nor would it necessarily determine what the MCL would be.

It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the prescribed label and labeling registered pursuant to FIFRA, as amended (86 Stat. 973, 89 Stat. 751; U.S.C. 135(a) *et seq.*). Therefore, it is proposed that 21 CFR 193.160 be amended as set forth below.

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 and document control number "[FAP 5H5097/P73B]". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of Richard Mountfort from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

As required by Executive Order 12291, EPA has determined that this proposed rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this proposal from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

(Sec. 409(c)(1), 72 Stat. 1786; (21 U.S.C. 346(c)(1))).

Dated: November 16, 1981.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 193—TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, it is proposed that 21 CFR 193.160 be revised to read as follows:

§ 193.160 Diquat.

(a) A tolerance of 0.01 ppm is established for residues of the herbicide diquat (6,7-dihydrodipyrido (1,2-a:2',1'-c) pyrazidiinium) derived from application of the dibromide salt in potable water resulting from the application of the pesticide for control of aquatic weeds in ponds, lakes, reservoirs, marshes, bayous, drainage ditches, canals, streams, and rivers which are slow-moving or quiescent in programs of the Corps of Engineers or other Federal or State public agencies. These agencies or contractors or licensees under their direct control will make certain that the treated water will not be used for animal consumption, swimming, spraying, domestic purposes, or for irrigation for 14 days posttreatment or until approved analysis shows that the water does not contain more than 0.01 ppm of diquat (calculated as the cation) and that no treatment will be made where commercial processing of fish, resulting in the production of fish protein concentrate or fish meal, is practiced.

(b) A tolerance of 0.01 ppm is established for residues of the herbicide diquat (6,7-dihydrodipyrido (1,2-a:2',1'-c) pyrazidiinium) (calculated as the cation) derived from application of the dibromide salt in potable water resulting from the application of the pesticide in ponds, lakes, and drainage ditches where there is little or no outflow of water and which are totally under control of the user. The applicator will make certain that treated water will not be used for animal consumption, swimming, spraying, irrigation, or domestic purposes for 14 days posttreatment. For the purposes of this paragraph only [§ 193.160(b)] these applications of diquat are not to be used in aquatic sites in Florida.

[FR Doc. 81-34410 Filed 11-30-81; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 141

[WH-FRL-1938-2]

Maximum Contaminant Levels for Fluoride

AGENCY: Environmental Protection Agency (EPA or the Agency).

ACTION: Response to petition for rulemaking.

SUMMARY: On June 4, 1981, the South Carolina Department of Health and Environmental Control, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(e) filed a petition requesting that EPA exercise its rulemaking authority by repeal of 40 CFR 141.11(c), that portion of the National Interim Primary Drinking Water Regulations establishing Maximum Contaminant Levels (MCLs) for fluoride. The Administrator hereby acknowledges receipt of the petition and agrees to consider the actions proposed by the petitioners as part of the process of developing Revised National Primary Drinking Water Regulations under the Safe Drinking Water Act.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Director, Criteria and Standards Division, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202/472-5016.

SUPPLEMENTARY INFORMATION:

I. Petition

The petition filed by the South Carolina Department of Health and Environmental Control seeks repeal of the National Interim Primary Drinking Water Regulations for Fluoride, 40 CFR 141.11(c). The petitioner contends that: (1) The costs of reducing fluoride levels in water supplies with naturally high fluoride content is prohibitive and in excess of the supposed benefits and (2) fluoride in public water supplies does not present a health hazard.

The petitioner commissioned a study of fluoride reduction alternatives for forty-three South Carolina community water supplies. On the basis of results from that study, petitioner has concluded that the costs of fluoride reduction would make compliance with the current regulations economically burdensome. A copy of the report of the commissioned study was filed with the EPA Regional Office in Atlanta, Georgia. The petitioner noted that the costs of fluoride reduction, as determined by the study, are much higher than the cost estimates relied upon by EPA at the time of promulgation of the fluoride regulations in 1975.

The petitioner also submits that fluorosis, the visible effect of elevated fluoride levels, is not an adverse health effect that should be regulated under the Safe Drinking Water Act. Rather, the petitioner maintains that fluorosis is essentially an aesthetic effect, and therefore should not be controlled by a national drinking water regulation. Petitioner asserts that fluoride should be controlled only by a secondary drinking water regulation, pending further study of the medical and economic aspects of fluoride removal from drinking water. Secondary drinking water regulations are intended to specify maximum contaminant levels that are requisite to protect the public welfare, and are not Federally enforceable.

II. Agency Action in Response to Petition

A. Background

During the development of the National Interim Primary Drinking Water Regulations, EPA consulted the Department of Health, Education and Welfare, specifically the National Institute of Dental Research, the Division of Dental Health and the Deputy Surgeon General on the effects of fluoride in drinking water. EPA sought to ascertain whether fluoride should be included as a health-related contaminant, and if so, at what levels.

Acting upon the advice of the Surgeon General, EPA categorized dental fluorosis in its more severe forms as an adverse health effect. In addition to staining of dental enamel, severe fluorosis is characterized by pitting and flaking of dental enamel.

At the time of its development the 1975 National Interim Primary Drinking Water Regulation for fluoride was designed to be protective against the more severe levels of fluorosis and not against the merely cosmetic staining that also occurs. As the amount of fluoride in drinking water is increased, the incidence of all levels of fluorosis increases, including the more severe form. It is believed that the extent of the various degrees of dental fluorosis is a function of the amount of fluoride exposure during the years when tooth enamel generation is occurring, roughly up to ages 8 to 10.

B. Revised National Primary Drinking Water Regulations

The Agency has been actively attempting to resolve these questions and will continue to address the issues during the development of Revised Primary Drinking Water Regulations.

1. *Epidemiology Studies.* To reevaluate the issue regarding fluoride health effects, EPA has funded two epidemiology studies. A third epidemiology study, funded by the National Institute of Dental Research, has a similar goal—to determine if fluoride naturally occurring in drinking water causes adverse effects, and if so, at what levels.

After some delay, the study in Texas is now nearing completion, and the final report is scheduled for delivery in February 1982. The objectives of the project are the identification of the significant dental effects which occur in a specific age strata of a human population and the relationship of these to consumption of water containing natural fluorides and other sources of fluoride. Another aspect of the Texas project involves a survey of public opinion, in which participants will provide their perception of the problems related to dental fluorosis.

As an expansion of the Texas epidemiologic study, another project is intended to assess the benefits of normal dentition as compared to costs associated with fluorosed teeth. This study will examine caries incidence versus fluoride levels and fluorosis occurrence, and the costs of corrective dental care for caries and fluorosis.

The study in South Carolina conducted by the State of South Carolina and support by EPA funds, and submitted in support of the petition, is as yet unreported in the scientific literature and therefore has not yet undergone peer review. However, the study did show that moderate and severe fluorosis, the type associated with physiological damage to teeth, had been detected apparently as frequently as reported in the earlier literature.

The National Institute of Dental Research (NIDR) study, carried out in Illinois, is also nearing completion. In this investigation, dental caries experience and the prevalence and severity of dental fluorosis is being assessed among children who have consumed continually since birth, drinking water containing natural fluoride at two, three or four times the concentrations currently recommended as optimal by the U.S. Public Health Service for reducing dental caries for the specific geographic area. In addition to the conventional criteria used in diagnosing fluorosis, which involve an index based on the condition of the most affected teeth, NIDR will also utilize criteria which involve the most visible teeth, in an effort to assess the sociological impact and the aesthetic aspects of fluorosis.

All of the reports from these studies will be subject to formal peer review by a cross section of interested institutions. EPA will seek advice on the physiological effects of fluoride in water from experts in the field including the

Surgeon General, the American Dental Association and State authorities. The evaluations resulting from the review process will contribute significantly to the reapparisal of fluoride's status in revised drinking water regulations by providing an understanding of the frequency, extent and effect of dental fluorosis, and the effect of fluoride in water on dental caries.

2. *Treatment Options and Costs.* In the area of fluoride treatment and associated costs, EPA has underway a number of projects having a direct bearing on the issue raised by the petitioner. These projects include:

(a) Field studies of treatment processes including activated alumina and reverse osmosis, for the removal of inorganic contaminants from water.

(b) An evaluation of operating costs and effectiveness of low and highpressure reverse osmosis for the removal of specific contaminants, including fluoride, from drinking water.

(c) A project involving the use of a mobile pilot plant to evaluate and compare ion exchange, reverse osmosis and activited alumina for the removal of fluoride and other ground-water contaminants.

(d) Evaluation of performance and cost of full-scale treatment facilities for the removal of fluoride by activated alumina.

(e) Comparative evaluation of full-scale and individual fluoride removal systems, involving cost and efficacy evaluations in both existing and new installations.

(f) In addition to the data generated by EPA studies, data from existing fluoride removal plants are being compiled so that up-to-date actual cost figures will be available.

C. Decision of the Administrator

EPA hereby acknowledges receipt of the petition from the South Carolina Department of Health and Environmental Control. EPA will review the information supplied by the petitioner, along with all information related to the health effects of elevated fluoride levels and treatment costs during its ongoing regulatory development process. The objective of this process is to develop Revised Primary Drinking Water Regulations. The development of Revised Primary Drinking Water Regulations is already underway.

The present target date for comprehensive proposed Revised Primary Drinking Water Regulations is the fall of 1983. However, in response to the petition, EPA will accelerate the development process for the fluoride portion of those regulations and will make a decision regarding revised fluoride regulations as soon as the current epidemiology studies are completed, reported, and reviewed, and revised treatment and economic impact assessments are completed. The current schedule would allow a decision in approximately August of 1982.

Dated: November 17, 1981.

Anne M. Gorsuch,

Administrator.

[FR Doc. 81-34233 Filed 11-30-81; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Subtitle A

Prohibition of Flood Insurance for Undeveloped Coastal Barriers

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of intent to issue proposed rule.

SUMMARY: The Secretary of the Interior intends to issue a proposed rule on or about August 13, 1982, which will delineate those coastal barriers along the Atlantic Coast and Gulf of Mexico which are determined to be undeveloped and unprotected as defined in the Omnibus Budget Reconciliation Act (OBRA) of 1981. He will also issue a proposed definitional framework which amplifies the language of the Act and provides the basis for consistent and accurate delineation of boundaries. Data summaries on each designated unit will accompany the maps. The Secretary will take this action pursuant to Title III, Part 4 of OBRA, which requires that he designate those coastal barriers which are undeveloped so that no new Federal flood insurance shall be provided on or before October 1, 1983 for any new construction or substantial improvements of structures located on those undeveloped coastal barriers. The draft definitional framework will be made available for review and comment on December 8, 1981. The draft maps and data summaries will be made available on January 15, 1982 for a 60-day comment period. Comments on the draft definitional framework, maps and data summaries should be received prior to the close of the comment period on March 15, 1982. Proposed designations for submission to the Congress will be based on the actual-on-the-ground conditions in existence as of this date, March 15, 1982.

DATES:

Draft definitions to be released for public review and comment on or about: December 8, 1981.

Draft maps and data summaries to be released for public review and comment on or about: January 15, 1982.

Comments on the definitions, maps and data summaries to be received on or before: March 15, 1982.

On-the-ground conditions for proposed designations established as of this date: March 15, 1982.

Proposed designations and Report to Congress: August 13, 1982.

Final designations: October 15, 1982.

FOR FURTHER INFORMATION CONTACT:

Mr. Ric Davidge, Chairman, Coastal Barriers Task Force, U.S. Department of the Interior, Washington, D.C. 20240, (202-343-5347).

SUPPLEMENTARY INFORMATION: On August 13, 1981, the Omnibus Budget Reconciliation Act was enacted. Title III, Part 4 of this legislation concerned Flood, Crime, and Riot Insurance. Within that Part, section 341, subsections (a)-(c) and (e), amended specific portions of the National Flood Insurance Act of 1968. Section 341, subsection (d)(1) of that Act, also amended the National Flood Insurance Act by adding a new section. That new section, section 1321(a)-(c) of the National Flood Insurance Act, is entitled "Undeveloped Coastal Barriers". Section 341, subsection (d)(2) of OBRA while not an amendment to the National Flood Insurance Act, also establishes responsibilities within the Department of the Interior with regard to undeveloped coastal barriers.

This document is to provide a notice of the procedure and methodology with which the Department of the Interior intends to develop and implement its responsibilities under new section 1321 of the National Flood Insurance Act to designate undeveloped coastal barriers and its responsibilities with regard to section 341(d)(2) of OBRA to conduct a study of undeveloped coastal barriers. This notice identifies the key responsibilities established by this legislation and advises the public where additional information may be obtained and where comments should be sent. It is also designed to identify a process through which the Department of the Interior will consider the requirements of the Executive Order on Federal Regulation, E.O. 12291; the Regulatory Flexibility Act; the Paperwork Act of 1980; the National Environmental Policy Act, as implemented by the Council on Environmental Quality and by this

Department; and, Departmental regulations.

New section 1321 of the National Flood Insurance Act—entitled *Undeveloped Coastal Barriers*—establishes limits on the availability of flood insurance with regard to certain undeveloped coastal barriers. Subsection (a) provides that "(no) new flood insurance coverage shall be provided under this title on or before October 1, 1983, for any new construction or substantial improvements of structures located on undeveloped coastal barriers which shall be designated by the Secretary of the Interior." All flood insurance issued prior to that date will remain in effect regardless of location. The exclusion on flood insurance coverage will only be applicable to new construction or substantial improvements after October 1, 1983, on undeveloped coastal barriers, as designated by the Secretary of the Interior. Subsection (b), and its legislative history, provide definitions of the term "coastal barrier" and the word "undeveloped". This subsection also provides that certain already protected coastal barriers shall be excepted from these definitions and shall not be designated. These provisions will be implemented in the following manner.

First, the Department has determined that implementation of this new section will require the development of a definitional framework in order to designate undeveloped coastal barriers with precision. This effort has been initiated within the Department. The Department intends to further refine the statutory definition of terms "coastal barrier", "undeveloped", and similar terms within the latitude afforded by this legislation and its legislative history prior to final designation of undeveloped coastal barriers.

Second, the Department intends to integrate into the process of developing this definitional framework, and designations of undeveloped coastal barriers the requirements of E.O. 12291, the Regulatory Flexibility Act, the Paperwork Reduction Act of 1980, and the National Enironmental Policy Act to the degree they are applicable.

Third, the Department has also determined that public participation in the development of draft definitional framework, maps and data summaries will be beneficial. Accordingly, the Department has issued this Notice and will provide the public with a minimum of a 60 day comment period on draft maps and data summaries and will take additional steps to assure public participation during that comment period. In addition, the draft definitional framework will be made available to members of Congress, State and local officials and the public on or about December 8, 1981.

Fourth, it is contemplated that draft maps (indicating application of the draft definitional framework to coastal barriers) and data summaries will be available for public review and comment on or about January 15, 1982. The boundaries of undeveloped coastal barriers will be based upon the best data available to the Department at the time of printing. It is expected, however, that updating of that data both by the Department and the public will be necessary. The Department intends to develop proposed designations for submission to Congress based on actual on-the-ground conditions in existence at the close of the comment period. This is presently scheduled to be March 15, 1982. This approach means that changes in the geomorphic status or development status of potential undeveloped coastal barriers will be taken into consideration as of that date. To facilitate this process, comments submitted within one week after the close of the comment period will be accepted to ensure that the Department has the most accurate information possible as of that point in time. This approach is necessary to ensure that proposed designations can be provided the Congress in a timely manner.

Fifth, the Department intends to issue a final definitional framework and final designations in the fall of 1982. These final designations will follow transmission of the proposed delineations and the study to Congress as required by section 341(d)(2) of OBRA. These designations will be based on the definitional concepts adopted, after public comment, to implement the law.

The second component of the Department of the Interior's responsibilities with regard to undeveloped coastal barriers as provided by the terms of the OBRA is the study required by section 341(d)(2) of that Act. That provision requires that:

> (2) The Secretary of the Interior shall conduct a study for the purpose of designating the undeveloped coastal barriers which will be affected by the amendment made by paragraph (1). Not later than one year after the date of enactment of this Act, the Secretary shall transmit to the Congress a report of the findings and conclusions of such study together with a proposed designation of the undeveloped coastal barriers and any recommendation regarding the definition of the term "coastal barrier" as enacted by such amendment.

This study shall be conducted as a part of the process of developing definitions and designations as discussed above. It will also be closely integrated with the NEPA process. A significant portion of this study will be based upon new information received as a result of comments on the draft maps and definitions issued earlier and from other sources. As required by law, this study (including recommendations regarding the definition of the term "coastal barrier" and "undeveloped" if any) and the Department's proposed definitions and designations—as they may be revised following the close of the public review and comment period—will be provided to the Congress prior to August 13, 1982. Further public review and comment will also be provided at that time. Transmission of the study and proposed designations to the Congress will, in essence, provide the public with a second comment period prior to final designation.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-34355 Filed 11-30-81; 8:45 am]

BILLING CODE 4310-10-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 81

[Docket No. 81-657]

Vessel Traffic Service System (VTS) Communications in the Houston VTS Area; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule on the Vessel Traffic Service (VTS) System communication in the Houston VTS area that appeared at page 50573 in the **Federal Register** of Wednesday, October 14, 1981 (46 FR 50573). The action is necessary to correct typographical errors in the west longitudes in the Appendix.

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

FOR FURTHER INFORMATION CONTACT: Linda R. Figueroa, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Errata, PR Docket No. 81-657

Released: November 18, 1981.

In the matter of amendment of Parts 81 and 83 of the rules to make the frequency 156.55 MHz available exclusively for Vessel Traffic Service (VTS) communications in the Houston VTS radio protected area.

The following corrections are made in PR Doc. 81-657 appearing on FR page 50573 in the issue of October 14, 1981:

1. On page 50574 in column three under the headings "Appendix" and "§ 81.357 Frequencies available for use in Vessel Traffic Service Systems" in paragraph (b)(3) "west longitudes 93°30' and 93°" is corrected to read "west longitudes 93°30' and 96°".

2. On page 50574 in column three under the headings "Appendix" and "§ 83.361 Frequencies available for use in Vessel Traffic Service Systems" in paragraph (b)(3) "west longitudes 93°30' and 93°" is corrected to read "west longitudes 93°30' and 96°".

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-34375 Filed 11-30-81; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

Review of Information Concerning the Raccoon Dog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service is reviewing available biological and economic information on the raccoon dog, *Nyctereutes procyonoides*, for possible addition to the list of injurious wildlife under the Lacey Act. Importation and introduction of this species into the natural ecosystem of the United States appears to pose a threat to native wildlife species. Listing the raccoon dog as an injurious species would prohibit its importation into, or its transportation between, the United States and any territory or possession of the United States with limited exceptions. This notice seeks comments from the public to aid in determining if a proposed rule is warranted.

DATE: Comments must be submitted on or before January 15, 1982.

ADDRESS: Comments may be mailed to Chief, Division of Wildlife Management, Mail Code 355, U.S. Fish and Wildlife Service, 1717 H Street, NW., Room 512, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

James F. Gillett, Chief, Division of Wildlife Management, 202-632-7463.

SUPPLEMENTARY INFORMATION: The principal author of this notice is Jeffrey L. Horwath of the Division of Wildlife Management, U.S. Fish and Wildlife Service. An exchange of letters constituting a cooperative arrangement between the Assistant Secretary for Fish and Wildlife and Parks of the Department of the Interior and the Canadian Ministry of the Environment obligates both Governments to use their best efforts under existing legal authority to effect prohibition of importation of the raccoon dog, *Nyctereutes procyonoides*. The agreement obligates the Department of the Interior to initiate the process required for action toward prohibition of importation of raccoon dogs, but not to list or treat them as injurious, pending the outcome of a full study. Indigenous to Japan, eastern Siberia, and Vietnam, this species was released into the natural ecosystem in parts of the western Soviet Union where it apparently established a viable population. It has migrated northward and westward and now occurs in Finland, Sweden, Norway, Rumania, Hungary, Czechoslovakia, Poland and parts of Germany. It has been bred in captivity with its fur marketed under the name "ussurian raccoon."

Available evidence suggests that importation and introduction of the raccoon dog into the natural ecosystem of North America could pose a threat to indigenous wildlife species. At the present time, importation of this species into North America is not restricted.

The Lacey Act (18 U.S.C. 42) and implementing regulations contained in 50 CFR Part 16 restrict the importation into, or transportation between, the United States and any territory or possession of the United States of any nonindigenous species of wildlife determined to be injurious or potentially injurious to the natural ecosystem except for zoological, educational, medical, or scientific purposes, or by Federal agencies solely for their own use. Adding the raccoon dog to the list of injurious wildlife contained in 50 CFR Part 16 would prohibit its importation into, and transportation within the United States and its territories and possessions for any purposes other than as listed above.

This notice solicits biological, economic, or other information concerning the raccoon dog. The information will be used by the Service to determine the extent the raccoon dog has been imported and bred in the United States, and its possible introduction into the natural ecosystem. The information will also assist in preparing impact analyses and examining alternative protective measures under Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 601).

Dated: November 18, 1981.

J. Craig Potter,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-34436 Filed 11-30-81; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 46, No. 230
Tuesday, December 1, 1981

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1981 Crop Price Support Rates; Fire-Cured, Dark Air-Cured, and Virginia Sun-Cured Tobacco

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of Determination of 1981 Crop Fire-Cured (Types 22 and 23), Dark Air-Cured (Types 35 and 36) and Virginia Sun-Cured (Type 37) tobacco price support rates; correction.

SUMMARY: This document corrects a notice of determination of the price support rates applicable to eligible grades of 1981-Crop Kentucky-Tennessee Fire-Cured, Dark Air-Cured, and Virginia Sun-Cured Tobacco that appeared in FR Doc. 81-28832 at page 49627 in the **Federal Register** on Wednesday, October 7, 1981. This action is necessary to correct errors in support rates which appeared in the table of grade loan support rates for 1981 Crop Virginia Sun-Cured Tobacco Type 37.

EFFECTIVE DATE: December 1, 1981.

ADDRESS: Director, Tobacco and Peanuts Division, ASCS, USDA, Room 5750-South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Thomas R. Burgess, Program Specialist, ASCS, (202) 447-2715.

Correction

The following corrections are made in FR Doc. 81-28832 appearing on page 49627 in the issue of October 7, 1981 (46 FR 49627): On page 49629 at the end of column four entitled "length 44," the loan support rate for C3G is corrected to read 91 and C5G is corrected to read 82.

Signed at Washington, D.C., on November 20, 1981.

Merritt W. Sprague,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-34424 Filed 11-30-81; 8:45 am]
BILLING CODE 3410-05-M

Determination; 1981 Virginia Fire-Cured (Type 21) Tobacco, Price Support Rates

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determination of 1981 Virginia Fire-Cured (Type 21) tobacco price support rates; correction.

SUMMARY: This document corrects a notice of determination of price support rates applicable to eligible grades of 1981-Crop Virginia Fire-Cured tobacco tied in hands and in certain down-stalk grades in united form that appeared in FR Doc. 81-24100 at page 41832 in the **Federal Register** on Tuesday, August 18, 1981. This action is necessary to correct errors in grades and loan rates which appeared in the table of support rates.

EFFECTIVE DATE: December 1, 1981.

ADDRESS: Director, Tobacco and Peanuts Division, ASCS, USDA, Room 5750-South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Thomas R. Burgess, Program Specialist, ASCS, (202) 447-2715.

Correction

The following corrections are made in FR Doc. 81-24100 appearing on page 41832 in the issue of August 18, 1981 (46 FR 41832):

On page 41832 at the middle of column two entitled "length 47," the support rate for B3D is corrected to read 150; at the middle of column six entitled "length 43," the support rate for B4D is corrected to read 85. On page 41833 at the end of column one entitled "Grade," NIDG is corrected to read NIGD.

Signed at Washington, D.C., on November 20, 1981.

Merritt W. Sprague,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-34429 Filed 11-30-81; 8:45 am]
BILLING CODE 3410-05-M

Rural Electrification Administration

Brazos Electric Power Cooperative, Inc.; Finding of No Significant Impact

Notice is hereby given that the Rural Electrification Administration (REA) has prepared a Finding of No Significant Impact (FONSI) for the proposed financing assistance by REA for Brazos Electric Power Cooperative, Inc., (Brazos) of Waco, Texas, to convert approximately 30 miles (48.3 km) of 69 kV transmission line to 138 kV, construct 5 miles (8 km) of new 138 kV line, convert four substations in Denton, Dallas, and Tarrant Counties, Texas, and install microwave facilities at two of the substations. This finding, in accordance with REA Bulletin 20-21:320-21, Part 1, was based on REA's independent evaluation, REA's Environmental Assessment (EA) and Brazos' Environmental Report (BER).

Threatened and endangered species, important farmland, archaeological and historical sites, wetlands, floodplains, and other potential impacts of the proposed project have been adequately investigated in the BER and EA.

The transmission line will cross 0.72 mile (1.6 km) of floodplain and 0.5 mile (0.8 km) of wetland. Approximately 7 miles (11 km) of prime farmland will be crossed, however, the amount of prime farmland impacted by the project will be insignificant.

Several alternatives were evaluated including taking no action, instituting conservation measures, interconnection into other existing transmission lines, developing other sources of power generation, utilizing other communication sources and other construction methods. Relative to these alternatives the project, as proposed, would be the most economically and environmentally efficient solution.

Copies of the Finding of No Significant Impact, EA and the BER may be obtained from or reviewed in the Office of the Director, Power Supply Division, Room 0230, South Agriculture Building, Rural Electrification Adminstration, Washington, D.C. 20250, or may be reviewed in the Offices of Brazos Electric Power Cooperative, Inc., 2404 LaSalle Avenue, Waco, Texas 76706.

This Program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 19th day of November 1981.

Harold V. Hunter,

Administrator.

[FR Doc. 81-34009 Filed 11-30-81; 8:45 am]

BILLING CODE 3410-15-M

Cajun Electric Power Cooperative, Inc., New Roads, Louisiana; Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65), and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $830,000,000 to Cajun Electric Power Cooperative, Inc., (Cajun) of New Roads, Louisiana. This loan guarantee will be used to finance a 75 percent ownership interest in the 540 MW Big Cajun Oxbow, Unit 1, lignite-fired generating plant, approximately 13 miles of 500 kV and 7 miles of 230 kV transmission line, and related substations. It is contemplated that Gulf States Utilities will obtain and finance the remaining 25 percent ownership interest in the plant.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. James R. Smith, Manager, Cajun Electric Power Cooperative, Inc., P.O. Box 578, New Roads, Louisiana 70760.

In order to be considered, proposals must be submitted on or before December 31, 1981 to Mr. Smith. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as Cajun and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 19th day of November, 1981.

Harold V. Hunter,

Administrator, Rural Electrification Administration.

[FR Doc. 81-34206 Filed 11-30-81; 8:45 am]

BILLING CODE 3410-15-M

Pacific Northwest Generating Co., Portland, Oregon; Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $924,000 to the Pacific Northwest Generating Company, Portland, Oregon (PNGC). These loan funds will be used to finance front-end engineering and environmental studies, permit and license fees, and other related front-end costs in connection with the proposed construction of the Eagle Rock 20 MW Hydroelectric Project. This facility, if feasible, will be constructed on the Snake River in Power County, Idaho.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. David E. Piper, General Manager, Pacific Northwest Generating Company, 8383 N. E. Sandy Blvd., Suite 330, Portland, Oregon 97220.

In order to be considered, proposals must be submitted on or before December 31, 1981 to Mr. Piper. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as PNGC and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 19th day of November, 1981.

Harold V. Hunter,

Administrator, Rural Electrification Administration.

[FR Doc. 81-34208 Filed 11-30-81; 8:45 am]

BILLING CODE 3410-15-M

Tri-State Generation and Transmission Association, Inc., Denver, Colorado; Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $49,400,000 to Tri-State Generation and Transmission Association, Inc., Denver, Colorado. These loan funds will be used to finance the construction of (1) 1 mile of 230 kV and 20 miles of 115 kV transmission line; (2) 3 new substations, 1 new switching station and various substation and switching stations additions and improvements; (3) a new headquarters office facilities and energy management systems center; and (4) a warehouse service facility.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. William Mickey, Manager, Tri-State Generation and Transmission Association, Inc., 12076 Grant Street, P.O. Box 33695, Denver, Colorado 80233.

In order to be considered, proposals must be submitted on or before December 31, 1981 to Mr. Mickey. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Tri-State and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Office of

Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 19th day of November, 1981.

Harold V. Hunter,

Administrator, Rural Electrification Administration.

[FR Doc. 81-34207 Filed 11-30-81; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Pastime Park RC&D Measure, Ohio; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Robert R. Shaw, State Conservationist, Soil Conservation Service, Room 522, 200 North High Street, Columbus, Ohio, Telephone No. (614)–469–6962.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pastime Park RC&D Measure, Union County, Ohio.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert R. Shaw, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for providing flood control and land drainage improvements. Catch basins and drains to intercept and convey surface runoff off the fairgrounds will be installed. Seeding will be applied to control erosion on areas disturbed by construction.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert R. Shaw. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until December 31, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: November 16, 1981.

Robert R. Shaw,

State Conservationist.

[FR Doc. 81-34257 Filed 11-30-81; 8:45 am]

BILLING CODE 3410-16-M

Statistical Reporting Service

Changes in Fresh Market Vegetable Estimating Program

Notice is hereby given that effective with the January 7, 1982 *Vegetable* report, the Statistical Reporting Service (SRS) is implementing a revised vegetable estimating program.

Estimates of acres for harvest during the coming quarter will be reinstated in the quarterly reports published in January, April, July and October. Acres for harvest will continue to be published by "deal" or area in major States having a demonstrated industry need and local capability for producing estimates at less than State totals. Changes will affect quarterly acreage estimates for fresh market snapbeans, broccoli, cabbage, cantaloups, carrots, cauliflower, celery, sweet corn, cucumbers, eggplant, escarole/endive, honeydew melons, lettuce, green peppers, spinach, tomatoes, and watermelons. Estimates for other fresh and processed vegetables will be unchanged.

Forecasts of harvested acreage, yield and production for the first six months (January–June) will be published in the April report, and forecasts for the last half of the year (July–December) will be published in October.

For further information, contact R. D. Fenley, Head, Fruit and Vegetable Section, Room 5175–S, USDA/SRS, Washington, D.C. 20250, Phone (202) 447–2127.

Done at Washington, D.C. this 25th day of November, 1981.

W. E. Kibler,

Acting Administrator.

[FR Doc. 81-34435 Filed 11-30-81; 8:45 am]

BILLING CODE 3410-18-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting for 10:00 am, on December 1, 1981, to consider decisive action on the revision or rescission (ATBCB Dockets No. 81–G–2 and 81–G–1) of the ATBCB Minimum Guidelines and Requirements for Accessible Design as published in the **Federal Register** as a Final Rule on January 16, 1981. As deferred from the September 22, 1981, meeting, the Board will also consider the conduct of public hearings, the involvement of the American National Standard Institute standard A117.1, and Board funding for public participation in the rulemaking process.

DATE: December 1, 1981, 10:00 AM–5:00 PM.

ADDRESS: Main Hall, Disabled American Veterans National Service and Legislative Headquarters, 807 Maine Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Director of Public Information (202) 245–1591 (voice or TDD).

SUPPLEMENTARY INFORMATION: The meeting of the ATBCB will enable the Board to further consider developments, including modification, rescission, amendment, of its accessibility rule adopted January 6, 1981, 46 FR 4270. The ATBCB will also hold its annual election of a Chairperson for a term of one year effective December 5, 1981.

ATBCB Committee meetings are scheduled for Monday, November 30, 1981. These meetings will be held from 9:30 am–5:00 pm, Rooms 5167 and 5169, 330 Independence Avenue SW., Washington, D.C. Contact Larry Allison, Director of Public Information (202) 245–1591 (voice or TDD), for exact time of each committee meeting.

Mason H. Rose, V,

Chairperson.

[FR Doc. 81-34359 Filed 11-30-81; 8:45 am]

BILLING CODE 4000-07-M

CIVIL AERONAUTICS BOARD

[CAB-R-403; 81-47]

Applications and/or Amendments Thereto Filed During the Week Ending November 20, 1981; Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
11-18-81	40253	Northeast Sunrise Airlines, Inc., c/o Arthur Todman, President, One Penn Plaza, Suite 100, New York, N.Y. 10119. Application of Northeast Sunrise Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity to perform scheduled air transportation of persons, property and mail as follows: "Between the terminal point of Albany, New York and the intermediate points: Atlanta, GA, Boston, MA, Buffalo, NY, Chicago, IL, Dallas/Ft. Worth, TX, Detroit, MI, Houston, TX, Jacksonville, FL, Louisville, KY, Miami, FL, Minneapolis/St. Paul, MN, New York, NY-Newark, NJ, Orlando, FL, Philadelphia, PA/Wilmington, DE, Pittsburgh, PA, Providence, RI, San Juan, PR, St. Croix, VI, and the terminal point Washington, D.C." Conforming Applications, motions to modify scope, and Answers may be filed by December 17, 1981

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-34389 Filed 11-30-81; 8:45 am]

BILLING CODE 6320-01-M

Commuter Fitness Determination

The Board is proposing to find the following carriers fit willing and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that aircraft used in this service conform to applicable safety standards.

Order	Applicant	Response date
81-11-127	Airline Holdings, Inc., d/b/a Air Hawaii.	Dec. 10, 1981.
81-11-134	Dolphin Airways, Inc.	Dec. 10, 1981.
81-11-161	Cosmopolitan Airlines, Inc.	Dec. 15, 1981.
81-11-165	Kingman Aviation, Inc., d/b/a Golden Pacific Airlines.	Dec. 10, 1981

All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed in Attachment A of the respective orders and file response or additional data with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428.

The complete text of the orders is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request to the above address.

For further information contact: Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428 for Orders 81-11-127, 161, and 165: Mr. J. Kevin Kennedy, (202) 673-5918; for Order 81-11-134: Mr. James Lawyer, (202) 673-5088.

By the Civil Aeronautics Board, November 24, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-34388 Filed 11-30-81; 8:45 am]

BILLING CODE 6320-01-M

[Order 81-11-160]

South Pacific Kwajalein/Majuro Proceeding; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause (81-11-160).

SUMMARY: The Board is instituting the *South Pacific Kwajalein/Majuro Proceeding* and is proposing to grant unrestricted authority to South Pacific at Kwajalein and Majuro, Marshall Islands under expedited procedures of Subpart Q of its Procedural Regulations. The tentative findings and conclusions will become final if no objections are filed. The complete text of this order is available as noted below.

DATE: All interested persons having objections to the Board issuing the proposed authority shall file, and serve on all persons listed below, no later than December 16, 1981, a statement of objections, together with a summary of the 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 40131, which we have entitled the *South Pacific Kwajalein/Majuro Proceeding.* They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served upon South Pacific; the mayors and airport managers of Kwajalein and Majuro, Marshall Islands; and the President of the Marshall Islands.

FOR FURTHER INFORMATION CONTACT: Richard E. Clusman, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5216.

SUPPLEMENTARY INFORMATION: The complete text of Order 81-11-160 is available from our Distribution Section, Room 100, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 81-11-160 to that address.

By the Bureau of Domestic Aviation, November 24, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-34390 Filed 11-30-81; 8:45 am]

BILLING CODE 6320-01-M

[Order 81-11-74; Dockets 39456 and 31290]

Standard Industry Fare Level Based on Domestic Common Fares and Establishment of Standard Industry Fare Level; Final Orders

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 12th day of November, 1981.

By Order 81-4-108, adopted April 16, 1981, we directed all persons to show cause why we should not make final our tentative conclusion that for markets where there were common fares in effect on July 1, 1977 that were found to be unlawful in Docket 27330 (Orders 77-6-21, June 7, 1977 and 77-9-132, September 29, 1977) the SIFL fare should be recalculated on the basis of ratemaking mileage for said markets using the fare formula in accordance with the Board's standard methodology; and that ceiling fares should be computed from recalculated SIFL fares.

The order directed persons objecting to the tentative finding set forth in that order to file their objections within 21 days. In addition, the order provided that if no objections were filed, all procedural steps would be deemed waived, and the Secretary would enter an order which would make final the Board's tentative finding and recalculate prospectively SIFL fares and ceiling fares as described in Order 81-4-108.

No objections to Order 81-4-108 have been received.

Accordingly,

1. We hereby reset the SIFL fare level as of July 1, 1977 predicated on the finding in Docket 27330, for those markets in the Attachment hereto [1] where there were common fares in effect on July 1, 1977; and

[1] Attachment filed as part of original document.

2. We will serve a copy of this order on all U.S. certificated air carriers and the Seattle parties.

We shall publish this order in the Federal Register.

By the Civil Aeronautics Board.[2]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-34434 Filed 11-30-81; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Maine Advisory Committee; Cancelled Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the Commission on Civil Rights that a meeting of the Maine Advisory Committee of the Commission originally scheduled for December 1, 1981, at Augusta, Maine, (FR Doc. 81-32501 on page 55554) has been cancelled.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 81-34384 Filed 11-30-81; 8:45 am]

BILLING CODE 6335-01-M

Massachusetts Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 4:00 p.m., and will end at 6:00 p.m., on December 15, 1981, at the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts, 02110. The purpose of this meeting is to discuss the project on affirmative action in the private sector and the report on layoffs in public education.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Bradford E. Brown, Post Office Box 95, East Falmouth, Massachusetts, 02536, (617) 548-5123 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts, 02110, (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 25, 1981.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 81-34386 Filed 11-30-81; 8:45 am]

BILLING CODE 6350-01-M

[2] All members concurred.

New York Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 4:00 p.m., and will end at 6:30 p.m., on December 18, 1981, at the Phelps Stokes Funds, 10 East 87th Street, New York, New York. The purpose of this meeting is to discuss program planning for the fiscal year 1982.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Franklin H. Williams, Phelps Stokes Funds, 10 East 87th Street, New York, New York, 10028, (212) 427-8100 or the Eastern Regional Office, Jacob K. Javits Building, 26 Federal Plaza, Room 1639, New York, New York, 10278, (212) 264-0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 25, 1981.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 81-34385 Filed 11-30-81; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Telecommunications Equipment Technical Advisory Committee was initially established on October 23, 1973, and rechartered on September 17, 1981, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was established on October 5, 1981, pursuant to the charter of the Committee.

The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Time and place: December 15, 1981, at 10:00 a.m. The meeting will take place at the Main Commerce Building, Room B841, 14th Street and Constitution Avenue NW., Washington, D.C.

Agenda:

General Session

(1) Opening remarks by the Acting Chairman.

(2) Presentation of papers or comments by the public.

(3) Discussion of CCL entry 1565, as it relates to computer controlled switching equipment.

(4) Industry comments on relevant control parameters for export licensing purposes are requested.

Executive Session

(5) Discussion of matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public participation: The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 29, 1981, 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) and are properly classified under Executive Order 12065.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, telephone: 202-377-4217.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT: Mrs. Margaret Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230, telephone: 202-377-2583.

Dated: November 24, 1981.

Saul Padwo,

Director of Licensing.

[FR Doc. 81-34419 Filed 11-30-81; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Levels for Certain Cotton and Man-Made Fiber Apparel Products from Macau

November 24, 1981.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing by the application of swing and carryforward, the levels of restraint established for women's, girls' and infants' cotton knit shirts and blouses in Category 339 from 489,475 dozen to 556,915 dozen and for man-made fiber coats in Category 633/634/635 from 139,924 dozen to 165,264 dozen, produced or manufactured in Macau and exported during the agreement year which began on January 1, 1981.

(A detailed description of the texile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), and October 27, 1981 (46 FR 52409))

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 29 and December 18, 1979 between the Governments of the United States and Portugal, as amended, concerning products produced or manufactured in Macau, provides for percentage increases in certain specific ceilings during an agreement year (swing) and for the borrowing of yardage from the succeeding year's level (carryforward) with the amount used being deducted from the succeeding year's level. Pursuant to the terms of the bilateral agreement, the levels of restraint for Categories 339 and 633/634/635 are being adjusted for the twelve-month period which began on January 1, 1981.

EFFECTIVE DATE: November 25, 1981.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On December 11, 1980, there was published in the **Federal Register** (45 FR 81643) a letter dated December 8, 1980, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, including Category 339, produced or manufactured in Macau, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1981 and extends through December 31, 1981. A further letter dated August 25, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the **Federal Register** on August 28, 1981 (46 FR 43482) which established a level of restraint for Category 633/634/635 during the same twelve-month period. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the levels of restraint previously established for cotton and textile products in Categories 339 and 633/634/635 to the designated amounts during the twelve-month period which began on January 1, 1981.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 24, 1981.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 8, 1980, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981 of cotton, wool and man-made fiber textile products, produced or manufactured in Macau, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 29 and December 18, 1979, as amended, between the Governments of the United States and Portugal; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on November 25, 1981 and for the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 339 and 633/634/635, produced or manufactured in Macau, in excess of the following adjusted levels of restraint:

Category	Amended 12-mo. level of restraint [1]
339	556,915 dozen.
633/634/635	165,264 dozen.

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1980.

The actions taken with respect to the Government of Portugal and with respect to imports of cotton and man-made fiber textile products from Macau, have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-34331 Filed 11-30-81; 8:45 am]

BILLING CODE 3510-25-M

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 29 and December 18, 1979, as amended, between the Governments of the United States and Portugal, which provide, in part, that: (1) Within the aggregate and group limits, specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limits; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Adjusting the Import Restraint Levels for Certain Cotton Apparel Products From the Republic of the Philippines

November 25, 1981.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: (1) Reducing the import charges to the level of restraint for cotton playsuits in Category 337 (Non-Traditional) by 6,544 dozen; (2) Applying special carryforward amounting to 12,000 dozen to the level of restraint established for men's and boys' cotton trousers in Cagegory 347, increasing it to 248,391 dozen; and (3) Applying special carryforward amounting to 15,000 dozen to the level of restraint for women's, girls' and infants' cotton trousers in Category 348 (Non-Traditional), raising it to 225,373 dozen.

All of the foregoing adjustments apply to goods produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1981.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46

FR 48963) and October 27, 1981 (46 FR 52409))

SUMMARY: Pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, as amended, between the Governments of the United States and the Republic of the Philippines, it was agreed in consultations held November 9 and 10, 1981 between representatives of the two governments to apply special carryforward to the levels of restraint established during the agreement year which began on January 1, 1981 for Categories 347 and 348 (Non-Traditional). The amounts of special carryforward will be deducted from the 1982 levels for these two categories. It was also agreed, following a data investigation of imports in Category 337 (Non-Traditional) that charges to the level for this category during the current agreement year should be reduced by 6,544 dozen.

EFFECTIVE DATE: December 1, 1981.

FOR FURTHER INFORMATION CONTACT:
Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 29, 1980, there was published in the **Federal Register** (45 FR 85498) a letter dated December 19, 1980 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported to the United States during the twelve-month period which began on January 1, 1981 and extends through December 31, 1981. On June 23 and July 15, 1981, further letters were published in the **Federal Register** (46 FR 32470 and 36725) which amended the December 19, 1980 letter to establish levels of restraint for Categories 347 and 348 (Non-Traditional) and 337 (Non-Traditional) during the same twelve-month period. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with consultations held pursuant to the bilateral agreement, to adjust the levels of restraint previously established for Categories 337 (Non-Traditional), 347 and 348 (Non-Traditional).

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 19, 1980 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States or certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, as amended, between the Governments of the United States and the Republic of the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on December 1, 1981 and for the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347 and 348pt., produced or manufactured in the Philippines, in excess of the following amended levels of restraint:

Category	Amended 12-mo. Level of Restraint [1]
347	248,391 dozen.
348pt.[2]	225,373 dozen.

[1] The levels of restraint have not been adjusted for any imports after December 31, 1980.
[2] In Category 348, all T.S.U.S.A. numbers except 382.0087, 382.0691, 382.3349, 382.3355, 382.3359 and 382.3363.

You are further directed, effective on December 1, 1981, to reduce the import charges to the level of restraint established for Category 337pt.[1] by 6,544 dozen.

The actions taken with respect to the Government of the Republic of the Philippines and with respect to imports of cotton textile products from the Philippines have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-34421 Filed 11-30-81; 8:45 am]
BILLING CODE 3510-25-M

[1] In Category 337, all T.S.U.S.A. numbers except 382.0073, 382.0020 and 382.3329.

Announcing Additional Import Controls on Certain Cotton Textile Products from Thailand

November 25, 1981.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Controlling imports of cotton poplin and broadcloth in Category 314, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1981, at a level of 9,000,000 square yards.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), and October 5, 1981 (46 FR 48963) and October 27, 1981 (46 FR 52409))

SUMMARY: Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand, the United States Government has decided to control imports of cotton textile products in Category 314, produced or manufactured in Thailand and exported to the United States during the twelve-month period which began on January 1, 1981, in addition to those categories previously designated.

EFFECTIVE DATE: December 3, 1981.

FOR FURTHER INFORMATION CONTACT:
Gordana Slijepcevic, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–2184).

SUPPLEMENTARY INFORMATION: On December 24, 1980, there was published in the **Federal Register** (45 FR 85141) a letter dated December 19, 1980 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Thailand, which may be entered into the United States for consumption or withdrawn from warehouse for consumption during the twelve-month period which began on January 1, 1981 and extends through December 31, 1981. In accordance with the terms of the bilateral agreement, as amended, the United States Government has decided also to control imports of cotton textile products in Category 314, produced or manufactured in Thailand and exported to the United States during the twelve-month period which began on January 1, 1981. Accordingly, in the

letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 314, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1981, in excess of 9,000,000 square yards. The level has not been adjusted to reflect any imports after December 31, 1980. Imports during the January-September 1981 period amounted to 1,536,243 square yards and will be charged. As the data become available, further charges will be made to account for imports during the period which began on October 1, 1981 and extends to the effective date of this action.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 19, 1980 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on December 3, 1981, and for the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption, of cotton textile products in Category 314, produced or manufactured in Thailand and exported on and after January 1, 1981, in excess of 9,000,000 square yards.[1]

Cotton textile products in Category 314 which have been exported to the United States prior to January 1, 1980 shall not be subject to this directive.

Cotton textile products in Category 314 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963) and October 27, 1981 (46 FR 52409).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Thailand and with respect to imports of cotton textile products from Thailand have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-34420 Filed 11-30-81; 8:45 am]

BILLING CODE 3510-25-M

[1] The level of restraint has not been adjusted to reflect any imports after December 31, 1980. Imports during the period, January through September 1981, have amounted to 1,536,243 square yards.

Economic Regulatory Administration

[ERA Case No. 52053-2539-01, 02, 03, 04-84]

Niagara Mohawk Power Corp.; Disclosure of Information

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Disclosure of Information.

SUMMARY: In connection with its proposed prohibition order to a powerplant owned by the Niagara Mohawk Power Corporation of Syracuse, New York (units identified as Albany Generating Station Nos. 1, 2, 3, 4), pursuant to Section 2 of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), 15 U.S.C. 791 et seq., as amended, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) received a request for the disclosure of a Draft Environmental Impact Report (DEIR) prepared by Princeton Aqua Science, Inc., from the Niagara Mohawk Power Corporation. ERA has decided to release the requested information and has placed a copy of the DEIR in the public record of this proceeding.

FOR FURTHER INFORMATION CONTACT:

Steven A. Frank, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street NW.—Room 6128, Washington, D.C. 20461, (202) 653-3379.

Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93-319 (15 U.S.C. § 791 et seq.) as amended by Pub. L. 94-163, Pub. L. 95-70, and Pub. L. 95-620; Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. § 7101 et seq.) as amended by Pub. L. 95-509, Pub. L. 95-619, Pub. L. 95-620 and Pub. L. 95-621; Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620 (42 U.S.C. § 8301 et seq.) as amended by Pub. L. 97-35; E.O. 11790, 39 FR 23185 (June 25, 1974); E.O. 12009, 42 FR 46267 (September 15, 1977); Freedom of Information Act, Pub. L. 89-554 (5 U.S.C. § 552) as amended by Pub. L. 90-23, Pub. L. 93-502, Pub. L. 94-409, and Pub. L. 95-454; DOE Freedom of Information Regulations, 10 CFR Sec. 1004, 44 FR 1908 (January 8, 1979).

Issued in Washington, D.C., on November 20, 1981.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 81-34408 Filed 11-30-81; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Cases Filed; Week of November 6 Through November 13, 1981

During the week of November 6 through November 13, 1981, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

November 24, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 6 through Nov. 13, 1981]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 9, 1981	Foremost Petroleum Co., Houston, Tex	HEG-0005	Request for Special Redress. If granted: The October 22, 1981 Special Report Order issued to Foremost Petroleum Company by the Acting Deputy Director of the Office of Hearings and Appeals would be reviewed.
Do	Louisiana Land & Exploration Co., Washington, D.C	HRD-0010	Motion for Discovery. If granted: Discovery would be granted to Louisiana Land & Exploration Company in connection with the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. DRO-0199) issued to Texaco, Inc. by the Office of Special Counsel.
Do	M&A Petroleum Co., Victoria, Tex	HEG-0006	Request for Special Redress. If granted: The October 22, 1981 Special Report Order issued to M&A Petroleum Company by the Acting Deputy Director of the Office of Hearings and Appeals would be reviewed.
Do	Texaco, Inc., Washington, D.C	HRD-0009	Motion for Discovery. If granted: Discovery would be granted to Texaco, Inc. in connection with the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. DRO-0199) issued to Texaco, Inc. by the Office of Special Counsel.
Nov. 10, 1981	Cracker Barrel Stores, Inc., Baton Rouge, La	HRH-0004	Motion for Evidentiary Hearing. If granted: an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Cracker Barrel Stores, Inc. in response to the Proposal Remedial Order (Case No. HRO-0002) issued to the firm.
Do	Double U Oil Co., Washington, D.C	HRD-0008	Motion for Discovery. If granted: Discovery would be granted to Double U Oil Company in connection with the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. BRO-1535) issued to Double U Oil Company by the Office of Enforcement.
Do	Glen A. Martin, Washington, D.C	HRD-0011	Motion for Discovery. If granted: Discovery would be granted to Glen A. Martin in connection with the Statement of Objections submitted in response to the June 1, 1981, Proposed Remedial Order (Case No. BRO-1466) issued to Glen A. Martin by the Office of Enforcement.
Do	Jack A. Guenther, Washington, D.C	HRD-0012	Motion for Discovery. If granted: Discovery would be granted to Jack E. Guenther in connection with the Statement of Objections submitted in response to the June 1, 1981, Proposed Remedial Order (Case No. HRO-1533) issued to the firm by the Office of Enforcement.
Nov. 12, 1981	Babcock Contractors, Inc., Vienna, Va	HFA-0013	Appeal of Information Request Denial. If granted: The October 22, 1981, Information Request Denial issued by the Office of Procurement Operations would be rescinded and Babcock Contractors, Inc. would receive access to certain DOE information.
Do	Conoco, Inc., Washington, D.C	HFA-0014	Appeal of Information Request Denial. If granted: The October 2, 1981, Information Request Denial issued by the Office of Special Counsel would be rescinded, and Conoco, Inc. would receive access to documents involving the November 8, 1979, Notice of Probable Violation issued to the firm.

[FR Doc. 81-34406 Filed 11-30-81; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed Week of November 9 Through November 13, 1981

During the week of November 9 through November 13, 1981, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceedings the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 on or before December 21, 1981. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceedings and will prepare official service lists, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service lists as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: November 24, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

Culpepper Oil Company Oklahoma City, Oklahoma, HRO-0010, crude oil

On November 9, 1981 and November 10, 1981, Culpepper Oil Company (c/o Bright & Nichols, 1700 First City Bank Tower, Oklahoma City, Oklahoma), Energy Cooperative, Inc. (c/o Ginsburg, Feldman, Weil & Bress, 1700 Pennsylvania Avenue NW., Washington, D.C.), and Commonwealth Oil Refining Co., Inc. (c/o Ginsburg, Feldman, Weil & Bress, 1700 Pennsylvania Avenue NW., Washington, D.C.) filed Notices of Objection to a Proposed Remedial Order which the DOE Southwest District Office of Enforcement issued to Culpepper on October 1, 1981. In the PRO the Southwest District found that during the period September 1, 1973 to May 31, 1977, Culpepper maintained inadequate sales records in violation of 10 CFR § 210.92(a) and improperly certified various properties as stripper well properties in violation of 10 CFR §§ 210.32 and 212.54. According to the PRO, the Culpepper violation resulted in $560,669.76 of overcharges.

W. R. Hughey Operating CO., Tyler, Texas, HRO-0011, crude oil

On November 10, 1981, W. R. Hughey Operating Company of Tyler, Texas filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest District Office of Enforcement issued to the firm on October 14, 1981. In the PRO, the Southwest District found that during the period September 1973 through September 1, 1980 the firm sold crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart D.

According to the PRO, the W. R. Hughey Operating Company violation resulted in $1,167,845.76 of overcharges.

[FR Doc. 81-34405 Filed 11-30-81; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed Week of November 2 Through November 6, 1981

During the week of November 2 through November 6, 1981, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceedings the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 on or before December 21,

1981. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceedings and will prepare official service lists, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service lists as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: November 24, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

Hamilton Brothers Petroleum Corp., Denver, Colorado HRO-0008, natural gas liquid products

On November 4, 1981, Hamilton Brothers Petroleum Corp., 1600 Broadway, Suite 2600, Denver, Colorado, 80202, filed a Notice of Objection to a Proposed Remedial Order which the DOE Central District of Enforcement issued to the firm on October 2, 1981. In the PRO, the Central Enforcement District found that during the period September 1, 1973 through March 31, 1975, Hamilton failed to apply, or improperly applied, the applicable regulations regarding the computation of maximum allowable selling prices for its natural gas liquid products.

According to the PRO, Hamilton's violations resulted in $899,133.41 of overcharges (exclusive of interest).

Sauvage Gas Company, Oberlin, Kansas, HRO-0007, natural gas liquids

On November 4, 1981, Sauvage Gas Company, P.O. Box 132, Oberlin, Kansas filed a Notice of Objection to a Proposed Remedial Order which the DOE Central District Office of Enforcement issued to the firm on September 28, 1981. In the PRO, the Central Enforcement District found that during the period September 1973 through July 1977, Sauvage sold natural gas liquids (NGLs) and NGL products in excess of the maximum lawful selling prices established by applicable DOE regulations.

According to the PRO the Sauvage violation resulted in $13,797,232.38 of overcharges.

Spruce Oil Corporation, Denver, Colorado, HRO-0006, Motor Gasoline, diesel fuel

On November 2, 1981, Spruce Oil Corp., P.O. Box 5660, Denver, Colorado 80217 filed a Notice of Objection to a Proposed Remedial Order which the DOE Rocky Mountain District Office of Enforcement issued to the firm on September 30, 1981. In the PRO, the Rocky Mountain District found that during the period November 1, 1973 to January 31, 1976, prices charged by Spruce in certain sales of motor gasoline and diesel fuel constituted violations of applicable pricing regulations.

According to the PRO, the Spruce violation resulted in $1,396,512.82 of overcharges.

T&S Refining, Inc., Houston, Texas, HRO-0009, crude oil

On November 6, 1981, and November 9, 1981 T&S Refining, Inc. (c/o Roger Carter, 1660 L St. N.W., Washington, D.C.) Energy Cooperative, Inc. (c/o Ginsburg, Feldman, Weil and Bress, 1700 Pennsylvania Ave. N.W., Washington, D.C.) and Commonwealth Oil Refining Co., Inc. (c/o Ginsburg, Feldman, Weil and Bress, 1700 Pennsylvania Ave., N.W., Washington, D.C.) filed Notices of Objection to a Proposed Remedial Order which the DOE Office of Enforcement issued to T&S Refining on September 18, 1981. In the PRO the Office of Enforcement found that during the period April 1978 to December 1979, T&S Refining improperly failed to file Refiner's Monthly Reports as required by 10 CFR 211.66.

According to the PRO the T&S Refining violation resulted in $4,490,405.79 of overcharges.

[FR Doc. 81-34409 Filed 11-30-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51357; TSH-FRL-1995-3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of three PMNs and provides a summary of each.

DATES: Written comments by: PMN 81-594, January 17, 1982. PMN 81-595 and 81-596, January 18, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51357]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-755-5687).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-426-2601).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 81-594

Close of Review Period. February 16, 1982.

Importer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—Over $500 million.

Standard Industrial Classification Code—2865.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Mixed aromatic diazo dye.

Use. The importer states that the PMN substance will be used as a dye for paperboard.

Import Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Black liquid with slight ammoniacal odor.

pH, 10 g/l water—7.5.

Boiling point—100°C.

Solubility: water—Miscible.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—>5g/kg.

Acute intraperitoneal toxicity LD_{50} (rat)—810 mg/kg.

Skin irritation (rabbit)—Slight.

Eye irritation (rabbit)—Non-irritating.

Exposure. The importer states that during processing, use and disposal 4 workers may experience dermal exposure 2 hrs/day, 60 days/yr during opening drums and cleaning up spills or leaks.

Environmental Release/Disposal. The importer states that 10-100 kg/yr will be released to land and 1000-10,000 kg/yr will be released to water 2 hrs/day, 60 days/yr. Disposal is by reprocessing or incineration.

PMN 81-595

Close of Review Period. February 17, 1982.

Manfacturer's Identity. Superior Varnish and Drier Company, P.O. Box 1310, Merchantville, NJ 08109.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Tall oil/soya/safflower-styrene/acrylic copolymer resin.

Use. The manufacturer states that the PMN substance will be used as a printing ink vehicle.

PRODUCTION ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	10,000	12,000
2d year	26,000	26,000
3d year	26,000	26,000

Physical/Chemical Properties

Viscosity—150 poises @ 77°F.
Tack—10 @ 400 RPM.
Volatility—Non-volatile.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture 3 workers may experience dermal exposure 6 hrs/day, 24 days/yr during sampling and discharging the material in drums.

Environmental Release/Disposal. The manufacturer states that no release to the environment is anticipated.

PMN 81-596

Close of Review Period. February 17, 1982.

Importer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Phenylenediimino-bis (chlorotriazinylimino-substituted phenyleneazo-naphthalenetrisulfonic acid), hexasodium salt.

Use. Claimed confidential business information.

Import Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Free flowing powder
Solubility:
water @ 20°C—200 g/l
oil (fat stimulant) @ 37°C—8.4×10^{-5} g/kg
Octanol/water Partition—1.3×10^{-4} Coefficient @ 25°C
Vapor pressure @ 25°C—$<1 \times 10^{-4}$ Pa

Toxicity Data

Acute oral toxicity LD_{50} (rat)—<5,000 mg/kg
Acute dermal toxicity LD_{50} (rat)—>5,000 mg/kg
Skin irritation (rabbit)—Slight irritant
Eye irritation (rabbit)—Mild irritant
Skin sensitization (guinea pig)—Not a skin sensitizer

Environmental Test Data

COD—0.054 g/g
BOD_5—<0.05 g/g
TOC—9.26 g/g
Aerobic biological elimination—3%
EC_{50} 5 day (green algae)—>100 mg/1
EC_{50} @ 24, 48, 72, and 96 hr. (rainbow trout)—100 mg/1
EC_{50} @ 24 and 48 hr. (daphnia magna)—>100 mg/1
Accumulation study (mirror carp)—Did not accumulate

Exposure. The importer states that no exposure is anticipated.

Environmental Release/Disposal. The importer states that no release to the environment is anticipated.

Dated: November 20, 1981.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 81-34380 Filed 11-30-81; 8:45 am]

BILLING CODE 6560-31-M

[PP 6G1807/T333; PH-FRL-1995-4]

Thidiazuron; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the herbicide thidiazuron (*N*-phenyl-*N'*-1,2,3-thiadizol-5-ylurea) and its aniline-containing metabolites in or on the raw agricultrual commodities milk at 0.05 part per million (ppm); eggs at 0.1 ppm; and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.2 ppm.

DATE: These temporary tolerances expire July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, that was published in the **Federal Register** of June 25, 1981 (46 FR 32935), extending temporary tolerances established for residues of the herbicide thidiazuron (*N*-phenyl-*N'*-1,2,3-thiadizol-5-ylurea) and its aniline-containing metabolites in or on the raw agricultrual commodities cottonseed at 0.2 ppm; milk at 0.05 ppm; eggs at 0.1 ppm; and the meat, fat, and meat by-products of cattle, goats, hogs, horses, poultry, and sheep at 0.2 ppm. These temporary tolerances were extended in response to pesticide petition (PP 6G1807), submitted by Nor-Am Agricultural Products, Inc., 350 West Shuman Blvd., Napierville, IL 60566.

Since then, the company has submitted an amendment requesting that cottonseed be deleted from petition (PP 6G1807) and has requested a one-year extension of the temporary tolerances to permit the continued marketing of the remaining raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit (2139-EUP-23), which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136).

Nor-Am Agricultural Products, Inc., at the same time submitted pesticide petition (PP 1G2458) requesting the establishment of a tolerance for residues of the herbicide thidiazuron and its aniline-containing metabolites in or on cottonseed at 0.4 ppm. This request was granted in a notice that appeared in the **Federal Register** of November 4, 1981 (46 FR 54794).

The scientific data reported and all other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the herbicide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Nor-Am must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company 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 Administration.

These tolerances expire July 1, 1983. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the herbicide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this herbicide indicates that such revocation is necessary to protect the public health.

As required by Executive Order 12291, EPA has determined that this temporary tolerance is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this temporary tolerance from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164 (5 U.S.C. 601-612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: November 19, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-34361 Filed 11-30-81; 8:45 am]

BILLING CODE 6560-32-M

[AEN-FRL-1988-1]

Ethyl Corp.; Denial of Application for Fuel Waiver; Summary of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to section 211(f) of the Clean Air Act (Act), the Administrator of EPA is denying the waiver requested by the Ethyl Corporation (Ethyl) for the use of methylcyclopentadienyl manganese tricarbonyl (MMT) at a concentration of up to 1/64 gram of manganese per gallon of unleaded gasoline.

ADDRESS: Public Docket: Copies of information on this waiver application and the Administrator's decision are available for inspection in public docket EN-81-15 at the Central Docket Section (A-130) of the Environmental Protection Agency, Gallery I—West Tower, 401 M Street, SW, Washington, D.C. 20460, (202) 755-0245, between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of the Administrator's decision are also available by contacting James W. Caldwell at the address or phone number below.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell or Robert Gelman, Fuels Section, Field Operations and Support Division (EN-397), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 382-2635.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Clean Air Act (Act), 42 U.S.C. 7545(f)(1), prohibits the introduction into commerce of certain automotive fuels and fuel additives. Section 211(f)(4) of the Act, 42 U.S.C. 7545(f)(4), provides that the Administrator of EPA, upon application by a fuel or fuel additive manufacturer, may waive the prohibitions established under section 211(f) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause vehicles to fail emission standards. The Ethyl Corporation (Ethyl) has submitted such an application for the use of methylcyclopentadienyl manganese tricarbonyl (MMT) at a concentration of up to 1/64 gram of manganese per gallon of unleaded gasoline.

For reasons specified in the decision document, I have denied the waiver request. This denial is based on the determination that Ethyl has failed to demonstrate that MMT, used as an additive in unleaded gasoline in the requested concentration, will not cause or contribute to a failure of any 1975 or subsequent model year vehicle or engine to comply with the emission standards with respect to which it was certified under section 206 of the Act.

This action was submitted to the Office of Management and Budget (OMB) for review pursuant to Executive Order 12291.

This action is not a "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), because EPA is not required to undergo "notice and comment" under section 553(b) of the Administrative Procedure Act, or other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

This is a final Agency action of national applicability. Jurisdiction to review this action lies exclusively in the U.S. Court of Appeals for the District of Columbia Circuit. Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before February 1, 1982. Under section 307(b)(2), today's action may not be challenged later in a separate judicial proceeding brought by the Agency to enforce the statutory prohibitions.

Dated: November 20, 1981.

John E. Daniel,

Acting Administrator.

[FR Doc. 81-34362 Filed 11-30-81; 8:45 am]

BILLING CODE 6560-26-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Preparations for the ITU 1983 Region 2 Broadcasting Satellite Service Planning Conference; Subgroup Meeting

November 20, 1981.

Subgroup 2: Technical Parameters.

Meeting: Tuesday, December 15, 1981, 9:30 A.M.-4:30 P.M., Federal Communications Commission, 1229 20th Street, N.W., Room A-110, Washington, D.C.

Agenda: 1) Approval of Agenda, 2) Announcements, 3) Status Report by Working Group 2A—J. Ramasastry, 4) Status Report by Working Group 2B—E. Martin, 5) Organization for Future Work, 6) Other Business, 7) Date of Next Meeting and Adjournment.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-34418 Filed 11-30-81; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1320]

Petitions for Reconsideration and Applications for Review of Actions in Rule Making Proceedings

November 20, 1981.

The following listings of petitions for reconsideration and applications for review filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration and applications for review must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of 73.202(b), Table of Assignments, FM Broadcast Stations. (Christiansted and Frederiksted, Virgin Islands) (BC Docket No. 81-284, RM's 3696, 3822, 3927 and 3928)

Filed by: Lee M. Mitchell, Tom W. Davidson & Grier C. Raclin, Attorneys for CDI Communications WIVI Partnership, (WIVI-FM) on 11-16-81.

Subject: Amendment of 73.202(b), Table of Assignments, FM Broadcast Stations. (Falmouth, Massachusetts) (BC Docket No. 80-159, RM-3326)

Filed by: Louis Schwartz & Malcolm G. Stevenson, Attorneys for New England Media Corporation, (WCIB-

FM) on 11–16–81. (Application for Review)

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-34417 Filed 11-30-81; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and 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 the agreement and the justification offered therefor at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10427; or may inspect the agreement 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 the agreement, including request for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before December 11, 1981 in which this notice appears. Comments should include facts and arguments concerning the approval, modification, or disppproval 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 agreement and the statement should indicate that this has been done.

Agreement No. T–3761–1.

Filing party: Milton A. Mowat, Manager, Traffic & Regulatory Affairs, Port of Portland, P.O. Box 3529, Portland, Oregon 97208.

Summary: Agreement No. T–3761–1 between the Port of Portland and Matson Terminals, Inc., amends the basic Agreement No. T–3761 by extending its term from December 31, 1981, through February 28, 1982. Upon the termination date, Matson Navigation Company will transfer its vessel operations from Terminal 4 to Terminal 6 in the Port of Portland, under provisions of Portland Terminal Tariff No. 4.

By Order of the Federal Maritime Commission.

Dated: November 25, 1981.

Francis C. Hurney,

Secretary.

[FR Doc. 81-34358 Filed 11-30-81; 8:45 am]

BILLING CODE 6730-01-M

Greater Detroit Chamber of Commmerce and Greater Detroit Board of Commerce; Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation No. P–73; Order of Revocation

Wheras, the Greater Detroit Chamber of Commerce and its predecessor, the Greater Detroit Board of Commerce, 150 Michigan Avenue, Detroit, Michigan 48226, have completed their charters of the passenger vessels Sagafjord, Cunard Adventurer, Cunard Ambassador, Southward, Renaissance, Mississippi Queen and Caribe.

It is ordered, the Certificate (Performance) No. P–73 issued to the Greater Detroit Board of Commerce covering the Sagafjord and Certificate (Performance) No. P–73 reissued to the Greater Detroit Chamber of Commerce covering the Sagafjord, Cunard Adventurer, Cunard Ambassador, Southward, Renaissance, Mississippi Queen and Caribe be and are hereby revoked effective November 13, 1981.

It is further ordered, that a copy of this Order be published in the Federal Register and served on certificants.

By the Commission, November 13, 1981

Francis C. Hurney,

Secretary.

[FR Doc. 81-34396 Filed 11-30-81; 8:45 am]

BILLING CODE 6730-01-M

Carnival Cruise Lines, Inc., et al.; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons or Voyages pursuant to the provisions of Section 2, Public Law 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 C.F.R. 540): Carnival Cruise Lines, Inc., and Festivale Maritime Incorporated and AVL Maritime Inc. c/o Carnival Cruise Lines, Inc., 3915 Biscayne Boulevard, Miami, Florida 33137.

Dated: November 25, 1981.

Francis C. Hurney,

Secretary.

[FR Doc. 81-34397 Filed 11-30-81; 8:45 am]

BILLING CODE 6730-01-M

Scandinavian World Cruises (Bahamas) Ltd. and DFDS Seacruises (Bahamas) Ltd.; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Scandinavian World Cruises (Bahamas) Limited and DFDS Seacruises (Bahamas) Limited c/o Scandinavian World Cruises, 1080 Port Blvd., Port of Miami, Miami, Florida 33132.

Dated: November 25, 1981.

Francis C. Hurney,

Secretary.

[FR Doc. 81-34398 Filed 11-30-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound bank practices." Any comment on an application that requests

a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than December 21, 1981.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

Manufacturers Hanover Corporation, New York, New York (mortgage activities; insurance activities; North Carolina): To retain shares of its wholly-owned subsidiary Manufacturers Hanover Mortgage Corporation (MHMC) after MHMC expands the service area of its office located in Newport News, Virginia, which is authorized to engage in the activities of arranging, making or acquiring for its own account or for the account of others, loans and other extensions of credit such as would be made or acquired by a mortgage company; servicing any such loans and other extensions of credit for any person; acting as agent or broker, through its subsidiary, CMC Insurance Agency, Inc., for the sale of credit life insurance and credit accident and health insurance relating to such loans and other extensions of credit. The Newport News office services customers in the cities of Newport News, Hampton, Poquoson, Williamsburg and the counties of Gloucester, James City, and York; MHMC will continue to serve these customers and proposes to expand the service area to include Currituck and Dare Counties in North Carolina.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

Northern Trust Corporation, Chicago, Illinois (trust activities; Arizona and 49 other States): To engage, through its subsidiary, The Northern Trust Company of Arizona, in trust company activities. Such activities are to be conducted from an office in Tucson, Arizona, serving customers primarily in the State of Arizona, and secondarily in the other 49 States of the United States. Comments on this application must be received not later than December 18, 1981.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

Suburban Bancorporation, Hyattsville, Maryland (financing, leasing, and servicing activities; Maryland): To relocate the office of its subsidiary, Suburban Funding Corporation, currently located in Hyattsville, Maryland, to an office in Bethesda, Maryland. Suburban Funding Corporation currently engages, and would continue to engage, in making and acquiring for its own account or the account of others, loans and other extensions of credit, such as would be made by a commercial finance company; making and acquiring loans and other extension of credit for itself and others; leasing real and personal property and acting as agent, broker, and adviser in the leasing of real and personal property in accordance with the Board's Regulation Y; servicing loans and other extensions of credit for any person, and arranging financing, financial structuring, and analysis of equipment financing problems. The service area of this office has been before the relocation, and will continue to be after the relocation, Maryland, Virginia, and the Washington, D.C. metropolitan area.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation*, San Francisco, California (data processing activities; expansion of geographic scope; all fifty (50) States and the District of Columbia): To continue to engage, through its direct subsdiary, Decimus Corporation, a California corporation, in the activities of storing and processing banking, financial or related economic data. Such activities will include, but not be limited to, account reconciliation, deposit accounting, general ledger accounting, loan accounting, credit union accounting and providing payroll, accounts receivable and payable, billing and other similar data processing service.

These activities will be conducted from four existing data centers located in Piscataway, New Jersey; Elk Grove Village, Illinois; San Francisco, California and Cerritos, California, serving all fifty (50) States and the District of Columbia. Comments on this notice must be received not later than December 18, 1981.

2. *Imperial Bancorp*, Inglewood, California (financing, servicing, industrial loan company, and insurance activities; California): to engage *de novo* through it subsidiary, Imperial Plan, Inc., in making or acquiring, for its own account or for the account of others, loans and other extensions of credit and servicing loans and other extensions of credit for any person. Applicant also proposes to engage *de novo* through its subsidiary, Imperial Thrift and Loan Association, in the activities of an industrial loan company, including offering credit life and disability insurance in connection with such activities. These activities would be performed from offices of the subsidiaries located in Beverly Hills, San Jose, Tustin, Panorama City, Fresno, Sacramento, San Diego, Covina, Fullerton, Hayward, and Stockton, California, serving the State of California.

3. *Central Pacific Corporation*, Bakersfield, California (leasing activities): to establish a *de novo* subsidiary, Gateway Leasing, to engage in leasing automobiles, planes, manufacturing and industrial equipment, machinery and other personal property and servicing leases in accordance with the Board's Regulation Y. These activities would be conducted from offices in Bakersfield, Fresno, and Sacramento, California, serving the State of California.

E. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, November 23, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-34344 filed 11-30-81; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue

concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings would identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than December 18, 1981.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Security Pacific Corporation,* Los Angeles, California (escrow activities; California): To engage through its subsidiary, SP Escrow Service, Inc., in acting as escrow agent for the purchase and sale of real property and the execution of all documents and dispersal of funds relating to loan transactions, and all other activities engaged in by an escrow company. These activities would be conducted from an office of the subsidiary located in Irvine, California, serving the State of California.

2. *Security Pacific Corporation,* Los Angeles, California (commercial financing activities; United States): To engage through its subsidiary, Security Pacific Finance Corp. in making or acquiring for its own account or for the account of others, asset based business loans and other commercial or industrial loans and extensions of credit such as would be made by a factoring, rediscount, or commercial finance company. These activities would be conducted from an office of Security Pacific Finance Corp. in San Jose, California, serving the United States.

3. *Security Pacific Corporation,* Los Angeles, California (mortgage banking and credit-related life, accident and health insurance activities; California): To engage through its subsidiary, Security Pacific Mortgage Corporation, in the origination and acquisition of mortgage loans, including development and construction loans on multifamily and commercial properties for Security Pacific Mortgage Corporation's own account or for sale to others; the servicing of such loans for others; and acting as broker or agent for the sale of credit-related life, accident and health insurance. These activities would be conducted from an office of Security Pacific Mortgage Corporation in Ontario, California, serving the State of California.

4. *Security Pacific Corporation,* Los Angeles, California (loan servicing activities; United States): To engage through its subsidiary, Security Pacific Finance Corp. in servicing loans and other extensions of credit. These activities would be conducted from an office of Security Pacific Finance Corp. in San Diego, California, serving the United States.

5. *Security Pacific Corporation,* Los Angeles, California (underwriting, Connecticut, Massachusetts, Tennessee, Washington): To engage *de novo* through its indirect subsidiary, General Fidelity Life Insurance Company, in underwriting or reinsurance or both, of credit life and credit accident and health insurance in connection with extensions of credit by Applicant and its subsidiaries. These activities would be conducted from an office in Richmond, Virginia and would serve Connecticut, Massachusetts, Tennessee, and Washington.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, November 23, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-34343 Filed 11-30-81; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Travel Expenses; Report on the Cost of Travel and the Operation of Privately Owned Vehicles

The Travel Expense Amendments Act of 1975 (Pub. L. 94-22, May 19, 1975) requires the periodic investigation of the cost of travel and of the operations of privately owned vehicles (automobiles, motorcycles, and airplanes) to employees while engaged on official business. Further, the Act requires that the results of these investigations be reported to the Congress and published in the **Federal Register.**

Publication of the following report is in compliance with the requirements of the Act.

Dated: November 10, 1981.

Ray Kline,

Acting Administrator of General Services.

Report to Congress

The General Services Administration has concluded the investigations of the cost of travel and the cost of operating privately owned automobiles, airplanes, and motorcycles. We have identified the costs and consulted with representatives of employee organizations, the General Accounting Office, and the Departments of Defense and Transportation.

Based on the results of the current investigations, we are reporting our determination that a per diem allowance of $57 would be necessary to adequately compensate Government travelers. We can take no administrative action to increase the per diem rate, however, since the current allowance is already at the statutory maximum of $50.

The investigations also show that the costs have increased in all 62 of the existing high rate geographical areas (HRGA's) (Table 1). Travel expenses in HRGA's are reimbursed on an actual expense basis subject to a statutory maximum of $75 per day. Reimbursement rates in seven (7) of the existing HRGA's are already at the $75 statutory maximum level and cannot be increased until legislation is enacted to provide for further increases. Subsistence costs in the 7 areas range from $83.55 to a high of $141.35 in New York City. Reimbursement rates in the 55 other existing HRGA's are currently under the $75 statutory maximum and can be increased. However, only 35 can be increased to the level of cost reported in our study. Subsistence costs in the remaining 20 areas range from $75.50 to $101.05; thus an increase in the reimbursement rates for those areas is restricted to the $75 statutory maximum.

Additionally, the investigations reveal that 64 new localities (Table 2) now qualify for designation as HRGA's. To qualify as an HRGA, an area's subsistence cost must exceed the maximum per diem by 10 percent or more; based on a $50 maximum per diem, the minimum qualifying cost for HRGA status is $55. Current subsistence costs in the 64 areas range from $55.54 to over $75 per day. Designation of these additional HRGA's brings to 126 the total number of high rate areas within the conterminous United States. We will issue the regulations necessary to so designate these additional localities and to increase the amounts allowed in the 62 localities already designated as high rate areas. As indicated above, however, the current $75 statutory

maximum for actual subsistence expense reimbursement is not adequate to cover travel expenses incurred in all areas. The subsistence cost actually exceeds the statutory maximum in 28 of the 126 areas.

With respect to privately owned vehicles (POV's) used on official Government business, our investigations reveal that the average cost per mile for operating an automobile is 20.0 cents; for a motorcycle is 24.0 cents; and for an airplane is 60.0 cents. These costs represent an increase for motorcycles and airplanes but a decrease for privately owned automobiles. The lower automobile operating cost is primarily a result of our having changed our automobile cost study methodology. Recently we decided to adopt as the basis for GSA's automobile cost investigation, a study on the cost of operating privately owned automobiles prepared for the Internal Revenue Service (IRS) by Runzheimer and Company, Inc. (a Rochester, Wisconsin, business consultant firm).

We had used as the cost basis for our previous privately owned automobile cost investigations a periodic report issued by the Department of Transportation (DOT) most recently titled, "Cost of Owning and Operating Automobiles and Vans 1979." There were several shortcomings to using this report as the cost basis for determining a national reimbursement figure, however. Most notable among them were: a limited mix of automobiles surveyed in the DOT report (one each of 8, 6 and 4 cylinder vehicles); data collection geographically restricted to suburban Baltimore, Maryland, only; and infrequent updating of the report (approximately every two years). We have compensated for these shortcomings by incorporating in our past cost investigations adjustments in the formula for the composite reimbursement figure. However, we recognized that these adjustments did not correct the more fundamental, statistical shortcoming in the base data and scope of the DOT report where used for purposes of Federal employee reimbursement. The decision to adopt the Runzheimer methodology resolves these shortcomings without compromising equitable reimbursement of the employees.

We believe the methodology developed by Runzheimer and Company for use in the IRS report is superior to GSA's previous methodoloy and will result in more accurate reimbursement. The Runzheimer methodology reflects a broader range of direct source data than included in GSA's previous methodology, and it is also more representative of all sizes and types of automobiles used on a nationwide basis than the previous GSA methodology. We will issue regulations to adjust the automobile mileage rate from 22.5 cents to 20 cents. We estimate that this reduction in the mileage rate will result in approximately $25 million less in Government mileage reimbursement payments. The current allowances for motorcycles (20 cents per mile) and airplanes (45 cents per mile) are at their respective statutory maximums and cannot be administratively increased.

As noted above, GSA's flexibility in adjusting the POV and subsistence allowances is limited to adjusting the automobile mileage allowance and certain HRGA rates. Legislative action would be required to allow GSA to administratively adjust all of the allowance rates to levels which adequately cover the costs.

This report on the cost of travel and the operation of privately owned vehicles will be published in the **Federal Register.** The governing regulations will be amended within 30 days to reflect the subsistence and mileage allowance changes discussed above.

TABLE 1.—EXISTING HIGH RATE GEOGRAPHICAL AREA (HRGA) ALLOWANCE CHANGES

HRGA	Current rate	Current cost	Proposed rate
1. Atlanta, GA	$56	$77.70	[1] $75
2. Atlantic City, NJ	63	92.80	[1] 75
3. Baltimore, MD	59	77.10	[1] 75
4. Boston, MA	66	90.95	[1] 75
5. Burlington, VT	56	58.95	59
6. Charleston, WV	59	62.15	63
7. Cheyenne, WY	58	60.65	61
8. Chicago, IL	74	101.05	[1] 75
9. Cleveland, OH	71	76.30	[1] 75
10. Coatesville, PA	59	63.50	64
11. Dallas/Ft. Worth, TX	71	96.20	[1] 75
12. Denver, CO	67	83.60	[1] 75
13. Detroit, MI	75	86.70	[1] 75
14. Eatontown, NJ	56	60.52	61
15. El Paso, TX	58	60.20	61
16. Ft. Wayne, IN	62	64.05	65
17. Fresno, CA	57	62.15	63
18. Harrisburg, PA	58	68.15	69
19. Hartford, CT	56	72.50	73
20. Houston, TX	74	94.45	[1] 75
21. Indianapolis, IN	62	67.65	68
22. Kalamazoo, MI	57	58.10	59
23. Kansas City, MO/KS	68	76.85	[1] 75
24. Lake Placid, NY	56	61.07	62
25. Las Vegas, NV	75	83.55	[1] 75
26. Lexington, KY	58	67.40	68
27. Los Alamos, NM	58	63.04	64
28. Los Angeles, CA	70	92.60	[1] 75
29. Louisville, KY	59	67.75	68
30. Memphis, TN	61	64.65	65
31. Miami, FL	64	79.95	[1] 75
32. Milwaukee, WI	61	73.45	74
33. Minneapolis/St. Paul, MN	61	75.50	[1] 75
34. Monroeville, PA	64	68.85	69
35. Newark, NJ	67	82.05	[1] 75
36. New Haven, CT	63	73.15	74
37. New Orleans, LA	75	94.60	[1] 75
38. New York, NY	75	141.35	[1] 75
39. Philadelphia / Bala Cynwyd, PA	75	83.60	[1] 75
40. Pittsburgh, PA	65	77.60	[1] 75
41. Portland, OR	56	61.55	62

TABLE 1.—EXISTING HIGH RATE GEOGRAPHICAL AREA (HRGA) ALLOWANCE CHANGES—Continued

HRGA	Current rate	Current cost	Proposed rate
42. Rochester, NY	63	73.95	74
43. St. Louis, MO	67	76.35	[1] 75
44. Sacramento, CA	62	67.00	67
45. San Antonio, TX	61	71.25	72
46. San Diego, CA	70	94.40	[1] 75
47. San Francisco, CA	75	104.10	[1] 75
48. San Jose, CA	64	76.70	[1] 75
49. Santa Barbara, CA	68	87.20	[1] 75
50. Seattle, WA	72	77.50	[1] 75
51. Spokane, WA	60	63.30	64
52. Springfield, MA	58	62.15	63
53. Syracuse, NY	59	66.55	67
54. Tampa/St. Petersburg, FL	62	72.20	73
55. Toledo, OH	59	62.55	63
56. Tucson, AZ	61	65.50	66
57. Vail, CO	69	74.40	75
58. Valley Forge/King of Prussia, PA	58	63.04	64
59. Washington, DC	75	123.75	[1] 75
60. Wichita, KS	59	65.20	66
61. Wilmington, DE	62	74.15	75
62. Worcester, MA	58	59.70	60

[1] Although the subsistence costs exceed $75 per day, the daily allowance cannot exceed the statutory maximum rate of $75.

TABLE 2.—NEW AREAS WHICH QUALIFY FOR DESIGNATION AS HRGA'S

HRGA's	Proposed maximum rate
1. Akron, OH	$57
2. Albany, NY	66
3. Albuquerque, NM	63
4. Annapolis, MD	56
5. Ann Arbor, MI	56
6. Asheville, NC	58
7. Aspen, CO	75
8. Austin, TX	69
9. Baton Rouge, LA	69
10. Beaumont, TX	56
11. Birmingham, AL	60
12. Boise, ID	57
13. Bridgeport, CT	61
14. Buffalo/Niagara Falls, NY	64
15. Camden, NJ	56
16. Carson City, NV	56
17. Charleston, SC	61
18. Charlestown, IN	56
19. Charlotte, NC	57
20. Cincinnati, OH	66
21. Columbus, OH	65
22. Covington, KY	59
23. Dayton, OH	63
24. Des Moines, IA	58
25. Dover, NJ	57
26. Edison, NJ	56
27. Evendale, OH	56
28. Ft. Myers, FL	56
29. Ft. Walton Beach, FL	56
30. Ft. Washington, PA	57
31. Grand Rapids, MI	67
32. Groton, CT	56
33. Huntsville, AL	56
34. Jackson, MS	57
35. Jacksonville, FL	56
36. Little Rock, AR	56
37. Madison, WI	61
38. Manchester, NH	59
39. Nashville, TN	60
40. New London, CT	56
41. Newport, RI	59
42. Norfolk, VA	64
43. Oklahoma City, OK	56
44. Omaha, NE	61
45. Orlando, FL	64
46. Palm Springs, CA	59
47. Panama City, FL	56
48. Phoenix, AZ	64
49. Pittsfield, MA	57
50. Portland, ME	58
51. Portsmouth, NH	59

TABLE 2.—NEW AREAS WHICH QUALIFY FOR DESIGNATION AS HRGA'S—Continued

HRGA's	Proposed maximum rate
52. Providence, RI	69
53. Raleigh, NC	60
54. Redwood City, CA	64
55. Reno, NV	56
56. Richmond, VA	58
57. Salt Lake City, UT	70
58. San Bernardino, CA	56
59. San Luis Obispo, CA	63
60. Santa Cruz, CA	56
61. Sparks, NV	56
62. Springfield, IL	56
63. Williamsburg, VA	56
64. York, PA	58

Addendum to the Report to Congress on the Cost of Subsistence and the Cost of Operation of Privately Owned Vehicles

1. The changes to the mileage rate for use of a privately owned automobile in certain circumstances and travel allowances reflected in the preceding report are effective for travel beginning on or after December 6, 1981. The Federal Travel Regulations, FPMR 101–7, transmitted by FPMR Bulletin A–40, Supplement 1, dated September 28, 1981, are amended as follows:

a. Paragraphs 1–4.2a(2) and 1–4.2(c) (1) and (2) are revised to reflect a decrease in the mileage rate from 22.5 to 20.0 cents per mile for the use of privately owned automobiles in certain circumstances.

b. The HRGA listing previously found in paragraph 1–8.6 is revised to designate additional HRGA's and to increase the maximum actual subsistence expense rate and/or redefine the boundaries of certain existing HRGA's. The HRGA listing (as shown below) will be published in appendix 1–A.

DESIGNATED HIGH RATE GEOGRAPHICAL AREAS (HRGA'S)

High rate geographical area [1] [2]	Prescribed maximum daily rates (in dollars)
Alabama:	
Birmingham (all locations within Jefferson County) [3]	60
Huntsville (all locations within Madison County) [3]	58
Arizona:	
Phoenix/Scottsdale (all locations within Maricopa County, including Humboldt Mountain Air Force Station) [3]	64
Tucson (all locations within Pima County, including Davis Monthan AFB) [4]	66
Arkansas: Little Rock (all locations within Pulaski County) [3]	56
California:	
Fresno (all locations within Fresno County) [4]	63
Los Angeles (all locations within the counties of Los Angeles, Kern, Orange, and Ventura, including Edwards AFB) [4]	75
Palm Springs (all locations within Riverside County) [3]	59

DESIGNATED HIGH RATE GEOGRAPHICAL AREAS (HRGA'S)—Continued

High rate geographical area [1] [2]	Prescribed maximum daily rates (in dollars)
Redwood City (all locations within San Mateo County) [3]	64
Sacramento (all locations within Sacramento County) [4]	67
San Bernardino (all locations within San Bernardino County) [3]	56
San Diego (all locations within San Diego County) [4]	75
San Francisco/Oakland (all locations within the counties of San Francisco, Alameda, Contra Costa, and Marin) [4]	75
San Jose (all locations within Santa Clara County) [4]	75
San Luis Obispo (all locations within San Luis Obispo County) [3]	63
Santa Barbara (all locations within Santa Barbara County) [4]	75
Santa Cruz (all locations within Santa Cruz County) [3]	56
Colorado:	
Aspen (all locations within Pitkin County) [3]	75
Denver (all locations within the counties of Denver, Adams, Arapahoe, and Jefferson) [4]	75
Vail (all locations within Eagle County) [4]	75
Connecticut:	
Bridgeport (all locations within Fairfield County) [3]	61
Hartford (all locations within the counties of Hartford and Middlesex) [4]	73
New Haven (all locations within New Haven County) [4]	74
New London/Groton (all locations within New London County) [3]	56
Delaware: Wilmington (all locations within New Castle County) [4]	75
District of Columbia: Washington, DC (all locations within the corporate limits of the District of Columbia; the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland) (see also Maryland and Virginia)	
Florida:	
Ft. Myers (all locations within Lee County) [3]	56
Ft. Walton Beach (all locations within Okaloosa County) [3]	58
Jacksonville (all locations within Duval County, including Naval Station Mayport) [3]	56
Miami (all locations within the counties of Dade, Broward, Palm Beach, and Monroe) [4]	75
Orlando (all locations within Orange County) [3]	64
Panama City (all locations within Bay County) [3]	56
Tampa/St. Petersburg (all locations within the counties of Hillsborough and Pinellas) [4]	73
Georgia: Atlanta (all locations within the counties of De Kalb, Fulton, and Cobb) [4]	75
Idaho: Boise (all locations within Ada County) [3]	57
Illinois:	
Chicago (all locations within the Counties of Du Page, Cook, and Lake) [4]	75
Springfield (all locations within Sangamon County) [3]	56
Indiana:	
Charlestown (all locations within Clark County, including Indiana Army Ammunition Plant) [3]	56
Ft. Wayne (all locations within Allen County) [4]	65
Indianapolis (all locations within Marion County, including Fort Benjamin Harrison) [4]	68
Iowa: Des Moines (all locations within Polk County) [3]	59
Kansas:	
Kansas City (all locations within Wyandotte County) (see also Kansas City, MO) [4]	75
Wichita (all locations within Sedgwick County) [4]	66

DESIGNATED HIGH RATE GEOGRAPHICAL AREAS (HRGA'S)—Continued

High rate geographical area [1] [2]	Prescribed maximum daily rates (in dollars)
Kentucky:	
Covington (all locations within Kenton County) [3]	59
Lexington (all locations within Fayette County) [4]	68
Louisville (all locations within Jefferson County) [4]	68
Louisiana:	
Baton Rouge (all locations within East Baton Rouge Parish) [3]	69
New Orleans (all locations within the parishes of Jefferson, Orleans, Plaquemines, and St. Bernard)	75
Maine:	
Portland (all locations within Cumberland County) [3]	58
Kittery (all locations within York County, including the Portsmouth Naval Shipyard) (see also Portsmouth, NH) [3]	59
Maryland:	
Annapolis (all locations within Anne Arundel County) [3]	56
Baltimore (all locations within Baltimore City and the counties of Baltimore and Harford) [4]	75
Montgomery County (see also District of Columbia)	75
Prince Georges County (see also District of Columbia)	75
Massachusetts:	
Boston (all locations within the counties of Middlesex, Norfolk, and Suffolk) [4]	75
Pittsfield (all locations within Berkshire County) [3]	57
Springfield (all locations within Hampden County) [3]	63
Worcester (all locations within Worcester County) [3]	60
Michigan:	
Ann Arbor (all locations within Washtenaw County) [3]	56
Detroit (all locations within WayneCounty)	75
Grand Rapids (all locations within Kent County) [3]	67
Kalamazoo (all locations within Kalamazoo County) [4]	59
Minnesota: Minneapolis/St. Paul (all locations within the counties of Anoka, Hennepin, and Ramsey, including the Fort Snelling Military Reservation) [4]	75
Mississippi: Jackson (all locations within Hinds County) [3]	57
Missouri:	
Kansas City (all locations within Jackson County) (see also Kansas City, KS) [4]	75
St. Louis (all locations within the counties of St. Charles and St. Louis) [4]	75
Nebraska: Omaha (all locations within Douglas County) [3]	61
Nevada:	
Carson City (all locations within Carson City County) [3]	56
Las Vegas (all locations within Clark County, including Nellis AFB) [3]	75
Reno/Sparks (all locations within Washoe County) [3]	56
New Hampshire:	
Manchester (all locations within Hillsborough County) [3]	59
Portsmouth/Newington (all locations within Rockingham County, including Pease AFB) see also Kittery, ME) [3]	59
New Jersey:	
Atlantic City (all locations within Atlantic County) [4]	75
Camden (all locations within Camden County) [3]	56
Dover (all locations within Morris County, including Picatinny Arsenal) [3]	57
Eatontown (all locations within Monmouth County, including Ft. Monmouth) [4]	61
Edison (all locations within Middlesex County) [3]	56
Newark (all locations within the counties of Bergen, Essex, Hudson, Passaic, and Union) [4]	75

DESIGNATED HIGH RATE GEOGRAPHICAL AREAS (HRGA'S)—Continued

High rate geographical area [1] [2]	Prescribed maximum daily rates (in dollars)
New Mexico:	
Albuquerque (all locations within Bernalillo County) [3]	63
Los Alamos (all locations within Los Alamos County) [4]	64
New York:	
Albany (all locations within Albany County) [3]	68
Buffalo/Niagara Falls (all locations within the counties of Erie and Niagara Falls) [3]	64
Lake Placid (all locations within Essex County) [3]	62
New York (all locations within the Boroughs of the Bronx, Brooklyn, Manhattan, Queens, and Staten Island, and the counties of Nassau and Suffolk)	75
Rochester (all locations within Monroe County) [3]	74
Syracuse (all locations within Onondaga County) [3]	67
North Carolina:	
Asheville (all locations within Buncombe County) [3]	58
Charlotte (all locations within Mecklenburg County) [3]	57
Raleigh (all locations within Wake County) [3]	60
Ohio:	
Arkon (all locations within Summit County) [3]	57
Cincinnati/Evendale (all locations within Hamilton County) [3]	66
Cleveland (all locations within Cuyahoga County) [3]	75
Columbus (all locations within Franklin County) [3]	65
Dayton (all locations within Montgomery County, including Wright-Patterson AFB) [3]	63
Toledo (all locations within Lucas County) [3]	63
Oklahoma: Oklahoma City (all locations within Oklahoma County) [3]	56
Oregon: Portland (all locations within Multnomah County) [3]	62
Pennsylvania:	
Coatesville/Valley Forge (all locations within Chester County) [4]	64
Harrisburg (all locations within Dauphin County) [3]	69
Philadelphia/Bala Cynwyd (all locations within Philadelphia County and the city of Bala Cynwyd in Montgomery County) [4]	75
Pittsburgh/Monroeville (all locations within Allegheny County) [4]	75
King of Prussia/Ft. Washington (all locations within Montgomery County, except Bala Cynwyd) (see also Philadelphia, PA) [4]	64
York (all locations within York County) [3]	58
Rode Island:	
Newport (all locations within Newport County) [3]	59
Providence (all locations within Providence County) [3]	69
South Carolina: Charleston (all locations within the counties of Charleston and Berkeley) [3]	61
Tennessee:	
Memphis (all locations within Shelby County) [3]	65
Nashville (all locations within Davidson County) [3]	59
Texas:	
Austin (all locations within Travis County) [3]	69
Beaumont (all locations within Jefferson County) [3]	56
Dallas/Ft. Worth (all locations within the counties of Dallas and Tarrant) [4]	75
El Paso (all locations within El Paso County) [4]	61
Houston (all locations within Harris County, including the L. B. Johnson Space Center and Ellington AFB) [4]	75
San Antonio (all locations within Bexar County) [4]	72
Utah: Salt Lake City (all locations within Salt Lake County, including Dugway Proving Ground) [3]	70
Vermont: Burlington (all locations within Chittenden County) [4]	59
Virginia:	
Alexandria (see also District of Columbia)	75
Fairfax (see also District of Columbia)	75
Falls Church (see also District of Columbia)	75
Norfolk (all locations within the cities of Norfolk, Virginia Beach, Portsmouth, Hampton, Newport News, and Chesapeake, VA, and the county of York, including the Naval Weapons Station, Yorktown, VA) [3]	64
Richmond (all locations within the city of Richmond and the counties of Chesterfield and Henrico, including the Defense General Supply Center) [3]	58
Williamsburg [3]	56
Arlington County (see also District of Columbia)	75
Fairfax County (see also District of Columbia)	75
Loudon County (see also District of Columbia)	75
Washington:	
Seattle (all locations within King County) [4]	75
Spokane (all locations within Spokane County) [4]	64
West Virginia: Charleston (all locations within Kanawha County) [4]	63
Wisconsin:	
Madison (all locations within Dane County) [3]	61
Milwaukee (all locations within Milwaukee County) [4]	74
Wyoming: Cheyenne (all locations within Laramie County) [4]	61

[1] HRGA's without a specific definition are defined as "all locations within the corporate limits or entirely surrounded by the boundaries thereof, including independent entities located within the boundaries" unless otherwise specified.

[2] HRGA's with county definitions shall include "all locations entirely surrounded by the boundaries thereof, including independent entities located within the boundaries."

[3] Newly designated HRGA.

[4] Increased maximum rate or redefined boundary for previously designated HRGA.

2. The changes explained above will be incorporated in the revised edition of the Federal Travel Regulations. Changed pages will be transmitted by GSA Bulletin FPMR A–40, Supplement 2.

[FR Doc. 81–34328 Filed 11–30–81; 8:45 am]

BILLING CODE 6820–AM–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–79–4009]

Fresh or Fresh-Frozen Bivalve Mollusca Destined For the United States; Memorandum of Understanding With the Secretariat of Health And Welfare of the United States of Mexico

AGENCY: Food and Drug Administration; HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration has executed a memorandum of understanding with the Secretariat of Health and Welfare, United States of Mexico. The purpose of the memorandum is to affirm their intention to cooperate in assuring that fresh and fresh-frozen bivalve mollusca exported to the United States conform to certain regulations. This revised memorandum replaces the memorandum that was signed March 7, 1979 (see 44 FR 29162, May 18, 1979).

DATE: The memorandum of understanding became effective October 15, 1981.

FOR FURTHER INFORMATION CONTACT: Water J. Kustka, Interagency and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: FDA's policy is to publish in the **Federal Register** all agreements and memoranda of understanding between FDA and others (21 CFR 20.108(c)). Therefore, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding To Control the Sanitary Quality of Fresh or Fresh-Frozen Bivalve Mollusca Destined for Exportation to the United States of America

Between the

Food and Drug Administration, Department of Health and Human Services, United States of America

And the

Secretariat of Health and Welfare, United States of Mexico

I. Purpose

The Secretariat of Health and Welfare of the United States of Mexico that hereafter will be designated by the initials SSA and the Food and Drug Administration of the Department of Health and Human Services of the United States of America that hereafter will be designated by the initials FDA affirm by this document their intention to cooperate in assuring that fresh and fresh-frozen oysters, clams, and mussels exported to the United States of America are safe, wholesome, and have been harvested, transported, processed, and labeled in accordance with the provisions of the Mexican Regulations for the Sanitary Control of Seafoods, the Mexican Bivalve Mollusca Sanitation Program (PMSMB), the National Shellfish Sanitation Program (NSSP), and requirements of the Federal Food, Drug, and Cosmetic Act of the United States of America.

II. Definitions and Responsibilities

A. Terms

For the purposes of this Memorandum, both parties agree to the following definitions:

1. *Shellfish.* All edible species of molluscan bivalves except scallop species from the family Pectinidae.

2. *Lot.* Means a collection of primary containers or units of the same size, type, and style, produced under conditions as nearly uniform as possible, designated by a common

container code or marking, and in any event, no more than a day's production.

3. *Marine biotoxins.* Toxins produced by marine dinoflagellates such as *Gonyaulax catenella, Gonyaulax tamarensis,* and *Gymnodinium breve* and concentrated by shellfish during the feeding process.

4. *Central file.* The location where shellfish control program information, data, and reports are stored and maintained.

B. SSA Responsibilities

SSA agrees to:

1. Promulgate and enforce sanitation laws and regulations govening the growing, harvesting, processing, and shipment of shellfish to the United States.

2. Classify its shellfish harvesting waters in accordance with the procedures and standards set forth in the NSSP and the PMSMB.

3. Assure that only shellfish harvested from areas which meet NSSP- and PMSMB-approved water quality and marine biotoxin standards and processed according to NSSP and PMSMB guidelines will be exported to the United States of America.

4. Inspect the harvesting, transporting, and processing of shellfish at sufficient frequency to assure compliance wth NSSP and PMSMB sanitary control practices.

5. Issue sanitation quality certificates for harvesting areas, only to those shellfish exporting firms and cooperatives that comply with NSSP recommended practices and to notify FDA of the name, location and certification number of these firms or cooperatives on Form FD-3038b "Shellfish Certification". To cancel a firm's certification, SSA will send a completed Form FD-3038c "Certification Cancellation" to FDA.

6. Require that all containers or units of each lot of shellfish exported to the United States of America be identified by the name, address, and certification number of the shipper and the code of marking of the lot. Any other information required by the U.S. Federal Food, Drug, and Cosmetic Act and Mexican Regulations for the Sanitary Control of Seafoods will be also on each container.

7. Invite technical advisors of FDA to visit the firms or cooperatives which have certificates, and shellfish growing areas which have been identified for export harvesting. Such visits will be made on an annual basis or at a frequency considered appropriate by both parties to observe the operation of the Mexican Bivalve Molusca Sanitation Program.

8. Make travel arrangements for FDA technical advisors and provide the necessary facilities for carrying out their observations within Mexico.

9. Participate in FDA's laboratory quality assurance programs for seawater or shellfish including indicator and pathogenic bacteria, marine toxins, heavy metals, and radionuclides as considered necessary.

10. Participate as appropriate in the evaluation of new methods and procedures, including reagents, media, or other materials as well as instrument and equipment performance.

11. Establish a central office located in Mexico City in the Office of the Liaison Officer where a central file of laboratory results, including routine monitoring data, and data from quality assurance programs, will be maintained. Standard formats for collecting and reporting data should be used and these will be printed in English and Spanish.

C. FDA Responsibilities

FDA agrees to:

1. Publish the names, locations, and certification numbers of firms or cooperatives submitted by SSA. These will appear in the monthly publication of the Interstate Certified Shellfish Shippers List.

2. Provide training in technical and administrative procedures, including inspection, laboratory methods, and classification of shellfish growing areas, upon request of the SSA.

3. Inform the Mexican Liasion Officer of the reason or reasons for FDA detentions of Mexican shellfish imports. Additional information which will be provided will include, but not necessarily be limited to:

a. Commodity, identification, and the code or marking of the lot.

b. Name, address, and certification number of the shipper.

c. Date and other pertinent information on the shipping label.

d. Sampling procedure.

e. Methods of analysis.

f. Administrative procedures.

4. Recognize the United States of Mexico as a participant in the NSSP with full rights to particpate in national workshops, cooperative research programs, seminars, training courses, and other NSSP activities, and to make recommendations for changes and improvements in procedures, methods, standards, and guidelines of the NSSP.

5. Participate in joint FDA/SSA evaluations of NSSP practices as they pertain to Mexican shellfish imports.

6. Make travel arrangements for, and pay round trip transportation expenses of, its advisory team between the United States and Mexico. FDA will also pay all per diem of the advisory team.

7. To exchange appropriate information concerning questions by United States of America State or local food control officials regarding the certification, safety, and wholesomeness of shellfish imported from the United States of Mexico. FDA will, if so requested, seek to determine the reason for the problem and inform the SSA of any action taken relative to United States of America State and local laws governing such shellfish imports.

8. The Memorandum of Understanding is subject to the availability of appropriate funds and personnel to each party.

D. Shared Responsibilities

Both parties agree:

1. To name a liaison officer who will coordinate all operational matters relating to this Memorandum. The liaison officers will be responsible for facilitating exchanges of information and expeditiously informing other interested parties within their respective countries on shellfish control problems requring prompt attention. Each party will provide notification of any changes in liaison officer appointments. Such notification shall constitute a formality and does not require a revision of this agreement.

2. To provide information concerning proposed changes in the following:

a. Methods and procedures for sampling.

b. Methods of analysis.

c. Methods of confirmation.

d. Administrative guidelines, tolerances, specification standards, and nomenclature.

e. Reference standards.

f. Inspectional procedures.

3. To inform each other on a timely basis of the fundamentals of the following:

a. Proposed modifications of existing Federal or local regulations.

b. Proposed new Federal regulations.

c. Proposed new legislation.

d. Proposed modifications to the NSSP.

III. Period of Agreement

This agreement will come into force upon signature of both parties and will remain in force until terminated. It may be modified by mutual written consent or terminated by either party upon a sixty (60) day advance written notice to the other.

IV. This agreement supersedes the Memorandum of Understanding to control the Sanitary Quality of Fresh or Fresh-Frozen Bivalve Mollusca Destined for Exportation to the United States of America between the Food and Drug Administration, Department of Health, Education, and Welfare, United States of America, and the Secretariat of Health and Welfare of the United States of Mexico which entered into force March 1979, which agreement is hereby terminated.

V. Done at Washington, D.C. this 15th day of October 1981, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the Food and Drug Administration, Department of Health and Human Services, United States of America.

Arthur Hull Hayes, M.D.

For the Secretariat of Health and Welfare, United Sates of Mexico.

Dr. Manuel Lopez Portillo

Effective date. This memorandum of understanding became effective October 15, 1981.

Dated: November 18, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-34181 Filed 11-30-81; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings: Minneapolis District Office, Chaired by Henry P. Roberts, District Director.

DATE: Monday, December 7, 1981, 1:30 p.m.

ADDRESS: Northside Senior Citizen Center, 1711 W. Broadway Ave., Minneapolis, MN 55411.

FOR FURTHER INFORMATION CONTACT: Blanche L. Erkel, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–725–2121. Los Angeles District Office, Chaired by Abraham I. Kleks, District Director.

DATE: Tuesday, December 8, 1981, 9:30 a.m.

ADDRESS: Food and Drug Administration, 1521 W. Pico Blvd., Los Angeles, CA 90015.

FOR FURTHER INFORMATION CONTACT: Gordon L. Scott, Consumer Affairs Officer, Food and Drug Administration, 1521 W. Pico Blvd., Los Angeles, CA 90015, 213–688–4395. Minneapolis District Office, Chaired by Henry P. Roberts, District Director.

DATE: Tuesday, December 8, 1981, 9:30 p.m..

ADDRESS: Merriam Park Community Center, 2000 St. Anthony Ave., St. Paul, MN 55104.

FOR FURTHER INFORMATION CONTACT: Blanche L. Erkel, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–725–2121. New York District Office, Chaired by George J. Gerstenberg, District Director.

DATE: Wednesday, December 9, 1981, 9:30 a.m. to 12 m.

ADDRESS: North County Center, Veterans Memorial Highway, Bldg. 340, Hauppauge, NY 11788.

FOR FURTHER INFORMATION CONTACT: Alicia Martinez, Consumer Affairs Officer, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232, 212–965–5043. Dallas District Office, Chaired by James E. Anderson, District Director.

DATE: Thursday, December 10, 1981, 9:30 a.m. to 11 a.m.

ADDRESS: The High School, Mart, TX.

FOR FURTHER INFORMATION CONTACT: Hazel L. Wallace, Consumer Affairs Officer, Food and Drug Administration, 500 S. Ervay St., Suite 470–B, Dallas, TX 75201, 214–767–5433. Chicago District Office, Chaired by William R. Clark, District Director.

DATE: Thursday, December 10, 1981, 1 p.m. to 3 p.m.

ADDRESS: Chicago District Office, 433 W. Van Buren St., Rm. 1222, Chicago, IL 60607.

FOR FURTHER INFORMATION CONTACT: Marie A. Ekvall, Consumer Affairs Officer, Food and Drug Administration, 433 W. Van Buren St., Rm. 1222, Chicago, IL 60607, 312–353–7126. Dallas District Office, Chaired by James E. Anderson, District Director.

DATE: Friday, December 11, 1981, 9:30 a.m. to 11 a.m.

ADDRESS: Texas Power and Light Co. Bldg., Downtown, McGregor, TX.

FOR FURTHER INFORMATION CONTACT: Hazel L. Wallace, Consumer Affairs Officer, Food and Drug Administration, 500 S. Ervay St., Suite 470–B, Dallas, TX 75201, 214–767–5433.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance understanding and exchange information between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 24, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-34451 Filed 11-30-81; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Health Financing Research and Demonstration Grants; Cancellation of Grants Solicitation

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

ACTION: General Notice.

SUMMARY: The purpose of this notice is to cancel the solicitation for HCFA research and demonstration grants, as described in the standing grants announcement (45 FR 12362, February 25, 1980). We will announce fiscal year 1982 priorities in special grant solicitations in the **Federal Register**, as needed throughout the year.

DATES: Effective December 1, 1981.

FOR FURTHER INFORMATION CONTACT: Frances D. Lariviere, 301–594–7474. You may also write for further information to the following address: Health Care Financing Administration, Office of Research, Demonstrations and Statistics, Program Support Office, Area 2–D–6, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

SUPPLEMENTARY INFORMATION: In a general notice on availability of funds for research and demonstration grants, published in the **Federal Register** on February 25, 1980 (45 FR 12362), we announced priority subject areas for HCFA grants. That notice was supplemented by two HCFA pamphlets, one each for fiscal years 1980 and 1981, entitled "Grants for Research and Demonstrations" (HCFA Pub. No. 03017 and HCFA Pub. No. 03074). We distributed the pamphlet for fiscal year (FY) 1980 in February 1980 and that for FY81 in January 1981. In addition to describing priority subject areas for HCFA grants, the **Federal Register** notice and each of the pamphlets listed closing dates for the HCFA grants processing cycles for FY80–FY82.

Because of reductions in the HCFA budget for research and demonstration activities, we are canceling the solicitations announced in the three documents noted above. However, the priority areas may be announced again at a later date. In addition, we will review and decide whether to approve applications already received for the FY 82 processing cycle that ended on October 5, 1981. Applications received by HCFA after October 5, 1981 and by the date of publication of this notice in the **Federal Register** will also be included in that review process. We will designate panels to review these applications.

3087D/0174D tp 11–9–81

We also expect to approve some applications based on special grant solicitations that we will publish in the **Federal Register** during FY82. We anticipate that we will solicit applications for grants in the following areas:

- Competition for Medicaid.
- Co-payments for Medicaid health care services.

We will announce each special solicitation in the **Federal Register** throughout the course of the year. We do not plan to distribute specially printed brochures for the special solicitations.

We also anticipate soliciting other applications and proposals, through various procurement mechanisms, for:

- Closure and conversion of unnecessary health facilities.
- Competition with Medicare.

We will review on a quarterly basis applications for pilot experimental or demonstration projects that seek only waivers of statutory State Medicaid plan requirements under section 1115(a) of the Social Security Act. Experiment or demonstration projects under section 222(a) of the Social Security Amendments of 1972 or section 402 of the Social Security Amendments of 1967 that only involve benefit payments, and not additional grants for administration or research costs, will also be reviewed on a quarterly basis. Review panels will make recommendations of approval or disapproval to the Director of HCFA's Office of Research, Demonstrations and

Statistics. All waiver-only applications must explicitly describe the goals of the demonstration, including the questions to be addressed, and the evaluation methods and data to be used in conducting the demonstration. Closing dates for quarterly reviews of waiver only applications will be the first Monday of January, April, July and October of each year beginning Monday, January 4, 1982.

All unsolicited applications received after publication of this announcement will be returned to the applicant. When a final decision is made on the appropriateness and structure of future standing grants solicitations, we will publish an announcement in the **Federal Register.**

(Secs. 1110, 1115, and 1875 of the Social Security Act (42 U.S.C. 1310, 1315, 1395ll); section 222(a) of the Social Security Amendments of 1972 (42 U.S.C. 1395b–1 (note)); section 402 of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1); and section 3(a) of Pub. L. 95–210 (42 U.S.C. 1395b–1 (note)))

(Catalog of Federal Domestic Assistance Programs No. 13,766 Health Financing Research, Demonstrations and Experiments)

Dated: November 17, 1981.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 81–34377 Filed 11–30–81; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for Use and Distribution of Confederated Tribes of the Colville Reservation Judgment Funds in Dockets 181–C, 342–70 and 343–70 Before the United States Court of Claims

November 18, 1981.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

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 the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated in satisfaction of the awards granted to the Confederated Tribes of the Colville Reservation in United States Court of Claims Dockets 342–70 and 343–70 on January 27, 1981, and in Docket 181–C on January 30, 1981. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated May 22, 1981, and was received (as recorded in the Congressional Record) by the Senate on June 2, 1981, and by the House of Representatives on June 4, 1981. The plan became effective on September 22, 1981, as provided by Section 5 of the 1973 Act since Congress did not adopt a resolution disapproving it.

The plan reads as follows:

The funds appropriated on January 9 [27], 1981, and January 30, 1981, in satisfaction of awards granted to the Confederated Tribes of the Colville Reservation in Dockets 181–C, 342–70 and 343–70 before the United States Court of Claims, including all interest and investment [income] accrued, less attorney fees and litigation expenses shall be distributed as herein provided.

The Colville Confederated Tribes' latest approved membership roll shall be brought current to include all eligible members born on or prior to and living on the effective date of this plan.

Subsequent to the preparation and approval of this roll, the Secretary shall make a per capita distribution of the totality of the funds, in a sum as equal as possible, to each enrollee. Any amount remaining after the per capita payment to the enrollees shall revert to the Colville Business Council for use in [ongoing] programs.

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of legal incompetents shall be placed in individual Indian money (IIM) accounts and handled under 25 CFR 104.5. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, Part 4, Subpart D.

Minors' per capita shares in excess of $100, including all interest and investment income accruing thereto, will be retained in individually segregated IIM accounts and shall not be disbursed until the minor attains the age of eighteen years, or the minor'[s] shares, including all interest and investment income, will be placed in a private trust as approved by the Secretary. In those cases where a minor would reach the age of eighteen within six months after establishment of a trust, such funds shall instead be retained in IIM accounts. Upon reaching the age of eighteen, unless under a legal disability, the beneficiary shall be entitled to withdraw the per capita share and accrued investment income thereon as provided in 25 CFR 104.3. If a beneficiary is under a legal disability upon attaining the age of eighteen, the per capita share and accrued investment income thereon shall be handled pursuant to 25 CFR 104.5. If a minor's per capita share is not in excess of one hundred dollars ($100.00), it may be expended for the minor's benefit as provided in 25 CFR 104.4.

None of the funds distributed pursuant to this plan shall be subject to Federal or State income taxes or be considered income or resources in determining eligibility for assistance under Federal, State or local program[s].

Kenneth L. Payton,

Acting Deputy Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 81–34350 Filed 11–30–81; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Oil and Gas Leasing; National Petroleum Reserve, Alaska; Antitrust Review Information

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of antitrust review information required by the Department of Justice—preliminary determination and final determination.

SUMMARY: In the Notice of the First Oil and Gas Lease Sale for the National Petroleum Reserve—Alaska, 46 FR 55426 (November 9, 1981), the Department of the Interior published a statement prepared by the Department of Justice of the antitrust review information required by the Department of Justice of successful bidders in the first lease sale. *See* 46 FR 55431–32.

Consistent with the revised Attorney General review provision in the leasing regulations, 43 CFR 3130.1(b), *see* 46 FR 55494 and 55498 (Nov. 9, 1981), the published statement is the Attorney General's "preliminary determination of the information each successful bidder shall be required to submit for antitrust review purposes." Once the results of the lease sale are received by the Attorney General, a final determination of the information requirements for each successful bidder will be made. The Attorney General will promptly consider requests by successful bidders that are not affiliated with major oil companies for waivers of compliance with any one or more of the requirements for reserve or production information. The Attorney General will also consider any other requests for relief from or alteration of the information requirements in particular cases.

This notice of clarification is being made in response to expressed concerns that some of the information requirements may prove, in individual cases or in view of the actual results of the sale, either unnecessary or unduly burdensome in comparison to the

Attorney General's need for the information. In addition, some bidders wished to have it made clear that if the Attorney General determined after the sale that certain information need not be submitted in light of the sale results, potential bidders who refrained from bidding in the belief that the information requirements were absolute would not thereby have a basis on which to challenge any award. Prospective bidders may, as contemplated in the leasing regulations, 43 CFR 3130.1(b), still wish to seek expedited antitrust review by availing themselves of the option of submitting all the specified information in advance of or accompanying their bids, as such information will ordinarily be sufficient for antitrust review purposes.

ADDRESS: Any suggestions or inquiries should be sent to: Dave Brown, Attorney, Energy Division, Antitrust Division, Department of Justice, P.O. Box 14141, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT:
Dave Brown, (202) 724–6608.

Arnold E. Petty,
Acting Associate Director.
November 25, 1981.
[FR Doc. 81-34404 Filed 11-30-81; 8:45 am]
BILLING CODE 4310-84-M

National Park Service

Revised Draft Environmental Impact Statement for Grizzly Bear Management Program at Yellowstone National Park, Wyoming, Montana, and Idaho

AGENCY: National Park Service, Interior.

ACTION: Availability of Revised Draft Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service, U.S. Department of the Interior, has prepared a revised draft environmental impact statement (RDEIS) for the proposed grizzly bear management program at Yellowstone National Park. This RDEIS brings up to date a similar draft environmental impact statement issued in 1974. The RDEIS incorporates research data gathered from 1974 to the present and includes slightly revised alternatives. The proposal is to continue to implement the Yellowstone National Park bear management policy contained in Guidelines for Management Involving Grizzly Bears in the Greater Yellowstone Area approved June 16, 1980. This program would perpetuate a wild, free-ranging grizzly bear population in the park, and minimize conflicts between bears and humans in the park. The five alternatives considered are: (A) the proposal, (B) no action, (c) eliminate grizzly bears from the Yellowstone ecosystem, (D) further restrict visitor use, and (E) maintain grizzly bear population by artificial feeding.

A limited number of copies are available upon request to: Mr. Bob Kasparek, Compliance Officer, Rocky Mountain Regional Office, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, Colorado 80225, telephone (303) 234–4942.

Public reading copies will be available for review at the above address and at the following locations: Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240, telephone (202) 343–6843; and the office of the Superintendent, Yellowstone National Park, Wyoming 82190, telephone (307) 344–7381.

Comments on the RDEIS are invited from all interest parties and should be forwarded to Mr. Kasparek at the above address no later than 60 days from the date of this notice.

Dated: November 20, 1981.

Lorraine Mintzmyer,
Regional Director, Rocky Mountain Region.
[FR Doc. 81-34354 Filed 11-30-81; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 20, 1981. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments should be submitted by December 16, 1981.

Carol D. Shull,
Acting Keeper of the National Register.

CALIFORNIA

Los Angeles County

Long Beach, *Puvunga Indian Village Sites*, E. Boxby Hill Rd. and E. 7th St. (boundary increase)

MISSOURI

Clay County

Kearney vicinity, *Claybrook House*, NE of Kearney

NEW JERSEY

Cape May County

Cape May Court House, *Old Cape May County Courthouse Building*, N. Main St.
[FR Doc. 81-34353 Filed 11-30-81; 8:45 am]
BILLING CODE 4310-70-M

Appalachian Trail Route Changed

Two proposed relocations of the Appalachian Trail right-of-way, and Trail routes within those rights-of-way, were published on October 2, 1981 (46 FR 48782) to provide an opportunity for public review and comment. No substantive comments were received on the proposals. Environmental assessments have been prepared, and a Finding of No Significant Impact for each of these relocations is on file in the Supervisor's Office, Cherokee National Forest, 2321 N. Ocoee Street, N.W., Cleveland, Tennessee 37311, and in the Supervisor's Office, Chattahoochee-Oconee National Forest, 601 Broad Street, S.E., Gainesville, Georgia 30501. This notice confirms these right-of-way relocations as the official route of the Appalachian Trail.

David A. Richie,
Project Manager.
November 16, 1981.
[FR Doc. 81-34351 Filed 11-30-81; 8:45 am]
BILLING CODE 4310-70-M

Office of the Secretary

Meeting of the Commission on Fiscal Accountability of the Nation's Energy Resources

By notice published in the **Federal Register** on October 29, 1981 (46 FR 53529), it was announced that the Commission on Fiscal Accountability of the Nation's Energy Resources would hold meetings in Washington, D.C. on December 10 and 11, 1981. This amended notice announces that an additional meeting has been scheduled for December 9, 1981, in Washington, D.C. The specific location for the meeting is yet to be determined. For additional information, including the site location for the meeting, interested parties should contact the Commission staff at the Commission on Fiscal Accountability of the Nation's Energy Resources, Suite 403, 1111 18th Street, NW., Washington, D.C. 20036, telephone (202) 653–9051.

Dated: November 25, 1981.

William L. Kendig,
Director, Office of Financial Management.
[FR Doc. 81-34382 Filed 11-30-81; 8:45 am]
BILLING CODE 4310-10-M

INTERSTATE COMMERCE COMMISSION

[EX PARTE No. MC-156]

Applications for Motor Carrier Operating Authority by Railroads and Rail Affiliates

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for filing comments to Notice of Proposed Policy Statement.

SUMMARY: At 46 FR 50423, October 13, 1981, the Commission proposed to re-examine its policy of placing certain restrictions on operating authority issued to rail affiliated motor carriers unless "special circumstances" are demonstratred. Comments in this proceeding were due on November 27, 1981. This notice extends that date to December 11, 1981.

DATES: Comments should be filed by December 11, 1981.

ADDRESSES: An original and 10 copies, if possible, of any comment should be sent to: Ex Parte No. MC-156, Room 5416, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Harold Jackson, (202) 275-7887.

Decided: November 23, 1981.

By the Commission, Reese H. Taylor, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-34368 Filed 11-30-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed by Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the exent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: November 16, 1981.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,

Secretary.

MC-F-14727 filed October 26, 1981. Trans Canada Truck Lines, Inc. (Trans Canada) (P.O. Box 900, Station U, Toronto, Ontario, Canada, M82 5R3)-Purchase (Portion)-Killian Bulk Transport, Inc. (Killian) (100 Katherine Street, Buffalo, NY 14210). Representative: Robert D. Gunderman, Can-Am Bldg., 101 Niagara, Street, Buffalo, NY 14202. Trans Canada seeks to purchase a portion of the interstate operating rights of Killian. Trans Canada is a wholly owned subsidiary of Inter-City Truck Lines Inc., (Inter-City) which is in turn affiliated with Roadway Transport Limited and Automobile Transport Limited. An appropriate application under 49 U.S.C. 11343 and 11344 for control will be filed. Trans Canada is purchasing a portion of the operating rights of Killian that are contained in Certificate No. MC-99019 (Sub-No. 12X) dated June 1, 1981, which authorizes the transportation, transporting general commodities (except commodities in bulk on classes A and B explosives), between points in Erie County, NY, on the one hand, and, on the other, points in NY western counties, Chemung, Genesee, Monroe, Niagara, Onondaga, Ontario, Orleans.

MC-F-14725, filed October 26, 1981 HYMAN FREIGHTWAYS, INC. (HYMAN) (2380 Wycliff, P.O. Box 43393, St. Paul, MN 55164—Control—STURM FREIGHTWAYS, INC. (Sturm) (8919 North University, Peoria, IL 61614). Representative: Robert D. Gisvold, 1600 TCF Tower, Minneapolis, MN 55402. Hyman seeks authority to acquire control of Sturm through the purchase by Hyman of all the issued and outstanding capital stock of Sturm. Eugene Pikovsky, the individual in control of Hyman, seeks authority to acquire control of the operating rights and property of Sturm through the transaction. Hyman is a motor common carrier pursuant to authority issued in MC-108835 and Sub-numbers thereunder, operating over regular and irregular routes, in the States of MN, SD, IA, NE, MO and other States. The operating rights to be controlled are contained in certificates issued in MC-108649 and sub-numbers thereunder, which authorize the transportation of general commodities (with the usual exceptions) over regular routes between named points in the states of IA, IL, IN, MN and NE. Condition: Eugene Pikovsky is the majority shareholder of Hyman

Freightways, Inc., and therefore approval of this application is conditioned upon his joining in the application as the person in control of Hyman Freightways, Inc. Impediment: Hyman Freightways, Inc. holds authority in MC–108835 to operate over regular routes between Minneapolis-St. Paul, MN and Omaha, NE, which duplicates routes held by Sturm. In a letter dated October 26, 1981, the parties state that Hyman does not seek duplicating authority and that it proposes to either merge the two carriers within 3 to 5 years after consummation or to seek cancellation of the duplicating authority held by Sturm. The Commission's regulations pertaining to duplicating authority held by commonly-controlled carriers are found in 49 CFR 1134.51. Subsection (a) provides three alternatives by the involved carriers: (1) cancellation of the duplicating authority of one of the carriers, (2) a plan and timetable to eliminate the duplications at the "earliest practicable date," and (3) involves the imposition of a non-severability provision, if cogent reasons are shown for the continued existence of the commonly-controlled duplications. Subsection (b) provides that if the first alternative-cancellation is not selected by the parties, they must state with particularity, the facts and circumstances relied upon to warrant continuance of the duplications. Subsection (c) provides that if a plan for elimination is proffered, the parties must report, at six-month intervals, on the progress of the plan. The information submitted by the parties herein is defective in that there are no facts or circumstances justifying the continuance of commonly-controlled duplications for as much as 3 to 5 years. Rather than require immediate cancellation of duplications, however, we will permit the parties an opportunity to submit the justification under 49 CFR 1134.51 (a)(2) and (b).

[FR Doc. 81-34368 Filed 11-30-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OPY–2–227

Decided: November 18, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 159183, filed November 6, 1981. Applicant: GREAT WESTERN FREIGHTLINES, INC., 3455 52nd Ave., Denver, CO 80216. Representative: Donald J. Quinn, Commerce Bank Bldg., Suite 232, 8901 State Line, Kansas City, MO 64114, 816–444–7474. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 159202, filed November 6, 1981. Applicant: JOHN M. HAM, d.b.a. HAM TRUCKING, 93 West Harford Rd., Newington, CT 06111. Representative: John M. Ham (same address as applicant), 203–561–0532. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditoners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 159242, filed November 12, 1981. Applicant: CENTRAL MOTIVE PARTS, P.O. Box 4371, Fort Smith, AR 72914. Representative: Hugh Stouffer (same address as applicant), 501–474–7282. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OPY–3–217

Decided: November 19, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 155234 (Sub-2), filed November 13, 1981. Applicant: STOW TRANSPORT, INC., 3275 Kent Rd., Stow, OH 44224. Representative: Gary J. Boecker (same address as applicant), (216) 688–6262. Transporting, for or on behalf of the United States Government, *general commodities* (except used household

goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 159264, filed November 13, 1981. Applicant: WILLIAM A. RICHARDSON, d.b.a. R&T REFRIGERATED SERVICE, POB 611, Ramona, CA 92065. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, (805) 872–1106. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OPY–4–451

Decided: November 16, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 159177, filed November 6, 1981. Applicant: RONJO DELIVERY SERVICE, INC., 296 Nevada Ave., Williamstown, NJ 08094. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137, (901) 767–5600. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 159187, filed November 9, 1981. Applicant: MERVIN E. JUNKER, d.b.a. J. T. L. TRUCKING, P.O. Box 8306, Roseville, MN 55113. Representative: Robert P. Sack, P.O. Box 6010, W. St. Paul, MN 55118, (612) 457–6889. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 159207, filed November 9, 1981. Applicant: SPEEDWAY EXPRESS, INC., 3605 Long Beach Blvd., Suite 421, Long Beach, CA 90807. Representative: Eduardo C. Ferrer (same address as applicant), (213) 595–1247. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OPY–4–453

Decided: November 18, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 157437, filed November 3, 1981. Applicant: PRIORITY AIR COURIER, INC., 250 Richards Rd., Suite 267, Kansas City, MO 64116. Representative: Lawrence N. Short (same address as applicant), (816) 221–4411. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-34367 Filed 11-30-81; 8:00 a.m.]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a mjaor Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–310

Decided: November 18, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 30450 (Sub-5), filed November 12, 1981. Applicant: TAYLORVILLE TRANSIT, INC., R. R. 1, Box 5–A, Taylorville, IL 62568. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004 (202) 737–1030. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter and special operations, beginning and ending at points in Christian, Macon, McLean, DeWitt, Logan, Tazewell, Peoria, Woodford, Piatt, Macoupin, Montgomery, Shelby, Morgan, Pike, Scott, Adams, Moultrie, Sangaman, and Fulton Counties, IL, and extending to points in the U.S.

MC 45630 (Sub-6), filed November 9, 1981. Applicant: OSAR TRUCKING CO., INC., 94 Sylvan Ave., Clifton, NJ 07011. Representative: Harold L. Reckson, 33–28 Halsey Rd., Fair Lawn, NJ 07410. Transporting *solidified carbon dioxide, and machinery and equipment for the foregoing commodity and for cryogenic gases*, between points in CT, MA, RI, NH, VT, NY, NJ, PA, DE, MD, VA and DC, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, MO, TN, MS and LA.

MC 129410 (Sub-28), filed November 9, 1981. Applicant: BONCOSKY TRANSPORTATION, INC., 1301 Industrial Drive, Algonquin, IL 60102. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *food and related*

products, between points in the U.S., under continuing contract(s) with Tri-State Sweeteners, Inc., of Cincinnati, OH.

MC 142431 (Sub-13), filed October 23, 1981, previously noticed in the **Federal Register** issue of November 9, 1981. Applicant: WAYMAR TRANSPORT CORP., 5225 E. University, Des Moines, IA 50317. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309, (515) 245–4300. Transporting (1) *paper products,* between points in IA and MI, on the one hand, and, on the other, points in IL, MN, MO, NE, MA, NY, OH, WI, IA and MI, (2) *food and related products,* between points in IA, NE, RI, MN and WI, on the one hand, and, on the other, those points in the U.S. in and east of MN, NE, MO, OK and TX, and (3) *floor coverings,* between points in AR, IL, NY, and PA, on the one hand, and, on the other, points in IA, NE and MO.

Note.—This republication includes the state of WI to the radial movement in part (2).

MC 144061 (Sub-25), filed November 9, 1981. Applicant: SICOMAC CARRIERS, INC., 1109 Goffle Road, Hawthorne, NJ 07506. Representative: Jack L. Schiller, 123–60 83rd Avenue, Kew Gardens, NY 11415, (212) 263–2078. Transporting *commodities in bulk,* between points in the U.S., under continuing contract(s) with Industrial Products Group—Stokely Van Camp, Inc., of Columbus, OH.

MC 144221 (Sub-4), filed November 10, 1981. Applicant: KINGSWAY FREIGHTLINES LIMITED, 212 24th Street, N.E., Calgary, Alberta, Canada T2A 2N6. Representative: John W. Bryant, 900 Guardian Building, Detroit, MI 48226, (313) 963–3750. Over regular route, transporting *general commodities* (except classes A and B explosives), between Sweetgrass and Great Falls, MT, over Interstate Hwy 15, serving all intermediate points.

MC 151951, filed October 27, 1981. Applicant: TACOMA HAULING CO., INC., 19060 Frager Road, Kent, WA. Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101, (206) 624–2832. Transporting *animal and poultry feed, feed ingredients, feed supplements, seed and salt,* between points in the U.S., under continuing contract(s) with A. R. Smith & Co., Inc., of Redmond, WA.

MC 152730 (Sub-11), filed November 9, 1981. Applicant: DEPENDABLE TRANSIT, INC., 300 South, P.O. Box 349, Hartford City, IN 47348. Representative: Larry Dee Garrett (same address as applicant), 317–348–0051. Transporting *plastic articles,* between points in the U.S. (except AK and HI).

MC 152730 (Sub-12), filed November 12, 1981. Applicant: DEPENDABLE TRANSIT, INC., P.O. Box 349, Hartford City, IN 47348. Representative: Larry Dee Garrett (same address as applicant), (317) 348–0051. Transporting *pulp, paper and related products,* between points in Blackford County, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 153850 (Sub-1), filed November 10, 1981. Applicant: COOK'S TANK LINES, INC., 110–116 N. Franklintown Road, Baltimore, MD 21223. Representative: Leo C. Franey, 918 16th Street NW., Washington, D.C. 20006, (202) 785–3700. Transporting *petroleum and petroleum products,* between Baltimore, MD, on the one hand, and, on the other, points in MD, VA, WV, PA, DE and DC.

MC 154760 (Sub-1), filed November 10, 1981. Applicant: JEFFREY C. GALANTE, d.b.a. GALANTE'S MARINE TRANSPORT, 1812 Grantwood Drive, Toms River, NJ 08753. Representative: Mark D. Russell, Suite 348 Pennsylvania Bldg., 425–13th Street NW., Washington, D.C. 20004, (202) 737–2188. Transporting *boats, boat trailers, and marine equipment,* between points in AL, CA, CT, DE, FL, GA, IL, IN, LA, MA, MD, ME, MI, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TX, VA, VT, WA, and WI.

MC 158511 (Sub-2), filed November 9, 1981. Applicant: WISCONSIN GENERAL CARTAGE AND WAREHOUSE, INC., 4080 North Port Washington Road, Milwaukee, WI 53212. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719, (608) 273–1003. Transporting *such commodities* as are dealt in or used by a manufacturer of spices and seasonings, between points in the U.S., under continuing contract(s) with Wisconsin Spice, Inc., of Berlin, WI.

MC 159190, filed November 9, 1981. Applicant: CURTIS MUSE, 9000 NE Union #55, Portland, OR 97211. Representative: David C. White, 2400 SW Fourth Ave., Portland, OR 97201, (503) 226–6491. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with Pennzoil Products Company, of Houston, TX.

MC 159200 (Sub-1), filed November 6, 1981. Applicant: ALMA ORTIZ AND JULIO C. ORTIZ, d.b.a. AIR-MOSA TRAVEL, 3960 Wilshire Blvd., Suite 404, Los Angeles, CA 90010. Representative: Alma Ortiz (same address as applicant), (213) 383–3967. As a *broker* at Los Angeles, CA, in arranging for the transportation of *passengers and their baggage,* between points in CA, on the one hand, and, on the other, points in the U.S.

MC 159220, filed November 9, 1981. Applicant: REFRIGERATED INTERNATIONAL CARGO HAULERS, INC., 1195 Niagara Street, Buffalo, NY 14213. Representative: Charles H. White, Jr., Suite 800, 1019 19th Street NW., Washington, D.C. 20036, (202) 785–3420. Transporting *food and related products,* between points in the U.S. under continuing contract(s) with Rich-SeaPak Corporation of St. Simons Island, GA.

MC 159230, filed November 9, 1981. Applicant: DEAN H. YEATON, INC., RFD 2, Yeaton Road, Plymouth, NH 03264. Representative: Dean H. Yeaton (same address as applicant), (603) 536–2738. Transporting *lumber and wood products, petroleum, natural gas, and their products, farm products, and coal products,* between points in OH, MD, DE, VA, WV, PA, NJ, NY, CT, RI, MA, VT, NH, and ME.

Volume No. OPY–2–228

Decided: November 18, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 75603 (Sub-1), filed November 2, 1981. Applicant: THE REED WAREHOUSE, INC., 572 E. Liberty, Wooster, OH 44691. Representative: William Musser (same address as applicant), 216–263–0515. Transporting *household goods,* between points in AL, AR, CT, CO, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, WI, and DC.

MC 93393 (Sub-22), filed November 6, 1981. Applicant: NIGHTWAY TRANSPORTATION CO., INC., 4100 South Emerald Ave., Chicago, IL 60609. Representative: William H. Towle, 180 North LaSalle St., Chicago, IL 60601, 312–332–5106. Transporting *food and related products,* between points in IL, IN, KY, OH, and MI.

MC 148143 (Sub-15), filed October 21, 1981. Applicant: MID-AMERICA FARM LINES, INC., P.O. Box 71, Springfield, MO 65801. Representative: John M. Ringenberg (Same address as applicant), 417–866–7460. Transporting general commodities (except classes A and B explosives), between the facilities of ConAgra, Inc. and its subsidiaries, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 150093 (Sub-5), filed November 9, 1981. Applicant: THE TOM DAVIS CORP. d.b.a. DAVIS LINES, 5335 N.W. 111th Drive, Grimes, IA 50111. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309,

515–244–2329.Transporting *machinery*, between points in IL, on the one hand, and, on the other, points in the U.S. (including AK but excluding HI).

MC 152102, filed November 9, 1981. Applicant: WDP TRANSPORTATION, INC., 453 Versailles Rd., Frankfort, KY 40601. Representative: George M. Catlett, 708 McClure Bldg., Frankfort, KY 40601, 502–227–7384 Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with (a) Mitchell Aluminum Products Company, Inc., and Ohio Valley Aluminum Company, Inc., both of Shelbyville, KY, (b) MB Food Corporation, of Versailles, KY, and (c) Southern Molding, Inc., of Frankfort, KY.

MC 155223 (Sub-3), filed November 6, 1981. Applicant: HIGHWAY EXPRESS, INC., P.O. Box 580, Glendale, AZ 85301 Representative: Robert Fuller, 13215 E. Penn. St. Suite 310 Whittier, CA 90602, 213–945–3002. Transporting *electronic components*, between points in the U.S., under continuing contract(s) with Molex, Inc., of Nogales, AZ.

MC 157112, filed October 9, 1981 (Correction), previously published in the **Federal Register** of October 28, 1981, and republished this issue. Applicant: MICHAEL D. SMITH, d.b.a. M & S TRANSFER, 2371–34th St., Moline, IL 61265. Representative: Carl E. Munson, 469 Fischer Bldg., Dubuque, IA 52001, (319) 557–1320. Transporting *electric motors, welders, equipment, and supplies*, between points in Rock Island County, IL, on the one hand, and, on the other, points in IA and NE.

Note.—This republication corrects the commodity description.

MC 158412, filed September 23, 1981, published in the **Federal Register** issue of October 28, 1981, and republished, as corrected, this issue. Applicant: HAROLD MARCUS LIMITED, R.R. #3, Bothwell, Ontario, Canada NOP 1CO. Representative: Wilhelmina Boersma, 1600 1st Federal Bldg., Detroit, MI 48226, 313–962–6492. Transporting *waste materials and liquid tire fill*, between ports of entry on the International Boundary line between the U.S. and Canada in MI and NY, on the one hand, and, on the other, points in MI, OH, PA, NY, IL, IN, WI, MO, KY, MD, NH, MA, ME, RI, VT, and CT. The purpose of this republication is to correct the commodity description.

MC 159163, filed November 5, 1981. Applicant: MICHAEL W. JOHNSON, Rte. 3, Carbondale, IL 62901. Representative: Michael W. Johnson (same address as applicant), 618–549–2478. Transporting *concrete products*, between points in the U.S., under continuing contract(s) with Anna Ready Mix, Inc., of Anna, IL.

MC 159182, filed November 6, 1981. Applicant: BLUEBIRD TRANSPORTATION, INC., 1 West Pineloch Ave., Orlando, FL 33856. Representative: M. Craig Massey, 215 East Lime St., P.O. Drawer 1109, Lakeland, FL 33802, (813) 682–1178. Transporting *such commodities* as are manufactured or distributed by the food processing industry between points in FL, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK and TX.

MC 159233, filed November 10, 1981. Applicant: IRENE YOUNG d.b.a. YOUNG'S LIMOUSINE SERVICE, 945 Newtown Road, Warminster, PA 18974. Representative: Raymond A. Thistle, Jr., Five Cottman Ct., Homestead Rd & Cottman St., Jenkintown, PA 19046, (215) 576–0131. Transporting *passengers and their baggage*, limited to the transportation of not more than 7 passengers, excluding the driver, in one vehicle at one time, between points in Montgomery and Bucks Counties, PA, on the one hand, and, on the other, points in CT, DE, MD, NJ, NY and DC.

Volume No. OPY–3–217

Decided: November 23, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 24784 (Sub-43), filed November 17, 1981. Applicant: BARRY, INC., 463 South Water, Olathe, KS 66061. Representative: Arthur J. Cerra, 2100 CharterBank Center, P.O. Box 19251, Kansas City, MO 64141, (816) 842–8600. Transporting *salt and salt products* (except commodities in bulk), between (1) St. Martin Parish, LA, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, OK, NC, SC, TN, and TX, and (2) between points in Reno County, KS, and Tooele, Weber, and Salt Lake Counties, UT, on the one hand, and, on the other, points in AR, CO, IA, IL, IN, KS, LA, MO, ND, NE, NM, SD, TN, and TX.

MC 125254 (Sub-87), filed November 16, 1981. Applicant: MORGAN TRUCKING CO., a Corporation, P.O. Box 714, Muscatine, IA 52761. Representative: Ronald R. Adams, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *food and related products*, between points in Black Hawk and Louisa Counties, IA, on the one hand, and, on the other, points in AL, AR, IN, GA, KS, KY, LA, MI, MN, MS, NE, NC, OH, PA, SC, TN, and WI.

MC 140484 (Sub-102), filed November 17, 1981. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day (same address as applicant), (813) 334–4517. Transporting *food and related products*, between points in Cleveland, OH, on the one hand, and, on the other, points in IL, KS, MN and IN.

MC 145715 (Sub-21), filed November 16, 1981. Applicant: BELL TRUCKING, INC., P.O. Box 165, Van Buren, AR 72956. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702, (501) 521–8121. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 146964 (Sub-20), filed November 17, 1981. Applicant: RELIABLE TRUCK LINES, INC., R.D. #5, 5 Marianne Dr., York, PA 17402. Representative: Michael Valencik (same address as applicant), (717) 767–6639. Transporting *paper and paper products*, between points in the U.S. (except AK and HI).

MC 155595 (Sub-2), filed November 17, 1981. Applicant: WTR TRANSPORTATION, INC., 3023 Herbert St., Dallas, TX 75215. Representative: Daniel C. Sullivan, 10 S. LaSalle St., Chicago, IL 60603, (312) 263–1600. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of wearing apparel, between points in Rutherford County, TN, Kennebec County, ME, Fairfield County, CT, and Blair County, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 158075, filed November 16, 1981. Applicant: T & S BUS SERVICE, INC., 5009 Wheeler Rd., Oxon Hill, MD 20754. Representative: Brian L. Troiano, 918 16th St., N.W., Washington, D.C. 20006, (202) 785–3700. Transporting *passengers and their baggage*, in charter operations, beginning and ending at Washington, DC, points in Arlington, Fairfax, and Loudoun Counties, VA, Alwxandria, Falls Church, and Fairfax, VA, and points in Montgomery, Prince Georges, Anne Arundel, and Charles Counties, MD, and extending to points in the U.S. (except AK and HI).

MC 158874, filed November 16, 1981. Applicant: OF SERVICE, INC., 1400 S. Goodrich Blvd., City of Commerce, CA 90040. Representative: David P. Christianson, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017, (213) 627–8471. Transporting (1) *printed matter*, and (2) *paper and paper products*, between points in the U.S. (including AK and HI).

MC 159314, filed November 17, 1981. Applicant: DAVID McCOY, d.b.a. JAY N ZEE TOURS AND DAD–D–TOURS, 3040 East Olive Unit 106A, Fresno, CA 93701. Representative: David McCoy (same address as applicant), (209) 268–5570. As

a *broker*, at Fresno, CA, in arranging for the transportation by motor vehicle of *passengers and their baggage*, between points in CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159324, filed November 17, 1981. Applicant: OVERLAND TOURS, INC., 75 Federal St., Stratford, CT 06497. Representative: Gerald A. Joseloff, 410 Asylum St., Hartford, CT 06103, (203) 728-0700. As a *broker*, at Stratford, CT, in arranging for the transportation of *passengers and their baggage* in special and charter operations, beginning and ending at points in Fairfield and New Haven Counties, CT, and extending to points in the U.S. (except AK and HI).

MC 159325, filed November 17, 1981. Applicant: ZINC, INC., Rt. 3, Box 157, El Campo, TX 77437. Representative: Steven W. Anders, 2117 Potomac, Houston, TX 77057, (713) 877-6442. Transporting *zinc and zinc products*, between points in the U.S. (except AK and HI), under continuing contract(s) with National Zinc of Bartlesville, OK.

MC 157274, filed November 17, 1981. Applicant: AMERICAN CONCORD LINES, INC., U.S. Hwy 6 and 15, New Paris, IN 46553. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204-3491, (317) 638-1301. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, between points in IN, and those in Kent, Ingham, Van Buren, Kalamazoo, Calhoun, Berrien, Cass, St. Joseph, Jackson and Branch Counties, MI, and McHenry, Lake, DeKalb, Kane, DuPage, Cook, Kendall and Will Counties, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OPY-4-450

Decided: November 16, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 1017 (Sub-2), filed November 9, 1981. Applicant: SWAN TRUCKING CORP., INC., 3433 Holyoke Rd., Philadelphia, PA 19114. Representative: Francis W. Doyle, 323 Maple Ave., Southhampton, PA 18966, (215) 357-7220. Transporting *farm products and food and related products* between points in the U.S., (except AK and HI) under continuing contract(s) with Ward-Johnson of Milwaukee, WI, Sweet Service Corp., of Pennsauken, NJ and Alpha Aromatics, Inc., of Croydon PA.

MC 76677 (Sub-16), filed November 5, 1981. Applicant: HALLAMORE MOTOR TRANSPORTATION, INC., 795 Plymouth St., Holbrook, MA 02343. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108, (617) 742-3530. Transporting *commodities* which because of their size or weight require the use of special handling or equipment, between points in the U.S. (except AK and HI).

MC 104967 (Sub-15), filed November 9, 1981. Applicant: TIGHE TRUCKING, INC., 45 Holton Street, Winchester, MA 01089. Representative: David M. Marshall, 101 State St., Suite 304 Springfield, MA 01103, (413) 732-1136. Transporting *general commodities* (except classes A and B explosives household goods and commodities in bulk), between points in Middlesex County, MA, on the one hand, and, on the other, points in NY, NJ and PA.

MC 108247 (Sub-10), filed November 9, 1981. Applicant: WESTCHESTER MOTOR LINES, INC., 35 Edgemere Rd., New Haven, CT 06512. Representative: Ronald G. Esposito (same address as applicant), (203) 468-0500. Transporting *dental, medical and hospital supplies*, between points in Chenango and Oneida Counties, NY, on the one hand, and, on the other points in Middlesex County, CT.

MC 120547 (Sub-3), filed November 6, 1981. Applicant: PARKER'S EXPRESS, INC., 21 Parker Drive, Avon Industrial Park, Avon, MA 02322. Representative: John F. O'Donnell, 60 Adams St., P.O. Box 238, Milton, MA 02187, (617) 696-7610. Transporting *general commodities* (except household goods and classes A and B explosives), between points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, and DC.

MC 136077 (Sub-32), filed November 6, 1981. Applicant: REBER CORPORATION, 2216 Old Arch Rd., Norristown, PA 19401. Representative: Richard L. Thurston, One Franklin Plaza, Philadelphia, PA 19102, (215) 854-6444. Transporting *commodities in bulk* between points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western bondary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the U.S. and Canada.

MC 139207 (Sub-20), filed October 8, 1981, previously noticed in the **Federal Register** issue of October 29, 1981, and republished this issue. Applicant: McNABB-WADSWORTH TRUCKING CO., INC., 305 S. Wilcox Dr., Kingsport, TN 37665. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, D.C. 20004, (202) 347-8862. Transporting (1) *such commodities* as are dealt in or used by grocery houses, between points in Benton, Crawford, and Washington Counties, AR, on the one hand, and, on the other, points in AL, TN, GA, SC, NC, WV, KY, VA, PA, MS, FL, and MD, and (2) *clay, concrete, glass or stone products*, between points in Navarr County, TX, on the one hand, and, on the other, points in MO, AR, LA, MS, AL, GA, NC, SC, TN, KY, VA, FL, WV, OH, and PA.

Note.—The purpose of this republication is to indicate that Navarr County is in the state of TX.

MC 146817 (Sub-14), filed November 6, 1981. Applicant: GEORGE CAVES, d.b.a. CAVES TRUCKING, P.O. Box 29357, Lincoln, NE 685429. Representative: Max H. Johnston, P.O. Box 6597, Lincoln, NE 68506, (402) 488-4841. Transporting *such commodities* as are dealt in and used by automotive supply stores, between points in Johnson County, KS, on the one hand, and, on the other, points in Adams, Christian, Fulton, Hancock, Henry, Rock Island, Schuyler, and Whiteside Counties, FL, and points in IA.

MC 148577 (Sub-3), filed November 6, 1981. Applicant: ORVILLE HOWARD, INC., 2724 Unbrella Tree Drive, Edgewater, FL 32032. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, (213) 945-2745. Transporting *metal products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Roebling Wire Co., of Roebling, NJ.

MC 148737 (Sub-12), filed November 5, 1981. Applicant: SUNSET EXPRESS CORPORATION, P.O. Box 27043, Salt Lake City, UT 84125. Representative: Joseph Michael Roberts, 1730 M. St., N.W., Suite 501, Washington, DC 20036, (202) 296-2900. Transporting *general commodities* (except classes A and B explosives household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Church & Dwight Co., Inc., of Piscataway, NJ.

MC 149497 (Sub-20), filed November 9, 1981. Applicant: HAUPT CONTRACT CARRIERS, INC., P.O. Box 1023, Wausau, WI 54401. Representative: Robert A. Wagman (same address as applicant), (715) 359-2907. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Transportation Systems International, Inc., of Minneapolis, MN.

MC 155577 (Sub-1), filed November 6, 1981. Applicant: CAMELOT DISTRIBUTING COMPANY, 400 Fish

Drive, S.W., Atlanta, GA 30336. Representative: Clifford G. McGehee, III (same address as applicant), (404) 349–7680. Transporting *waste paper, paper and paper products*, between points in the U.S. (except AK and HI), under continuing contract(s) with H. Vander Kley and Associates Ltd., of Atlanta, GA.

MC 156387 (Sub-1), filed November 9, 1981. Applicant: JIM L. LAGENFELD d.b.a. D & J ENTERPRISES, Rural Route #2, Dow City, IA 51528. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, (402) 397–9900. Transporting *food and related products*, between points in CA, IL, IA, KS, NE, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 157457 (Sub-1), filed November 9, 1981. Applicant: CONGOLEUM CARTAGE CORPORATION, 2323 S. 17th St., Elkhart, IN 46514. Representative: H. Barney Firestone, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603, (312) 263–1600. Transporting (1) *furniture and fixtures*, and (2) *rubber and plastic products*, between Seattle, WA, St. Louis, MO, Philadelphia, PA, Roanoke, VA, and Knoxville, TN, and points in Marathon County, WI, Winston County, AL, Marion County, MS, and Logan County, OK, and points in FL, NC, GA, and AR, on the one hand, and, on the other, points in AL, GA, SC, MI, FL, NC, AZ, ID, OR, TX, MO, KS, IN, MS, CA, PA, VA, TN, WI, IL, KY, NV, NY, MA, and OH.

MC 159197, filed November 9, 1981. Applicant: BURLINGTON STATE LINES, LTD., d.b.a. BURLINGTON TRAILWAYS, 504 Spring St., W. Burlington, IA 52655. Representative: Lawrence E. Lindeman, 425 13th St., NW., Suite 1032, Washington, DC 20004, (202) 628–4600. Over regular routes, transporting *passengers and their baggage, and express and newspapers* in the same vehicle, between Muscatin and Grandview, IA, over U.S. Hwy 61, serving all intermediate points.

Volume No. OPY–4–454

Decided: November 23, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 74346 (Sub-4), filed October 19, 1981, previously noticed in the Federal Register issue of November 11, 1981, and republished this issue. Applicant: GARRETT BROS., INC., 1300 S. Meridian, P.O. Box 19190, Oklahoma City, OK 73144. Representative: James W. Hightower, First Continental Bank Bldg., Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237, (214) 339–4108. Transporting *Mercer and earth drilling commodities*, between points in AR, CO, ID, KS, LA, MT, MS, NE, NM, ND, OK, SD, TX, UT, and WY.

Note.—The purpose of this republication is to correctly state the commodity description.

MC 119936 (Sub-4), filed October 22, 1981, previously noticed in the Federal Register of November 12, 1981. Applicant: FAIRFIELD MOTOR TRANSPORTATION COMPANY, 4350 W. 123rd St., Alsip, IL 60658. Representative: Stephen H. Loeb, Suite 2027, 33 N. LaSalle St., Chicago, IL 60602 (312) 725–9722. Transporting (1) *solar equipment, furnaces, air-conditioning machinery, heaters, and containers*, between Chicago, IL, Indianapolis, IN, and Fort Smith, AR, on the one hand, and, on the other, points in AR, IA, IL, IN, KY, MI, MN, OH, and WI, and (2) *metals and related products*, between Chicago, IL, Toledo, OH, and points in Butler, Montgomery, and Warren Counties, OH, and Detroit, MI, on the one hand, and, on the other, points in AR, IA, IL, IN, KY, MI, MN, MO, OH, TN, and WI.

Note.—The purpose of this republication is to include Detroit, MI, which was inadvertently omitted from the previous notice.

MC 118306 (Sub-1), filed November 16, 1981. Applicant: R. H. LEAHY TRANSPORT, LIMITED, P.O. Box 9, Trenton, Nova Scotia, Canada. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103 (413) 732–1136. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points of entry on the international boundary line between the U.S. and Canada at points in Aroostook, Washington, and Hancock Counties, ME, on the one hand, and, on the other, points in CT, DE, FL, GA, MA, MD, ME, NH, NJ, NY, NC, PA, RI, SC, VT, VA, WV, and DC.

MC 123916 (Sub-20), filed November 16, 1981. Applicant: GROVE CITY BUS LINES, INC., P.O. Box 31, Grove City, PA 16127. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K St., N.W., Washington, DC 20005 (202) 783–3525. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter operations, between points in the U.S., including AK but excluding HI, under continuing contract(s) with Earth Tours, Inc., of Grove City, PA.

MC 130156 (Sub-2), filed November 5, 1981. Applicant: WEGIEL TRAVEL SERVICE, INC., 1985 Main St., Springfield, MA 01103. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103 (413) 781–8205. To engage in operations, in interstate or foreign commerce, as a *broker*, at Springfield, MA, in arranging for the transportation, by motor vehicle, of *passengers*, in special and charter operations, between points in the U.S., including AK and HI.

MC 134156 (Sub-5), filed November 13, 1981. Applicant: AL SALEM, d.b.a. AL SALEM PRODUCE, 5136 Cherokee Hill Dr., Salem, VA 24153. Representative: Terrell C. Clark, P.O. Box 25 Stanleytown, VA 24168–(703) 629-2818. Transporting *pulp, paper, and related products*, between points in Worcester, MA and points in the U.S. (except AK and HI).

MC 139006 (Sub-37), filed November 23, 1981. Applicant: RAPIER SMITH, Rural Route 5, Loretto RD., Bardstown, KY 40004. Representative: William P. Whitney, Jr. (same address as applicant) (502) 348–5159. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) between the facilities utilized by Holiday Inn, Inc., Products Services Division and its vendors in the U.S. on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143776 (Sub-35), filed November 16, 1981. Applicant: C.D.B., INCORPORATED, 155 Spaulding Ave., SE, Grand Rapids, MI 49506. Representative: C. Michael Tubbs (same address as applicant) (800) 253–9527. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with John Morrell and Company, of Chicago, IL.

MC 147536 (Sub-37), filed November 16, 1981. Applicant: D. L. SITTON MOTOR LINES, INC., P.O. Box 1567, Joplin, MO 64802. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112 (405) 848–7946. Transporting *clay, concrete, glass or stone products*, between points in Wayne County, MI, Davidson County, TN, and Tulsa County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147906 (Sub-7), filed November 13, 1981. Applicant: KOHN TRANSPORT, INC., 4840 Southway, SW, Canton, OH 44706. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215 (614) 228–1541. Transporting *food and related products*, between Memphis, TN, on the one hand, and, on the other, points in OH.

MC 151206 (Sub-2), filed November 16, 1981. Applicant: NANCY & DWIGHT'S HOLIDAY TOURS, INC., P.O. Box 188,

Randleman, NC 27317. Representative: Dwight E. Thompson (same address as applicant) (919) 498–2003. Transporting *passengers and their baggage*, in special and charter operations, between points in Guilford County, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OPY–4–455

Decided: November 23, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 151746 (Sub-6), filed November 16, 1981. Applicant: ORANGE DISTRIBUTION SERVICE, INC., P.O. Box 2277, Short Beach, CT 06405. Representative: Gerald A. Joseloff, 410 Asylum St., Hartford, CT 06103 (203) 728–0700. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151946 (Sub-2), filed November 13, 1981. Applicant: BIG LAKE TRANSPORT, INC., P.O. Box 98, Charleston, MO 63834. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440–0496, (216) 652–2789. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Hoover Universal, Inc., of Georgetown, KY.

MC 151946 (Sub-3), filed November 13, 1981. Applicant: BIG LAKE TRANSPORT, INC., P.O. Box 98, Charleston, MO 63834. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440–0496, (216) 652–2789. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Morton Chemical Company, a division of Morton-Norwich Products, Inc., of Woodstock IL.

MC 157586,, filed November 16, 1981. Applicant: RICHARD PATTERSON, d.b.a. PATTERSON TRUCKING COMPANY, Rt. 6, Box 50, Brownsville. Representative: Richard Patterson (same address as applicant), (901) 772–3821. Transporting (1) *lawn and garden tractors, lawn edgers and shredders*, and (2) *recreational vehicles and parts*, between points in the U.S. (except AK and HI) under continuing contract(s) with Modern Tool and Die Co., Inc., of Brownsville, TN.

MC 158386, filed November 13, 1981. Applicant: HAB–NAB TRUCKING, INC., F.R.D. No. 2, Box 303, Federalsburg, MD 21632. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113, (215) 365–5141. Transporting *chemicals and related products*, between Baltimore, MD and Norfolk, VA, and points in Sussex County, DE, on the one hand, and, on the other, points in MD, NJ, and VA.

MC 159286, filed November 16, 1981. Applicant: MALICO, INC., 223 Maple St., Waukesha, WI 53186. Representative: Richard Salentine, 5260 S. Brennan Dr., New Berlin, WI 53151, (414) 679–2997. Transporting (1) *driveway sealer*, between points in the U.S. (except AK and HI) under continuing contract(s) with Good Seal Products, Corp., of Milwaukee, WI, (2) *food and related products*, between points in the U.S. (except AK and HI), under continuing Contract(s) with Jack Gronik Co., Inc. of Milwaukee, WI, (3) *office furniture and warehouse equipment*, between points in the U.S. (except AK and HI), under continuing contract(s) with Burrall Storage Design and Equipment, of Green Bay, WI, and (4) *chemical and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Cargill, Inc., Salt Division, of Minneapolis, MN.

MC 159276, filed November 13, 1981. Applicant: FLEET-RAIL, INC., 8063 Tennessee, Clarendon Hills, IL 60513. Representative: Albert A. Andrin, 180 N. LaSalle St., Chicago, IL 60601, (312) 332–5106.Transporting *general commodities* (except commodities in bulk, household goods, and classes A and B explosives), (1) between points in Lake County, IL, on the one hand, and, on the other, points in IL, IN, WI, TN, and MO, and (2) between Chicago, IL, on the one hand, and, on the other, points in IL, IN, WI, MI, OH, KY, IA, and TN.

Volume No. OPY–5–204

Decided: November 19, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

FF 579, filed November 9, 1981. Applicant: FREIGHT EXPEDITERS, INC., 600 Erieside Ave., Dock 26, Cleveland, OH 44114. Representative: Arthur E. Gogel, 7723 Greenwich Rd., Lodi, OH 44254, 216–948–2531. To operate as a *freight forwarder* of *general commodities* (except classes A and B explosives) between ports in the U.S. (except AK and HI), on the one hand, and, on the other, points in OH and KY.

MC 57239 (Sub-60), filed November 6, 1981. Applicant: RENNER'S EXPRESS, INC., 1350 South West St., Indianapolis, IN 46225. Representative: James R. Smith (same address as applicant), (317) 635–9312. Transporting *general commodities* (except classes A and B explosives), between points in IL, IN, KY, MI, OH, and TN.

MC 140889 (Sub-24), filed November 12, 1981. Applicant: FIVE STAR TRUCKING, INC., 4720 Beidler Rd., Willoughby, OH 44094. Representative: Ignatius B. Trombetta, One Public Square, Suite 1001, Cleveland, OH 44113. (216) 589–0448. Transporting *chemicals and related products and rubber and plastic products* between points in the U.S., under continuing contract(s) with BF Goodrich Co., of Akron, OH.

MC 144399 (Sub-2), filed November 9, 1981. Applicant: CRAWFORD TRUCKING CO., INC., P.O. Box 532, Montrose, AL 36559. Representative: Donald B. Sweeney, Jr., P.O. Box 2366, Birmingham, AL 35201; (205) 254–3880. Transporting (1) *food and related products*,(2) *paper and paper products*, (3) *rubber and related products*, and (4) *building materials, equipment, and supplies* between points in AL, and points in FL in and west of Jefferson County, FL, on the one hand, and, on the other, points in the U.S.

MC 145559 (Sub-15), filed November 10, 1981. Applicant: NORTH ALABAMA TRANSPORTATION, INC., P.O. Box 38, Ider, AL 35981. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210, (703) 525–4050. Transporting *food and related products* between points in Malheur County, OR, Cassia County, ID, Montcalm County, MI, Stark County, OH, and Portage County, WI, on the one hand, and, on the other, points in the U.S.

MC 145679 (Sub-20), filed November 9, 1981. Applicant: A & A TRANSPORT, INC., P.O. Box 569, Palmer, MA 01069. Representative: Arlyn L. Westergren, Suite 201, 9202 W. Dodge Rd., Omaha, NE 68114, (404) 397–7033. Transporting *food and related products* between points in Kankakee County, IL, Tarrant County, TX, and Hamilton County, TN, on the one hand, and, on the other, points in the U.S.

MC 147969 (Sub-9), filed November 9, 1981. Applicant: JOE S. BOWEN, INC., P.O. Box 262, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702, (501) 521–8121. Transporting (1) *food and related products* (a) between points in AR, on the one hand, and, on the other, points in the U.S., and (b) between points in TX, on the one hand, and, on the other, points in the U.S., and (2) *paper and paper products*, (3) *rubber and plastic products*, (4) *non-woven articles*, and (5)

metal products between points in the U.S.

MC 148478 (Sub-3), filed November 9, 1981. Applicant: TIMBER EXPRESS, INC., P.O. Box 302, Cedarville, OH 45314. Representative: Jerry B. Sellman, 50 West Broad St., Columbus, OH 43215, (614) 464–4103. Transporting *such commodities* as are dealt in or used by manufacturers or distributors of lumber and wood products, between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 150398 (Sub-8), filed November 9, 1981. Applicant: BLUE EXPRESS, INC., P.O. Box 292, Canton, SD 57013. Representative: Rick A. Rude, 1730 Rhode Island Ave., N.W., Washington, D.C. 20036, (202) 223–5900. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Jason Foods, Inc., of Northbrook, IL.

MC 150519 (Sub-2), filed November 3, 1981. Applicant: PETER PICKNELLY and LOUIS MAGNANO, d.b.a. VIP COACH SERVICES, 1776 Main St., Springfield, MA 01103. Representative: Robert J. Brooks, 1828 L Street NW., Washington, D.C. 20036, (202) 466–3892. Transporting *passengers and their baggage*, in same vehicle with passengers, in charter and special operations, between Atlantic City, NJ, on the one hand, and, on the other, points in CT, NY, PA, DE, MD, VA, and DC, under continuing contract(s) with Happy Day Tours, Inc., of Atlantic City, NJ, Peter Pan World Travel, Inc., of Springfield, MA, and Blue Bird World Travel, Inc., of Olean, NY.

MC 151788 (Sub-15), 1981. Applicant: MEL JARVIS CONSTRUCTION CO., INC., 2934 Arnold Ave., Salina, KS 67401. Representative: William B. Barker, 641 Harrison St., P.O. Box 1979, Topeka, KS 66601, (913) 234–0565. Transporting *general commodities* (except classes A and B explosives), between points in KS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152509 (Sub-20), filed November 9, 1981. Applicant: CONTRACT TRANSPORTATION SYSTEMS CO., 1370 Ontario St., Cleveland, OH 44101. Representative: J. L. Nedrich (same address as applicant), (216) 566–2677. Transporting *general commodities* between points in the U.S., under continuing contract(s) with The Scott & Fetzer Company of Lakewood, OH.

MC 155529 (Sub-1), filed November 9, 1981. Applicant: G & D TRANSPORT, INC., P.O. Box 3754, Alliance, OH 44601. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215, 614–464–4103. Transporting *such commodities* as are dealt in or used by (1) manufacturers and distributors of clay, concrete, glass or stone products, and building materials, between Cleveland, OH, on the one hand, and, on the other, points in the U.S.; (2) commercial fabricators, manufacturers and distributors of transportation equipment, between Chicago, IL, on the one hand, and, on the other, points in the U.S.; and (3) manufacturers and distributors of welding equipment and supplies, between Dayton, OH, on the one hand, and, on the other, points in the U.S.

MC 156399 (Sub-2), filed November 9, 1981. Applicant: CASTLE CONTRACT CARRIER, INC., 2337 Summer St., Lauderdale, MN 55113. Representative: Jerry E. Hess, P.O. Box 43640, St. Paul, MN 55164, 612–633–7911. Transporting *food and related products*, between points in the U.S. under continuing contract(s) with The Kroger Co., of Cincinnati, OH.

MC 157179, filed November 9, 1981. Applicant: WARRIOR TRANSPORT, INC., 2334 Havenhurst, Farmers Branch, TX 75234. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Ft. Worth, TX 76112, 817–457–0804. Transporting *general commodities*, between points in the U.S. under continuing contract(s) with Intertrans Corp., Expeditors International Inc., Pan World Shipping, Inc., Galbraith International, Inc., and Wallace International, Ltd, all of Dallas, TX; and Comet International Airfreight, of Miami, FL.

MC 159079, filed November 2, 1981. Applicant: TRI-BORO TRAVEL ENTERPRISES, INC., 4130 Birney Ave., Moosic, PA 18505. Representative: Edward F. V. Pietrowski, 430 Scranton Life Bldg., Scranton, PA 18503, 717–346–5761. As a *broker* at Moosic, PA, in arranging for the transportation of passengers and their baggage, between points in Lackawana County, PA on the one hand, and, on the other, points in the U.S.

MC 159189, filed November 9, 1981. Applicant: MERRITT TRUCKING COMPANY, INC., P.O. Box 11206, Greensboro, NC 27409. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602, (919) 828–0731. Transporting *liquefied petroleum gas*, (a) between points in Wake County, NC, on the one hand, and, on the other, points in VA and WV, (b) between Chesapeake, VA, on the one hand, and, on the other, points, in DE, MD, NC, SC, and WV, and (c) between points in York County, VA, on the one hand, and, on the other, points in DE, MD, NC, PA, and WV. Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of classes A and B explosives shall be limited in point of time to a period expiring 5 years from the date of issuance of the certificate.

MC 159188, filed November 9, 1981. Applicant: MISSOURI RIVER TRUCKING, 1490 Southern Road, Kansas City, MO 64120. Representative: Warren H. Sapp, 4420 Madison, Kansas City, MO 64111, (816) 931–8711. Transporting *general commodities* (except classes A and B explosives) between points in MO, AR, IA, KS, NE, OK, TX, IL, and CO.

MC 159238, filed November 10, 1981. Applicant: CHARLES A. PRESLEY, d.b.a. GREAT AMERICAN VACATIONS, P.O. Box 14009, Pittsburgh, PA 15239. Representative: Charles A. Presley, 409 Presque Isle Drive, Pittsburgh, PA 15239, (412) 327–8260. To engage in operations as a broker at Pittsburgh, PA, arranging the transportation of *passengers and their baggage*, in the same vehicle with passengers, between points in the U.S.

Volume No. OPY–5–206

Decided: November 20, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 47898 (Sub-10), filed November 12, 1981. Applicant: WISCONSIN-PACIFIC EXPRESS, INC., P.O. Box 190, Weyauwega, WI 54983. Representative: Gerald K. Gimmel, 4 Professional Dr., Gaithersburg, MD 20879, (301) 840–8565. Transporting *food and related products*, between points in Lawrence, Barry, Jasper and Newton Counties, MO, on the one hand, and, on the other, points in MO, KS, NE, ND, SD, MN, IA, WI, IL, KY, IN, OH, and MI.

MC 67308 (Sub-7), filed November 9, 1981. Applicant: COLONIAL TRAILWAYS, 400 South Royal St., Mobile, AL 36601. Representative: Lawrence E. Lindeman, 425 13th St., N.W., Suite 1032, Washington, D.C. 20004, 202–628–4600. Transporting *passengers and their baggage* in special and charter operations, beginning and ending at points in Mobile, Baldwin, Escambia, Clark, and Conecuh Counties, AL; Escambia, Santa Rosa, and Okaloosa Counties, FL; St. Tammany Parish, LA; and Jackson, Harrison, Hancock and Pearl River Counties, MS and extending to points in the U.S.

MC 78728 (Sub-7), filed November 5, 1981. Applicant: EVERETT EXPRESS, INC., Hwy 258, North, Tarboro, NC 27886. Representative: John H. Everett, P.O. Box 6274, Chesapeake, VA 23323, 804–487–2575. Transporting *general commodities* (except classes A and B

explosives), between points in AL, AR, DE, FL, GA, IN, KY, LA, MD, MS, NC, NY, NJ, OH, PA, SC, TN, TX, VA, WV, and DC.

MC 88818 (Sub-6), filed November 5, 1981. Applicant: MAYNARD T. WEDUL, d.b.a. WEDUL TRUCK LINE, P.O. Box 293, Thief River Falls, MN 56701. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul , MN 55118, 612–457–6889. Transporting *salt, cement and lime*, between points in St. Louis County, MN and Douglas County, WI on the one hand, and, on the other points in MN, ND, SD, IA and WI.

MC 105159 (Sub-46), filed November 12, 1981. Applicant: KNUDSEN TRUCKING, INC., 1320 West Main St., Red Wing, MN 55066. Representative: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402, 612–333–1341. Transporting *containers*, between Minneapolis, MN, on the one hand, and, on the other, points in CA, IA, IL, IN, KS, MA, MI, NY, PA, SD, and WV.

MC 121508 (Sub-3), filed November 9, 1981. Applicant: WESTERN CARTAGE, INC., 5050 First Ave., So., Seattle, WA 98124. Representative: Henry C. Winters, 12600 Southeast 38th St., Suite 200, Bellevue, WA 98006, 206–644–2100. Transporting *general commodities* (except classes A and B explosives) between points in OR and WA.

MC 134978 (Sub-27), filed November 2, 1981. Applicant: C. P. BELUE, d.b.a. BELUE'S TRUCKING, Rt. 3, Campobello, SC 29322. Representative: Mitchell King, Jr., P.O. Box 5711, Greenville, SC 29606, (803) 288–6000. Transporting *petroleum, natural gas and their products*, between points in GA and SC.

MC 140149 (Sub-3), filed November 3, 1981. Applicant: M. C. BUNCH, INC., Rt. #1, Box 52, Lake City, AR 72437. Representative: Wayne Mooney, 404 Market St., Harrisburg, AR 72432, (501) 578–2422. Transporting (1) *machinery and equipment*, between points in the U.S., under continuing contract(s) with (a) PCR, Inc., of Jonesboro, AR, (b) Collier Equipment Company, of Paragould, AR, (c) Farmers, Inc., of Wynne, AR, and (d) Blytheville Equipment Company, of Blytheville, AR, and (2) *metal products*, between points in the U.S., under continuing contract(s) with (a) Delta, Inc., and (b) Hytrol Conveyor Co., Inc., both of Jonesboro, AR.

MC 141379 (Sub-6), filed October 7, 1981, previously noticed in (Republication) **Federal Register** publication of November 4, 1981. Applicant: CALVIN C. HARTSFIELD d.b.a. SOUTHSIDE AUTO, Highway 25 South, P.O. Box 161, Rt. 1, Malden, MO 63863. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1300, St. Louis, MO 63102, (314) 421–0845. Transporting *used automobiles, trucks and parts*, between points in FL, on the one hand, and, on the other, points in Adams, Cook, Madison, Lake, LaSalle, Peoria, St. Clair, Sangamon, Will, and Winnebago Counties, IL, Clay, Dunklin, Howell, Jackson, New Madrid, Platte, and St. Louis Counties, MO, Johnson and Leavenworth Counties, KS, Cass, Douglas, and Sarpy Counties, NE, Mills and Pottawattamie Counties, IA, Eaton and Wayne Counties, MI, Dallas, Harris and Tarrant Counties, TX, Anoka, Hennepin, Ramsey and Washington Counties, MN, Coffee and Davidson Counties, TN, Craighead, Pope and Pulaski Counties, AR, and Sacramento County, CA.

Note.—This application is republished to show "Sacramento County, CA" in lieu of Sacramento, CA.

MC 159209, filed November 9, 1981. Applicant: POODLE BUS LINES CORPORATION, 1122 Wikiup Dr., Santa Rosa, CA 95401. Representative: Jim Fitzer, 15 S. Grady Way, Renton, WA 98055, (206) 235–1111. Transporting *passengers and their baggage* in same vehicle with passengers, in special or charter operations, between points in Sonoma, Marin, Napa, Mendocino, Solano and Lake Counties, CA, on the one hand, and, on the other, points in the U.S.

MC 143179 (Sub-27), filed November 9, 1981. Applicant: CNM CONTRACT CARRIERS, INC., P.O. Box 1017, Omaha, NE 68101. Representative: Foster L. Kent (same address as applicant), 712–323–9124. Transporting *furniture and fixtures and metal products*, between points in Newton County, MO on the one hand, and, on the other, points in IN, IA, KS, MN and NE.

MC 143348 (Sub-3), filed November 9, 1981. Applicant: PROFESSIONAL DELIVERY SYSTEMS, INC., 8408 Zell Lane, Richmond, VA 23229. Representative: Paul C. Anderson (same address as applicant), 804–285–8879. Transporting *such commodities* as are dealt in, used, or distributed by, manufacturers of cosmetics and cleaning, scouring and washing compounds, between points in the U.S. under continuing contract(s) with Amway Corporation of Norcross, GA.

MC 146929 (Sub-2), filed November 9, 1981. Applicant: PARK MOVING & STORAGE CO., INC., U.S. Route 40 South, Aberdeen, MD 21001. Representative: Charles A. Schneider, 1819 H Street NW, Suite 1000, Washington, DC 20006, 202–775–1300. Transporting *household goods as defined by the Commission*, between points in Anne Arundel, Baltimore, Carroll, Cecil, Harford and Howard Counties, MD on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, WI and DC.

MC 148479 (Sub-28), filed November 6, 1981. Applicant: MIDWEST SOLVENTS COMPANY, INC., 1300 Main St., Atchison, KS 66002. Representative: Kenneth E. Smith (same address as applicant), (913) 367–1480. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with The Pillsbury Company, of Minneapolis, MN.

MC 151788 (Sub-13), filed November 5, 1981. Applicant: MEL JARVIS CONSTRUCTION CO., INC., 2934 Arnold Ave., Salina, KS 67401. Representative: William B. Barker, 641 Harrison St., P.O. Box 1979, Topeka, KS 913–234–0565. Transporting *Mercer commodities*, between points in Hitchcock and Red Willow Counties, NE and Ellis, Graham and Rooks Counties, KS, on the one hand, and, on the other, points in CO, KS, NE, OK, and TX.

MC 151788 (Sub-14), filed November 9, 1981. Applicant: MEL JARVIS CONSTRUCTION CO., INC., 2934 Arnold Ave., Salina, KS 67401. Representative: William B. Barker, 641 Harrison St., P.O. Box 1979, Topeka, KS 66601, 913–234–0565. Transporting *metal products*, between points in Saline County, KS, on the one hand, and, on the other, points in the U.S. (except AK & HI).

MC 152568 (Sub-2), filed November 9, 1981. Applicant: KISTLER AMELING TRANSPORTATION, INC., 408 East Indiana St., Kouts, IN 46347. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204–3491, 317–638–1301. Transporting *chemicals and related products*, between points in the U.S. under continuing contract(s) with Overton Chemical Sales, Inc., of Sumner, IA.

MC 153828, filed October 16, 1981. Applicant: BORDER STATES TRANSPORT, INC., 2434 Hillview Ave., Bismarck, ND 58501. Representative: Charles E. Johnson, P.O. Box 2056, Bismarck, ND 58502–2056, (701) 223–5300. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Bis-Man Ford, McGrath Machinery Co., and NPN Inc., all of Bismarck, ND, and

Standard Steel Warehouse Company, of Portland, OR.

MC 158839 (Sub-1), filed November 5, 1981. Applicant: SHAMROCK TRUCKING, INC., 5258 Springdale Road, Forest Park, GA 30050. Representative: Archie B. Culbreth and John P. Tucker, Jr., 2200 Century Parkway, Atlanta, GA 30345, (404) 321-1765. Transporting (1) *animal feed* and (2) *metal containers*, between points in Fulton County, GA, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, OK and TX.

MC 159008, filed November 5, 1981. Applicant: NORTHERN CARRIERS, INC., 3814 11th St., Rockford, IL 61110. Representative: Thomas L. Brejcha, Jr., 69 W. Washington St., Chicago, IL 60602, (312) 269-0300. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Marathon Electric Manufacturing Corporation, of Wausau, WI.

MC 159149, filed November 4, 1981. Applicant: ADVENTURE TRAILS, INC., 430 East 56th St., New York, NY 10022. Representative: Jerrold A. Schwartz (same address as applicant), 212-688-8144. To operate as a *broker* in New York, NY, of *passengers and their baggage* in special and charter operations, beginning and ending in New York, NY; points in Westchester and Nassau Counties, NY; and points in Essex, Bergen and Passaic Counties, NJ, on the one hand, and, on the other, points in the U.S.

MC 159178, filed November 6, 1981. Applicant: THIRTY SIX MIDLAND AVENUE CORP., 36 Midland Avenue, Port Chester, NY 10573. Representative: Anthony Tesoriero, 92 Calvin Ave., Syosset, NY 11791, 516-364-3387. Transporting *tobacco and tobacco products* and *portable cigarette making kits*, between points in Westchester County, NY, on the one hand, and, on the other, points in Fairfield and New Haven Counties, CT.

MC 159229, filed November 10, 1981. Applicant: GULF COAST TOURS, INC., 123 East Mineola Ave, Valley Stream, NY 11580. Representative: Sidney J. Leshin, 575 Madison Ave., New York, NY 10022, (212) 759-3700. To engage in operations, as a *broker* at New York, NY and Miami, FL, in arranging for the transportation of *passengers and their baggage*, in special and charter operations, beginning and ending at points in NY, NJ, and FL, and extending to points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-34365 Filed 11-30-81; 8:45 am]

BILLING CODE 7035-01-M

Privacy Act Records; Minority and Female-Owned Motor Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of additional Privacy Act system of records.

SUMMARY: Pursuant to 5 U.S.C. (e)(4), the Commission hereby publishes a notice pertaining to the existence and character of an additional Privacy Act System of Records. The categories of individuals covered by the System are minority and female-owned motor carriers. The categories of records in the System are developed by questionnaires which are mailed to all ICC-regulated carriers and to each new applicant for authority. This data is compiled into a register which serves as a useful means of communicating with minority firms already in or interested in entering the trucking business. The information obtained will be made available to the Commission and the Congress, as well as to other agencies and organizations, to assist in designing and delivering programs to address the specific needs of these firms. Participation in this data collection program is voluntary.

ADDRESSES: The System is located at the Interstate Commerce Commission Headquarters in Washington, DC.

The System manager and address are as follows: Chief, Section of Systems Development, Room B-114, Interstate Commerce Commission, 12th & Constitution Ave., NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: S. Arnold Smith, 202-275-7076.

SUPPLEMENTARY INFORMATION: The above described System is called Identification and Measurement of Minority and Female-Owned Motor Carriers (#32-20-0013). The policies and practices for storing, retrieving, accessing, retaining and disposing of the records in the System are as follows: The records are maintained on magnetic tape, and kept in a locked file cabinet under direct control of the responsible official. They are retained for an unlimited period of time. The record source categories for the System are the licensees and applicants for authority who receive questionnaries on this matter from the Commission. Access to these files will be made upon request and presentation of proper identification. Notification and contesting record procedures are the same as for all other privacy act files. No exemption in the Privacy Act applies to this system of records.

The authority for maintenance of the System is found at 5 U.S.C. 553 and 49 U.S.C. 10101 and 10321.

Agatha L. Mergenovich,

Secretary.

Pursuant to 5 U.S.C. 552a(e)(4), the Interstate Commerce Commission hereby publishes notice pertaining to the existence and character of an additional Privacy Act System of Records:

32-20-0013

SYSTEM NAME:

Identification and Measurement of Minority and Female Owned Motor Carriers.

SYSTEM LOCATION:

ICC Headquarters, Washington, D.C.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Minority and female owned motor carriers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Questionnaires are mailed to all ICC regulated carriers and to each new applicant for authority. This data is compiled into a register which serves as a useful means of communicating with minority firms already in or interested in entering the trucking business.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 553 and 49 U.S.C. 10101 and 10321.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information will be made available to the Commission and the Congress, as well as to other agencies and organizations, to assist in designing and delivering programs to address the specific needs of these firms. Participation in this data collection program is voluntary.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained on magnetic tape.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Kept in locked file cabinet under direct control of responsible official.

RETENTION AND DISPOSAL:

To be retained for an unlimited period of time.

SYSTEM MANAGER AND ADDRESS:

Chief Section of Systems Development, B–411, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C. 20423.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Licensees and applicants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 81-34278 Filed 11-30-81; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 19, 1981, Wyeth Laboratories, Inc., 611 E. Nield Street, P.O. Box 565, West Chester, Pennsylvania 19380, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Meperidine Intermediate A (9232).

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Acting Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, N.W., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than January 4, 1982.

Dated: November 24, 1981.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 81-34363 Filed 11-30-81; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council on Juvenile Justice and Delinquency Prevention

Notice is hereby given that the Coordinating Council on Juvenile Justice and Delinquency Prevention will meet on Wednesday, December 16, 1981, in the Department of Labor's Francis Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Conference Rooms 4215 A, B and C South. The meeting will be open to the public and will begin at 10:00 a.m.

This meeting will feature the selection of priorities for the 1982 Council agenda. A discussion of program and budget changes affecting Federal delinquency related programs and an update on research efforts concerning Native American Youth. Other items to be discussed include a presentation of the National Institute of Juvenile Justice and Delinquency Prevention study on the relationship between learning disabilities and delinquency, and a presentation on International Youth Year.

For further information, contact Mr. William Modzeleski, Office of Juvenile Justice and Delinquency Prevention, Department of Justice, 633 Indiana Avenue, N.W., Room 442, Washington, D.C. 20531. Telephone: (202) 724–7751.

Charles A. Lauer,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 81-34380 Filed 11-30-81; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Associated Spring, et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 16–20, 1981.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

NEGATIVE DETERMINATIONS

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to workers separations at the firm.

TA–W–11,538; Associated Spring, Ann Arbor, MI

TA–W–12,242 & 12,243; Texas Apparel Co., Del Rio & Eagle Paso, TX

TA–W–10,003, 10,426, & 11,227; Henry I. Siegel Co., Inc., Dickson, TN, Fulton, KY, and Johnson City, TN

TA–W–10,931; Commercial Shearing, Inc., Youngstown, OH

In each of the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to worker separations at the firm.

TA–W–12,367; American Can Company, Geneva, NY

TA–W–12,382; Hastings Mfg. Co., Hastings, MI

In each of the following cases the investigation revealed that criterion (3) has not been met for the reason(s) specified.

TA–W–10,865; Interlake, Inc., Globe Metallurgical Div., Beverly, OH

With respect to perrosilicon and silicon metal, aggregate U.S. imports did not increase as required for certification.

With respect to ferrochrome alloys, increased imports did not contribute importantly to sales, production and employment declines at the firm.

TA–W–12,757; Port Huron Machine Products, Port Huron, MI

Aggregate U.S. imports of electric arc welding equipment are negligible.

TA-W-12,333; Erin Industries, Erin, TN

Aggregate U.S. imports of men's and boys' cotton and manmade fiber work shirts did not increase as required for certification.

TA-W-12,249; Brauer Knitting Co., Little Ferry, NJ

Aggregate U.S. imports of finished fabric and finished manmade knit fabric are negligible.

AFFIRMATIVE DETERMINATION

TA-W-11,862; Imperial Glass Corp.,Bellaire, OH

A certification was issued for a petition received on December 4, 1980 covering all workers separated on or after December 1, 1980.

I hereby certify that the aforementioned determination were issued during the period November 16-20, 1981. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street NW, Washington, D.C. 20213 during normal working hours or will be mailed to persons who write to the above address.

Dated: November 24, 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-34224 Filed 11-30-81; 8:45 am]

BILLING CODE 4510-30-M

Determination of States' Eligibility for "Cap" on Reduced Credits Under Federal Unemployment Tax Act (FUTA)

The Secretary of Labor has determined that six States with outstanding Federal loans to their unemployment funds are eligible for a "cap" on the repayment requirements in section 3302(c)(2) of FUTA.

The determinations were made as of November 10, 1981, and the Secretary of the Treasury was informed in a letter of November 19, 1981, to the Secretary of the Treasury, which is printed below.

Albert Angrisani,

Assistant Secretary of Labor.

November 19, 1981.

Hon. Donald T. Regan,

Secretary of the Treasury, Washington, D.C.

Dear Don: This is to verify the status of States which have had an outstanding balance of repayable advances under Title XII of the Social Security Act on January 1 in at least two consecutive years and are, therefore, subject to the reduction in credit provisions of section 3302(c)(2) of the Federal Unemployment Tax Act (FUTA).

Employers in 11 States are subject to a reduction in FUTA offset credit for taxable year 1981:

Connecticut
Delaware
District of Columbia
Illinois
Maine
New Jersey
Pennsylvania
Puerto Rico
Rhode Island
Vermont
Virgin Islands

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) added a new subsection (f) to section 3302 of FUTA which limits the FUTA tax credit reduction in 1981 to an amount which will not exceed the greater of 0.6 percent of wages subject to FUTA or the percentage reduction that was in effect for the preceding taxable year under certain conditions.

To quality for the "cap" in taxable year 1981, a State must have taken no action after August 12, 1981, and before October 1, 1981, unless required under State law in effect before August 13, 1981, which has resulted or will result in:

(1) A reduction in the State's unemployment tax effort, or

(2) A net decrease in the solvency of the State unemployment compensation system.

I have determined that under these criteria six States qualify for the "cap" and are subject to the reduced 1981 FUTA credits indicated:

Connecticut*, 0.7%
Delaware, 0.6%
District of Columbia, 0.6%
Pennsylvania, 0.6%
Rhode Island, 0.6%
Vermont, 0.6%

* Additional 0.1% is difference between average contribution rate and 2.7% in 1979 per Section 3302(c)(2)(B).

The five States not yet affected by the "cap" are subject to the credit reductions as shown:

Illinois, 0.6%
Maine, 0.6%
New Jersey, 0.6%
Puerto Rico, 0.6%
Virgin Islands, 0.6%

The States of Arkansas, Kentucky, Michigan, Minnesota, Ohio, and West Virginia have outstanding Title XII advances but are not subject to reduced credit for 1981.

Sincerely,

Raymond J. Donovan.

[FR Doc. 81-34332 Filed 11-30-81; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-81-57-M]

Conoco, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Conoco, Inc., 907 Rancho Road, Casper, Wyoming 82601 has filed a petition to modify the application of 30 CFR 57.19-54 (rope guides requirements) to its North Tisdale Mine Shaft located in Johnson County, Wyoming. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that where rope guides are used in shafts other than in shaft sinking operations, the rope guides be a type of lock coil construction.

2. As an alternative method, petitioner proposes to use bridge strand ropes which are more applicable to spelter sockets which will be at the shaft headframe and counterweights. In addition, these proposed ropes will be protected by solid oak rope guides which are installed on the hoisting cage. After completion of the shaft, the hoist will only be used one to two times per month and at a maximum governed speed of 200 feet per minute.

3. Petitioner states that this proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1981. Copies of the petition are available for inspection at that address.

Dated: November 17, 1981.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 34333 Filed 11-30-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-59-M]

Glens Falls Portland Cement Co.; Petition for Modification of Application of Mandatory Safety Standard

Glens Falls Portland Cement Company, P.O. Box 440, Glens Falls, New York 12801 has filed a petition to modify the application of 30 CFR 56.16-14(b) (operator cranes; requirements) to its Howes Cave Terminal located in Schoharie County, New York. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that operator-carrying

overhead cranes be provided with automatic switches to halt uptravel of the blocks before they strike the hoist.

2. Petitioner is using an eleven and-half ton capacity overhead crane with a 100 foot span to move clinker and gypsum from one section of the storage building to another and to feed clinker and gypsum into grinding mill bins.

3. The crane was originally equipped with an automatic limit switch to halt uptravel of the bucket but the walls of the mill bins were so high the crane operators were continuously tripping out the switch and causing physical damage to it.

4. The crane operates in a raw material storage hall where no one ever works. No miners work in this area because the building is only used to store clinker and gypsum. The only maintenance work performed in this building is on the crane bucket and that is performed with the bucket on the ground.

5. Petitioner states that there are rare occasions when raw material is brought in by truck into the storage hall.

6. As an alternative method which will provide the same degree of safety to the miners affected as that afforded by the standard, petitioner proposes to cease crane operations anytime trucks or other vehicles are within operating distance of the crane. Crane operation will not be resumed until the vehicles are out of the area. In addition, petitioner proposes to place barricades at both ends of the storage hall to prevent any unauthorized entry. The crane will also be equipped with a highly audible siren which will be operated by the crane operator to warn anyone near the storage hall.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in the office on or before December 31, 1981. Copies of the petition are available for inspection at that address.

Dated: November 19, 1981.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-34336 Filed 11-30-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-210-C]

Jones & Laughlin Steel Corp.; Petition for Modification of Application of Mandatory Safety Standard

Jones & Laughlin Steel Corporation, Dehue, West Virginia 25618 has filed a petition to modify the application of 30 CFR 49.6 (mine rescue teams) to its Dehue Mine located in Logan County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that a mine rescue station be provided with equipment for two mine rescue teams.

2. As an alternative method, petitioner proposes to assure that at least two mine rescue teams and the necessary equipment for two teams, as required by the standard, are available when miners are underground. In this regard, petitioner proposes to maintain the appropriate equipment for one mine rescue team and provide a second equipped mine rescue team by agreement with the Amherst Coal Company which is within two hours travel time from the petitioner's mine.

3. Petitioner states that the method outlined above will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1981. Copies of the petition are available for inspection at that address.

Dated: November 19, 1981.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-34335 Filed 11-30-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-204-C]

Mt. Run Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mt. Run Coal Company, Route 1, Box 8AA, Masontown, WV 26542 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 5 Mine located in Preston County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The Upper Freeport coal seam has an average height of 48 inches.

3. Because of the low coal seam, equipping the electric face equipment with a canopy would cause the canopy to strike and dislodge roof support. To set the canopy low enough to miss the roof would cause the operator to stick his or her head out of the machine to see. Either condition would constitute a diminution of safety.

4. For these reasons, petitioner requests a modification of the standard.

Requests for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1981. Copies of the petition are available for inspection at that address.

Dated: November 19, 1981.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-34337 Filed 11-30-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-213-C]

National Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

National Mines Corporation, P.O. Box 12022, Lexington, Kentucky 40579 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Stinson No. 1, No. 2, No. 3, and No. 5 Mines, located in Knott County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The coal seams average 32 to 40 inches in height.

3. Petitioner states that the use of cabs or canopies would result in a diminution

of safety for the miners affected because:

a. The canopies impair the equipment operator's visibility;

b. The operator must lean out from the canopy to see properly, exposing body parts to injury by striking the coal rib;

c. The canopies may strike and dislodge roof support.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1981. Copies of the petition are available for inspection at that address.

Dated: November 19, 1981.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-34338 Filed 11-30-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-201-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, R.R. #1, Box 135D, Marissa, Illinois 62257 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Marissa Mine located in Washington County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure screw caps in place on plugs of a battery operated S & S Scoop tractor.

2. Petitioner states that there is an element of danger in having plugs locked together in the event of a short circuit occurring in the Scoop's electrical components.

3. As an altenative method, petitioner proposes that a modified bolt and nut locking device be used, in lieu of a padlock. This modified locking device will serve the same purpose as a padlock; the plug could not be pulled apart without removing the bolt and nut.

4. Petitioner states that the proposed alternative method will provide the same measure of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1981. Copies of the petition are available for inspection at that address.

Dated: November 19, 1981.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-34339 Filed 11-30-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-231-C]

Sewell Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Sewell Coal Company, Nettie, West Virginia 26681 has filed a petition to modify the application of 30 CFR 75.1704 (escapeways) to its Sewell No. 4 Mine located in Nicholas County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The fourth West return airway has deteriorated due to bad roof conditions and pressure from the roof, making travel and examination of the airway extremely hazardous for the miners affected.

2. As an alternative method, petitioner proposes to change the return escapeway at the shaft bottom and have it established on intake. This intake is separate from the main intake and would shorten the traveling distance from 3100 feet to 1100 feet. Also, this area is approximately 35 to 40 inches in height and requires crawling to travel.

3. This escapeway is not the only means of escape from the mine. There are two escapeways to the No. 2 Portal and one escapeway to the slope.

4. Petitioner states that by changing this escapeway, a greater measure of safety will be provided and will at all times guarantee no less protection for the miners affected as that afforded by the standard.

Request for Comments

Person interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1981. Copies of the petition are available for inspection at that address.

Dated: November 19, 1981.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-34334 Filed 11-30-81; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet in Washington, D.C. on December 16–18, 1981. The meeting will begin at 9:00 a.m., on Wednesday, December 16 in Room 800 of the Hubert Humphrey Department of Health and Human Services Building, Third Street and Independence Avenue, SW, Washington, D.C. The public is invited to attend.

The National Advisory Committee was established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the Administration of the Act.

The agenda will include reports on OSHA and NIOSH activities and discussions of matters of importance to the programs of these agencies, which will include the following topics:

NIOSH Respirator Research and Certification;

Trade Name Certification;

Plans and Procedures for maintaining the Quality of NIOSH Research; and OSHA Enforcement Policies.

Written data or views concerning these agenda items may be submitted to the Division of Consumer Affairs. Such documents which are received before the scheduled meeting dates, preferably with 20 copies, will be presented to the Committee and included in the official record of the proceedings.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear and a brief

outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the Chairman of the Committee to the extent which time permits.

For additional information contact: Clarence Page, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3635, Third Street and Constitution Avenue, NW, Washington, D.C. 20210, Telephone: (202) 523-8024.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, D.C. this 25th day of November 1981.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 81-34527 Filed 11-30-81; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (81-79)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATE AND TIME: January 21, 1982, 2 p.m. to 4 p.m.

ADDRESS: National Aeronautics and Space Administration, Review Center, Room 7002, 400 Maryland Avenue SW., Federal Building 6, Washington, D.C. 20546.

TYPE OF MEETING: Open.

PURPOSE OF MEETING: The Panel will present its annual report to the NASA Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, evaluates, and advises on those program activities, systems, procedures and management policies that contribute to risk and the identification and assessment of these for management. Priority is given to those programs that involve the safety of manned flight. The major subject will be the Space Shuttle Program and Space Transportation System Operations.

FOR FURTHER INFORMATION CONTACT: Gilbert L. Roth, Staff Director, Aerospace Safety Advisory Panel, Natonal Aeronautics and Space Administration, Code LB-4, Washington, D.C. 20546 (202/755-8380).

SUPPLEMENTARY INFORMATION: The Panel is chartered by the Congress (Pub. L. 90-67), and chaired by Willis M. Hawkins. This meeting is open to the public up to the seating capacity of the room (approximately 55 persons, including Panel members). Visitors will be requested to sign a visitor's register. To assure adequate seating for all, members of the public planning to attend the meeting should contact Gilbert L. Roth on 202/755-8380.

November 24, 1981.

Russell Ritchie,

Deputy Associate Administrator for External Relations.

[FR Doc. 81-34341 Filed 11-30-81; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Combined Subcommittees on Waste Management and Reactor Radiological Effects; Meeting

The ACRS Combined Subcommittees on Waste Management and Reactor Radiological Effects will hold a meeting on December 18 and 19, 1981, Room 1046, 1717 H Street NW., Washington, D.C. The Subcommittees will review the current research in waste management and siting policy. Notice of this meeting was published October 29.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981, (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to ensure the security of information identified and supplied by a foreign government in confidence (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. (Sunshine Act exemption 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Friday and Saturday, December 18 and 19, 1981

8:30 a.m. Until the Conclusion of Business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Staff Engineer, Mr. Herman Alderman (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST. The Designated Federal Employee for this meeting is Mr. John C. McKinley.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting. The authority for such closure, is Exemption 4 to the Sunshine Act, 5 U.S.C. 552(c)(4).

Dated: November 25, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-34393 Filed 11-30-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactors; Location Change

The ACRS Subcommittee on Advanced Reactors scheduled to be held on December 3 and 4, 1981 at the Bellevue Hotel in San Francisco, CA has been changed to the Argonne National Laboratory, Building 208, Room C-234, Argonne, IL.

All other items regarding this meeting remain the same as announced in the **Federal Register** published Monday, November 16, 1981 (46 FR 56263).

Further information may be obtained by a prepaid telephone call to the cognizant Designated Federal Employee for this meeting, Mr. Elpidio Igne (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST.

Dated: November 25, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-34392 Filed 11-30-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Class-9 Accidents; Meeting

The ACRS Subcommittee on Class-9 Accidents will hold a meeting on December 16 and 17, 1981, at the Rodeway Inn, 4590 Quebec at I-70, Denver, CO. The Subcommittee will continue its review of core melt mitigation systems and degraded core rulemaking. Notice of this meeting was published October 29.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981, (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary and Industrial Security information. One or more closed sessions may be necessary to discuss such information. (Sunshine Act Exemption 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Wednesday, December 16, 1981—1:00 p.m. until the conclusion of business.

Thursday, December 17, 1981—8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m and 5:00 p.m., est.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary and Industrial Security information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552(b)(c)(4).

Dated: November 24, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-34340 Filed 11-30-81; 8:45 am]

BILLING CODE 7590-01-M

List of Applications for License to Export/Import Nuclear Material

Pursuant to 10 CFR 110.70(b) "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission has received the following application for an export/import license. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed December 31, 1981. Any request for hearing or petition for leave to intervene shall be served by the requester or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for license to export/import production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported.

Dated this 24th day of November at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James R. Shea,

Director, Office of International Programs.

Name of applicant, date of application, date received, and application No.	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Edlow Int'l, 11/04/81, 11/06/81, XSNM01403(02).	4.05% enriched uranium	Additional 1,250.0	Additional 361.5	For reload fuel for Forsmark I power reactor.	Sweden.
Edlow Int'l, 11/04/81, 11/06/81, XSNM01752(01).	4.05% enriched uranium	Additional 34,135	Additional 1,492	For reload fuel for Forsmark II power reactor.	Sweden.
Edlow Int'l, 11/05/81, 11/09/81, XSNM01886.	4.05% enriched uranium	102,000	4,131	5 reloads for Oskarshamn unit II	Sweden.
Edlow Int'l, 11/05/81, 11/09/81, XSNM01887.	4.05% enriched uranium	84,000	3,402	3 reloads for Barsebaeck I	Sweden.
Edlow Int'l, 11/05/81, 11/09/81, XSNM01888.	4.05% enriched uranium	96,000	3,888	3 reloads for Barsebaeck II	Sweden.
Transnuclear, 11/09/81, 11/10/81, XSNM01725(01).	93.3% enriched uranium	Additional 0.0290	Additional 0.0272	For Astra	Austria.
M.G. Maher & Co., Inc., 11/05/81, 11/13/81, IU81022.	Natural uranium	730,000		For conversion and enrichment for use in U.S. nuclear powerplants.	Australia.

[FR Doc. 81-34394 Filed 11-30-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-470F]

Combustion Engineering, Inc.; Combustion Engineering Standard Safety Analysis Report (Cesar System 80 Nuclear Steam Supply System Standard Design); Notice of Issuance of a Safety Evaluation Report

Notice is hereby given that the Office of Nuclear Reactor Regulation has issued a Safety Evaluation Report (SER) dated November 1981, for the nuclear steam supply system portion of a nuclear power plant, as described in the Combustion Engineering Standard Safety Analysis Report (CESSAR-FSAR) and designated as a System 80. The reactor is designed for core thermal power levels up to 3800 megawatts. CESSAR-FSAR has been reviewed pursuant to Appendix 0 to 10 CFR Part 50.

Notice of receipt of Combustion Engineering's application for the CESSAR-FSAR Final Design Approval was published in the **Federal Register** on March 24, 1980 (45 FR 19103). The CESSAR-FSAR System 80 design as described in the CESSAR-FSAR will be utilized and relied upon by the Commission and the Advisory Committee on Reactor Safeguards in their review of facility license applications that incorporate by reference the CESSAR-FSAR System 80 standard design.

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555. The report (Document No. NUREG-0852) can also be purchased, at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161 and by GPO deposit account holders by calling (301) 492-9530 or by writing to the U.S. Nuclear Regulatory Commission, Division of Technical Information and Document Control, Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 20th day of November 1981.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 81-34305 Filed 11-30-81; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Senior Executive Service; Bonus Schedule

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the agency's schedule for awarding Senior Executive Service bonuses.

DATE: December 1, 1981.

FOR FURTHER INFORMATION CONTACT: James J. Costello, Bureau of Personnel, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611 (312-751-4570).

SUPPLEMENTARY INFORMATION: Office of Personnel Management guidelines require that each agency publish a notice in the **Federal Register** of the agency's schedule for awarding Senior Executive Service bonuses at least fourteen days prior to the date on which the awards will be paid.

Schedule for Awarding Senior Executive Service Bonuses

Office of Personnel Management guidelines require that each agency publish a notice in the **Federal Register** of the agency's schedule for awarding Senior Executive Service Bonuses at least fourteen days prior to the date on which the awards will be paid. The U.S. Railroad Retirement Board intends to award Senior Executive Service bonuses for the performance rating cycle of October 1, 1980 through September 30, 1981, with payouts scheduled by December 30, 1981.

Dated: November 19, 1981.

By authority of the Board.

James T. Brown,

Chief Executive Officer.

[FR Doc. 81-34401 Filed 11-30-81; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 18069; SR-CBOE-81-17]

Chicago Board Options Exchange, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

August 28, 1981.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on August 21, 1981, the Chicago Board Options Exchange, Incorporated ("CBOE") LaSalle at Jackson, Chicago, Illinois 60604, filed with the Commission copies of a proposed rule change which provides the specifications for the CBOE's Interest Rate Options Qualification Examination to be administered pursuant to CBOE Rule 20.28 and proposed CBOE Rule 21.28.

Interested persons are invited to submit written data, views and arguments concerning the submission on or before December 22, 1981. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-81-17.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order to allow maximum time for the CBOE to prepare for the administration of the examination and for member firms to prepare personnel for testing prior to the CBOE's contemplated start-up date of its GNMA options trading program.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-34347 Filed 11-30-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18138; SR-CBOE-81-20]

Chicago Board Options Exchange, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

October 1, 1981.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on September 21, 1981, the Chicago Board Options Exchange, Incorporated ("CBOE"), LaSalle at Jackson, Chicago, Illinois 60606, filed with the Commission copies of a proposed rule change which would clarify the obligations of member organizations with respect to receipt and delivery of GNMA securities in transactions resulting from the exercise of GNMA put and call options.

Interested persons are invited to submit written data, views and arguments concerning the submission on or before December 22, 1981. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-81-20.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that it is intended merely to clarify the responsibilities of member organizations under the CBOE's existing rules. Moreover, since CBOE has indicated that it intends to start up trading in GNMA options on October 30, 1981, approval of the proposed rule change on an accelerated basis will give CBOE, its member organizations and public investors the maximum possible time to prepare for the commencement of trading.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-34348 Filed 11-30-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18283; (SE-MSE-81-9)]

The Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change

November 24, 1981.

On October 9, 1981, the Midwest Stock Exchange, Inc., 120 LaSalle Street, Chicago, IL 60603; filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would require a member of the Committee on Floor Procedure or the Chairman to suspend the registration of a specialist, co-specialist or relief specialist if it appears to the Committee member or Chairman that such specialist is violating any MSE rule or federal securities law, or is conducting business in an unethical manner. At present, the rule requires a member of the Committee on Specialist Assignment and Evaluation or its Chairman to suspend a specialist's registration under these circumstances.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 18177, October 16, 1981) and by publication in the **Federal Register** (46 FR 51845, October 22, 1981). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-34364 Filed 11-30-81; 8:45 am]

BILLING CODE 8010-01-M

SYNTHETIC FUELS CORPORATION

Guidelines on Disclosure and Confidentiality

AGENCIES: Synthetic Fuels Corporation.

ACTION: Notice of adoption by the Board of Directors of final Guidelines on Disclosure and Confidentiality.

SUMMARY: The United States Synthetic Fuels Corporation gives notice that the Revised Interim Guidelines on Disclosure and Confidentiality, as published in the **Federal Register** on September 17, 1981 (46 FR 46266), were approved by the Corporation's Board of Directors at the board meeting on October 28, 1981, and thereby, are adopted as the Corporation's final Guidelines on Disclosure and Confidentiality to carry out the requirements of section 121 of the United States Synthetic Fuels Corporation Act of 1980, Pub. L. 96-294 relating to public access to information.

EFFECTIVE DATE: October 28, 1981.

FOR FURTHER INFORMATION CONTACT: Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, Suite 310, 2000 "L" Street NW., Washington, D.C. 20586, (202) 653-4359.

United States Synthetic Fuels Corporation.

Edward E. Noble,

Chairman of the Board of Directors.

[FR Doc. 81-34383 Filed 11-30-81; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/466]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on December 11, 1981 at 10:00 a.m. in Room A 110, of the Federal Communications Commission, 1229 20th Street, N.W., Washington, D.C. This Study Group will deal with U.S. Government aspects of

international telegram and telephone operations and tariffs.

The Study Group will discuss international telecommunications questions relating to telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at the upcoming international CCITT meetings. This meeting of Study Group A will examine the questions and contributions relating to upcoming meetings of CCITT Study Groups I and III.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Requests for further information should be directed to Earl S. Barbely, Conference Staff, Federal Communications Commission, Washington, D.C., telephone (202) 632-3214.

This notice is being published less than 15 days prior to the meeting because the scheduling of a joint meeting of Study Groups A and B on December 10 was considered urgend and this meeting of Study Group A has been scheduled the following day for the convenience of Study Group members who do not reside in the Washington area.

Dated: November 24, 1981.

Richard H. Howarth,

Chairman, U.S. CCITT National Committee.

[FR Doc. 81-34403 Filed 11-30-81; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/465]

Study Group A and B of the U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Groups A & B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on December 10, 1981 at 1:00 p.m. in Room 856, of the Federal Communications Commission, 1919 M Street NW., Washington, D.C. These Study Groups will deal with the issues of developing a U.S. position relating to international inter-active videotex services which would be proposed at upcoming meetings of CCITT Study Groups I and VIII.

The meeting will examine certain proposals that were discussed at the previous videotex meeting held on November 18.

This meeting is an open public forum. It will review the various aspects of videotex service as they relate to industry, data base providers, equipment manufacturers, terminal and chip producers. Protocol flexibility and complexity will also be considered as they relate to accomodating future technological advances and ultimate cost to the consumer.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Requests for further information should be directed to Earl S. Barbely, Conference Staff, Federal Communications Commission, Washington, D.C., telephone (202) 632-3214.

This notice is being published less than 15 days prior to the meeting because the urgency of the question and the need to develop a U.S. position prior to the January 1982 meeting of Study Group II requires adequate lead time.

Dated: November 20, 1981.

Richard H. Howarth,

Chairman, U.S. CCITT National Committee.

[FR Doc. 81-34402 Filed 11-30-81; 8:45 am]

BILLING CODE 4710-07-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Negotiations; Meeting and Determination of Closing of Meeting

The meeting of the Advisory Committee for Trade Negotiations (the Advisory Committee) to be held Tuesday, December 15, 1981, from 2:00 p.m. to 5:00 p.m. at the Federal Home Loan Bank Board, Amphatheatre, will involve a review and discussion of the current issues involving the trade policy of the United States. The review and discussion will deal with information submitted in confidence by the private sector members of the Committee under section 135(g)(1)(A) of the Trade Act of 1974, as amended, (the Act), information submitted by government officials under section 135(g)(2) of the Act the disclosure of which could be reasonably expected to prejudice United States negotiating objectives, information the disclosure of which would be likely to significantly frustrate implementation of proposed government action, and information properly classified pursuant to Executive Order 12065 and specifically required by such Order to be kept secret in the interests of national security (i.e., the conduct of foreign relations) of the United States. All members of the Advisory Committee have all necessary security clearances. Consistent with previous determinations concerning other advisory committees established under section 135(c) of the Act, I hereby determine that the meeting of the Advisory Committee will be concerned with matters listed above and with matters listed in section 552b(c) of Title 5 of the United States Code. Therefore, the meeting of the Advisory Committee for Trade Negotiations will be closed to the public.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, D.C. 20506.

William E. Brock,

United States Trade Representative.

[FR Doc. 81-34346 Filed 11-30-81; 8:45 a.m.]

BILLING CODE 3190-01-M

Amendment of Determination Regarding Application of Agreement on Government Procurement

Section 1-104 of Executive Order 12260 provides that the United States Trade Representative shall determine, from time to time, the dollar equivalent of 150,000 Special Drawing Right units.

Now, therefore, I, William E. Brock, III, United States Trade Representative, in conformity with the provisions of Executive Order 12260, do hereby determine, effective January 1, 1982, that, with respect to the Agreement on Government Procurement, the dollar equivalent of 150,000 Special Drawing Right units is $182,000. This determination may be modified from time to time as appropriate.

William E. Brock III,

United States Trade Representative.

[FR Doc. 81-34345 Filed 11-30-81; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 230
Tuesday, December 1, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

[M-338]

CIVIL AERONAUTICS BOARD

November 24, 1981.

TIME AND DATE: 10 a.m., December 1, 1981.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.
2. Docket 39964, Application of Midstate Airlines, Inc. under expedited procedures for a 401 certificate. (BDA)
3. Docket EAS-713—Essential Air Service Determination for Seward, Alaska. (BDA)
4. Dockets 39289 and 39480—Essential Air Service for Norfolk, Nebraska, and Yankton, South Dakota. (Memo 684-B, BDA, OCCR)
5. Commuter carrier fitness determination of Ford-Aire, Inc. d.b.a. Susquehanna Airlines. (BDA)
6. Commuter carrier fitness determination of Direct Air, Inc. (BDA, OCCR)
7. Commuter carrier fitness determination of Minuteman Aviation, Inc. (Memo 937, BDA)
8. Agreements among members of the International Air Transport Association (IATA) amending the IATA Passenger Sales Agency Administration Rules (Agreement CAB 28518-R1) and the IATA Passenger Sales Agency Agreement (Agreement CAB 28518-R2) applicable in the United States. (Memo 938, BDA, OGC, BIA)
9. Dockets 39387 and 35388. Order denying petitions for rulemaking by US Air and American Airlines to amend domestic service segment reporting requirements and granting USAir motion for confidential treatment, in part. The order would also extend the same confidential treatment of all other carriers filing domestic service segment data. (OC, BDA, BIA, OEA, OCCR, BCCP, OGC)
10. Docket 39310, Aeroamerica, Inc. petition for reconsideration of Board action upholding staff denial of exemption and waiver. (OGC)
11. Docket 39958, *Tiger International-Seaboard World Airlines, Inc., Acquisition Case, Petition of Aprile, et al.*, for order directing arbitration of LPP disputes. (OGC)
12. Docket 40080, *Pan American-Acquisition of control of, and merger with National, Petition of Billy J. Williams* to enforce LPP seniority integration arbitration award. (Memo 939, OGC)
13. Docket 38185, *Lone Star Airways, Inc. Fitness Investigation Opinion and Order on Discretionary Review. (Memo 914, OGC)*
14. Dockets 39540, 39631 and 39777—Application of Northwest Airlines, Inc. for U.S.-Switzerland/Israel/Jordan/Jamaica authority; conforming application of Eastern Air Lines, Inc. (U.S.—Switzerland/Israel/Jordan); and application of United Air Lines, Inc. for U.S./Jordan and Israel. (Memo 658-A, BIA, OGC, BALJ)
15. Docket 39924, Application of Flying Tiger for an amendment to its certificate of public convenience and necessity for Route 205F to (a) combine its two transatlantic routes into a single entity; (b) eliminate the designation of specific domestic coterminals in conjunction with its authority between the United States and Belgium, the Netherlands, and Luxembourg, and (c) add as additional points on its transatlantic routes the countries of Israel, Switzerland, Spain, and Portugal. (BIA, OGC)

STATUS: Open.

Phyllis T. Kaylor,
The Secretary.

[S-1789-81 Filed 11-27-81; 11:47 am]
BILLING CODE 6320-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Times of Agency Meetings

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice if hereby given that the Open and Closed Meetings of the Board of Directors of the Federal Deposit Insurance Corporation scheduled for 9:00 a.m. and 9:30 a.m., respectively, on Monday, November 30, 1981, have been rescheduled for 9:30 a.m. and 9:45 a.m., respectively, that same date.

Dated: November 27, 1981.

Hoyle L. Robinson,
Executive Secretary, Federal Deposit Insurance Corporation.

[S-1788-81 Filed 11-27-81; 10:45 am]
BILLING CODE 6714-01-M

3

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 46, no issue number at this time. No page number at this time. No date of publication at this time.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Friday, December 4, 1981.

PLACE: 1700 G Street NW., Board Room, 6th Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

CHANGES IN THE MEETING: The notice that was sent over on Wednesday, November 25, 1981, had a mistake in it. The date of the meeting should have read Friday, December 4, 1981 instead of Wednesday, December 4, 1981. Also the time of the meeting has been changed from 10 a.m. to 1 p.m.

No. 569, November 27, 1981.

[S-1790-81 Filed 11-28-81; 1:00 pm]
BILLING CODE 6720-01-M

4

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Monday, December 7, 1981.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignment, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 27, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-1794-81 Filed 11-27-81; 4:01 pm]

BILLING CODE 6210-01-M

5

NATIONAL COUNCIL ON THE HANDICAPPED

DATE AND TIME:

December 3, 1981 9 a.m. to 5 p.m.
December 4, 1981 10 a.m. to 12:30 p.m.

PLACE: Capitol Holiday Inn, Lewis Room, 550 C Street SW., Washington, D.C. 20024.

STATUS: Open.

MATTERS TO BE CONSIDERED:

It has been determined that it will not be necessary to close a portion of the December 3, meeting as previously announced in the **Federal Register.** The agenda and matters to be considered as the same as previously announced.

Observers requiring special services should notify NCH staff immediately.

CONTACT PERSON FOR MORE INFORMATION: Hilda Gay Legg, National Council on the Handicapped, Staff Assistant, 202-245-3498.

[S-1791-81 Filed 11-27-81; 2:25 pm]

BILLING CODE 4000-01-M

6

INTERNATIONAL TRADE COMMISSION

[USITC SE-81-38]

TIME AND DATE: 2 p.m., Thursday, December 10, 1981.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary: a. Vacuum cleaner brush rollers (Docket No. 768).
5. Investigation 104-TAA-4 (Steel Units for Electrical Transmission Towers from Italy)—briefing and vote.
6. Investigation 701-TA-82 [Preliminary] (Hard-Smoked Herring Filets from Canada)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[S-1786-81 Filed 11-25-81; 4:50 pm]

BILLING CODE 7020-02-M

7

NATIONAL RAILROAD PASSENGER CORPORATION

Board of Directors Meeting

In Accordance with Rule 4(a) of Appendix A of the Bylaws of the National Railroad Passenger Corporation, notice is given that the Board of Directors will meet on December 9, 1981.

A. The meeting will be held on Wednesday, December 9, 1981, in the Renoir I Salon, 2nd Floor, at Loews L'Enfant Plaza Hotel, Washington, D.C. at 9:30 a.m.

B. The meeting will be open to the public at 10:30 a.m. beginning with agenda item No. 4, as described below.

C. The agenda items to be discussed at the meeting follow.

Agenda—National Railroad Passenger Corporation

Meeting of the Board of Directors, December 9, 1981.

Closed session (9:30)

1. Internal personnel matters.
2. Litigation matters.
3. Discussion of safe harbor lease transactions.

Open Session (10:30)

4. Approval of minutes of regular meeting of October 28, 1981.
5. Resolution modifying equipment retirement policy.
6. Resolution authorizing participation in 1982 safe harbor lease transactions.
7. Resolution authorizing joint venture agreement for development of 30th Street Station, Philadelphia, Pa.
8. Resolution authorizing initial working capital to determine feasibility of high speed trains in the U.S.
9. Commitment Approval Requests:

82-13 Renew the New York City Ticket Office lease.
80-197-R2 Purchase Fort Washington Reservation and Sales Office.
82-04 Pollution Control System, Hialeah, Fla.
82-06 Track Upgrading—Porter to Michigan City, IN.
77-154-S5 Michigan track upgrading—phase VI.
82-5 Conversion of four bag-dorms to wheel transport cars.
82-14 Retire and sell car 9363.
82-17 Autonmate Bridge and install interlocking, Lumber Street, Chicago.
82-12 Modular office systems.
82-11 Retirement and sale of ARTS computer equipment.
81-68-R1 Purchase of IBM tape storage equipment.
81-67-R1 Purchase data Processing equipment now on month-to-month lease.
80-114-R1 Purchase IBM disk storage equipment.
80-195-R1 Purchase automatic call distributors.

10. Board Committee Reports:

Finance.
Northeast corridor improvement project.
Organization and compensation.

11. President's report.
12. Date and time of next meeting.
13. New business.
14. Adjournment.

D. Inquiries regarding the information required to be made available pursuant to Appendix A of the Corporation's Bylaws should be directed to the Corporate Secretary at (202) 383-3754.

Sandra Spence,

Corporate Secretary.

November 27, 1981.

[S-1787-81 Filed 11-27-81; 10:37 am]

BILLING CODE 0000-00-M

8

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-81-41]

TIME AND DATE: 9 a.m., Tuesday, December 8, 1981.

PLACE: Conference Rooms 8-ABC, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Special Investigation Report:* The United States Air Traffic Control System and *Recommendations* to the Federal Aviation Administration.
2. *Aircraft Accident Report:* Universal Airways, Inc., Beech 65-A-80/Excalibur, N100UV, near Madisonville, Texas, July 2, 1981.
3. *Marine Accident Report:* Grounding of the U.S. Sailboat MR. B, near Punta Chivata, Mexico, November 25, 1980, and *Recommendations* to Vision Quest National, Ltd.; the U.S. Coast Guard; and the National Association of State Boating Law Administrators.
4. *Marine Accident Report:* Explosion and Fire on Board the U.S. Tankship MONTICELLO VICTORY at Port Arthur, Texas, May 31, 1981, and *Recommendations* to the U.S. Coast Guard and Victory Carriers, Inc.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202-382-6525.

November 27, 1981.

[S-1793-81 Filed 11-27-81; 3:00 pm]

BILLING CODE 4910-58-M

9

NUCLEAR REGULATORY COMMISSION.

DATE: Week of November 30, 1981 and Week of December 7, 1981.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open/Closed.

MATTERS TO BE CONSIDERED:

Friday, December 4

10:00 a.m.: Briefing on PWR Steam Generator Problems (Public meeting).
2:00 p.m.: Affirmation/Discussion Session (Public meeting).
Items to be affirmed and/or discussed:
a. Final Amendment to 10 CFR Part 50, Clarifications to Emergency Preparedness Regulations
b. Proposed Amendment to 10 CFR Part 50 and to Appendix E: Modification to Emergency Preparedness Regulations
c. Amendments to 10 CFR Chapter I Parts 19, 30, 40, 50, 60, 70, 72 and 150 with Respect to Employees Who Provide Information
d. Issuance of Notice of Hearing in Civil Penalty Action
e. Proposed Amendment to 10 CFR Part 50, Appendix E, Frequency of Emergency Preparedness Exercises
f. Final Rule for Pending CP/ML Applications
g. Draft Commission Order on San Onofre Sua Sponte Issue

Wednesday, December 9

10:00 a.m.: Discussion of Scheduling Matters Regarding TMI–1 Restart (Closed meeting)
2:00 p.m.: Discussion of Policy and Planning Guidance (Public meeting)

Thursday, December 10

10:00 a.m.: Discussion of Management-Organization and Internal Personnel Matters (Closed meeting)
2:30 p.m.: Affirmation/Discussion Session (Public meeting)
Items to be affirmed and/or discussed:
a. Proposed Amendment to 10 CFR 50.54(r)—Modification of Requirements for Submittal of Emergency Plans by Research and Test Reactor Licensees
b. Final Amendments to 10 CFR Parts 71 and 73 for Advance Notification to Governors of Transportation of Nuclear Waste Including Spent Fuel
c. Proposed Rulemaking, "Environmental Qualification of Electric Equipment for Nuclear Power Plants"
d. Final Rule on Intransit Physical Protection of Special Nuclear Material of Moderate Strategic Significance
e. Suggested Time Periods for Issuance of Initial Decisions
f. Review of Director's Decision on 2.206 Petition (Florida Power and Light Company)
1:30 p.m.: Discussion of Operational Data Evaluation (Public meeting)

Automatic telephone answering service for schedule update: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Gary Gilbert (202) 634–1410.

Gary Gilbert,
Office of the Secretary.
November 27, 1981.
[S–1792–81 Filed 11–27–81; 3:00 pm]
BILLING CODE 7590–01–M

federal register

Tuesday
December 1, 1981

Part II

Department of the Interior

Office of the Secretary

Employee Responsibilities and Conduct

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Parts 7 and 20

Employee Responsibilities and Conduct

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior is revising the regulations governing the conduct and responsibilities of regular and special Department employees. Proposed revisions to 43 CFR Part 20 were published on October 6, 1980, (45 FR 66370–66408). This revision:

(1) Revokes 43 CFR Part 7 dealing with employee interests in public lands, and revises and incorporates the regulations contained in that part into Part 20;

(2) Adds two new subparts and revises one subpart to allow consolidation of rules governing conflict of interest prohibitions, financial disclosure reporting requirements and resolution of conflicts of interest into separate and easily referenced subparts;

(3) Adds a new subpart to incorporate enforcement provisions governing post employment restrictions as required by section 501(a) of the Ethics in Government Act of 1978, 18 U.S.C. 207 (Supp. II 1978);

(4) Incorporates recommendations made by the General Accounting Office in its report, Federal Agency Standards of Employee Conduct Need Improvement, FPCD–80–8 (October 18, 1979);

(5) Clarifies which rules apply to regular employees and which rules apply to special government employees;

(6) Deletes obsolete requirements;

(7) Clarifies rules and definitions which are vague, imprecise, or misleading; and

(8) Incorporates new statutory requirements and Department policy decisions not previously published as regulations. This revision involves extensive reorganization and editing of the current regulations in 43 CFR Part 20. The reorganization is designed to advise more clearly departmental employees of applicable ethical conduct standards, including conflict of interest prohibitions, and of the possible consequences of noncompliance. New statutory requirements aimed at abuse of official position are referenced. Modifications are made to existing provisions to facilitate employee understanding of and compliance with ethical conduct standards.

EFFECTIVE DATE: December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Gabriele J. Paone or Mr. Mason Tsai at (202) 343–3932.

SUPPLEMENTARY INFORMATION: The proposed regulations published October 6, 1980 (45 FR 66370–66408) provided a 45 day period for public comment. The Department received comments from 31 employees and one from the American Federation of Government Employees. A number of comments offered specific recommendations for clarifying or modifying specific provisions of the proposed regulations. The Department has modified certain of the proposed regulations, as explained below.

Subpart A—General Provisions

Definitions of words and phrases used throughout Part 20 are moved to section 1 for quick reference and clarity.

Five commenters asked that the term minor child be added to the definitions. The term minor child has been replaced with the term dependent child and dependent child has been defined. Also, a definition of the term personal residence has been added and modifications have been made to the definition of employee to clarify that contract education employees in Indian Affairs are included.

A sentence has been added to the paragraph on equal employment opportunity policy to state that the policy does not affect, in any way, the law dealing with Indian preference in employment.

Two commenters felt that the language contained in the proposed § 20.735–2(d) dealing with conformance with policy, was not clear and that it conflicted with § 20.735–2(g). The language has been changed to clarify the meaning of the policy and to correct the apparent conflict with paragraph 2(g). Also, the title of paragraph 2(d) is changed to clarify that the conformance policy is also the policy governing subordination to authority.

Proposed § 20.735–2(e) drew attention to the fact that the Secretary gave special consideration to the application of these conduct regulations to employees in Indian Affairs and decided that all provisions contained in 43 CFR 20.735 shall, except where indicated, apply to regular and special Indian and non-Indian employees working in Indian Affairs. Only two comments were received on this proposed decision and after further consideration, the paragraph is included in the final rule to eliminate questions of applicability which have been raised by *Oglala Sioux Tribe of Indians v. Andrus, 603 F.2d 707 (8th Cir. 1979).* In this case, the 8th Circuit held that portions of the Department's general employee conduct regulations could not be extended to Indian employees working in Indian Affairs without specific consideration for the effect such extension may have.

One commenter requested that an employee's responsibility to report violations of law to the Inspector General be added to the final regulations. The addition has been made to § 20.735–2(g) by reformatting the paragraph and by numbering major responsibilities.

An adjustment has been made to § 20.735–3 to explain that:

(1) Employees may also seek counseling advice from Regional Solicitors, the Associate Solicitor—General Law and other Solicitor Office officials specifically designated by the Solicitor,

(2) Advice given by ethics officers, counselors and by attorneys in the Solicitor's office should be coordinated for consistency in application and

(3) The Associate Solicitor for General Law has official responsibility for providing and coordinating legal advice on ethics and conduct matters.

One commenter suggested that the identification of the types of disciplinary action that can be taken for violation of the regulations was unnecessary and should be deleted from § 20.735–4(a). On the contrary, we believe employees have a right to know what possible actions may be taken against them for violations of the regulations in 43 CFR Part 20 and therefore the suggestion is not adopted. A second commenter suggested adding commonly used sanctions to the listing already proposed and the suggested additions were adopted. Also, a paragraph has been added to reference the regulations in 25 CFR 31(g)(7) which contain the procedures for disciplinary action involving contract education employees in Indian Affairs.

Subpart B—Ethical and Other Conduct And Responsibilities of Employees

The current Subpart C of Part 20 is redesignated as Subpart B and revised, reorganized and expanded. Subpart B is divided into sections presented in an order of priority that reflects trends identified by analyzing referrals and inquiries received by the Designated Agency Ethics Official.

With regard to § 20.735–7 on Gifts, Entertainment and Favors, several commenters recommended that the term "nominal value" be specifically defined and that more of a distinction be made between the rules for foreign gifts and the rules for domestic gifts. In response

to these comments the title of the section has been changed to indicate that the section contains the rules on acceptance of gifts from domestic sources. "Nominal value" is defined as a dollar value of $35 or less. Commenters suggested amounts ranging from $5 to $100 for nominal value, and one individual recommended that no value be set and that acceptance of all gifts be discouraged. The policy on acceptance of gifts from domestic sources does discourage the acceptance of gifts. However, the Secretary has determined that employees should be allowed to accept gifts of nominal value in some circumstances and that employees should be given guidance on the value of gifts that may be accepted in the allowed circumstances. The $35 value is a reasonable amount for the types of gifts allowed by the few exceptions. Also, the filing requirements of the Ethics in Government Act of 1978 do not require employees to aggregate gifts valued at or below $35 for purposes of financial disclosure. See 5 CFR 734.301(c)(5). These factors are the bases for the final $35 value determination.

Two commenters each felt that the proposed rule on acceptance of gifts from officials and inhabitants of the islands administered by the Department was ambiguous, unfair and inaccurate. Ambiguous because it was not clear if gifts of nominal value, or of a perishable nature such as food or flowers, could be accepted and retained by employees; unfair because the rule seemed to place an undue burden on a special class of employees; and inaccurate because the clause "islands administered by the Assistant Secretary—International and Territorial Affairs" does not encompass all of the islands, territories or possessions for which the Department is responsible and the proposed rule did not treat the islands, territories and possessions as foreign governments.

In response to these comments, the rules on acceptance of gifts from official and inhabitants of the territories have been changed to state clearly that the policy applies to all Department employees and that employees offered gifts under the provision may accept and retain gifts of nominal value as nominal value is defined in that same section. The rule was proposed and is retained in the section dealing with the acceptance of domestic gifts based on the interpretation by the Associate Solicitor—General Law that the islands of Guam, Samoa and the Virgin Islands are not foreign governments as that term is defined in 5 U.S.C. 7342. The locations at which the policy shall apply are more clearly delineated, and the clause beginning "islands administered by * * *" has been deleted.

Upon the recommendation of one respondent, a sentence has been added to proposed § 20.735–8(d)(2)(ii) to remind employees that when acceptance of travel expenses for travel taking place entirely outside of the United States is approved, an appropriate adjustment must be made to the associated travel voucher claim form.

Concern was expressed in one comment that the policies on reimbursement of travel and related expenses were difficult to relate to specific situations. To help alleviate this concern an example has been inserted in § 20.735–9(a) to explain how the policies apply to a frequently asked question. Also, § 20.735–9(b) has been changed to indicate clearly that approval for use of the exception of 5 U.S.C. 4111 must be based on a decision that no real or apparent conflict of interest will result.

One commenter suggested listing a series of examples of prohibited teaching, lecturing and writing activities in § 20.735–10. This suggestion is rejected since any such listing could not be all-inclusive and since specific activities are prohibited by statute or by Office of Personnel Management regulations, and the final rule makes it clear that those types of activities are not allowed.

One commenter felt that the requirement in proposed § 20.735–11(c) for clearing outside presentations with the Director, Office of Public Affairs was too burdensome and would generate unnecessary paperwork. The overall policy as proposed is based on existing Department policy contained in Part 470 of the Department of the Interior Administrative Manual (DM). See 470 DM 1.2 D and E. The comment did, however, result in the discovery that the language in the proposed section is broader than that contained in the Department Manual. Appropriate changes have been made in the final version to bring it into conformance with the Department Manual and a citation to the Manual is referenced.

Concerning the nepotism provisions of proposed § 20.735–12 one Department manager commented that it is difficult to understand how an employee could direct the work of a relative without becoming involved at some time in a decision about that relative's performance, promotions or advancement. The statutory provisions of 5 U.S.C. § 3110 absolutely prohibit an employee from appointing, employing, promoting in or to a position in the Department over which he or she exercises jurisdiction or control, and from advocating such actions, for any individual who is a relative. Therefore, we have adopted the commenter's recommendation that when an exception is approved for related employees to work together, a decision be made as to who, other than the related workers, will have the authority to make decisions on performance, promotions and advancements. This recommendations is adopted in order to protect related employees who work together on a project from potential violations of the statute and in order to sensitize managers to the specific prohibitions in the statutory provisions of 5 U.S.C. 3110. Special consideration for employees in Indian Affairs is expressed by wording added to § 20.735–12(c) of the final rule.

The same commenter recommended that the exception allowing related employees to work together on a project be applied only to scientists. This recommendation is not adopted since the statutory provisions of 5 U.S.C. 3110 apply to all employees and there are many related employees other than scientists who may work together on the same project as long as each refrains from advocating a relative for or from actually appointing, employing, promoting or advancing a relative.

A paragraph has been added to § 20.735–13(b) to give special recognition to the negotiating for employment rules as they apply to communications made by Tribal organizations in accordance with 25 U.S.C. 450.

With respect to the prohibitions on political activity a sentence from the Federal Personnel Manual has been added to clarify that intermittent employees, for example experts or consultants, are subject to the political activity restrictions of the law while in an active duty status only and for the entire 24 hours of any day of actual employment (733 FPM Subchapter 2–4).

Two individuals commented that the interpretation in proposed § 20.735–14(c) that Federal employees are prohibited from contributing funds to the President is not appropriate. Based on advice from the General Counsel, Federal Election Commission, this interpretation has been deleted.

Three people commented that the automatic one month suspension penalty for employees who misuse Government vehicles is excessive and unfair. The suspension, without compensation, for "not less than one month" is contained in statute at 31 U.S.C. 638(a) and cannot be changed by regulation. One comment concerning the omission in the proposed rules of the

word willful as it appears in 31 U.S.C. 638(a) is adopted and the word willful is added to the final rule.

Final determination of indebtedness for taxes is defined in § 20.735–16(a)(3) of the final rules based on a suggestion from one individual that the Department make clear to employees what is meant by "final determination." Final determination is defined to mean the last decision that ends those available administrative and judicial appeals and remedies which an employee actively pursues.

One commenter indicated that the clause "or the appropriate grievance process" as that clause was used in proposed § 20.735–17(a)(3)(i) is inaccurate and should be deleted in the final version. Section 20.735–17(a)(3)(i) deals with complaints of sexual harassment and while such complaints are to be handled through Equal Employment Opportunity complaint procedures employees may choose to pursue related matters through other grievance procedures therefore, the wording is not changed.

One commenter suggested that incidents of sexual harassment which occur after hours and outside the work place should also be included in § 20.735–17(a)(3)(ii). This section is changed to state that any incident of sexual harassment may be reported to the Inspector General.

One commenter recommended that language be added to § 20.735–17(c) to permit solicitations for government bonds, United Givers Fund, and other activities covered under the President's fund raising policy. No change is made to 17(c) since the proposed wording clearly prohibits only those activities which result in personal gain and not public service fund raising activities sanctioned by the President.

One individual asked why no flexibility is incorporated into the prohibitions on gambling activities. The individual felt that recognition should be given to the fact that baseball and football pools are likely to be found and tolerated in many offices. The prohibition is not changed since anything less stringent could be construed as Departmental encouragement of gambling activity. Further, with legalized lotteries and off-track betting in some states, it becomes especially important to inform employees that participation in any gambling activity will not be condoned when the employee is on official duty.

One commenter cited an apparent contradiction between the proposed policy on employee lobbying in § 20.735–17(i) and the statutory provisions of 5 U.S.C. 7211 which protect the rights of employees individually or collectively to communicate with the Congress. The proposed policy has been modified to distinguish between lobbying with appropriated funds which is prohibited by 18 U.S.C. 1913 and petitions for redress of grievances which is protected by 5 U.S.C. 7211.

The same commenter suggested reorganizing § 20.735–17(j), on employee organizations. The suggestion is adopted by retitling 17(j) as *Unlawful organizations* and by moving the provisions on striking against the Government to a new paragraph 17(q) entitled *Labor practices.*

Two commenters questioned the appropriateness of prohibiting employees from using government envelopes to mail their personal job applications (proposed § 20.735–17(m)). This proposed provision is retained based on advice from the Solicitor that the statutory provisions of 18 U.S.C. 1719 and 39 U.S.C. 3201 *et seq.* are interpreted as prohibiting such use. The proposed reference to the Federal Personnel Manual Bulletin 735–6 is deleted since the Bulletin has expired.

Subpart C—Conflict of Interest Prohibitions

The existing Subpart B (Conflict of Interest) is reorganized into three separate subparts. The first, Subpart C, contains all conflict of interest prohibitions that are applicable to Department employees. The second, Subpart D, contains all financial disclosure reporting requirements that are applicable to Department employees. The third, Subpart E, contains procedures for resolution of conflicts of interest and other conduct violations. This reorganization facilitates reference to the conflict of interest rules and helps to clarify that many of the conflict of interest prohibitions apply to employees regardless of whether they have to file a financial disclosure report.

One individual questioned the use of the clause "reasonable member of the public" as it was used in the proposed definition of Apparent Conflict—§ 20.735–21(b)(2). The individual asked who would determine if a member of the public was "reasonable" and what criteria would be used? The wording is changed in the final rule, but the word reasonable is retained to mean that a charge of apparent conflict must be based on logical analysis which a majority of objective individuals could accept as being a valid point of view. The initial determination of reasonableness will be made by the ethics counselor who reviews the employee's financial statement or the allegation of apparent conflict, and subsequently, by other ethics and Department officials designated to perform duties related to the appeals process.

Several comments were received stating that the definition of "direct interest" as proposed in § 20.735–21(b)(3), was confusing and needed clarification. The definition is modified in the final rules to (1) delete wording already covered under the definition of "indirect interest", (2) move coverage of a spouse, dependent child and other relative living in the employee's personal residence to the definition of indirect interest. Both dependent child and personal residence are defined in § 20.735–1 and the word relative, as defined in the Ethics in Government Act of 1978, has been added to the definitions in § 20.735–21. Also, a note has been inserted into § 20.735–21 to give examples of the kinds of financial holdings that are not covered by the definitions of direct and indirect interests.

Several commenters feel that the prohibitions on financial interests proposed in § 20.735–21(c) are too broad and certain portions should be deleted. No changes were made as this language was taken directly from Section 203 of Executive Order 11222.

One commenter asked how U.S. Mineral Surveyors would be affected by the statutory prohibitions of 18 U.S.C. 203–209 as consolidated into § 20.735–22. U.S. Mineral Surveyors are special government employees. However, by law, they are paid directly by the private business entities who hire them to conduct surveys necessary for Bureau of Land Mangement programs. Given this situation, one commenter asked if U.S. Mineral Surveyors would, because of the nature of their work, automatically be in violation of 18 U.S.C. 203–209. The question points up the problem between the nature of the work performed by U.S. Mineral Surveyors and the application of the conflict of interest statutes contained in 18 U.S.C. 203–209. Therefore, the commenter's question is being sent to the Justice Department for an official ruling. However, because of the ruling in *Waskey* vs. *Hammer*, 223 U.S. 85 (1912), U.S. Mineral Surveyors are considered to be special government employees and the definition of special government employee contained in § 20.735–1 is not changed to delete U.S. Mineral Surveyors.

One commenter asked why the Department changed the one year ban on post-employment activities contained in 18 U.S.C. 207(b) to a two year ban. This change is statutory and is

contained in Title 5 of the Ethics in Government Act of 1978. The change was inserted into the revision of Departmental regulations to inform employees that the one year ban had been changed to a two year ban by Congress.

Several people commented that the proposed definition of outside work should be changed to delete work performed for no monetary compensation. This suggestion is adopted. Others felt that the definition should state that outside work does not include work performed only occasionally for short periods of time, such as an occasional weekend or a single night or day. This suggestion is not adopted since occasional work that impairs an employees' ability to perform his or her Government duties is prohibited. However, under the final rule voluntary and compensated work performed only occasionally for short periods of time does not have to be reported to one's supervisor.

One person felt that prohibiting employees from performing outside work for a person or enterprise that conducts operations or activities that are regulated by the Department was too broad. The commenter suggested that the final rule clarify that such outside work is prohibited only when an employee takes an outside job that is of a sensitive nature. This suggestion is adopted and the final rule in § 20.735–23(c)(v) is modified to provide guidance on what is meant by the words "sensitive nature".

One commenter felt that the prohibition on performing outside work of the type that an employee would be expected to do as a part of his or her duties was vague. The commenter asked if a clerk-typist would be prohibited from outside work requiring typing. The answer is no. However, a clerk-typist whose official duties require him or her to process and type applications for permits would be prohibited from accepting employment to prepare applications for permits to be filed with his or her office. In this situation, the employee's outside work would appear to give preferential treatment to an applicant and appear to place others at a disadvantage. The prohibition is retained and will be applied only in relationship to the substantive work an employee performs for the Government and not in relationship to the same general nature of the work. The wording in § 20.735–23(c)(2)(i) has been modified to clarify this distinction.

At the suggestion of one commenter, a clause is added to § 20.735–23(e)(1)(i) to indicate that for some employees the exception criteria of 18 U.S.C. 209(b) which allows the retention of interests in stock options or profit sharing benefit plans maintained by a former employer may be prohibited by other statutory requirements.

Four commenters feel that it is discriminatory and unnecessary to prohibit regular employees in the Bureau of Land Management (BLM) from working as real estate agents. See § 20.735–23(c)(3). This long standing BLM policy was inserted into the proposed revision as part of the Department's effort to consolidate into one place as many of the existing conduct rules as possible. The policy is retained to prevent real and apparent conflicts of interest on the part of BLM employees. State real estate licensing authorities do recognize such potential conflicts and most States do allow federal employees to place active real estate licenses into an inactive status for the duration of their federal employment. At the request of officials in Indian Affairs a similar policy applicable to real estate specialists and appraisers in Indian Affairs has been added to the final rule at § 20.735–23(c)(6).

Many commenters took exception to the proposal in § 20.735–23(g) which would require employees to report outside work to their supervisor and to their assigned ethics counselor. Commenters argued that the proposed requirement was unnecessary, would increase paperwork, was unconstitutional, and was an unwarranted invasion of privacy. Since some bureaus currently require certain employees to obtain approval for outside work, we do not feel that it is inappropriate to establish a Department policy to require employees simply to report their outside work to their supervisors. Such information is important to the management of office operations and the reports will benefit the employee by documenting officially that proper consideration was given to potential conflicts of interest or improper outside work activity. Therefore, the provision is retained. However, several modifications have been made to:

1. Except Mineral Surveyors from the requirement because of the nature of their assignments,

2. Limit reports only to outside work that is performed frequently and on a standardized schedule,

3. Delete the requirement that reports automatically be sent to the designated deputy ethics counselors.

The need to obtain prior approval to participate in outside work or activity is not required by this final rule. However, the final rule states that bureau and office heads may issue supplementary requirements to require employees to obtain approval before engaging in outside work or activities. This provision is retained to allow the continuance of some existing bureau and office policies and to allow bureau heads to impose such a requirement on employees or a class of employees when sensitive situations require it.

Several comments were received regarding the proposed rules on Interests in Federal Lands—§ 20.735–24. Two commenters stated that prohibiting all Department employees from acquiring or retaining personal rights to Federal lands was too restrictive. This rule is already contained in 43 CFR Part 7 and it was incorporated into proposed § 20.735–24 in an effort to consolidate into one section, all regulations dealing with interests in Federal lands. The prohibition dates back to the early 1900's and is based on the facts that (1) a primary mission of the Department of the Interior is the administration of the Federal lands, (2) particular rights to use federal lands for personal needs are granted by the Bureau of Land Management (BLM) and (3) there is often competition to obtain BLM permits or other rights. Given these facts, the rule was adopted to avoid allegations that Department employees received preferential treatment in the awarding of BLM rights because of their employment in the Department. Accordingly, the prohibition is not changed in the final rule.

Several commenters stated that the prohibition on stock ownership should define a minimum aggregate percentage of the total ownership of the corporation below which the definition and the requirements for a waiver do not apply. This suggestion is not adopted since: (1) The statutory prohibitions of 43 U.S.C. 11 and 31(a) are absolute and do not allow for the establishment of a *de minimis* amount, (2) the question of whether or not an employee owns enough stock to effect the company's policies is not the most important question for determining the existence of a conflict of interest. More important is the question—Can the employee's official government duties be substantially biased because he or she has financial interests in a particular company?

For example, it is a fact that a $1,000,000 financial interest in the common stock of a single major oil company will in the majority of cases represent an interest in far less than 1% of the common stock outstanding. Yet, if the employee has anything at all to do with administering or influencing the

administration of Federal lands which are of interest to the oil industry as a whole, a $1,000,000 interest in the stock of an oil company is certainly going to result in a conflict of interest or an appearance of conflict of interest which (i) will violate Executive Order 11222 (§ 20.735–21), (ii) may violate 18 U.S.C. 208 (§ 20.735–22), and (iii) may violate other statutory prohibitions which are unique to the Department of the Interior (§§ 20.735–24, 26, 27 and 29).

Most of the prohibitions unique to the Department are absolute prohibitions and prevent the acquisition or retention of even small financial interests. The other prohibitions do allow for consideration of the substantiality of the holding and bureau and office Directors are encouraged to apply these other regulations in a reasonable manner with consideration for the value of the financial interest, in relationship to the duties of the employees. Bureau and office Directors are also encouraged to provide employees with information about which financial interests are prohibited.

One individual commented that the requirement to disclose personal financial interests is an invasion of privacy and unconstitutional. Numerous court decisions have rejected this view holding that the need to insure that public employees are completely impartial in the performance of their duties outweighs the privacy of the individual who chooses to serve the public. Most recently, the Supreme Court upheld the public disclosure requirements of the Ethics in Government Act of 1978, which requires employees in positions classified at GS–16 or above to disclose publicly certain personal financial interests. See *Duplantier v. United States*, 606 F. 2d 654 (5th Cir. 1979), *cert. denied*, No. 79–1180 (Jan. 12, 1981).

In response to a comment received from Bureau of Land Management officials, language has been added to § 20.735–24(d)(2) to clarify that U.S. Mineral Surveyors, because of their important and influential duties, are prohibited from retaining or acquiring any interests or rights in Federal lands in the same way as regular BLM employees.

One commenter stated that the waiver criteria contained in § 20.735–24(e)(1) seemed to be superceded by the flat prohibitions of 43 U.S.C. 11. Based on past cases, BLM and Geological Survey employees who meet the criteria of 24(e)(1) and whose duties do not conflict or appear to conflict with their interests will be allowed to retain interests without violating the provisions of 43 U.S.C. 11. Decisions must be made by the Designated Agency Ethics Official on a case-by-case basis.

Proposed § 20.735–24(f) is moved to 24(g) and corrected to read *Advisory Councils*. This change is made in accordance with the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1739.

One commenter asked if the prohibitions on ownership of financial interests in federal lands prohibits investments in diversified mutual funds, or in Federal, State or municipal bonds. The answer is no. Language added by Note to § 20.735–21(b)(4) clarifies that financial interests in diversified (non-specialized) mutual funds or in Federal, State and municipal bonds are allowed. Financial interests in other investment clubs may be approved as long as the investment portfolio of the club is well diversified and independently managed by a licensed investment broker.

One commenter asked that a special definition of apparent conflict be used when applying the prohibitions of § 20.735–29 dealing with Native American government employees and their role in Tribal Government. The term apparent conflict is defined in § 20.735–21(b) and it is our determination that the definition as stated, provides managers in Indian Affairs with enough flexibility to render a reasonable judgment about the substantiality of an appearance of conflict of interest. A cross reference to the definition is added to § 20.735–29. In arriving at our determination not to change the definition, consideration was given to the special needs of Native American employees. We feel the final regulations establish a reasonable policy which will protect the rights of employees and prevent serious allegations of conflict of interest against employees in Indian Affairs.

Subpart D—Financial Reporting Requirements

One individual inquired as to whether all four conditions under § 20.735–30(b)(5)(iii) had to be met before an employee classified at GS–12 or below was required to file a financial statement. If any one of the conditions is met the employee should be required to file and the language in this section was changed to clarify this determination. The same commenter also remarked that federal recruitment for highly qualified professionals will be more difficult as the conflict of interest regulations become more restrictive. The point is well taken, but the Department's conflict of interest regulations are based entirely on Executive Order or statutory provisions which cannot be changed or eliminated by this Department.

For clarity, § 20.735–30(d) is moved to § 20.735–35(c) and the remaining paragraphs of § 30 are relettered accordingly. Also, one commenter recommended that the term "Nonsecurity Controlled" in proposed § 20.735–30(g) be changed to "For Official Use Only" to conform to Department policy on similar confidential documents. The recommendation is adopted in § 20.735–30(f).

One individual requested that we include in § 20.735–30 the requirement that all Contract Specialist and Procurement Agents in the Office of the Secretary be required to file confidential statements of employment and financial interests. We feel that it is inappropriate to add this requirement to the regulations since the rules already require the head of each Office to review annually his or her staff and determine which staff members should be required to file. This determination should, in our opinion, be made by the manager who is most knowledgeable about an employee's duties.

A number of commenters wrote in reference to the filing provisions in the Ethics in Government Act of 1978. (§ 20.735–31) One individual questioned whether the definition of "relative" should include "fiance or fiancee," and requested an explanation of the reporting requirements of an employee's relatives. The definition of relative is a statutory definition and cannot be changed by regulation. See 5 U.S.C. App. section 209. However, the reporting requirements of the Ethics in Government Act of 1978 restrict reporting information primarily to the holdings of the employee and his or her spouse and dependent children.

One commenter recommended that we add to § 20.735–31(e)(6) a requirement to disclose the prior employment of an employee's spouse. In accordance with the filing requirements of the Ethics in Government Act of 1978, information regarding a spouse's prior employment does not have to be reported and therefore, the recommendation is rejected.

Another commenter suggested that the definition of earned income be included in § 20.735–31. This suggestion is not adopted because the directions contained in the Executive Personnel Financial Disclosure Statement (SF–278) provide an explanation to the filer in the appropriate context and because adding the definition could create confusion with the statutory definition of the term "Income". Another person recommended that we clarify the language in § 20.735–31(f)(3)(ii)

pertaining to the reporting of accounts in a financial institution. The commenter stated that it was unclear whether this provision requires the aggregation of savings accounts owned by an employee's dependent child. This subparagraph is reworded to state that the requirement does include the financial holdings of the employee, his or her spouse and dependent children. The same commenter stated that the term, "personal residence" as used in § 20.635–31(f)(4)(ii) was imprecise and could be interpreted to include a second or vacation home. This term is defined in § 20.735–1(15).

In response to one commenter, language has been added to § 20.735–31(i) to state that referrals made by the Designated Agency Ethics Official to the Department of Justice, will be coordinated with the Department's Solicitor and with the Department's Inspector General.

In response to one commenter, the letters GM before an employee's grade level indicate that the employee is in a "merit-pay" position as described in 5 U.S.C. 7103. The commonly used "GS" acronym is retained to identify non-merit pay positions classified in the General Schedule.

The statutory requirements contained in the laws cited in § 20.735–34 contemplated the publications of positions exempted from the filing requirements. To simplify and reduce the size of the publication required by these statutes the Secretary has determined that the publication of the list of covered positions is preferable. Section 20.735–34(c)(2) is modified accordingly.

Subpart E—Resolution of Conflicts of Interest

One individual argued that employees ordered to divest of prohibited financial interests should not be required to provide written proof that the divestiture was accomplished. The requirement is retained since acceptable written evidence can be a signed statement from the employee. Copies of broker's receipts are preferable since such receipts are normally provided by brokers and they negate the need for an employee to prepare a new statement.

In March 1981, the Secretary delegated responsibility for the Department's ethics functions to the Assistant Secretary—Policy, Budget and Administration. In recognition of this change, the membership of the Appeals Review Board is changed in the final rule to eliminate the Assistant Secretary—Policy, Budget and Administration. See § 20.735–43(c). The new membership will consist of the Associate Solicitor—General Law, the Director or Deputy Director—Office of Personnel and a program Assistant Secretary or Deputy Assistant Secretary on a select basis. Selection of the program Assistant Secretary will be made by the Designated Agency Ethics Official and will depend on which bureau or office head issued the remedial order. For example if the majority of the appeal cases to be considered derive from remedial orders issued by the Director, Bureau of Land Management then the Assistant Secretary—Land and Water will be selected to serve on the Review Board to hear those cases.

In response to one comment, a specific statement has been added stating that the appeal procedures in § 20.735–43 for remedial orders issued under § 20.735–40 supercede other grievance procedures described in the Departmental Administrative Manual.

Subpart F—Special Government Employee Responsibilties, Ethics and Other Conduct

The present regulations in Subpart D are moved to Subpart F, renumbered and retained with only minor grammatical changes and with the following modifications.

Language has been added to § 20.735–52(4) to make the provisions on coercion parallel with the provision in § 20.735–23(c)(4) that is applicable to regular employees.

A sentence has been added to § 20.735–53(a) to inform special government employees who occupy confidential or policymaking Excepted Service positions of the filing requirements of the Ethics in Government Act of 1978.

Subpart G—Prohibitions Affecting Former Government Employees

This new subpart prescribes policies and procedures for identifying, correcting and preventing post employment conflicts of interest. The provisions in this subpart set forth and implement new requirements contained in Title V of the Ethics in Government Act of 1978. Title V of that Act revised 18 U.S.C. 207 by adding new post employment restrictions and by amending the restrictions that were already imposed on former employees.

Subpart H—Bibliography of Statutes

This subpart replaces the Subpart E which is moved and revised to delete obsolete listings, update citations, and add new statutory references.

Only minor changes to update position titles, administrative procedures to correct grammatical errors were made to the regulations contained in subparts G and H.

Through this document, whenever the context so requires, the use of any gender shall include both genders.

Appendix B is reserved for samples of financial interest disclosure forms. The increased number of forms and the frequent necessity to revise them would require many republications of Appendix B. Sample forms may be obtained from the Designated Agency Ethics Official or from Bureau Ethics Counselors upon request.

Appendices C, D, E, F, and G will not be published in the **Federal Register.** Instead, the appendices will be published annually by the Department of the Interior and be available from the Designated Agency Ethics Official and Bureau Ethics Counselors. Only a notice of the annual update and publication of these appendices will be printed in the **Federal Register.** This procedure satisfies the administrative requirements which affect only Department employees and saves the Department the costs of publishing the document in the **Federal Register.**

The primary authors of these final regulations are Gabriele J. Paone, Deputy Agency Ethics Official, Mason Tsai, Assistant Agency Ethics Official and Kathleen A. O'Neil, former Assistant Agency Ethics Official.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that the rule will not have a significant economic effect under the Regulatory Flexibility Act.

Accordingly, the Department of the Interior revokes 43 CFR Part 7 and revises 43 CFR Part 20 to read as follows:

Dated: November 24, 1981.

Donald Paul Hodel,

Acting Secretary.

PART 7 [REVOKED]

PART 20—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Sec.

20.735–1 Definitions.
20.735–2 Purpose, policy, and general responsibilites.
20.735–3 Responsibilities of ethics officials and channels for counseling.
20.735–4 Sanctions.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

20.735–6 Scope of subpart.
20.735–7 Gifts, entertainment, and favors from domestic sources.

Sec.

20.735–8 Gifts and decorations from foreign governments.
20.735–9 Reimbursement of travel and related expenses.
20.735–10 Teaching, lecturing and writing.
20.735–11 Honorariums and outside earned income.
20.735–12 Nepotism.
20.735–13 Negotiations for non-Federal employment.
20.735–14 Political activity.
20.735–15 Government property.
20.735–16 Indebtedness.
20.735–17 Other conduct.

Subpart C—Conflict of Interest Prohibitions

20.735–20 Scope of subpart.
20.735–21 General conflict of interest prohibitions.
20.735–22 Statutory prohibitions.
20.735–23 Outside work and interests.
20.735–24 Interests in federal lands.
20.735–26 Interests in underground or surface coal mining operations.
20.735–27 Interests in mining activities.
20.735–28 Interests in trading with Indians.
20.735–29 Indian and Alaska Native organizations.

Subpart D—Financial Reporting Requirements

20.735–30 Executive Order filing requirements.
20.735–31 Ethics in Government Act filing requirements.
20.735–32 Surface Mining Control and Reclamation Act filing requirements.
20.735–34 Other statutory filing requirements.
20.735–35 How to file.
20.735–36 Certificates of disclaimer.
20.735–37 Review and analysis of statements.

Subpart E—Resolution of Conflicts of Interest

20.735–40 Procedures for resolving conflicts or prohibited holdings.
20.735–42 Qualified trusts.
20.735–43 Appeal procedures.

Subpart F—Special Government Employee Responsibilities, Ethical and Other Conduct

20.735–50 Scope of subpart.
20.735–51 Conflict of interest statutes relating to special government employees.
20.735–52 Conduct provisions of particular interest to special government employees.
20.735–53 Statements of employment and financial interests.

Subpart G—Prohibitions Affecting Former Government Employees

20.735–60 Scope of subpart.
20.735–61 Post-employment restrictions.
20.735–62 Administrative enforcement procedures.

Subpart H—Bibliography of Statutes

20.735–70 Bibliography of statutes.

Appendices

Appendix A–1 Employee Certification—U.S. Geological Survey
Appendix A–2 Employee Certification—Indian Affairs
Appendix A–3 Employee Certification—Bureau of Land Management
Appendix A–4 Employee Certification—Bureau of Mines
Appendix A–5 Employee Certification—Office of the Secretary
Appendix B Reserved
Appendix C List of Employees, in Addition to GS–15's and Higher, Required to File Confidential Statements of Employment and Financial Interests
Appendix D List of Bureaus and Offices, or Subunits Thereof, Performing Functions or Duties Under the Federal Land Policy Management Act and Positions Which the Secretary Has Determined Are Subject To the Reporting Requirements of Section 313 of the Act
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Appendix F List of Bureaus and Offices, or Subunits Thereof, Performing Functions or Duties Under the Energy Policy and Conservation Act and Positions Which the Secretary Has Determined Are Subject To the Reporting Requirements of Section 522 of the Act
Appendix G List of Bureaus and Offices, or Subunits Thereof, Performing Functions or Duties Under the Outer Continental Shelf Lands Act Amendments of 1978 and Positions Which the Secretary Has Determined Are Subject To the Reporting Requirements of Section 605 of the Act.

Appendices C, D, E, F and G are not published with this Part. Copies of the appendices are on file with the Office of the **Federal Register.** Copies are available from the Designated Agency Ethics Official, Main Interior Building, Washington, D.C. 20240 and from Bureau Ethics Counselors.

Authority: 5 U.S.C. 301; Sec. 13, Pub. L. 94–429, 90 Stat. 1344 (16 U.S.C.A. 1912 (Supp. 1980)); 18 U.S.C. 207(j) (Supp. II 1978); Sec. 12, Ch. 576, 48 Stat. 966 (25 U.S.C. 472); Sec. 201(f), Pub. L. 95–87, 91 Stat. 450–51 (30 U.S.C. 1211 (Supp. II 1978)); Sec. 522, Pub. L. 94–163, 89 Stat. 961, as amended by Sec. 691(b)(2), Pub. L. 95–619, 92 Stat. 3288 (42 U.S.C. 6392 (Supp. II 1978)); Sec. 313, Pub. L. 94–579, 90 Stat. 2768 (43 U.S.C. 1743); Sec. 605, Pub. L. 95–372, 92 Stat. 695 (43 U.S.C. 1864 (Supp. II 1978)); E.O. 11222, 30 FR 6469, 3 CFR 1964–65 (Comp.), as amended (18 U.S.C. 201 note); 5 CFR 735.104; 5 CFR 734.103; 5 CFR 737.1(c)(7).

Subpart A—General Provisions

§ 20.735–1 Definitions.

(a) *General.* The following terms are used throughout this Part and have the following meanings: (1) "Department" means the United States Department of the Interior and any of its components.

(2) "Secretary" means the Secretary of the Interior.

(3) "Bureau" means each major program operating organization of the Department, the Office of the Secretary, and each other Departmental Office.

(4) "Employee" means a regular employee, a special government employee, and a contract education employee in Indian Affairs as defined in 25 CFR 31(g)(2) (h) and (i) unless the text of a particular subpart, section, or paragraph indicates that either regular employees or special government employees are not intended to be covered by that subpart, section or paragraph. Volunteers in Parks accepted pursuant to 16 U.S.C. 18(g) are not employees.

(5) "Regular employee" means any officer or employee of the Department who is appointed or employed to serve more than 130 days in any period of 365 consecutive days.

(6) "Special government employee" means any employee or officer of the Department who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive calendar days, either on a full-time, part-time or intermittent basis (18 U.S.C. 202). U.S. Mineral Surveyors are considered to be special government employees.

(7) "U.S. Mineral Surveyor" means a person appointed under the authority of 30 U.S.C. 39, and as such is included within the term "officers, clerks, and employees" of the Bureau of Land Management as that term is used in 43 U.S.C. 11 and construed in *Waskey* v. *Hammer*, 223 U.S. 85 (1912).

(8) "Executive Order" means Executive Order 11222 of May 8, 1965 (18 U.S.C. 201 note).

(9) "Designated Agency Ethics Official" means the Principal Deputy Assistant Secretary—Policy, Budget and Administration.

(10) "Ethics Counselor" means the head of each bureau, as that term is defined in paragraph (3) above, except that the Assistant Secretary—Policy, Budget and Administration is the Ethics Counselor for employees in the Office of the Secretary and other offices for which personnel services are provided by the Division of Personnel Services, Office of Administrative Services excluding the Office of Hearings and Appeals and the Office of Water Research and Technology.

(11) "Deputy Ethics Counselor" means the bureau personnel officer or other qualified headquarters employee who has been delegated responsibility for the operational duties of the Ethics Counselor for that bureau. The Director, Office of Administrative Services is the Deputy Ethics Counselor for employees

in the Office of the Secretary and other offices for which personnel services are provided by that Office, excluding the Office of Hearings and Appeals, and the Office of Water Research and Technology. In accordance with rules in 5 CFR 738.202(b), the Deputy Agency Ethics Official shall serve as alternate agency ethics official.

(12) "Assistant Ethics Counselor" means a bureau, regional or area personnel officer or other qualified employee who has been delegated responsibility to perform the operational duties of the Ethics Counselor at the field level. Assistant Ethics Counselors may also be designated within the bureau headquarters.

(13) "Indian Affairs" means the Office of the Assistant Secretary—Indian Affairs and the Bureau of Indian Affairs.

(14) "Dependent child means a son, daughter, stepson, or stepdaughter who (i) is unmarried and under age 21 and is living in the household of the employee or (ii) is a dependent of the employee within the meaning of section 152 of Internal Revenue Code of 1954 (26 U.S.C. 152).

(15) "Personal residence" means any real property used exclusively as a private dwelling by the reporting individual or his or her spouse, which is not rented for any period during a calendar year. There may be more than one personal residence, and the term may include a vacation home. The term is not limited to domicile.

(b) *Specific definitions.* Additional definitions of terms specifically associated with a particular subpart or section are found in that subpart or section.

§ 20.735–2 Purpose, policy, and general responsibilities.

(a) *Purpose.* These regulations set forth Departmental policies and identify principal statutes and regulations which relate to employee conduct and responsibilities. These regulations ordinarily apply to all regular and special employees of the Department. Exceptions to this general rule are stated in the specific subpart, section or paragraph to which they apply.

(b) *General policy.* Employees of the Department are expected to maintain especially high standards of honesty, integrity, impartiality, and conduct to ensure the proper performance of Government business and the continual trust and confidence of citizens in their Government. Employees are expected to comply with all Federal statutes, Executive Orders, Office of Personnel Management regulations and Departmental regulations. The conduct of employees should reflect the qualities of courtesy, consideration, loyalty to the United States, a deep sense of responsibility for the public trust, promptness in dealing with and serving the public, and a standard of personal behavior which will be a credit to the individual. These principles apply to official conduct and to private conduct which affects in any way the ability of the employee or the Department to effectively accomplish the work of the Department.

(c) *Equal employment opportunity policy.* It is the policy of the Federal Government that there shall be no discrimination in employment based on such factors as race, creed or religion, color, national origin, political affiliation, physical handicap, sex, age, union membership or non-membership, and similar matters not related to merit and fitness. This policy does not affect in any way the provisions of 25 U.S.C. 472 dealing with Indian preference in employment.

(d) *Conformance with policy and subordination to authority.* Employees are required to carry out the announced policies and programs of the Department and to obey proper requests and directions of supervisors. While policies related to one's work are under consideration employees may, and are expected to, express their professional opinions and points of view. Once a decision has been rendered by those in authority, each employee is expected to comply with the decision and work to ensure the success of programs or issues affected by the decision. An employee is subject to appropriate disciplinary action, including removal from office, if he or she fails to: (1) Comply with any lawful regulations, orders, or policies; or (2) Obey the proper requests of supervisors having responsibility for his or her performance.

(e) *Applicability to Indian Affairs employees.* The provisions of this part apply to non-Indian employees in Indian Affairs in the same manner as they apply to all other employees employed elsewhere in the Department. Except where otherwise indicated, the provisions of this part shall also apply to Indian and Alaska Native employees in Indian Affairs.

(f) *Bureau responsibilities.* Ethics Counselors shall (1) Establish and maintain internal procedures and guidelines to adequately and systematically inform employees of the content, meaning, and importance of the regulations in this part. Such supplementary guidelines may include specific or additional restrictions applicable to employees of the bureau. Supplementary guidelines must be approved by the Designated Agency Ethics Official before they are issued.

(2) Give a copy of the regulations in this part to each employee upon entrance to duty. At least once annually, each Ethics Counselor shall: (i) Remind each employee of the regulations in this part; and

(ii) Inform each employee of the name, location and telephone number of bureau officials who can properly counsel them on ethics and conduct matters.

This annual reminder shall be accomplished through a publication or memorandum issued to all employees. In addition, vacancy announcements for those positions which require any statement of employment and financial interest shall alert applicants to the filling requirement.

(3) Notify the Designated Agency Ethics Official of the names and locations of each Deputy and Assistant Ethics Counselor and of changes in such designations.

(g) *Employee responsibilities.* It is the responsibility of employees (1) to be familiar with and to comply with the regulations in this part. Employees are expected to consult with their supervisors and personnel officers on general questions they may have regarding the applicability of the regulations. On specific matters and for guidance on questions of conflict of interest, employees may obtain advice and guidance from their Ethics Counselors, Deputy Ethics Counselors, Assistant Ethics Counselors, the Department Ethics Official, or the Office of the Solicitor, (2) to be careful in dealing with the public and with representatives of private industry so as not to give an opinion or decision contrary to expressed Departmental or bureau policy, (3) to avoid expressing personal opinions or making unauthorized decisions about work situations where those opinions or decisions may be mistakenly taken to be the opinion or decision of the bureau or Department. A memorandum of discussion should be prepared by employees providing ethics advice to representatives of private industry, (4) to report directly or through appropriate channels to the Office of Inspector General matters coming to their attention which do or may involve violations of law or rule by employees, contractors, sub-contractors, grantees, subgrantees, lessees, licensees or other persons having official business with the Department.

(h) *Conduct codes for specific groups.* (1) Special codes of conduct not in derogation of this part may be

developed or adopted (if established by the profession in which the employee is engaged, such as attorneys and accountants) by a bureau or the Department for specific groups of employees engaged in the same occupation or profession.

(2) Certain individuals, for example, volunteers in National Park Service programs and enrollees and corps members in youth and young adult programs administered by the Office of Youth Programs, are Federal employees only as specifically provided in the statute which authorizes their particular program. In the absence of a statutory provision which makes the individual in one of these programs a regular or special Government employee, the individual is not subject to the regulations in this part. However, the head of a bureau responsible for individuals in such a program may submit a proposal requesting that all or part of the regulations in this part be made applicable to the particular category.

(3) Proposals for special codes of conduct, including procedures for their implementation, and proposals for applying a portion of these regulations to specific categories of individuals shall be submitted to the Designated Agency Ethics Official for approval. The Office of Personnel and the Office of the Solicitor shall also approve such proposals before they are adopted.

§ 20.735–3 Responsibilities of ethics officials and channels for counseling.

(a) *Responsibilities of ethics officials.* (1) The Designated Agency Ethics Official (or the Deputy Agency Ethics Official in his or her absence) shall: (i) Administer the regulations governing the conduct and responsibilities of employees in the Department;

(ii) Develop and administer an effective system and procedures for the collection, filing, review, and public inspection of financial disclosure statements in accordance with applicable statutes and regulations;

(iii) Provide advice, assistance, training, and guidance to all levels of Ethics Counselors and to any employee within the Department;

(iv) Monitor the conflict of interest program, using reports requested of bureaus and periodic internal audits and administrative reviews performed by the Office of Inspector General or by the Designated Agency Ethics Official. These reviews will be conducted on a cyclical basis to ensure that each bureau is reviewed at least once every three years;

(v) Review statements of employment and financial interests for those Department employees cited in section 20.735–30(d) (2) and (6);

(vi) Ensure that all financial disclosure statements filed by employees with bureaus are completely and effectively maintained and consistently reviewed for conformance to all applicable laws and statutes;

(vii) Assume the authorities and responsibilities of any Ethics Counselor within the Department, either for the duration of an individual case or for a period or periods not to exceed six months each;

(viii) Develop and supervise an education and counseling program for employees on all ethics and standards of conduct matters; the program shall include counseling on post employment matters and shall provide that adequate and specific records are kept on any advice rendered;

(ix) Evaluate periodically, in conjunction with the Office of Government Ethics, the Department's standards of conduct regulations, financial disclosure systems and post-employment enforcement systems to determine their adequacy and effectiveness in relation to current Departmental responsibilities;

(x) Act as liaison with and, as necessary or required, provide information to the Office of Government Ethics concerning the Department's ethics function.

(xi) Develop, maintain and publish a list of those circumstances or situations which have resulted or may result in noncompliance with ethics laws and regulations;

(xii) Keep appropriate records on advice rendered;

(xiii) Take prompt and effective action to insure that appropriate remedial actions are taken.

(2) Ethics Counselors are responsible for administering the regulations governing the conduct and responsibilities of employees in their respective bureaus. Ethics Counselors shall: (i) Order remedial action in accordance with the provisions of § 20.735–40. This authority may not be redelegated;

(ii) Designate the Bureau Personnel Officer (or other qualified headquarters employee) as Deputy Ethics Counselor. Deputy Ethics Counselors may carry out operational duties of the Ethics Counselor within their bureaus under the general direction of the Ethics Counselor, including reviewing statements of employment and financial interests, informally resolving conflict of interest situations, and answering employee conduct questions;

(iii) Consolidate the final review, certification and filing of financial interest statements at the headquarters level; and,

(iv) Designate regional or area personnel officers (or other qualified employees) as Assistant Ethics Counselors to perform ethics counseling and the initial financial statement review at the field office level. Assistant Ethics Counselors may also be designated within the bureau headquarters.

(b) *Channels for counseling.* Employees may seek advice from any bureau ethics counselor, the Designated Agency Ethics Official or the Office of the Solicitor. It is the Department's policy to encourage responsible disposition of counseling requests and to strive for consistency in the application of employee responsibility and conduct regulations. To achieve this: (1) Ethics Counselors shall, if possible, consolidate the operation of the ethics counseling function at the headquarters level. Employee inquiries should be directed to that office. In bureaus where consolidation is not feasible, Assistant Ethics Counselors shall seek concurrence in their final decisions from the bureau Deputy Ethics Counselor or Ethics Counselor. Ethics Counselors may seek advice from the Designated Agency Ethics Official, Regional Solicitors, the Associate Solicitor for General Law or other Solicitor Office officials designated by the Solicitor.

(2) The Designated Agency Ethics Official shall provide advice on any ethics matter to employees and to Ethics Counselors and shall seek advice from the Associate Solicitor—General Law.

(3) Employees wishing to request advice from the Solicitor's Office shall submit requests to Regional Solicitors or to the Associate Solicitor—General Law, in Washington, D.C., as appropriate. Regional Solicitors called upon to render advice which will affect interpretations of the employee responsibility and conduct regulations shall seek concurrence in their final decisions from the Associate Solicitor—General Law.

§ 20.735–4 Sanctions.

(a) Violations of the regulations in this part by an employee may be cause for appropriate corrective, remedial or disciplinary action, which may be in addition to any criminal or civil penalty provided by law. Such disciplinary action may include, but is not limited to, oral or written warning or admonishment, reprimand, suspension, reassignment, reduction in grade or pay, or removal from office and shall be taken in accordance with Departmental policies, applicable statutes, Executive Orders, and regulations (see Federal

Personnel Manual and additions thereto).

(b) Employees having financial or other interests prohibited by statute or regulation may be ordered to divest themselves of such interests. Failure to comply with appropriate divestiture orders may result in suspension or removal from office, or other disciplinary action. Employees may appeal divestiture orders in accordance with procedures contained in § 20.735–43.

(c) The procedures for disciplinary action involving contract education employees in Indian Affairs are contained in 25 CFR 31(g)(7).

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 20.735–6 Scope of subpart.

(a) *Standards of conduct.* This subpart contains policies, procedures and restrictions concerning the ethical and other conduct and responsibilities of both regular and special government employees in the discharge of their official responsibilities. Employees are expected to maintain high standards of honesty, integrity, impartiality, and other ethical and moral conduct and to avoid any actions, whether on or off duty, which could reflect adversely on the Department or Government service or which would jeopardize the employee's fitness for duty or effectiveness in dealing with other employees or with the public.

(b) *Prohibited Activities.* (1) An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of: (i) Using public office for private gain;

(ii) Giving preferential treatment to any person, except as authorized or required by law;

(iii) Impeding Government efficiency or economy;

(iv) Losing independence or impartiality;

(v) Making a Government decision outside official channels; or

(vi) Affecting adversely the confidence of the public in the integrity of the Government.

(2) An employee shall not have any interest (financial or non-financial) in any contract, grant or other particular matter administered or controlled by this Department in which the employee was personally or substantially involved through the performance of his or her duties.

(3) Contracts shall not knowingly be entered into between the Government and employees of the Government or business concerns or organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied. (41 CFR 1–1.302–3)

(4) When a contracting officer has reason to believe that an exception as described in paragraph (3) of this section, should be made, approval of the decision to make such an exception shall be handled in accordance with agency procedures and shall be obtained prior to entering into any such contract. (41 CFR 1–1.302–3)

§ 20.735–7 Gifts, entertainment, and favors from domestic sources.

(a) *Soliciting or accepting gifts.* Except as provided in paragraph (b) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, regardless of its value, from a person who: (1) Has, or is seeking to obtain, contractual or other business or financial relations with the Department;

(2) Conducts operations or activities that are regulated by the Department; or

(3) Has interests that may be substantially affected by the performance or non-performance of the employee's official duties.

The prohibitions in this paragraph apply to special government employees while they are employed by the Department or in connection with their work with the Department.

Note.—For purposes of the exclusions in this subparagraph (b) where the term "nominal value" is used it means a value of $35 or less.

(b) *Exclusions.* (1) The prohibitions of paragraph (a) of this section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors.

(2) An employee may accept: (i) Food and refreshments of nominal value on infrequent occasions in the ordinary course of an official luncheon or dinner meeting or other official meeting or on an inspection tour where an employee may properly be in attendance,

(ii) Loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans,

(iii) Unsolicited advertising or promotional material, of nominal value such as pens, pencils, note pads, calendars, and other similar items,

(iv) Gifts, on behalf of the Department, which are offered for the advancement of the American Indian, or for the National Parks; such gifts shall be deposited with the bureau property officer, and

(v) Suitable mementos or awards of nominal value for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

(3) All Department employees may accept gifts offered to them by inhabitants or officials of the islands, territories and possessions which fall within the responsibility of the United States, when refusal to accept such gifts would be likely to cause offense or embarrassment or otherwise adversely affect relations with the United States. Gifts of nominal value or perishable gifts such as food or flowers accepted under this provision may be retained by the employee. Non-perishable gifts of more than nominal value accepted under this provision shall be deemed to have been accepted for the Department, shall become the property of the United States upon acceptance, and shall be deposited by the employee with his or her property officer within 60 days of acceptance.

(c) *Soliciting contributions.* An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift or donation made on a special occasion such as a marriage, illness, or retirement.

§ 20.735–8 Gifts and decorations from foreign governments.

(a) This section implements the Foreign Gifts and Decorations Act (5 U.S.C. 7342).

(b) *Definitions.* (1) "Employee" means all regular and special government employees of the Department, experts and consultants of the Department appointed under 5 U.S.C. 3109, spouses of all such individuals (unless such individual and his or her spouse are separated) and dependents (within the meaning of section 152 of the Internal Revenue Code, 26 U.S.C. 152) of such an individual.

(2) "Foreign government" means any unit of foreign governmental authority, including any foreign national, State, local and municipal government; any international or multinational organization whose membership is

composed of any unit of foreign government; and any agent or representative of any such unit or organization while acting in that capacity.

(3) "Gift" means a tangible or intangible present, other than a decoration, tendered by, or received from, a foreign government. Examples of intangible gifts are travel and subsistence expenses.

(4) "Decoration" means an order, device, medal, badge, insignia, emblem or award tendered by, or received from, a foreign government.

(5) "Minimal value" means a retail value in the United States at the time of acceptance of $100.00 or less.

(c) *Prohibited activities.* An employee is prohibited from: (1) Requesting or otherwise encouraging the tender of a gift or decoration from a foreign government; or

(2) Accepting a gift or decoration from a foreign government, except in accordance with the rules and procedures of the Department. These prohibitions apply whether an employee is on or off duty.

(d) *Exceptions.* An employee may: (1) Accept and retain a gift of minimal value tendered and received as a souvenir or mark of courtesy; and

(2) Accept a gift of more than minimal value when such a gift is in the nature of an educational scholarship or medical treatment, or when it appears to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, provided that: (i) When a tangible gift of more than minimal value is accepted, it will be deemed to have been accepted on behalf of the United States, shall become the property of the United States upon acceptance, and shall be deposited by the employee with the Department within 60 days of acceptance; and

(ii) An employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and determined by the Assistant Secretary—Policy, Budget and Administration to be in the best interests of the Department. In such cases, an appropriate adjustment must be made to the travel voucher claim covering per diem, lodging, etc.;

(3) Accept, retain, and wear a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the Department, *Provided,* That: (i) Without such approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States upon acceptance, and shall be deposited by the employee with the Department within 60 days of acceptance; and

(ii) Requests for approval should be sent to the Assistant Secretary—Policy, Budget and Administration.

§ 20.735–9 Reimbursement of travel and related expenses.

(a) *Policy.* (1) Except as specifically authorized by law, when an employee is on official duty (no leave status) all travel and accommodations shall be at Government expense and his or her acceptance of outside reimbursement for travel expenses or services in kind from private sources, either in his or her behalf or in behalf of the government, is not allowed (18 U.S.C. 209). This includes instances where an employee is officially directed to participate in a convention, seminar, or similar meeting sponsored by a private source for the mutual interest of the Government and the private source. In such instances, expenses shall be charged to the appropriate bureau or Department appropriation.

(2) When a bureau is authorized by statute to accept gifts, the travel expenses incurred by an employee directed to participate in a convention, seminar, or similar meeting sponsored by a private source for the mutual interest of the Government and the private source may be reimbursed to the bureau and credited to its appropriation. The employee shall be paid by the bureau in accordance with the law relating to reimbursement for official travel and any accommodations and goods or services in kind furnished an employee shall be treated as a donation to the bureau and an appropriate reduction shall be made to the employee's reimbursement [46 CG 689 (1967)].

(3) When participation at a function is not in an official capacity, an employee may accept reimbursement of travel and accommodation expenses from a private source, provided that such acceptance creates no conflict or appearance of a conflict of interest with one's official duties. Participation as a private citizen must occur on one's own time, such as while on leave. If participation should occur during the course of official travel (i.e., evening or weekend hours during official travel status), the travel voucher submitted for Government reimbursement of official duty expenses must be adjusted to claim only that per diem and travel attributable to official duty. Employees who are appointed by the President and paid at a rate higher than the highest rate for GS–18 are on 24 hour duty and determinations of what constitutes official duty and what is private participation should be carefully made.

Example: An employee who is a member of a professional society is asked to speak at a society meeting. The society offers the employee air fare to and from the meeting and meals, but hotel accommodations are not offered. In order for the employee to attend while on official duty (no leave status) a decision must be made by his or her supervisor that attendance will result in sufficient benefits to the Government. If it is decided that there will be benefit to the Government all expenses: air fare, meals, and hotel, must be paid to the employee by the Government. In this situation, if the employee's bureau is authorized by statute to accept gifts then (1) the air fare offered by the Society can be paid to the bureau, (2) the employee may accept the meals and the employee expenses for air fare and per diem shall be paid by the bureau with an appropriate reduction for the meals. If the supervisor decides that attendance at the meeting will not benefit the Government the employee may participate in the meeting and accept the air fare and meals offered by the Society in a non-official capacity, while on leave, provided that such participation creates no conflict or appearance of conflict with his or her official duties. Hotel and other related costs will be at the employee's personal expense.

(b) *Exclusions.* (1) When on official duty, contributions and awards incident to training in non-Government facilities, and payment of travel, subsistence, and other expenses incident to attendance at training meetings may be accepted by an employee when the payment is made by a nonprofit, tax exempt organization as described in 26 U.S.C. 501(c)(3) and when no real or apparent conflict of interest will result. Prior advice should be obtained from the employee's ethics counselor in this circumstance (5 U.S.C. 4111).

(2) Employees may accept reimbursement by the Department of travel and related expenses when assigned (official personnel action detail) to state and local governments and to universities in accordance with 5 U.S.C. 3375.

(3) Should the Director of the International Communication Agency, with the approval of the employing agency, assign a Departmental employee to a foreign government, reimbursement for the employee's pay and allowances shall be made to the United States in an amount equal to the compensation, travel expenses, and allowances payable to such person during the

period of such assignment, in accordance with 22 U.S.C. 1451.

(4) Should an employee be detailed by the Secretary to an international organization which requests services, the employee is deemed to be (for the purpose of preserving his or her allowances, privileges, rights, seniority, and other benefits) an employee of the Department and the employee is entitled to pay, allowances, and benefits from funds available to the Department. The international organization may reimburse the Department for all or part of the pay, travel expenses, and allowances payable during the detail; or, the detailed employee may be paid or reimbursed directly by the international organization for allowances or expenses incurred in the performance of duties required by the detail without regard to 18 U.S.C. 209 (5 U.S.C. 3343).

§ 20.735–10 Teaching, lecturing and writing.

(a) *General policy.* Employees are encouraged to engage in teaching, lecturing, or writing that is not prohibited by statute, the Executive Order, Office of Personnel Management regulations, or this part.

(b) *Using information obtained because of employment.* An employee shall not teach, lecture, or write using information obtained because of his or her Government employment, except when that information has been or on request will be made available to the general public.

(c) *Preparing persons for examinations.* An employee shall not teach, lecture, or write to prepare a person or class of persons for an examination given by the Office of Personnel Management or the Board of Examiners for the Foreign Service.

§ 20.735–11 Honorariums and outside earned income.

(a) *Definition.* The term "honorarium" means a payment of money or anything of value received by an employee as consideration for an appearance, speech, article, or consultation when such money is accepted as a payment for a single event or transaction and under circumstances which do not imply a continuing compensatory relationship between the parties for similar services. Excluded for purposes of this paragraph are any payments of actual and necessary travel and subsistence expenses for an employee and spouse or aide of the employee and any amounts paid or incurred for any agent's fees or commissions.

(b) *Policy on acceptance of honorariums.* (1) No employee shall accept an honorarium for any activity the subject of which is devoted substantially to the responsibilities, programs, or operations of the Department, draws substantially on official data or ideas not part of the body of public information, or involves any other contribution of Government facilities, materials, funds, or services.

(2) The acceptance of honorariums by employees from groups doing business with or whose interests can be affected by the Department presents the potential for a conflict or the appearance of a conflict of interest. An employee is prohibited from receiving an honorarium from an organization at a time when the employee has before him or her issues the resolution of which will affect the interests of that organization.

(3) Acceptance of honorariums by employees in circumstances other than those enumerated in this subsection is permissible if the article, speech, or appearance for which payment is accepted, was not written, delivered or made while the official was on duty and if acceptance would not create an appearance of a conflict of interest.

(4) Under 2 U.S.C. 441i, an employee is prohibited from (i) accepting an honorarium of more than $2,000 (excluding amounts accepted for actual travel and subsistence expenses for such employee and his or her spouse or an aide to such employee, and excluding amounts paid or incurred for any agent's fees or commissions) for any appearance, speech, or article or (ii) accepting honorariums aggregating more than $25,000 in any calendar year. Amounts returned to the payor of an honorarium shall not be aggregated.

(c) All speeches to be made by members of the Office of the Secretary, and by headquarters officials of bureaus and offices, shall given prior review by the Office of Public Affairs. All articles for publication that deal with policies or programs of the Department, its bureaus or offices, are subject to prior review by the Office of Public Affairs. See 470 DM 1.2D and E of the Departmental Manual for more detail about this provision. These requirements are applicable whether or not an honorarium is to be paid.

(d) *Restriction on Outside Earned Income.* All employees who are compensated at a pay grade in the General Schedule of grade 16 or above and who occupy full-time positions appointment to which must be made by the President, by and with the advice and consent of the Senate, may not have in any calendar year outside earned income attributable to such calendar year which is in excess of 15 percent of their salary. Outside earned income is all income earned from services rendered and excludes income from interest, dividends, royalties, or rents derived from financial investments.

(e) *Honorariums transferred to charitable organizations.* If an honorarium payable to an employee, is paid instead, at the employee's request, to a charitable organization operated exclusively for educational purposes and selected by the payor from a list of 5 or more charitable organizations provided by the employee, then, that employee shall not be treated as accepting that honorarium for purposes of 2 U.S.C. 411i. However, the employee must include the amount in gross income, as defined in 26 U.S.C. 61, for individual tax purposes. In such situations, the amount can be claimed as a charitable contribution deduction, subject to limitations set forth in 26 U.S.C. 170. For purposes of this provision "charitable organization" means an organization as described in § 26 U.S.C. 170(c).

(f) *Violation.* In addition to the potential sanctions in § 20.735–4, any individual who knowingly and willfully violates the honorarium provisions of this section shall be reported to the Federal Election Commission and may be subject to civil and criminal penalties as provided for by section 108 of Pub. L. 96–187, 93 Stat. 1368–1369.

§ 20.735–12 Nepotism.

(a) *Definition.* "Relative" means an individual who is related to the employee as a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daugther-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) *Policy.* An employee may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the Department or over which he or she exercises jurisdiction or control, any individual who is a relative of the employee. An individual may not be appointed, employed, promoted, or advanced in or to a position in the Department if such appointment, employment, promotion, or advancement has been advocated by an employee, who is a relative of the individual and who is serving in or exercising jurisdiction, or control over the position. (5 U.S.C. 3110)

(c) *Exceptions.* (1) An employee may appoint, or employ or advocate for appointment or employment, in or to a position in the Department or over which he or she exercise jurisdiction or

control any individual who is a relative of the employee only in emergency situations such as forest fires, floods, earthquakes, or other natural disasters. Exceptions may also be made in situations involving special scientific needs, or at isolated field stations, or where there is a shortage of quarters. (In regard to summer employees, refer to current Department directives.)

(2) This section shall not be construed to prohibit the appointment of an individual who is a preference eligible in any case in which the passing over of that individual on a certificate of eligibles furnished under 5 U.S.C. 3317(a) will result in the selection for appointment of an individual who is not a preference eligible.

(3) An employee may supervise a relative when: A bureau director or the Assistant Secretary—Policy, Budget and Administration for Office of the Secretary and other Departmental office employees, (i) finds that all merit-related provisions of Federal law have been observed, (ii) determines that such supervision would result in a net benefit to the Government, and (iii) assigns a non-related individual as manager to conduct performance evaluations and recommend promotions or advancements.

Supervision under this exception is limited to activities other than appointing, employing, promoting, advancing or advocating the appointment, employment, promotion or advancement of a relative. Effectively then, this exception allows an employee to work with his or her relative on the same project and to direct the work of a relative. Appointment, employment, promotion or advancement of a relative, and the advocacy of these actions for a relative, are prohibited by statute (5 U.S.C. 3110) and this exception does not allow these activities. It is recognized that the policy of Indian Self Determination, the application of Indian Preference and the isolation of many Indian Affairs installations may create situations where Indian Affairs employees exercise supervision or administrative control over an individual who is a relative. In such instances, except for emergency situations, all supervisory or administrative controls to be exercised over a relative shall be referred, without recommendation or advocacy, to the next higher administrative level for review and action.

(d) *Violation.* An individual supervised, appointed, employed, promoted, or advanced in violation of this section shall not receive salary. And, an employee who supervises, appoints, employs, promotes, advances or advocates these actions in violation of this section shall be subject to the sanctions in § 20.735–4.

§ 20.735–13 Negotiations for non-Federal employment.

(a) Negotiation for employment commences when: (1) The employee or anyone at the direction of and on behalf of the employee, initiates a communication in writing or orally, directly or indirectly, to the prospective employer for the purpose of discussing rendering service to the prospective employer upon termination of the employee's service as an employee of the Department, or

(2) An individual, partnership, association, corporation or organization initiates a communication to the employee or representative of the employee and the employee or the employee's representative responds directly or indirectly with the communicator and indicates that the employee is interested in serving the communicator upon termination of employment with the Department.

(b) *Policy.* (1) An employee shall not without permission negotiate for future non-Federal employment with persons or organizations having business with the Department if the employee is called upon to render advice or make judgments which may affect those persons or organizations.

(2) In the event that an employee desires to negotiate for future employment with organizations he or she is called upon to render advice or make judgments about, he or she shall request permission from his or her supervisor. The supervisor will consult with the appropriate ethics counselor. If the supervisor and the ethics counselor determine that the proposed negotiations will not adversely affect the Government's interests, the supervisor may authorize, in writing, the employee to proceed to negotiate.

(3) Where authorization is granted the employee shall be restricted from participating in his or her governmental capacity in any matter in which the employee, or the employee's spouse, minor child, outside business associate, or person with whom he or she is negotiating for employment has a financial interest (18 U.S.C. 208).

(4) Nothing in this section prohibits an employee from negotiating with a tribal organization that initiates a communication directly or indirectly to an employee for the purpose of employment or temporary reassignment in accordance with the Indian Self Determination Act (25 U.S.C. 450).

§ 20.735–14 Political activity.

(a) *Hatch Act.* 5 U.S.C. 7324 states generally that an employee may not use his or her official authority or influence for the purpose of interfering with or affecting the results of an election; or take an active part in political management or in policital campaigns. An employee is subject to dismissal for violation of this prohibition. Persons who are employed on an irregular or occasional basis, e.g., experts and consultants, are subject to the political activity restrictions of 5 U.S.C. 7324 while in an active duty status only and for the entire 24 hours of any day of actual employment. In accordance with regulations contained in 5 CFR Part 733, the following definitions, permissible activities and prohibited activities help to interpret the restrictions in 5 U.S.C. 7324.

(1) Definitions include: (i) "Political party" means a National political party, a State political party, and an affiliated organization;

(ii) "Election" includes a primary, special, and general election;

(iii) "Nonpartisan election" means: (A) An election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for presidential election received votes in the last preceding election at which presidential electors were selected, and

(B) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

(iv) "Partisan" when used as an adjective refers to a political party.

(2) Permissible activities consistent with the restrictions imposed by 5 U.S.C. 7324 include the right to: (i) Register and vote in any election;

(ii) Express opinions as an individual privately and publicly on political subjects and candidates;

(iii) Display a political picture, sticker, badge, or button;

(iv) Participate to the extent consistent with law in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(v) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

(vi) Attend a political convention, rally, fund-raising function, or political gathering;

(vii) Sign a political petition as an individual;

(viii) Make a financial contribution to a political party or organization except as restricted by provisions explained in § 20.735–14(c);

(ix) Take an active part as an independent candidate, or in support of an independent candidate, in a partisan election covered by rules in 5 CFR 733.124;

(x) Take an active part as a candidate or in support of a candidate, in a nonpartisan election;

(xi) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

(xii) Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law; and

(xiii) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise one's efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the Department.

(3) Prohibited activities include, but are not limited to: (i) Any activity listed in § 20.735–14(a)(2) if participation in the activity would interfere with the efficient performance of official duties or create a conflict or apparent conflict of interest;

(ii) Serving as an officer of a political party, a member of a National, State, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;

(iii) Organizing or reorganizing a political party organization or political club;

(iv) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;

(v) Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate in a partisan election or a political party, or political club;

(vi) Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;

(vii) Becoming a candidate for, or campaigning for, an elective public office in a partisan election except as indicated in 20.735–14(a)(2)(ix);

(viii) Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office;

(ix) Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;

(x) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;

(xi) Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign literature, or similar material;

(xii) Serving as a delegate, alternate, or proxy to a political party convention;

(xiii) Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office; and

(xiv) Initiating or circulating a partisan nominating petition.

(4) Additional information regarding employees' participation in political activities, including certain exceptions for employees appointed by the President, by and with the advice and consent of the Senate, is contained in 5 CFR Part 733.

(b) *Political Affiliation.* No person in the Executive Branch with authority to take or recommend a personnel action relative to a person in, or an eligible candidate or applicant for, a position in the competitive service, may make inquiry concerning his or her political affiliation. All disclosures concerning political affiliation shall be ignored. Except as may be authorized or required by law, discrimination may not be exercised, threatened, or promised by any person in the Executive Branch against or in favor of an employee in, or an eligible candidate or applicant for, a position in the competitive service because of his or her political affiliation (5 CFR 4.2).

(c) *Federal Election Campaign Act Amendments of 1979.* The Federal Election Campaign Act Amendments of 1979, 93 Stat. 1339, prohibit, under threat of criminal penalty, Federal employees from contributing to a person if the person receiving said contribution is the employer or employing authority of the contributor.

§ 20.735–15 Government property.

(a) *General responsibility.* Employees shall be held accountable for Government property and moneys entrusted to them in connection with their official duties. It is each employee's responsibility to protect and conserve Government property and to use it economically and for official purposes only.

(b) *Misuse of Government motor vehicles or aircraft.* Employees shall not willfully use or authorize the use of a Government-owned or leased passenger motor vehicle or aircraft for other than official purposes. Violation of this provision shall automatically result in suspension from duty without compensation, for not less than one month. See 31 U.S.C. 638a(c)(2) and 41 CFR Subpart 114–38.50 for additional interpretation and guidance on official use of motor vehicles or aircraft.

(c) *Embezzlement of Government property.* Employees shall not convert, even temporarily on loan, for personal use any Government property, or equipment; nor use Government purchase authority, even though reimbursement is made, for personal acquisitions (18 U.S.C. 641, 643 and 654).

§ 20.735–16 Indebtedness.

(a) *Employee responsibility.* An employee: (1) Shall pay each just financial obligation (one either acknowledged by the employee or reduced to judgment by a court);

(2) Shall refund salary overpayments, excess travel expense advances, and pay income taxes when due;

(3) Shall pay a final determination of indebtedness for Federal, state or local taxes. Final determination means the last decision that ends those available administrative and judicial appeals and remedies which an employee actively pursues.

(b) *Department responsibility.* The Department will not act as a collection agency for private debts owed by its employees, except as required by law, nor does the Department or any bureau determine the validity or amounts of its employees' disputed debts.

(c) *Access to employees.* Whether by telephone or otherwise, creditors or collectors shall not have access to employees on premises occupied by the Department during working hours. If, nevertheless, the employee is approached during working hours, he or she shall inform the creditor or collector that he or she is not allowed to transact private business during official hours and that any discussions must be held during non-duty hours and away from Departmental premises.

(d) *Disciplinary action.* An employee may be subject to removal or other disciplinary action for his or her failure to meet just financial obligations. A proposal to remove or otherwise discipline an employee for these reasons must be taken only after full consideration for the effect on the Department and any mitigating circumstances over which the employee has no control, such as sickness, accident, or death in the family.

§ 20.735–17 Other conduct.

(a) *Sexual harassment.*—(1) *Definition.* Sexual harassment means deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome.

(2) No employee shall sexually harass another employee of the Executive Branch or a member of the public having business with the Department. All employees and members of the public are entitled to work or conduct official business in an environment free from sexual harassment. Sexual harassment debilitates morale and productivity, and undermines confidence in the fairness and integrity of government. Sexual harassment is, therefore, a form of employee misconduct which shall subject the employee engaging in such conduct to discipline. Sexual harassment also constitutes sex discrimination, which is a prohibited personnel practice, when it affects an employee's employment status or conditions on the basis of conduct related to gender rather than job performance, such as the taking or refusal to take a personnel action, including, but not limited to, promotion of employees who submit to sexual advances or refusal to promote employees who resist or protest sexual overtures. For example, a supervisor who, on or off duty, uses implicit or explicit sexual behavior to control, influence, or affect the career, salary, or job performance of an employee is engaging in sexual harassment, sex discrimination and a prohibited personnel practice.

(3) *Reporting a violation.*

(i) If an employee believes he or she is being or has been sexually harassed, and such harassment relates to his or her employment status or conditions, such as promotion, training, step increase, work assignments, etc., the standard Equal Employment Opportunity complainant process or the appropriate grievance process can be followed. The affected employee may contact either his or her Equal Employment Opportunity Officer or Personnel Specialist for further information concerning these procedures.

(ii) Individuals may also report any incident of sexual harassment to the Inspector General either by using the hotline 343–2424 (local) or 800–424–5081 (long distance) or by writing to Post Office Box 57016, Washington, D.C. 20037.

(iii) Individuals who in good faith report violations of this sexual harassment policy are assured of freedom from restraint, interference, coercion, discrimination or reprisal for reporting violations, and any employee found to have violated this assurance shall be disciplined pursuant to § 20.735–4.

(b) *Scope of authority.* Employees shall not engage in any conduct or activity which is in excess of his or her authority, or is otherwise contrary to any law or departmental policy.

(c) *Selling or soliciting.* Employees and other persons are prohibited from selling or soliciting for personal gain within any building or on any lands occupied or used by the Department. Exception is granted for Department authorized operations, including, but not limited to, the Interior Department Recreation Association, the Indian Arts and Crafts store, and for cafeteria, newsstand, snack bar and vending machine operations which are authorized by the Department for the benefit of employees or the public.

(d) *Gambling activity.* An employee shall not participate in or promote while on duty for the government any gambling activity, including the operation of a gambling device, a lottery or pool, a numbers game for money or property, or the selling or purchasing of gambling slips or tickets. However, this paragraph does not preclude activities:

(1) Necessitated by the employee's law enforcement duties; or

(2) Carried out by employees to solicit their own members for support of employee organizations or welfare funds under policies and procedures approved by the Department.

(e) *Money lending activities.* The practice of money lending between or among employees is to be discouraged. Organized financial lending activities by employees except when officially sponsored by the Department are prohibited. Properly constituted employee credit unions that provide various financial services to employee members are sanctioned.

(f) *Endorsements.* Employees are prohibited from endorsing in an official capacity the proprietary products or processes of manufacturers or the services of commercial firms for advertising, publicity, or sales purposes. Use of materials, products, or services by the Department does not constitute official endorsement.

(g) *Habitual use of intoxicants.* An employee who habitually uses intoxicants to excess may be subject to removal (5 U.S.C. 7352). The provisions of 370 DM 792 should be thoroughly reviewed before considering any such action.

(h) *Community and professional activities.* (1) Employees are encouraged to participate in the activities of professional societies and civic organizations whose purpose and objectives are not inconsistent with those of the bureau in which they are employed.

(2) Participation in professional societies or organizations must not be incompatible with an employee's performance at his or her regularly assigned duties or detrimentally affect the Department's capacity to accomplish its missions.

(3) No Indian Affairs employee may hold a position on a tribal election board, or on a tribal school board which oversees Bureau of Indian Affairs schools. An employee in Indian Affairs may hold an office in other organizations, including organizations involving his or her own tribe in accordance with provisions in § 20.735–29(c).

(i) *Appropriations, legislation and lobbying.*

(1) Unless expressly authorized by Congress, employees are prohibited from using any part of the money appropriated by any enactment of Congress to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any *legislation* or *appropriation* by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; this prohibition does not prevent any employee from communicating to Members of Congress on the request of any Member *or* through proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business (18 U.S.C. 1913). The right of employees, individually or collectively, to otherwise petition Congress or a Member of Congress or to furnish information to either House of Congress, or to a Committee or Member thereof, shall not be interfered with or denied (5 U.S.C. 7211).

(2) Employees are also required to refrain from promoting or opposing legislation relating to programs of the Department without the official sanction of the proper Departmental authority.

(j) *Unlawful organizations.* An employee may not advocate the violent overthrow of our constitutional form of government nor may an employee be a member of an organization that he or she knows advocates the violent overthrow of our constitutional form of government.

(k) *Patents.* Patent regulations issued by the Secretary, 43 CFR Part 6, define the rights and obligations of employees with respect to any inventions made or developed while they are employed in the Department. Under the regulations each employee shall submit a report on any invention made or developed to the Solicitor through supervisory channels. This includes inventions developed on Government time and those developed on the employee's time and with his or her materials.

(l) *Notary.* An employee is prohibited from charging fees for performance of any notarial act for any employee of the Federal Government acting in his or her official capacity or for any person during the hours of such notary's service to the Government (E.O. 977, Nov. 24, 1908).

(m) *Penalty and franked mail and official stationery.* An employee is prohibited from using official Government envelopes, with or without applied postage, or official letterhead stationery for personal business (18 U.S.C. 1719 and 39 U.S.C. 3201 *et seq.*). These statutory requirements prohibit employees from using Government envelopes to mail their own personal job applications.

(n) *Fraud or false statements in a Government matter.* Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly or willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years or both (18 U.S.C. 1001). Special attention is required in the certification of time and attendance reports, applications for employment, requests for travel reimbursement, and purchase orders and receiving forms.

(o) *Use of official title.* Employees are prohibited from using their official titles in conducting private business or participation in private or public group activities. Use is strictly limited to those occasions and circumstances where representation is official.

(p) *Carrying of firearms.* Employees, except those specifically designated to perform enforcement, police or other official duties requiring the use of firearms, are prohibited from carrying or having in their possession firearms on property under the control of the Secretary of the Interior. Employees who are officially stationed in parks, refuges, Indian reservations, other Tribal lands or other wilderness areas which are known to be inhabited by wild animals, are permitted, when on those lands, to carry and use firearms for personal protection as permitted by existing policy or as authorized by the park, refuge or area supervisor. Notwithstanding this paragraph, employees may carry firearms on Departmental lands under the same conditions and in accordance with procedures and authorization established for members of the general public.

(q) *Labor practices.* Employees are prohibited from striking against the Government of the United States (5 U.S.C. 7311). Additional information regarding affiliation with employee organizations is found in the Department Manual, Part 370, Chapter 711, Labor Management Relations.

Subpart C—Conflict of Interest Prohibitions

§ 20.735–20 Scope of subpart.

(a) This subpart deals with restrictions on the outside financial and other interests of employees and on outside work by employees.

(b) General conflict of interest prohibitions based on Executive Order 11222 are contained in § 20.735–21. Statutory prohibitions against conflict of interests found in Federal criminal statutes and in enabling legislation for various Departmental bureaus and programs are summarized in § 20.735–22. Restrictions on outside work are contained in § 20.735–23. The remainder of the subpart consolidates the Department's regulatory prohibitions against ownership of certain interests in areas of special Departmental responsibility: (1) Federal lands, (2) mining activity, and (3) Indians and Alaska natives.

(c) For purposes of applying the prohibitions in § 20.735–24 Interests in federal lands, § 20.735–27 Interests in mining activities, and § 20.735–28 Interests in trading with Indians, of this Subpart, the term "Office of the Secretary and other Departmental Offices reporting directly to a Secretarial Officer" means the following offices:

The Immediate Office of the Secretary
Solicitor
Inspector General
Hearings and Appeals
Congressional and Legislative Affairs
Public Affairs
Executive Secretariat
All Assistant Secretary Immediate Offices
The following offices under the Assistant Secretary—Policy, Budget and Administration
Acquisition and Property Management
Budget
Environmental Project Review
Policy Analysis
Outer Continental Shelf Program Coordination

(d) Except where otherwise indicated, the restrictions contained in this subpart apply without regard to grade level or the requirements of Subpart D for filing of financial interest statements. The individual sections of the subpart explain their applicability to special government employees.

§ 20.735–21 General conflict of interest prohibitions.

(a) This section sets out general conflict of interest restrictions which are applicable to all financial and other interests without regard to the subject matter of the particular interest involved. The restrictions are based on Executive Order 11222 and apply to both regular and special government employees. Violation of these restrictions may subject an employee to the administrative sanctions outlined in § 20.735–4. In addition, in certain instances, a conflict between an employee's outside interests and his or her duties and responsibilities may subject the employee to prosecution under Federal criminal statutes. These statutes are summarized in § 20.735–22 (a) and (b).

(b) *Definitions.* (1) "Conflict" means a situation where:

(i) An employee's public duty is or will be affected by his or her financial interest, or

(ii) An employee's financial interest is or will be affected by decisions he or she makes or operations in which he or she is involved in an official capacity.

(2) "Apparent conflict" means a situation where a member of the public would have reasonable cause to believe that an employee may be in conflict, even though he or she might not be. It is not necessary for an employee to have actually taken a Government action related to private financial interests for there to be an apparent conflict.

(3) "Direct interest" means ownership or part ownership by an employee in his or her own name of lands, stocks, bonds, or other holdings. Direct interest also includes membership or outside employment in a firm.

(4) "Indirect interest" means ownership of a financial interest by an employee in the name of another person where the employee still reaps the benefits. Indirect interest extends to: (i)

Holdings in a corporation that has a subsidiary whose business is related to the employees duties,

(ii) Partnership agreements,

(iii) Sole proprietary or personal relationships where the employee still reaps the benefits,

(iv) The holdings of a spouse or dependent child, and

(v) The holdings of other relatives who live in the employee's personal residence.

See 20.735–1 for definitions of "dependent child" and "personal residence".

Note.—Examples, not all-inclusive, of the types of interests that are *not* covered by the terms "direct interest" or "indirect interest" are: diversified mutual funds, vested pension plans, life insurance investments, state and municipal bonds, U.S. Savings bonds and bank, credit union or loan association savings certificates. Financial interests in other investment clubs may be approved by the appropriate ethics counselor if the club's portfolio is well diversified and independently managed by a licensed investment broker. These examples also apply to the definitions of direct and indirect interests contained in §§ 20.735–24—Interests in federal lands, 26—Interests in mining activities, and 27—Interests in trading with Indians.

(5) "Substantially" means having a significant relationship between either:

(i) The dollar value of the financial interest and the employee's specific official duties, or

(ii) The dollar value of the financial interest and the employee's general position within the Department.

"Substantially" is not measured by percentage of ownership.

Example: An employee who works as a Contracting Officer owns $5,000 worth of stock in a computer company. This employee has a significant relationship between that financial interest and the computer company if either of the following situations exist: (1) He or she is required to deal directly with or make decisions concerning the company, or

(2) He or she may potentially be required to deal with or make decisions concerning the company and it is reasonable for members of the public to perceive of such potential activity as being a conflict of interest.

In the first instance there is a substantial conflict. In the second instance there is a substantial apparent conflict. It is important to understand that for a Personnel Officer a $5,000 interest in the same computer company may not create a substantial conflict or apparent conflict but for the Contracting Officer even a $1,000 interest in that computer company may still be considered substantial.

(6) "Relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, halfbrother, halfsister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiancé or fiancee of the reporting individual.

(c) *Prohibitions.* No employee shall:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her Government duties and responsibilities.

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his or her Government employment.

These prohibitions apply whether or not the employee has to file a financial interest statement.

§ 20.735–22 Statutory prohibitions.

(a) The criminal statutes generally spoken of as the conflict of interest laws, insofar as they relate to regular employees, are 18 U.S.C. 203, 205, 207, 208, and 209. In summary, a regular employee may not in accordance with these statutes: (1) Directly or indirectly receive or solicit compensation for any services rendered by the employee or another on behalf of another person before a Government agency in connection with a particular matter in which the United States is a party or has an interest, except as authorized by law (18 U.S.C. 203).

(2) Except in the discharge of his or her official duties, represent anyone else before a court or Government agency in a particular matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 205).

(3) Participate in his or her governmental capacity in any matter in which he or she, his or her spouse, dependent child, outside business associate, or person with whom he or she is negotiating for employment has a financial interest (18 U.S.C. 208).

(4) After his or her Government employment has ended, represent any other person (except the United States) before a Government agency or court in connection with a particular matter in which the United States is a party or has an interest and in which he or she participated personally and substantially for the Government (18 U.S.C. 207(a)). See § 20.735–61 for more information about this prohibition.

(5) For two years after his or her Government employment has ended, represent any other person (except the United States) before a Government agency or court in connection with a particular matter in which the United States is a party or has an interest and which was actually pending under his or her official responsibility during the last year of his or her Government service (18 U.S.C. 207(b)(i)). This temporary restraint of course gives way to the permanent restraint described in paragraph (4) above if the matter is one in which he or she participated personally and substantially for the Government. See § 20.735–61 for more information about this prohibition.

(6) Receive any salary, or supplementation of his or her Government salary, from a private source as compensation for his or her services to the Government (18 U.S.C. 209).

(b) The criminal conflict of interest statutes summarized in paragraph (a) of this section also apply, in part, to special government employees. In general a special government employee may not: (1) Except as authorized by law, directly or indirectly receive or solicit compensation for any services rendered by the employee or another on behalf of another person before a Government agency in connection with a particular matter in which the United States is a party or has an interest, and in which the employee has at any time participated personally and substantially or which is pending in the Department if he or she has served in the Department for at least 61 days during the preceding 365 days (18 U.S.C. 203).

(2) Except in the discharge of his or her official duties, represent anyone else before a court or Government agency in a particular matter in which the United States is a party or has an interest, and in which the employee has at any time participated personally and substantially or which is pending in the Department if he or she has served in the Department for at least 61 days during the preceding 365 days. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 205).

(3) Engage in any of the activities proscribed by paragraphs (a)(3) through (a)(5) of this section.

(c) In addition to the prohibitions that are generally applicable, the following statutory prohibitions are imposed on specific classes of employees or former employees. These prohibitions apply to

both regular and special government employees within the identified class.

(1) The officers, clerks, and employees in the Bureau of Land Management are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land; and any person who violates this section shall forthwith be removed from his or her office (43 U.S.C. 11). Notwithstanding this prohibition, the Secretary is authorized to sell or lease to a BLM employee, or the spouse of a BLM employee, stationed in Alaska one tract of land, not exceeding five acres, for residence or recreation purposes in the State of Alaska (43 U.S.C. 682a). See § 20.735–24 for prohibitions on interests in Federal lands by employees of the Department generally.

(2) Neither the Director nor any member of the Bureau of Mines, in conducting inquiries and investigations authorized under 30 U.S.C. 1, 3, and 5 to 7 shall have any personal or private interest in any mine or the products of any mine under investigation, nor shall accept employment from any private party for services in the examination of any mine or private mineral property or issue any report as to the valuation or the management of any mine or other private mineral property (30 U.S.C. 6). See § 20.735–27 for prohibitions on ownership of mining interests by employees generally.

(3) "The Director and members of the Geologic Survey shall have no personal or private interests in the lands or mineral wealth of the region under survey, and shall execute no surveys or examinations for private parties or corporations." Members of the Geological Survey are prohibited from holding any personal or private interests, direct or indirect, in lands whose title is in the United States. They are also prohibited from holding personal or private interests, direct or indirect, in the mineral wealth of such lands (43 U.S.C. 31(a)). See § 20. 735–24 for prohibitions on interests in Federal lands and resources by employees of the Department generally.

(4) No person employed in Indian Affairs shall have any interest or concern in any trade with the Indians. See § 20.375–28 for prohibitions and exceptions concerning trade with Indians. Any person violating this prohibition shall be liable to a penalty of $5,000, imprisoned not more than six months, or both and shall be removed from his or her office. (Sec. 1, Pub. L. 96–277, 94 Stat. 544.)

(5) No employee of the Office of Surface Mining Reclamation and Enforcement and no other federal employee who performs functions or duties under the Surface Mining Control and Reclamation Act shall have any direct or indirect financial interest in surface or underground coal mining operations (30 U.S.C. 1211(f)). Regulations implementing this prohibition are found in 30 CFR Part 706 and in § 20.735–26 of this part.

(6) For two years after his or her Government employment has ended, no former Senior Employee may assist, by personal appearance, in the representation of any other person (except the United States) in connection with an appearance before the Government on any particular matter in which the United States is a party or has an interest and in which he or she participated personally and substantially (18 U.S.C. 207(b)(ii)). For purpose of this prohibition and the prohibition in paragraph (7) below, the term "Senior Employee" is defined in § 20.735–61(a)(5) and 5 CFR 737.25. See § 20.735–61 and 5 CFR Part 737 for more information on this prohibition.

(7) For one year after his or her Government employment has ended, no former Senior Employee of the Department of the Interior may represent himself or herself or anyone other than the United States in appearing before or attempting to influence the Department on a matter pending before, or of substantial interest to, the Department (18 U.S.C. 207(c)). See § 20.735–61 and 5 CFR Part 737 for more information about this prohibition.

(8) An employee appointed to a grade GS–16 or higher non-judicial fulltime position by the President, by and with the advice and consent of the Senate, may not have in any calendar year outside earned income, including honorariums, attributable to such calendar year which is in excess of 15 percent of his or her salary (Pub. L. 95–521, § 210, 92 Stat. 1850).

(d) No partner of a regular or special government employee of the Department may represent anyone other than the United States before a Government agency or court in connection with a particular matter in which the United States is a party or has an interest and in which such employee participates or has participated personally and substantially, or which is the subject of his or her official responsibility (18 U.S.C. 207(g)).

§ 20.735–23 Outside work and interests.

(a) *Definitions.* (1) "Outside Work" means all gainful employment other than the performance of official duties, including, but not limited to, self-employment, working for another employer, the management or operation of a private business for profit (including personally-owned businesses, partnerships, corporations, and other business entities).

(2) "Outside activity" means outside work, lectures, consultations, discussions, writings, appearances and other similar activities.

(3) "Active proprietary management" means an outside work business affiliation in which ownership is coupled with responsibility for day-to-day management efforts in making decisions, supervising operations, dealing with the public, and otherwise discharging essential tasks in the direction of the business.

(b) *General policies and prohibitions.* (1) Outside work is permitted to the extent that it does not prevent a regular employee from devoting his or her primary interests, talents, and energies to the accomplishments of his or her work for the department or create a conflict or apparent conflict between the private interests of a regular or special government employee and the employee's official responsibilites. A regular or special government employee's outside work shall not reflect discredit on the United States or the Department.

(2) Active proprietary management by a regular employee of any except the smallest business is questionable because of the probability that such management responsibilities may interfere with the employee's obligations to his or her primary employer, the Federal Government. Employees are especially urged to seek the advice of their ethics counselors before committing themselves to such activities.

(3) Outside work or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of a regular or special government employee's Government employment is prohibited. Incompatible activities include but are not limited to outside work which tends to impair the employee's mental or physical capacity to perform his or her Government duties and responsibilities in an acceptable manner. Any work assignment or employment affiliation which might encourage on the part of members of the general public a reasonable belief of a conflict of interest falls into this category. In this connection, it is not necessary that there be an actual conflict of interest before applying this policy. The fact that the general public could logically perceive a conflict of interest is enough for a determination that the work or activity be prohibited.

(c) *Specific regulatory prohibitions applicable to regular employees.* (1) A

regular employee shall not perform outside work or outside activity which: (i) Is of such a nature that it may be reasonably construed by the public to be the official act of the Department,

(ii) Involves the use of Government facilities, equipment, and supplies which are not routinely available to the public for similar use,

(iii) Involves the use of official information not available to the public,

(iv) Involves outside work of a sensitive nature for a person or enterprise that has or is seeking to obtain contractual or other business or financial relations with the employee's bureau,

(v) Involves outside work of a sensitive nature for a person or enterprise that conducts operations or activities that are regulated by the Department, or

(vi) Involves a person or enterprise that has interests that may be substantially affected by the performance or non-performance of the employee's official duties.

Note.—"Sensitive nature" means a job the duties and responsibilities of which (i) require or authorize the individual to formulate, determine, or influence the policies of the organization or (ii) create a substantial appearance of conflict of interest, or

(2) While a regular employee is not prohibited from performing outside work or other outside activity solely because the work is of the same general nature as the work he or she performs for the Department such an employee may not perform outside work if: (i) The work that the employee would be expected to do is substantively the same as that required by his or her regular duties; or

(ii) The work involves active proprietary management of a business closely related to the official work of the employee; or

(iii) The work would tend to influence the exercise of impartial judgment on any matters coming before the employee in the course of his or her official duties.

(3) Regular Bureau of Land Management employees are prohibited from working as real estate agents and realty specialists and appraisers employed in Indian Affairs are prohibited from working as real estate agents or appraisers. Such employees, however are not required to cancel a real estate license, but, rather, may maintain the license on an inactive basis.

(4) A regular employee shall not use his or her Government employment to influence or coerce, or give the appearance of influencing or coercing, a person to provide financial benefit to the employee or another person with whom he or she has family, business or financial ties.

(5) A regular employee shall not be granted leave without pay to engage in outside work or other outside activity unless granting such leave is done in accordance with and in consideration of civil service rules and regulations governing leave without pay.

(d) *Specific regulatory prohibitions applicable to special government employees.* (1) A special government employee shall not perform outside work or outside activity which:

(i) Is of such a nature that it may be reasonably construed by the public to be the official act of the Department,

(ii) Involves the use of Government facilities, equipment, and supplies which are not routinely available to the public for similar use,

(iii) Involves the use of official information not available to the public, or

(iv) Involves a person or enterprise that has interests that may be substantially affected by the performance or non-performance of the employee's official duties.

(2) While a special government employee is not prohibited from performing outside work or other outside activity solely because the work is the same general nature as the work he or she performs for the Department, such an employee may not perform outside work if: (i) The work is such that the employee would be expected to do it as a part of his or her regular duties; or

(ii) The work would tend to influence the exercise of impartial judgment on any matters coming before the employee in the course of his or her official duties.

(3) A special government employee shall not use his or her Government employment to influence or coerce, or give the appearance of influencing or coercing, a person to provide financial benefit to the employee or another person with whom he or she has family, business or financial ties.

(e) *Statutory restrictions related specifically to outside work and activity.* (1) A regular employee shall not receive any salary or anything of monetary value from a private source as compensation for services to the Government (18 U.S.C. 209). This statute does not apply to a regular employee serving without compensation, nor does it prevent an employee from: (i) Continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit sharing, stock bonus or other employee welfare or benefit plan maintained by a former employer;

Note.—Continued participation in stock options or profit sharing benefit plans maintained by a former employer may be prohibited by other statutory requirements, or

(ii) Accepting contributions, awards, or other expenses under 5 U.S.C. 4111 as amended by Pub. L. 96-54, 93 Stat. 381; or

(iii) Accepting payment by his or her former private employer of actual relocation expenses incident to participation in an executive exchange or fellowship program in the Department, provided that such program has been established by statute or Executive Order, offers appointments not to exceed 365 days, and permits no extensions in excess of 90 additional days.

(2) A regular or special Bureau of Mines employee may not work on any private report as to the valuation or the management of any mine or other private mineral property with or without remuneration (30 U.S.C. 6).

(3) A regular or special Geological Survey employee may not work on any surveys or examinations for private parties or corporations with or without remuneration (43 U.S.C. 31(a)).

(4) An employee appointed to a grade GS-16 or higher non-judicial full-time position by the President, by and with the advice and consent of the Senate, may not have in any calendar year outside earned income, including honorariums, attributable to such calendar year which is in excess of 15 percent of his or her salary (Pub. L. 95-521, § 210, 92 Stat. 1850). See § 20.735-11 for more information on honorariums.

(f) *Exceptions.* This section does not preclude an employee from: (1) Participation in the activities of national or state political parties which are not otherwise prohibited by law. (See § 20.735-15)

(2) Participation in the affairs of, or acceptance of an award for, meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

(g) *Notification requirements.* (1) Except for U.S. Mineral Surveyors, a regular or special government employee engaged in outside work shall report that work to his or her immediate supervisor if the work is to be performed frequently or on a standardized schedule.

(2) Each report shall contain: (i) A description of the outside work,

(ii) An estimate of the number of hours per week spent engaged in the outside work, and

(iii) A statement of the employee's opinion of any apparent or potential

conflict of interest between the work and his or her official duties.

(3) Each report shall be reviewed by the employee's supervisor and a determination shall be made by the supervisor whether there is compliance with the regulations in this section. Supervisors may seek the assistance of the appropriate ethics counselors in arriving at a determination. Reports revealing potential problems should be sent to the *bureau* deputy ethics counselor for review. Each bureau Deputy Ethics Counselor shall:

(i) Maintain a file of each report for the duration of an individual's employment with the Department or until the employee notifies the counselor or supervisor in writing that the outside work has ended.

(ii) Take remedial action to correct any situations, which violate the policies, prohibitions or restrictions in this section.

(h) *Requests for approval or guidance.* (1) Bureaus may require employees to obtain approval to engage in outside work by issuing supplementary requirements.

(2) Employees who are uncertain about the propriety of a potential outside work or outside activity situation should seek guidance from their appropriate Ethics or Deputy Ethics Counselor prior to engaging in outside work or activity.

§ 20.735–24 Interests in Federal lands

(a) *Definitions.* (1) "Federal lands" means lands or resources or an interest in lands or resources administered or controlled by the Department of the Interior, including, but not limited to, the Outer Continental Shelf.

(2) "Outer Continental Shelf" means all submerged lands lying seaward outside of the area of "lands beneath navigable waters" as defined in 43 U.S.C. 1301(a), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(3) "Direct interest in federal lands" means any ownership or part ownership in federal lands or any participation in the earnings therefrom, or the right to occupy or use the property or to take any benefits therefrom, based upon a lease, permit, easement, rental agreement, or application, or upon any formal or informal contract with a person who has such an interest. Direct interest in federal lands also includes: (i) Membership or outside employment in a firm which has such an interest, and

(ii) Ownership of stock or other securities in a corporation which has interests in federal lands.

(4) "Indirect interest in federal lands" means ownership or part ownership of an interest by an employee in the name of another where the employee still reaps the benefits. Indirect interest in federal lands also includes: (i) Holdings in a corporation that has a subsidiary with lease, contract, other use permit or financial interests in federal lands, and

(ii) Holdings in land, mineral rights, grazing rights or livestock which in any manner is connected with or involves the use of the resources or facilities of the federal lands, and (iii) the holdings of a spouse or dependent child.

Refer to Note in 20.735–21(b)(4) for examples of the kinds of interests that are not covered.

(b) *Prohibitions.* (1) The Director and members of the U.S. Geological Survey and of the Bureau of Land Management are prohibited from: (i) Voluntarily acquiring a direct or indirect interest in federal lands; or

(ii) Retaining an interest in federal lands acquired voluntarily or by any other method, before or during employment by the Department.

(2) The Secretary and employees of the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer, who are in merit-pay positions as described in 5 U.S.C. 5401(b)(1), are prohibited from: (i) Voluntarily acquiring a direct or indirect interest in federal lands.

(ii) Retaining an interest in federal lands acquired voluntarily or by any other method before or during employment by the Department. *See 20735–20(c) for the definition of Office of the Secretary and other Departmental Offices.*

(3) All employees not identified in § 20.735–24(b) (1) and (2) are prohibited from acquiring or retaining any claim, permit, lease, small tract entries, or other rights in federal lands either in their own name or in the name of their spouse, dependent child, or solely-owned or family-owned business except that they may acquire or retain such interests in accordance with the waiver criteria in § 20.735–24(e). Also, such employees may purchase or retain stocks or securities traded on the open market in companies having interests in federal lands, provided that such acquisition will not interfere or appear to interfere with the proper and impartial performance of their official duties.

(4) No employee whose duties are connected in any way with federal lands, may hold a direct or indirect financial interest in federal lands that conflicts substantially or appears to conflict substantially with his or her Government duties or responsibilities.

(c) The prohibitions of this section apply to both regular and special government employees.

(d) *Exceptions.* (1) A Bureau of Land Management employee (or the spouse of a Bureau of Land Management employee) stationed in Alaska, may purchase or lease one tract of land, not exceeding five acres, for residence or recreation purposes in that state.

(2) Except for U.S. Mineral surveyors an individual employed on an intermittent or seasonal basis for a period not exceeding 180 working days in each calendar year, and a special government employee engaged in field work relating to land, range, forest, and mineral conservation and management activities, and the spouse of such an individual shall not be precluded from retaining any interest, including renewal or continuation of existing rights, in federal lands, provided that such an individual or his or her spouse shall not acquire any additional interest in federal lands during employment.

(3) An employee or any member of an employee's family may acquire wild free-roaming horses or burros from federal lands for maintenance and protection through a cooperative agreement entered into in accordance with 43 CFR 4740.e and 4740.4–2.

(4) Nothing in this section shall prohibit the recreational or other personal and noncommercial use of the federal lands by an employee, the employee's spouse or minor child, on the same terms as use of the federal lands is available to the general public.

(e) *Waivers.* (1) The Designated Agency Ethics Official may approve the retention of an interest in federal lands for employees identified in § 20.735–24(b) when there is little or no relationship between the employee's functions or duties and the particular interest in federal lands and: (i) The employee, or the spouse, minor child or relative of the employee, acquired such an interest by gift, devise, bequest, or operation of law, or

(ii) The employee, or the spouse, minor child or relative of the employee, acquired such an interest prior to the time the employee entered on duty in the Department, or

(iii) In the case of stock or securities traded on the open market, divestiture would constitute a financial hardship.

(2) No waiver is needed for holding an interest consistent with paragraph (d) of this section.

(3) Each request for waiver must consist of: (i) A written request submitted to the Department Ethics Counselor within 90 days from the effective date of these regulations or

within 60 days of employment by the Department or acquisition of the holding,

(ii) A full and complete disclosure of the interest in federal lands,

(iii) A disclosure of the date and manner of acquisition (evidence to support this information may be required),

(iv) An explanation of why denial of the right to retain such interests will work a hardship upon the employee, and

(v) An opinion explaining why retention of the interest will not be contrary to the interests of the Department.

(4) Waivers for U.S. Geological Survey and Bureau of Land Management employees shall not be permitted where retention of the interest violates 43 U.S.C. 31(a) or 43 U.S.C. 11, respectively.

(f) *Advisory councils.* Nothing contained in this section shall disqualify individuals appointed pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1739, as members of advisory boards or councils from acquiring or retaining grazing licenses or permits issued pursuant to Section 3 of the Taylor Grazing Act (43 U.S.C. 315b), or any other interest in land or resources administered by the Bureau of Land Management: Provided, that in no case shall the member of any such board or council participate in any advice or recommendation concerning such license or permit in which such member is directly or indirectly interested.

(g) *Requests for advice.* When an employee is in doubt as to whether the acquisition or retention of any interest in lands or resources administered by the Department would violate the provisions of this section, a statement of the facts should be submitted promptly by the individual involved to his or her Ethics Counselor for transmittal to the Designated Agency Ethics Official for guidance.

§ 20.735–26 Interests in underground or surface coal mining operations.

(a) *Definitions.* (1) "Direct financial interest in underground or surface coal mining operations" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests also include employment, pensions, creditor, real property and other financial relationships.

(2) "Indirect financial interest in underground or surface coal mining operations" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests including interests held by his or her spouse, dependent child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, dependent children or other resident relatives hold a financial interest.

Refer to Note in § 20.735–21(b)(4) for examples of the kinds of interests that are not covered.

(3) "Coal mining operation" means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite or lignite or of reclaiming the areas upon which such activities occur.

(4) "Performing any function or duty under the Surface Mining Control and Reclamation Act of 1977" means those decisions or actions, which if performed or not performed by an employee, affect the programs under that Act.

(b) *Prohibitions.* (1) Neither the Director nor any member of the Office of Surface Mining Reclamation and Enforcement shall have a direct or indirect financial interest in underground or surface coal mining operations. The Assistant Secretary—Energy and Minerals, her or his staff, and no other employee performing any function or duty under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1200 *et seq.*) shall have a direct or indirect financial interest in underground or surface coal mining operations. Section 201(f) of the Act provides that anyone who knowingly violates these prohibitions shall, upon conviction, be punished by a fine of not more than $2,500, or by imprisonment for not more than one year, or both.

(2) No other employee whose duties are connected in any way with coal mining activities may hold a direct or indirect financial interest in underground or surface coal mining operations or in mining enterprises conducting coal mining activities, when that financial interest conflicts substantially or appears to conflict substantially with his or her government duties or responsibilities (Executive Order 11222).

(c) The prohibitions of this section apply to both regular and special government employees.

(d) Employees are encouraged to review regulations contained in 30 CFR Part 706 which pertain to the prohibitions of this section.

§ 20.735–27 Interests in mining activities.

(a) *Definitions.* (1) "Direct interest in mining activities" means ownership or part ownership in mining activities or any participation in the earnings therefrom or the right to take any benefits therefrom based upon lease, permit, rental agreement, application, or upon any formal or informal contract with a person who has such an interest. Direct interest also includes: (i) Membership or outside employment in a firm which has such an interest,

(ii) Ownership of stock or other securities in a corporation which has interests in mining activities, and

(iii) The holdings of a spouse or child.

(2) "Indirect interest in mining activities" means ownership or part ownership of an interest in mining activities by an employee in the name of another person where the employee still reaps the benefits. Indirect interest in mining activities also includes: (i) Holdings in a corporation that has a subsidiary with financial interests in mining activities,

(ii) Holdings in lands or rights which in any manner are connected with mining activities, and (iii) The holdings of a spouse or dependent child.

Refer to Note § 20.735–21(b)(4) for examples of the kinds of interests that are not covered.

(3) "Mining activities" means any mining operations which: (i) Involve exploration, development, or extraction of oil, gas, coal or other minerals, or reclamation of lands after extraction, and

(ii) Are or will be affected by programs, policies, research or other actions initiated by this Department.

(4) "Investigation" means inquiries, scientific and technological research, tests and other activities conducted under provisions in 30 U.S.C. 1, 3, and 5 to 7.

(5) "Mine or products of any mine" means the specific mine or products of the specific mine under investigation and does not include other mines or the products of other mines owned by a company or other entity that are not under investigation.

(6) "Inside information" means Government information that is not available to members of the public upon request or through libraries.

(7) "Private mining enterprise" means any business organization involved in mining activities.

(b) *Prohibitions.* (1) Neither the Director nor any member of the Bureau of Mines shall: (i) Have any personal or private interest in any mine or the

products of any mine under investigation;

(ii) Accept employment from any private party for services in the examination of any mine or private mineral property;

(iii) Issue any report as to the valuation or the management of any mine or other private mineral property; or

(iv) Use inside information obtained in the collection of mineral or energy resources statistics for private gain.

(2) Neither the Director nor any member of the Geological Survey shall hold substantial personal or private interests, direct or indirect, in any private mining activities in the United States. The Director of Geological Survey may authorize exceptions to this restriction for cause on an individual basis.

(3) The Secretary and employees of the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer who are in merit pay positions described in 5 U.S.C. 5401(b)(1) are prohibited from: (i) Having any personal or private interest in any mine or the products of any mine under investigation by Bureau of Mines employees;

(ii) Accepting employment from any private party for services in the examination of any mine or private mineral property;

(iii) Issuing any report as to the valuation or the management of any mine or other private mineral property; and

(iv) Using inside information obtained in the collection of mineral or energy resources statistics for private gain. *See § 20.735–20(c) for the definition of Office of the Secretary and Other Departmental Offices.*

(4) No employee whose duties are connected in any way with mining activities may hold a direct or indirect interest in a mining activity or in a mining enterprise conducting mining activities when that interest conflicts substantially or appears to conflict substantially with his or her government duties or responsibilities. This prohibition derives from Executive Order 11222 and therefore applies to the interests of a spouse, dependent child or other relative who lives in the employee's home.

(c) The prohibitions of this section apply to both regular and special government employees.

(d) The Bureau of Mines may temporarily employ in a consulting capacity or in the investigation of special subjects, any engineer or other expert whose principal professional practice is outside of employment by the Bureau of Mines as permitted in 30 U.S.C. 6.

(e) *Waivers.* (1) The Designated Agency Ethics Official may approve the retention of an interest in mining activities for employees identified in § 20.735–27(b) when there is little or no relationship between the employees functions or duties and the particular interest in mining activities, and: (i) The employee or the spouse, dependent child or relative of the employee acquired such an interest by gift, devise, bequest, or by operation of law, or

(ii) The employee or the spouse, dependent child or relative of the employee acquired such an interest prior to the time the employee entered on duty in the Department, or

(iii) In the case of stock or securities traded on the open market, divestiture would constitute a financial hardship, and when

(2) Each request for waiver must consist of: (i) A written request submitted to the Designated Agency Ethics Official within 90 days from the effective date of these regulations or within 60 days of employment by the Department or acquisition of the holding,

(ii) A full and complete disclosure of the interest in mining activities,

(iii) A disclosure of the date and manner of acquisition (evidence to support this information may be required),

(iv) An explanation of why denial of the right to retain such interests will work a hardship upon the employee, and

(v) An opinion explaining why retention of the interest will not be contrary to the interest of the Department.

(3) Waivers shall not be applicable to cases where retention of the interest violates a statutory prohibition.

§ 20.735–28 Interests in trading with Indians.

(a) *Definitions.* For the purposes of this section,

(1) "Trade" means buying, selling, or bartering services, commodities or property with or without the use of money; and

(2) "Indian" means any member of an Indian tribe recognized as eligible for the services provided by the Bureau of Indian Affairs who is residing on a Federal Indian Reservation, on land held in trust by the United States for Indians, or on land subject to a restriction against alienation imposed by the United States. The term shall also include any such tribe and any Indian owned or controlled organization located on such a reservation or land.

(b) *Prohibitions.* No employee in Indian Affairs shall: (1) Have (other than as a lawful representative of the United States) any interest, in his or her own name, or in the name of another person where such employee benefits or appears to benefit from such interest—

(i) In any contract made or under negotiation with any Indian, for the purchase, transportation, or delivery of goods or supplies for any Indian, or

(ii) In any purchase or sale of any service of real or personal property (or any interest therein) from or to any Indian, or colludes with any person attempting to obtain any such contract, purchase, or sale.

(2) Make any purchase from or sale to an Indian of any real or personal property (or any interest therein) for the purpose of commercially selling, reselling, trading, or bartering such property; or

(3) Have any interest in any purchase or sale involving property or funds which are either held in trust by the United States for Indians or which are purchased, sold, utilized, or received in connection with a contract or grant to an Indian from the Bureau of Indian Affairs or the Indian Health Service, if such officer, employee, or agent is employed in the office or installation of such Bureau or Service which recommends, approves, executes, or administers such transaction, grant, or contract on behalf of the United States except as authorized by 18 U.S.C. 437(b)(2)(B), as amended by Sec. 1, Pub. L. 96–277, 94 Stat. 544.

(4) Acquire any interest in property held in trust, or subject to restriction against alienation imposed, by the United States unless the conveyance or granting of such interest in such property is otherwise authorized by law.

(c) *Extension of the prohibitions.* (1) The prohibitions in § 20.735–28(b) shall apply to the Secretary and employees of the Office of the Secretary and Other Departmental Offices reporting directly to a Secretarial officer who are in merit pay positions as described in 5 U.S.C. 5401(b)(1). *See § 20.735–20(c) for the definition of Office of the Secretary and Other Departmental Offices.*

(2) The Designated Agency Ethics Official may grant a waiver to such employees when denial of the right to trade with Indians will work a hardship upon the employee, and for other good cause.

(d) The prohibitions of this section apply to both regular and special government employees covered by § 20.735–28 (b) and (c).

(e) *Exceptions.* (1) Nothing contained in this section shall be construed as

preventing any employee in Indian Affairs who is an Indian, of whatever degree of Indian blood, from obtaining or receiving any benefit or benefits made available to Indians generally or to any member of his or her particular tribe, under any Act of Congress, nor to prevent any such employee who is an Indian from being a member of or receiving benefits by reason of his or her membership in any Indian tribe, corporation, or cooperative association organized by Indians, when authorized under such rules and regulations as the Secretary or his designee shall prescribe.

(2) Employees in Indian Affairs, the Office of the Secretary and Other Departmental Offices may be permitted to trade with Indians or Indian organizations under rules or regulations prescribed by the President or his designee.

(f) *Penalties.* In addition to divestiture or disciplinary action, any person employed in Indian Affairs who violates the prohibitions contained in § 20.735–28(b) shall be liable to a penalty of $5,000 or imprisoned not more than six months or both, and shall be removed from his or her office notwithstanding any other provision of law concerning termination from Federal employment.

§ 20.735–29 Indian and Alaska Native organizations.

(a) *Definition.* The term "representative" means the occupant of an elective or other position in official governing body of the tribe, band, pueblo or corporation, or any position of the governing body which carries with it the right to vote in the proceedings of the body or to make substantial decisions on behalf of the governing body.

(b) *General restrictions.* Under the authority granted by 25 U.S.C. 472, the Secretary has determined that Indian and Alaska Native employees, whether regular or special government employees, are subject to the provisions of this part.

(c) *Interest in tribal affairs.* Many Indian or Alaska Native employees of the Department, especially within the Bureau of Indian Affairs, are members of federally-recognized tribes, bands, pueblos or corporations created under the Alaska Native Claims Settlement Act. These employees cannot absolve themselves of tribal membership or ownership in Indian or Alaska Native corporations. By law and policy, the Bureau of Indian Affairs must give preference to Indians in all personnel actions, and the Bureau is continually pursuing the policy of Indian Self-determination. In recognition of these factors, membership in an Indian tribe, band or pueblo which receives services from Interior, or ownership of interests in an Indian corporation established under the Indian Reorganization Act or Alaska Native corporation established under the Alaska Native Claims Settlement Act, shall not be considered a conflicting interest except as restricted by the provisions of this section. Ownership of interests in an Indian or Alaska Native corporation shall be reported by the employee on the statement of employment and financial interests whenever such a statement is required.

(1) No person employed in Indian Affairs may hold a position on a tribal election board or on a tribal school board which oversees Bureau of Indian Affairs schools. Except for membership on a tribal election board and a tribal school board which oversees Bureau schools, an eligible person employed in Indian Affairs may, with the approval of the Deputy Assistant Secretary—Indian Affairs, become a candidate for office in his or her local tribe or may be appointed as a representative of his or her local tribe, if in the Deputy Assistant Secretary's judgment no real or apparent conflict of interest is created. *See § 20.735–21(b) for definitions of real and apparent conflict of interest.* Requests will be handled on a case-by-case basis and, if approved, will require that such duties be carried out while on: (i) Off duty hours,

(ii) Leave without pay,

(iii) Administrative leave, or

(iv) An Intergovernmental Personnel Act assignment.

If service is provided to a tribe or Alaska Native Corporation in accordance with these special conditions, the employee may not thereafter, if the tribal organization with which he or she served is within the jurisdiction or area of responsibility of the office to which the employee is assigned, participate in his or her governmental capacity in a decision or recommendation involving a particular matter in which he or she participated while serving the tribal organization. It is the duty of the employee to identify to his or her supervisor the extent of participation in tribal matters and to request, when appropriate, to be relieved from acting on such matters in his governmental capacity.

(2) An Indian or Alaska Native may hold in the Bureau of Indian Affairs a policy or decisionmaking position, as defined in the Bureau of Indian Affairs Manual Part 735, on his or her home reservation, Area Office, or in the Central Office, with approval of the Deputy Assistant Secretary—Indian Affairs when the following conditions are met: (i) During tenure the employee does not lease land more than $500 in value per year from the tribe or Alaska Native corporation for his or her personal benefit. The Deputy Assistant Secretary—Indian Affairs may authorize exceptions from the $500 limitation on an individual basis for cause;

(ii) There is divestiture of any tribal financial interest (as well as any personal outside financial interest) that creates an apparent or actual conflict situation, unless such divestiture is precluded by law or the Deputy Assistant Secretary—Indian Affairs determines that factors, such as, but not limited to, tribal custom or severe financial hardship, provide a basis for authorizing an individual exception;

(iii) Acquisition of Indian lands is limited to five (5) acres or less during tenure in office and may be further restricted to no acquisition of Indian lands if the employee presently holds any Indian lands;

(iv) Acquisition of any loans or grants through the tribal governing body is prohibited during tenure in office by the employee, spouse, dependent children or other relatives residing in the employee's home. As an exception, loans or grants are not prohibited for Higher Education and Adult Vocational Training programs;

(v) Any personal indebtedness to the tribal governing body is settled in full prior to appointment. The Appointing Office many grant extensions not to exceed 90 days after appointment; and

(vi) Any other specific conflict is satisfactorily resolved.

(3) An Indian or Alaska Native employee shall not make nor participate in a substantial manner in any decision of the Department if he or she has a private direct interest, as defined in § 20.735–21, in the results of the decision. If the decision is one which the employee would be expected to make if he or she had no direct interest, the matter shall be referred to the next higher authority of the Department which does not have such private direct interest in an appropriate form but without recommendation by the employee having a direct private interest.

(4) The restrictions stated in this section shall apply to temporary and intermittent employees and consultants employed by the Department, except employees or consultants who are members of boards or other organizations which have as a principal purpose consultation with the

Department related to Indians and Alaska Natives.

(d) *Special conditions for Bureau of Indian Affairs employees.* Approval may not be granted to Bureau of Indian Affairs employees to serve in a key decisionmaking role at their home agency or area office if a close relative or family member holds an elected position with any tribe under the jurisdiction of the home agency or area office. For the purpose of this condition, family members are defined as: father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

Subpart D—Financial Reporting Requirements

§ 20.735–30 Executive order filing requirements.

(a) *General information.* By provisions contained in Executive Order 11222 and implementing civil service regulations in 5 CFR 735.401, the Department has a responsibility to obtain financial interest statements from certain employees, to review those statements and to determine if, on the basis of the information provided, there is a conflict or an apparent conflict of interest with an individual's official duties. Any employee required to file any statement of employment and financial interests under this subpart shall be given an opportunity for review through the Department's appeal procedures (§ 20.735–43) as to whether his or her position has been properly designated as one to which the filing requirement attaches.

(b) *Who shall file.* (1) All regular employees who occupy a position designated as GS (or GM)–15.

(2) Presidential Interchange Executives and other employees on loan to the Department from industry or other non-government agencies.

(3) Special Government employees as provided in Subpart F of this part.

(4) Regular employees on temporary assignment or detail to the Department or within the Department.

(i) In some instances, temporary assignments or details will involve employees in policy or decisionmaking situations different from those in the employee's regular position. An employment and financial interest statement may be necessary, either because the position to which the employee is temporarily assigned is listed in Appendix C to these regulations, or because the bureau head, task force leader, or project manager, may decide the temporary or detail position requires it.

(ii) In these instances, the temporarily assigned or detailed employee shall file an employment and financial interest statement before the effective date of the assignment or detail, or, if the employee has a statement on file, it shall be updated and reviewed by the applicable Ethics Counselor for interests which conflict or might conflict with the employee's new duties. Each bureau is responsible for implementing this paragraph.

(iii) Employees assigned or detailed for 30 days or less are exempt from the filing requirement.

(5) Each regular employee whose position is listed in Appendix C to this part. The head of each bureau will annually review and update the related portion of Appendix C to this part. Proposed revisions or a certification that revision is not required shall be submitted to the Designated Agency Ethics Official by no later than October 31 of each year. The Secretary may revise Appendix C by the addition or deletion of positions at any time he or she determines such revisions are required to carry out the purpose of statute, the Executive Order, Office of Personnel Management regulations, or the regulations of this part. Additions to, deletions from, and other amendments of the list of positions in Appendix C are effective upon actual notification to the incumbents. Appendix C shall be submitted annually for publication within the Department. Copies of Appendix C shall be available from the Designated Agency Ethics Official. Positions shall be included in Appendix C pursuant to the following criteria: (i) Positions designated as GS (or GM)–13 or GS (or GM)–14 (or comparable pay level) with duties and responsibilities which require making a Government decision or taking a Government action which could result in a direct conflict of interest. Examples (not all-inclusive) of such duties are: (A) Contracting and procurement.

(B) Administering or monitoring grants, loans or subsidies.

(C) Selecting concessioners, approving or administering concessions contracts, or approving concessions management policies.

(D) Regulating, auditing, or inspecting a private or other non-Federal enterprise.

(E) Recommending policy for private or other non-Federal enterprise.

(F) Sitting on special committees that may influence policies on a private or other non-Federal enterprise.

(G) Appraising or acquiring real estate for the Government.

(H) Enforcing Federal laws.

(I) Conducting other activities where the decision or action has an economic impact on the interests of any private or other non-Federal enterprise.

(ii) Positions designated as GS (or GM)–13 or GS (or GM)–14 (or comparable pay level) with the duties and responsibilities which may result in actions that create an apparent conflict of interest. Examples (not all-inclusive) of such duties are: (A) Participation in the decisionmaking process on matters that may affect a private or other non-Federal enterprise.

(B) Planning or developing activities that may affect a private or other non-Federal enterprise.

(C) Reviewing results of program operations or administration.

(D) Meeting with public media personnel or preparing and disseminating public information.

(E) Supervising others who must file employment and financial interest statements.

(F) Analyzing or reviewing economic data relating to or of potential value to a non-Federal enterprise.

(G) Conducting any other activities that could have an economic impact on the interests of any private or other non-Federal enterprise.

(iii) Positions classified at GS–12 or below which have the approval of the Office of Personnel Management and meet one or more of the following criteria: (A) Have duties similar to those of a GS (or GM)–13 in the same occupation and in those areas of responsibility where a significant potential for conflict of interest exists.

(B) Require a minimum of supervision either because the nature of the job is similar to a GS or GM–13 or because of remote location in performing such a job.

(C) Involve the making of Government decision that directly affects the economic interests of any private or other non-Federal enterprise.

(D) Provide the opportunity to influence Government decisions that directly affect the economic interests of any private or other non-Federal enterprise.

(c) *When to file.* The Ethics Counselors shall notify each employee covered by this section and furnish the necessary form or forms to the employee by December 15 of each year. The employee shall file a completed statement of employment and financial interest with the appropriate Ethics Counselor: (1) By no later than February

1 of each year showing holdings and interests for the prior calendar year; or

(2) Within thirty days after notification that some recent action on his or her position now requires the submission of a statement; or

(3) At the time of entrance on duty if a new employee. Persons transferring between bureaus will be treated as new employees.

(4) Nothing in these regulations shall prevent a potential employee from volunatarily filing a financial interest statement in order to determine if their financial interests will create a conflict of interest with the job they are seeking. Statements voluntarily filed before entrance on duty shall be reviewed immediately, shall not be copied and shall be returned to the potential employee within 1 week.

(d) *What to report.* An employee required to report under the Executive Order shall file a statement listing: (1) The names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational institutions in which the employee, spouse, dependent child or other relatives who are full-time residents of the employee's immediate household have: (i) A continuing financial interest through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or

(ii) Any financial interest through the ownership of stock, stock options, bonds, securities or other arrangements including trusts;

(2) Interests in real property or rights in lands in which the employee, spouse, dependent child or other relatives who are full-time residents of the employee's immediate household have an interest, other than property which the employee occupies as a personal residence;

(3) The names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions with which the employee is connected as an employee, officer, owner, director, trustee, partner, adviser, or consultant;

(4) The names of the employee's creditors, other than those to whom the employee is indebted by reason of a mortgage on property which is occupied as his or her personal residence or to whom he or she is indebted for current and ordinary household and living expenses; and

(5) Retirement benefits, vested rights to retirement benefits, or investments in self-employment or individual retirement plans.

(e) *What not to report.* An employee is not required to report any connection with, or interest in: (1) A professional society;

(2) A charitable, religious, social, fraternal, recreational, public service, civil, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests;

(3) Holdings in widely held mutual funds, investment clubs or regulated investment companies not specializing in a particular industry; or

(4) Savings or deposits in banks, credit unions, building and loan associations, or insurance companies.

(f) *Access to Executive Order Statements.* Each statement of employment and financial interests filed pursuant to Executive Order 11222 is a confidential document and shall be held in confidence and marked "For Official Use Only". The statement shall be transmitted in a special attention envelope so marked by the employee to the ethics counselor designated in paragraph (d) of this section.

(1) Ethics counselors shall maintain statements in strict confidence. Statements shall be kept in locked filing cabinets in locked offices. A privacy act warning notice shall be displayed in the office where statements are filed.

(2) Employees having access to statements shall not allow information to be disclosed from statements except to those individuals who must have access in order to carry out responsibilities under law.

(3) Confidential statements of employment and financial interests will be retained by the ethics counselors who actually perform the review. The personnel office holding the employee's official personnel folder must be notified when the review has been completed.

(g) *Penalty.* An employee who fails to comply with these filing requirements shall be subject to disciplinary action, as provided in § 20.735–4.

(h) *Retention and disposal of statements.* All statements shall be destroyed two years after an employee leaves a position in which a statement is required.

§ 20.735–31 Ethics in Government Act filing requirements.

(a) *General information and definitions.* Title II of the Ethics in Government Act of 1978, Pub. L. 95–521, 92 Stat. 1824, as amended, sets forth new public financial disclosure filing requirements for certain Executive Branch personnel, and new requirements for making reports available to the public. This section supplements and summarizes portions of the regulations issued by the Office of Government Ethics to implement the financial reporting requirements in Title II of the Ethics in Government Act. See 5 CFR Part 734.

(1) "Designated agency official" means the Designated Agency Ethics Official.

(2) "Income" means gross income from whatever source derived and includes items whether or not taxable for Federal income tax purposes, such as interest on municipal bonds.

(3) "Reporting individual" means those individuals obliged to file the public financial disclosure information required by Title II of the Ethics in Government Act of 1978. Such individuals are identified in § 20.735–31(b).

(4) "Relative" is defined in § 20.735–21(b)(6).

(5) "Gift" means a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include: (i) Bequest and other forms of inheritance;

(ii) Suitable mementos of a function honoring the reporting individual;

(iii) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government;

(iv) Food and beverages consumed at banquets, receptions, or similar events; or

(v) Communications to the offices of a reporting individual including subscriptions to newspapers and periodicals.

(6) "Honorarium" means a payment of money or anything of value received by an employee as consideration for an appearance, speech, article or consultation when such money is accepted as a payment for a single event or transaction and under circumstances which do not imply a continuing compensatory relationship between the parties for similar services. Excluded for purposes of this paragraph are any payments of actual and necessary travel and subsistence expenses for an employee and spouse or aide of the employee and any amounts paid or incurred for any agent's fees or commissions.

(7) "Dependent Child" is defined in § 20.735–1(14).

(8) "Personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his or her family, or on property or facilities owned or rented by that individual or his family.

(9) "Personal residence" is defined in § 20.735.1(15).

(10) "Value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual. In the case of any interest in property, such estimation shall be made in accordance with the principles of 5 CFR 734.303(a).

(11) "Reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are: (i) Provided by the United States Government;

(ii) Required to be reported by the reporting individual under 5 U.S.C. 7342; or

(iii) Required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434).

(b) *Who shall file.* (1) Each employee of the Department whose position is classified at GS–16 or above of the General Schedule or whose rate of basic pay is fixed (other than under the General Schedule) at a rate equal to or greater than the minimum rate of basic pay fixed for GS–16 (Step 1).

(2) Each employee appointed to an Administrative Law Judge position pursuant to 5 U.S.C. 3105.

(3) Each employee, regardless of grade or pay level, who is in a position in the Department which is excepted from the competitive service by reason of being of a confidential or policymaking character.

(i) An exclusion is available for a person in any such position classified below GS–16 (or at a rate of basic pay which is less than the minimum rate of basic pay fixed for GS–16) who has no role in advising or making policy determinations with respect to agency programs or policies. Such persons may include chauffeurs, private secretaries, stenographers and those who hold positions of similar nature where consistent with the basic criteria.

(ii) The exclusion of any person pursuant to this subparagraph will be effective as of the time the Designated Agency Ethics Official files with the Office of Government Ethics a list and description of each position for which exclusion is sought, as well as the identity of its current occupant. The exclusion applies for one year.

(iii) Such a list shall be updated annually and sent by Bureau Ethics Counselors to the Designated Agency Ethics Official by October 31 of each year. In the event that the Office of Government Ethics finds that one or more positions has been improperly excluded, it will so advise the Designated Agency Ethics Official and set a date for the filing of the report.

(4) The Designated Agency Ethics Official and the Deputy Agency Ethics Official.

(5) Each employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS–16.

(6) The filing provisions shall not apply to an individual who, as determined by the Director, Office of Government Ethics, is not reasonably expected to perform the duties of his or her office or position for more than 60 days in a calendar year, except that if such individual performs the duties of his or her office or position for more than 60 days in a calendar year: (i) The SF–278 report shall be filed within fifteen calendar days after the sixty-first day of such performance, and

(ii) The SF–278 report shall be filed as provided in § 20.735–31(c)(3).

(7) The Director of the Office of Government Ethics may grant a publicly available request for a waiver of any reporting requirement for an individual who is expected to perform or has performed the duties of his or her office or position less than 130 days in a calendar year, but only if the Director determines that: (i) Such individual is not a full time employee,

(ii) Such individual is able to provide services specially needed by the Government,

(iii) It is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(iv) Public financial disclosure by such individual is not necessary in the circumstances.

The procedures for requesting such a waiver appear in 5 CFR 734.205(b).

(c) *When to file.* (1) Within thirty days of assuming a position as described in § 20.735–31(b), an individual shall file a Standard Form 278 unless the individual has left another position described in § 20.735–31(b) within thirty days prior to assuming such new position or unless the individual has already filed a Standard Form 278 in connection with a nomination for a new position.

(2) Within five days of the transmittal by the President to the Senate of the nomination of an individual to a position, appointment to which requires the advice and consent of the Senate, such individual shall file the required report in accordance with instructions received from the Executive Office of the President. Each report so filed, shall be reviewed by the Designated Agency Ethics Official who shall sign approval or comment on the contents of the form before it is forwarded to the Office of Government Ethics. Nothing in these regulations shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(3) On February 1 of each year each employee described in § 20.735–31(b) shall file on Standard Form 278 an annual report disclosing information for the previous calendar year.

(i) The Designated Agency Ethics Official may grant an extension of time not to exceed May 15 for filing the annual SF–278 form. Extensions will be granted to allow affected individuals to obtain necessary tax, trust or investment information that is needed to complete the annual report or to make allowances for pending termination from employment.

(ii) Requests for extension shall be in writing to the Designated Agency Ethics Official and shall be submitted by January 25.

(4) On or before the thirtieth day after termination of his or her employment from a position described in § 20.735–31(b), the employee who occupied the position shall file a Standard Form 278 termination report if: (i) The SF–278 report required by § 20.735–31(c)(3) has not been filed covering the portion of the calendar year in which such termination occurs up to the date he or she leaves such office or position, or

(ii) He or she does not enter employment in another covered position within 30 days after termination.

Example 1: A covered individual files the annual report on February 1 and resigns on February 28 that same year. An SF–278 termination report is required. The annual SF–278 report will contain information for the prior calendar year and the termination report will contain information for the first two months of the year of resignation. In this example, a separate termination SF–278 report may be avoided by requesting an extension in time for the annual filing and preparing the annual report to disclose the termination and the necessary report information for the prior 14 months (the preceding year and January and February of the current year).

Example 2. An individual files the annual report on February 1 and resigns March 15 that same year to accept a GS–16 position in

another agency. No termination SF-278 report is necessary if the individual enters the covered position within 30 days after terminating.

(d) *Where to file.* (1) Employees assuming or terminating from a covered position shall file the required report with their Bureau Ethics Counselor.

(2) Bureau heads assuming a position that does not require Congressional confirmation shall file with the Designated Agency Ethics Official.

(3) Bureau and office heads and other individuals nominated to a position, appointment to which requires the advice and consent to the Senate, shall file the required report in accordance with instructions received from the Executive Office of the President.

(4) Annual reports shall be filed in the same manner as provided for in § 20.735-30(d) for form DI-212 (Confidential Statement of Employment and Financial Interests).

(5) Bureau Ethics Counselors shall review each report and transmit it to the Designated Agency Ethics Official in accordance with the procedures in § 20.735-31(g).

(e) *What to report.* This paragraph identifies general categories of information that must be reported by covered employees. Specific details of reporting, including exceptions, are set forth in 5 CFR Part 734 and in instructions contained in the Standard Form 278 issued by the Office of Personnel Management for use by individuals who are required to file by the Ethics in Government Act of 1978. In summary, each report filed to meet the Ethics in Government Act of 1978 requirements shall include a full and complete statement with respect to the following general categories: (1) *Income.* Employees shall list income, including honorariums which exceed $100 in value, from whatever source other than from employment by the United States.

(2) *Gifts and reimbursements.* Employees shall provide the source, a brief description and the value of: (i) Lodging, transportation, food and entertainment which from each source totals $250 or more in value,

(ii) All other gifts which from each source totals $100 or more in value, and

(ii) Reimbursements which from each source totals $250 or more in amount or value.

(3) *Real and personal property.* Employees shall list any interests and assets held in a trade or business or for investment or the production of income which has a fair market value in excess of $1,000 as of the close of such preceding calendar year.

(4) *Liabilities.* Employees shall list any liabilities owed to any creditor, other than a relative, which exceeded $10,000, unless such liabilities are certified by the reporting employee as being solely the responsibility of his or her spouse or dependent child and from which he or she derives no benefits and about which he or she has no knowledge, and which is not related to his or her income, assest, or activities, and concerning which he or she neither derives nor expects to derive any financial or economic benefit.

(5) *Purchase, sale and exchange of property.* Employees shall report any purchase, sale or exchange of real property, stocks, bonds, commodities futures and other forms of securities where the property value exceeds $1,000 unless such purchases, sales or exchanges are certified by the reporting employee as being solely the responsibility of his or her spouse or dependent child and from which he or she derives no benefits and about which he or she has no knowledge, and which is not related to his or her income, assets, or activities, and concerning which he or she neither derives nor expects to derive any financial or economic benefit.

(6) *Positions held.* New employees and candidates to appointed positions shall report all positions held during the preceding two calendar years and the current calendar year at any time until the date of filing. Incumbent employees shall report all positions held at any time during the current calendar year until the date of filing. In all cases the reporting individual shall list any position currently held as an officer, director, trustee, partner, proprietor, representative, employee or consultant of (i) any corporation, company, firm, partnership, or other business enterprise, (ii) any non-profit organization, (iii) any labor organization, (iv) any educational institution, or (v) any institution other than the United States Government.

(7) *Compensation in excess of $5,000 paid by one source.* On the first report filed to meet provisions of the Ethics in Government Act of 1978, each covered employee shall identify the source and briefly describe the nature of the duties performed or services rendered for any person, other than the United States Government, from whom they received compensation in excess of $5,000 in any of the two preceding calendar years.

(8) *Relationships with other employers.* Employees shall list the date, parties to, and terms of any agreement or arrangement which they have with respect to: future employment, a leave of absence during the period of Government service, continuation of payments by a former employer other than the United States Government, or continuing participation in an employee welfare or benefit plan maintained by a former employer.

(9) *Additional information.* Employees are required to answer two additional questions: (i) Whether there are any interests in property or liabilities of a spouse or dependent child which the employee has not reported but which would be reportable, if held by him or her; and

(ii) Whether the employee, his or her spouse, or dependent child receives income from or has a beneficial interest in a trust.

(f) *What not to report.* This paragraph identifies general categories of information that are exempt from the reporting requirements. Specific details of exemptions are set forth in instructions contained in the Standard Form 278. General exemptions are shown for each of the following reporting categories.

(1) *Income.* Employees are not required to report: (i) The amount of earned income received by a spouse, or

(ii) Income from current employment by the United States Government.

(2) *Gifts and reimbursements.* Employees are not required to report gifts: (i) Of $35 or less in value per individual item (gifts of more than $35 in value must be aggregated in the total of gifts from one source),

(ii) From a relative, or

(iii) Of food, lodging or entertainment received as personal hospitality.

(3) *Real and personal property.* Employees are not required to report: (i) Assets derived from a personal liability owed to them by a relative;

(ii) Deposits in personal savings accounts in a single financial institution if the total of all family accounts (employee's, spouse's and children's) in that institution is $5,000 or less; or

(iii) Personal property not held for business, investment or the production of income. (Examples include household goods, non-interest bearing checking accounts, automobiles, paintings, jewelry, and life insurance policies. However, if an individual is in the business of buying and selling any such items for profit, their category of value must be disclosed.)

(4) *Liabilities.* Employees are not required to report: (i) Liabilities owed a relative;

(ii) A mortgage on the personal residence of oneself or spouse; or

(iii) A loan which is secured by and does not exceed the purchase price of a personal motor vehicle, household furniture or appliance.

(5) *Purchase, sale and exchange of property.* Employees are not required to report: (i) Transactions involving the personal residence of oneself or one's spouse.

(ii) Transactions solely between oneself, one's spouse or one's dependent children.

(6) *Positions held.* Employees are not required to report positions: (i) In religious, social, fraternal, or political entities;

(ii) Of solely an honorary nature, or

(iii) Being held by a spouse or dependent child.

(7) *Compensation in excess of $5,000 paid by one source.* Employees may exclude information: (i) That is considered confidential as a result of a privileged relationship established by law;

(ii) About persons for whom services were provided by a firm or an association of which an employee was a member, partner or employee unless he or she was directly involved in the provision of the services; and

(iii) Relating to a spouse or dependent child.

(8) *Relationships with other employers.* Employees are not required to report information relating to a spouse or dependent child.

(g) *Administrative procedures.* (1) *Review and analysis of statements.* Each financial disclosure report filed to meet the provisions of the Ethics in Government Act of 1978 shall be reviewed by the appropriate ethics counselor or deputy ethics counselor. Review and analysis of the statements shall be pursuant to the general provisions in § 20.735–37. In addition, each ethics counselor shall: (i) Inform affected employees of the filing requirement and obtain the required report;

(ii) Attach a position description or other description of the position duties and responsibilities to the report;

(iii) Determine which, if any, conflict of interest prohibitions in addition to Executive Order 11222 prohibitions apply to each position (e.g. organic act prohibitions);

(iv) Review the report for completeness and determine if any information disclosed reveals any conflict or appearance of conflict of interest in connection with applicable prohibitions;

(v) Prepare for each report a statement to the Designated Agency Ethics Official indicating review findings and recommending approval or, with reasons, disapproval of each report;

(vi) Send the report, position description and statement of findings and recommendation to the Designated Agency Ethics Official for review, signature and filing within 15 days after the report is received;

(vii) Take action to resolve informally any potential conflicts, actual conflicts or apparent conflicts that exist; and

(viii) Have the Ethics Counselor take remedial action if informal resolution fails.

(2) Each report required by the Ethics in Government Act must be reviewed and signed by the Designated Agency Ethics Official or designee.

(3) Annual or other reports pertinent to the Ethics in Government Act of 1978 and required by the Director, Office of Government Ethics, or Congress shall be prepared by the Designated Agency Ethics Official or designee.

(4) The Comptroller General, the Office of Inspector General, and the Director, Office of Government Ethics, shall have access to financial disclosure reports filed under the Ethics in Government Act for the purpose of carrying out their statutory responsibilities.

(h) *Public access to and fees for copying statements.* (1) Standard Forms 278 shall be available to the public for review or copying at the Department Ethics Office, 18th and C Streets, NW., Washington, D.C. 20240, within 15 days after any report is received.

(2) No report shall be available to any person, except upon his or her written application stating his or her name, occupation and address, the name and address of any other person or organization on whose behalf the report is requested, and showing that he or she is aware of the prohibitions on improper use. It is unlawful for any person to obtain or use a report—

(i) For any unlawful purpose;

(ii) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(iii) For determining or establishing the credit rating of any individual; or

(iv) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(3) Each application for a report shall itself be made available to the public throughout the period during which the report requested by that application is made available to the public.

(4) The fee schedule for services performed in obtaining or copying a statement is set forth in 43 CFR Part 2, Appendix A, which is made applicable to these regulations.

(i) *Penalties.* (1) *Filing reports.* (i) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 202 of the Ethics in Government Act of 1978. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000. Knowing or willful falsification of information required to be filed by section 202 of the Act may also subject such individual to criminal prosecution under 18 U.S.C. § 1001, leading to a fine of not more than $10,000 or imprisonment for not more than five years or both. The Designated Agency Ethics Official shall refer to the Attorney General the name of any individual he or she has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported. Such referrals will be coordinated with the Solicitor and with the Office of Inspector General.

(ii) In addition, the Secretary may take any appropriate personnel or other action against any individual for failing to file a report or for falsifying or failing to report information required to be reported. (See § 20.735–4.)

(2) *Inspecting or copying reports.* The Attorney General may bring a civil action against any person who obtains or uses a report for any prohibited purpose as set forth in § 20.735–31(h)(2). The court may assess against such a person a penalty in any amount not to exceed $5,000. Such remedy shall be in addition to any other remedy available under law.

(j) *Retention and disposal of financial reports.* (1) Financial Disclosure Reports filed in accordance with the provisions of this section shall be retained by the Designated Agency Ethics Official. Such reports shall be made available to the public for a period of six years after receipt of the report. After the six-year period, reports shall be destroyed unless needed in an ongoing investigation.

(2) Financial Disclosure Reports filed by individuals nominated to positions requiring Senate confirmation and who were not subsequently confirmed shall be destroyed one year after the individual is no longer under consideration by the Senate, unless the report is needed in an ongoing investigation.

§ 20.735–32 Surface Mining Control and Reclamation Act filing requirements.

(a) *General information.* Section 201(f) of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1211(f), requires the Director of the Office of

Surface Mining Reclamation and Enforcement to establish provisions for the filing of financial interest statements. Regulations implementing the filing requirements of Section 201(f) are contained in 30 CFR Part 706 and are incorporated here by reference. All employees of the Office of Surface Mining Reclamation and Enforcement and all other Federal employees who perform any function or duty under the Surface Mining Control and Reclamation Act are required to comply with the filing requirements in Part 706.

(b) *What not to report.* An employee is not required to report any connection with, or interest in: (1) A professional society;

(2) A charitable, religious, social, fraternal, recreational, public service, civil, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests;

(3) Holdings in widely held mutual funds, investment clubs or regulated investment companies not specializing in a particular industry; or

(4) Savings or deposits in banks, credit unions, building and loan associations, or insurance companies.

(c) *Access to Surface Mining Control and Reclamation Act financial interest statements.* Confidential statements of employment and financial interest filed to meet requirements of the Surface Mining Control and Reclamation Act shall be handled in accordance with the regulations in § 20.735–30(g).

(d) *Penalty.* An employee who fails to comply with these filing requirements shall be subject to disciplinary action, as provided in § 20.735–4.

(e) *Retention and disposal of statements.* All statements shall be destroyed two years after an employee leaves a position.

§ 20.735–34 Other statutory filing requirements.

(a) *General information.* Four other statutes relating to Department programs have requirements for filing public disclosure financial interest statements. Each of these statutes requires public disclosure only of specific types of financial interests. Paragraph (b) of this section identifies the four statutes and contains specific definitions of the terms used in each. Paragraphs (c) through (k) of this section contain information and procedures common to all four statutes.

(b) *Statutes and definitions relating to each.* (1) Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*): (i) "Covered employee" means an employee performing a function or duty under this Act, (43 U.S.C. 1701 *et seq.*) whose position has not been exempted by the Secretary from its reporting requirements.

(ii) "Person" means an individual, corporation, partnership, association, consortium, company, firm, society, trust, joint venture, joint stock company, or entity organized for a common business purpose, wherever situated, domiciled, or doing business.

(iii) "Public Land" means any land and interest in land owned by the United States within the several States and administered by the Secretary through the Bureau of Land Management, without regard to how the United States acquired ownership except (A) lands located on the Outer Continental Shelf, and (B) lands held for the benefit of Indians, Aleuts, and Eskimos.

(iv) "Engaged in business subject to the Federal Land Policy and Management Act" means conduct of any business involving the use, occupancy or development of public land or of mineral, timber, range, wildlife, recreation, watershed or other resources thereon. A parent company or holding company is "engaged in business subject to the Federal Land Policy and Management Act" if one or more of its subsidiaries is "engaged in business subject to the Federal Land Policy Management Act." A mutual fund or investment club is within the definition if it specializes in a business involved in the use, occupancy, or development of public lands or mineral, timber, range, wildlife, recreation, watershed or other resources thereon.

(v) "Pecuniary interest" means any monetary or financial interest (whether owned directly by a covered employee or held for the employee's benefit by a trustee) including but not limited to (A) the ownership of common stock, preferred stock, bonds, debentures, warrants, or a partnership share, (B) a leasehold, rental permit, license, right of way, or contract, or (C) a pension or retirement plan, shared income or other arrangement as a result of current or prior employment or professional association.

(vi) "Known financial interest" means (A) any right of a covered employee to use, occupy or develop public land or mineral, timber, range, wildlife, recreation, watershed or other resources thereon, or (B) any pecuniary interest of a covered employee in any person whom the employee knows, or could reasonably be expected to know, is engaged in a business subject to the Federal Land Policy and Management Act.

(2) Mining in the Parks Act (16 U.S.C. 1901 *et seq.*): (i) "Covered employee" means an employee performing a function or duty under this Act (16 U.S.C. 1901 *et seq.*), whose position has not been exempted by the Secretary from its reporting requirements.

(ii) "Mining claim" means any patented or unpatented mining claim within any area of the National Park System.

(iii) "Mining activity" means any exploration and assessment work, preparation of mining claims of extraction of minerals, mining, transportation of the extracted minerals, processing of the extracted minerals or reclamation of a mining claim following mining, provided these activities take place, in whole or in part, within the boundaries of any area of the National Park System.

(iv) "Engaged in business subject to the Mining in the Parks Act" means the conduct of a business involving the ownership of, or the right to use or occupy, a mining claim or the conduct of a mining activity. A parent company is "engaged in business subject to the Mining in the Parks Act" if one or more of its subsidiaries is "engaged in business subject to the Mining in the Parks Act." A mutual fund or investment club is within the definition if it specializes in a business or businesses which own or have the right to occupy or use mining claims or conduct mining activity.

(v) "Person" means an individual, corporation, partnership, association, consortium, company, firm, society, trust, joint venture, joint stock company, or entity organized for a common business purpose, wherever situated, domiciled, or doing business.

(vi) "Pecuniary interest" means any monetary or financial interest (whether owned directly by a covered employee or held for the employee's benefit by a trustee) including but not limited to (A) the ownership of common stock, preferred stock, bonds, debentures, warrants, or a partnership share, (B) a leasehold, rental permit, license, right of way, or contract, or (C) a pension or retirement plan, shared income or other arrangement as a result of current or prior employment or professional association.

(vii) "Known financial interest" means (A) any mining claim which a covered employee owns or has the right to

occupy or use, (B) any mining activity in which a covered employee is engaged, or (C) any pecuniary interest of a covered person whom the employee knows, or could reasonably be expected to know, is engaged in business subject to the Mining in the Parks Act.

(3) Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*): (i) "Covered employee" means an employee performing a function or duty under this Act (43 U.S.C. 6201 *et seq.*), whose position has not been exempted by the Secretary from its reporting requirements.

(ii) "Energy property" means real property from which coal, natural gas, or crude oil is commercially produced.

(iii) "Person" means an individual, corporation, partnership, association, consortium, company, firm, society, trust, joint venture, joint stock company, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business, who directly or through other persons subject to their control does business in any part of the United States. For purposes of this definition, the United States includes the Outer Continental Shelf.

(iv) "Engaged in energy business" means the active conduct of one or more of the businesses of exploring, developing, producing, or refining, transporting by pipeline, or distributing (other than at the retail level) coal, natural gas, or petroleum products. A parent company or holding company is "engaged in the energy business" if one or more of its subsidiaries in the United States is "engaged in the energy business." A mutual fund or investment club is within the definition, if it specializes in a business or businesses which explore, develop, refine, transport by pipeline or distribute (other than at the retail level) coal, natural gas, or petroleum products in the United States.

(v) "Pecuniary interest" means any monetary or financial interest (whether owned directly by a covered employee or held for the employee's benefit by a trustee) including but not limited to (A) the ownership of common stock, preferred stock, bonds, debentures, warrants, or a partnership share, (B) a leasehold, rental permit, license, right of way, or contract, or (C) a pension or retirement plan, shared income or other arrangement as a result of current or prior employment or professional association.

(vi) "Known financial interest" means (A) any energy property which a covered employee owns or has a right to occupy or use and (B) any pecuniary interest of a covered employee in a person whom the employee knows, or could reasonably be expected to know, owns or has the right to occupy energy property or is engaged in energy business.

(4) Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1801 *et seq.*): (i) "Act, as amended" means the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, 67 Stat. 462, as amended by the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1801 *et seq.*).

(ii) "Covered employee" means an employee performing a function or duty under the Act, as amended, or under the Outer Continental Shelf Lands Act Amendments of 1978, whose position has not been exempted by the Secretary from the reporting requirements (43 U.S.C. 1864).

(iii) "Person" means an individual, corporation, partnership, association, consortium, company, firm, society, trust, joint venture, joint stock company, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business, who directly or through other persons subject to their control does business in any part of the United States. For purposes of this definition, the United States includes the Outer Continental Shelf.

(iv) "Outer Continental Shelf" means all submerged lands lying seaward, outside the area of the lands beneath navigable waters as defined in 43 U.S.C. 1301, and of which the subsoil and the seabed appertain to the United States and are subject to its jurisdiction and control.

(v) "Minerals" means oil, gas, sulphur, geopressured-geothermal and associated resources, and all other substances which are authorized by an Act of Congress to be produced from public lands.

(vi) "Engaged in business subject to the Act, as amended" means the conduct of any business involving the exploration for the development or production of, minerals of the Outer Continental Shelf. A parent company or holding company is "engaged in business subject to the Act, as amended" if one or more of its subsidiaries is "engaged in business subject to the Act, as amended". A mutual fund or investment club is within the definition if it specializes in a business or businesses involved in the exploration for or the development or production of, minerals of the Outer Continental Shelf.

(vii) "Pecuniary interest" means any monetary or financial interest (whether owned directly by a covered employee or held for the employee's benefit by a trustee) including but not limited to (A) the ownership of common stock, preferred stock, bonds, debentures, warrants, or a partnership share, (B) a leasehold, rental permit, license, right of way, or contract, or (C) a pension or retirement plan, shared income or other arrangement as a result of current or prior employment or professional association.

(viii) "Known financial interest" means any pecuniary interest in any person who the covered employee knows or could reasonably be expected to know (A) is applying for or has received any permits or leases authorizing exploration for or the development or production of, minerals of the Outer Continental Shelf or (B) is otherwise engaged in any business subject to the Act, as amended.

(c) *Who shall file.* (1) The statutes identified in this section apply to all employees who perform functions or duties under them. All such employees must file the relevant public disclosure form(s) unless the position that they occupy has been specifically exempted by the Secretary from these statutory requirements or unless they are no longer employed by the Department at the time a filing is due. Employees required to file a financial disclosure form (SF-278) by the Ethics in Government Act of 1978 (§ 20.735-31(b)) shall not be required to file the public disclosure forms required by this section. (§ 207(c) of the Ethics in Government Act of 1978, Pub. L. 95-521, 92 Stat. 1849).

(2) Appendices D (Federal Land Policy and Management Act), E (Mining in the Parks Act), F (Energy Policy and Conservation Act), and G (Outer Continental Shelf Lands Act Amendments of 1978) of this part list the bureaus and offices of the Department, or subunits thereof, performing functions or duties under these statutes and also list positions in those offices which the Secretary has determined are subject to the reporting requirement because they are regulatory and policymaking in nature.

(3) The head of each affected bureau will annually review and update the related portion of Appendices D, E, F, and G. Proposed revisions or certification that revision is not required shall be submitted to the Designated Agency Ethics Official by no later than October 31 of each year. The Secretary may revise Appendices D, E, F, and G by the addition or deletion of positions any time he or she determines such revisions are required to carry out the purpose of the laws or regulations of this part. Additions to or deletions from and other amendments to the list of positions in Appendices D, E, F, and G are effective upon the Secretary's approval

and notification to the incumbents or publication within the Department. Copies of Appendices D, E, F and G are maintained and available from the Designated Agency Ethics Official.

(d) *When to file.* The Ethics Counselor shall notify each such employee, and furnish the proper form(s) to the employee by December 15 of each year. The employee shall file a completed statement with the appropriate Ethics Counselor by no later than February 1 of each year showing applicable holdings and interests for the preceding calendar year.

(e) *Where to file.* (1) All covered employees shall file their statement(s) as provided in § 20.735–35.

(2) The statement marked Department Public Copy shall be filed by the appropriate ethics counselor with the Designated Agency Ethics Official by February 15.

(f) *What to report.* Covered employees are obligated to exercise diligence in determining whether companies or other business entities in which they own interests fall in the category covered. Interests held at any time during the previous calendar year should be reported as follows: (1) Employees required to report by section 313 of the Federal Land Policy and Management Act (43 U.S.C. 1743) must report any known financial interests as defined in § 20.735–34(b)(1)(vi).

(2) Employees required to report by section 13 of the Mining in the Parks Act (16 U.S.C. 1912) must report any known financial interests, as defined in § 20.735–34(b)(2)(vii).

(3) Employees required to report by section 522 of the Energy Policy and Conservation Act (42 U.S.C. 6392) must report any known financial interests as defined in § 20.735–34(b)(3)(vi).

(4) Employees required to report by section 605 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1864) must report any known financial interests as defined in § 20.735–34(b)(4)(viii).

(g) *What not to report.* An employee is not required to report: (1) Holdings owned by spouse or children; or

(2) Holdings acquired by a trustee for a qualified trust. Covered employees who are beneficiaries of qualified trusts are required to disclose only interests that are initially committed to the trust, not of interests thereafter acquired by the trustee of which the employee or officer has no actual knowledge.

(h) *Administrative procedures.*—(1) *Review and analysis of statements.* Each financial disclosure report filed to meet the provisions of the statutes identified in this section shall be reviewed by the ethics counselor with whom it is filed by no later than March 3. Review and analysis of the statements shall be pursuant to the general provisions in § 20.735–37. In addition, each affected ethics counselor shall: (i) Inform covered employees of the filing requirement and obtain the necessary report;

(ii) Review the report for completeness and ensure that each section has a response;

(iii) Send the public copy of each statement to the Designated Agency Ethics Official by February 15.

(iv) Take action to resolve informally any potential conflicts, or apparent conflicts that exist. For statements filed under the provisions of this section the fact that an employee has a financial interest that must be listed means that there is a high probability that Executive Order 11222 provisions prohibit the retention of the listed holding;

(v) Recommend remedial action if informal resolution fails; and

(vi) Report to the Designated Agency Ethics Official by March 18 the name of any covered individual who failed to file a required report. The Designated Agency Ethics Official shall where appropriate transmit such names to the Department of Justice.

(2) *Report to Congress.* The annual reports required by the statutes identified in this section shall be prepared by the Designated Agency Ethics Official for submission to the Congress by June 1, unless otherwise authorized by Congress.

(i) *Public access to and fees for copying of statements.* (1) Form DI–211 (revised) and Form DI–211B shall be available for review or copying to the public at the Department Ethics Office, 18th and C Streets, N.W., Washington, D.C. 20240 by February 15.

(2) The fee schedule for services performed in obtaining or copying a statement is set forth in 43 CFR Part 2, Appendix A, which is made applicable to these regulations.

(j) *Penalty.* (1) Each statute described in this section provides that any employee who is subject to and knowingly violates the filing requirements shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(2) Designated Agency Ethics Official shall submit to the Department of Justice the name and address and other pertinent information about any employee who fails to comply with the filing requirements of this section.

(k) *Retention and disposal of statements.* Statements filed in accordance with the provisions of this section shall be held in accordance with the following schedule: (1) Statements filed in an individual's personal financial reports folder will be retained for a period of two years after an employee terminates employment or two years after an employee is relieved from the filing requirements, whichever occurs first.

(2) Statements filed with the Department for public inspection will be retained for two years after the filing date.

§ 20.735–35 How to file.

(a) Employees who are in positions subject to a single filing requirement.

(1) Employees who are subject only to Executive Order filing requirements shall report all information required on form DI–212, Confidential Statement of Employment and Financial Interest.

(2) Employees who are in positions subject only to Surface Mining Control and Reclamation Act filing requirements shall report all information required on form DI–212A, Confidential Statement of Employment and Financial Interests For Use by Federal Employees Who Perform Functions or Duties Under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1211(f)).

(3) Employees who are in positions subject only to the Ethics in Government Act of 1978 filing requirements shall report all information required on Standard Form 278 for annual and termination of employment reports. Newly appointed or elected officials and Presidential nominees to positions requiring the advice and consent of the Senate shall also file Standard Form 278.

(4) Employees who are in positions subject only to the filing provisions of the statutes identified in § 20.735–34 shall report all information required: (i) On form DI–211 Public Disclosure Statement of Known Financial Interests for—

(A) The Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*).

(B) The Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1801 *et seq.*),

(C) The Mining in the Parks Act (16 U.S.C. 1901 *et seq.*),

(ii) On form DI–211B Public Disclosure Statement of Known Financial Interests for the Energy Policy and Conservation Act (43 U.S.C. 6201 *et seq.*).

(b) Employees who are in positions subject to multiple filing requirements.

(1) Employees who are in positions subject to—

(i) Executive Order filing requirements, and

(ii) The Surface Mining Control and Reclamation Act filing requirements

shall report all information on form DI-212A.

(2) Employees who are in positions subject to: (i) Statutory prohibitions contained in § 20.735-22(c), filing requirements of one or more statutes identified in § 20.735-34 or Surface Mining Control and Reclamation Act filing requirements, and

(ii) Ethics in Government Act of 1978 filing requirements shall file a Standard Form 278 in connection with the Ethics in Government Act of 1978 and shall meet Executive Order or Surface Mining filing requirements by also filing a DI-278. The DI-278 is an approved supplement to the Standard Form 278 and requests only that additional information required by the Executive Order or the Surface Mining Act that is not requested on the Standard Form 278.

(3) Employees who are in positions subject to: (i) Executive Order filing requirements or Surface Mining Control and Reclamation Act filing requirements, and

(ii) Filing requirements of one or more of the statutes identified in § 20.735-34 shall file the DI-212 or DI-212A and the appropriate DI-211 forms as identified in § 20.735-35(a)(4).

(c) *Where to file.* (1) The Designated Agency Ethics Official and the Deputy Agency Ethics Official shall file statements with the Under Secretary.

(2) The following employees shall file statements with the Designated Agency Ethics Official. The Secretary, the Under Secretary, Deputy Under Secretaries; Assistants to the Secretary; Solicitor and Deputy Solicitors; Assistant and Deputy Assistant Secretaries; Heads of bureaus; the High Commissioner and the Deputy High Commissioner of the Trust Territory; and such others as the Secretary may designate.

(3) Covered employees in the Office of the Solicitor (except for the Solicitor and Deputy Solicitors) shall file statements with the Solicitor or the Deputy Ethics Counselor for the Office of the Solicitor, as the Solicitor may direct.

(4) Covered employees in the Office of Hearings and Appeals (except for the Director) shall file statements with the Director, Office of Hearings and Appeals, or the Deputy Ethics Counselor for the Office of Hearings and Appeals, as the Director may direct.

(5) Covered employees in the Office of Water Research and Technology (except for the Director) shall file statements with the Director, Office of Water Research and Technology or the Deputy Ethics Counselor for the Office, as the Director may direct.

(6) Covered employees in the Office of the Secretary and in other Departmental offices, except those employees mentioned in paragraphs (c)(1) through (5) of this section shall file statements with the Director, Office of Administrative Services.

(7) Covered employees in other bureaus (except for the head of the bureau) shall file statements with the bureau head, Deputy Ethics Counselor, or the Assistant Ethics Counselor, as the head of the bureau may direct.

(d) *Information for all employees.* (1) If any information required to be included on a statement of employment and financial interests or supplementary statement is not known to the employee but is known to another person, the employee shall request that other person to submit information on his or her behalf to the appropriate ethics counselor.

(2) Employees required to file who have no known financial interest to report shall file the required form(s) indicating thereon where appropriate, "None."

(3) Covered employees shall complete a new form each year. A statement of "No Change From The Last Report" is not acceptable.

§ 20.735-36 Certificates of disclaimer.

(a) The following statutory restrictions apply specifically to the heads and members of the bureaus and offices identified and are extended to employees in the Office of the Secretary and in other Departmental offices who are covered by the filing requirements of Executive Order 11222 or the Ethics in Government Act of 1978: (1) 43 U.S.C. 31(a)—Geological Survey; (2) 18 U.S.C. 437—Indian Affairs; (3) 43 U.S.C. 11—Bureau of Land Management; (4) 30 U.S.C. 6—Bureau of Mines.

(b) Each employee covered by these restrictions shall sign a certificate upon entrance to or upon transfer between these bureaus or offices. The employee's signature will indicate that he or she: (1) Is aware of the specific restrictions pertinent to his or her employment, and

(2) Is in compliance with such restrictions.

(c) If an employee is unable to sign the certificate, he or she must submit a statement of facts to the appropriate ethics counselor for review and action under the provisions of §§ 20.735-37, 20.735-40 and 20.735-44. (See Appendix A for applicable certificate.)

§ 20.735-37 Review and analysis of statements.

(a) Review of statements of employment and financial interests is made to verify that information reported discloses no: (1) Potential, actual or apparent conflicts of interest with the employee's official duties,

(2) Interests prohibited by statute or regulation, and

(3) Discloses no other serious problems related to the employee's official duties and responsibilities.

(b) Ethics Counselors have important review and analytical responsibilities and shall conduct the following minimum procedures: (1) Ensure that all necessary statements are filed by February 1;

(2) Review statements received for completeness: (i) Each section must have a response (*i.e.*, a statement of "no change from my last report" is *not* acceptable), and

(ii) Each statement must be signed and dated;

(3) Determine which prohibitions apply to each employee and conduct the remaining procedures accordingly;

(4) Research financial interests disclosed in order to obtain enough information to make a determination;

(5) Match the confidential statement with any public disclosure statements filed by the employee to ensure that items on the confidential statement that are reportable on the public disclosure statements have been included;

(6) Match the employee's position description or other description of duties to his or her financial interests and determine if any reported interests: (i) Are prohibited by law or regulation, or

(ii) Create potential, actual or apparent conflicts of interest with the employee's duties;

(7) Initiate appropriate counseling to effect informal, voluntary resolution of any problems disclosed;

(8) Initiate remedial action by the Bureau Ethics Counselor, if necessary; and

(9) Sign each statement as the reviewing official upon completion of each case.

(c) Each employee's annual statement shall be reviewed by the ethics counselor with whom it is filed by no later than March 3 of each year to ensure that the employee is in compliance with these regulations. The ethics counselor may consult with the appropriate Regional Solicitor, or the Associate Solicitor—General Law, in the conduct of the review.

(d) At all stages in the review process employees shall be provided full opportunity to offer information and explanation prior to a final determination.

(e) Each bureau shall certify to the Designated Agency Ethics Official that all required reviews of statements have been completed or that statements are still under review. Such certificates are

required annually by no later than March 18.

Subpart E—Resolution of Conflicts of Interest

§ 20.735–40 Procedures for resolving conflicts or prohibited holdings.

(a) *Remedial action to effect resolution.* (1) Violations of the regulations or the statutes referred to in this part by an employee may be cause for mandatory remedial action. Remedial action should normally be considered only after attempts to obtain voluntary resolution have failed. Voluntary resolution may include: (i) Voluntary divestiture, or

(ii) Voluntary conversion to securities which are not prohibited or which do not create actual or apparent conflicts of interest with the employee's duties.

(2) If the Bureau Ethics Counselor decides that remedial action is required, immediate action shall be initiated to remedy the holding of prohibited financial interests or to eliminate the conflict or appearance of conflict of interest created by holding of a prohibited financial interest within a reasonable time, usually ninety days.

(b) Remedial action may include: (1) *Reassignment or restriction of the employee.* If an employee is in a job where there is a conflict of interest, it may be possible to reassign the employee to another job where no such conflict would exist. It may also be possible to restrict the employee from performing the particular duties that are creating the conflict or the appearance of a conflict of interest. Although the number of cases where this remedy can be used should be rare, the possibility should be explored before divestiture of the interest is ordered.

(2) *Divestiture of the interest.* If the conflict involves the ownership of stocks, lands, etc., or outside employment or business interest, the bureau Ethics Counselor may order the employee to divest himself or herself of the stocks, land, or business interest or to discontinue outside employment, whichever is appropriate. Divestiture of the interest shall be ordered in all situations where reassignment or restrictions of an employee will not resolve the conflict or where the conditions for a trust described below are not met. Evidence of divestiture must be provided in the form of broker's sale receipts or other appropriate documents.

(3) *Establishment of a qualified trust.* The Director, Office of Government Ethics, Office of Personnel Management, may allow an employee the option to place holdings in a qualified trust. A qualified trust is established when by written agreement, the employee gives control and legal title to a trustee. Complete provisions for establishing a trust are contained in § 20.735–42. Employees are permitted to use a qualified blind trust unless such an action is specifically precluded by a statutory restriction. In order to be acceptable as a remedy for a conflict of interest situation, the qualified trust must meet the conditions set forth in § 20.735–42 which include the requirement that each new and existing trust be approved by the Designated Agency Ethics Official, the Solicitor or his or her representative, and the Director, Office of Government Ethics.

(c) *Other forms of trust.* Employees who have pre-existing trusts or inherited trusts (not established by themselves) may, in rare instances and on a case-by-case basis, receive authorization from the Designated Agency Ethics Official to continue the trust, provided the employee has no control over its management or assets.

(d) *Authority to order remedial action.* (1) Each bureau Ethics Counselor is authorized and shall order resolution of conflict of interest situations within his or her bureau. The advice of the appropriate Regional Solicitor, the Associate Solicitor—General Law, the Deputy Agency Ethics Official or the Designated Agency Ethics Official may be sought before such an order is issued. This authority to order remedial action may not be redelegated.

(2) The Assistant Secretary—Policy, Budget and Administration is responsible for ordering resolution of conflict of interest situations for employees who file with the Director, Office of Administrative Services.

(3) The Under Secretary is responsible for ordering resolution of conflict of interest situations for employees who file with the Under Secretary or the Designated Agency Ethics Official. The Secretary shall order resolution of conflict of interest situations involving the Under Secretary.

(e) *Disciplinary action.* An employee who fails to comply with an order for remedial action is considered to be in violation of these regulations and shall be subject to disciplinary action, as provided by § 20.735–4.

§ 20.735–42 Qualified trusts.

(a) *Definitions.* (1) "Qualified blind trust" means a trust certified as approved by the Director, Office of Government Ethics, pursuant to 5 CFR 734.405, which includes the provisions described in 5 CFR 734.403(b) and has an independent trustee as defined in § 20.735–42(d)(1).

(2) "Qualified diversified trust" means a trust certified as approved by the Director, Office of Government Ethics, pursuant to 5 CFR 734.405, which has a portfolio as described in § 20.735–42(e)(2)(i), includes the provisions described in 5 CFR 734.404(c), and has an independent trustee as defined in § 20.735–42(d)(1).

(3) "Excepted trust" means a trust (i) which was not created directly by an employee, his or her spouse, or any dependent child and (ii) the holdings or sources of income of which the employee, his or her spouse, and any dependent child have no knowledge.

(4) "Reporting individual" means any employee who submits a trust instrument for approval.

(5) "Interested party" means an employee, his or her spouse, and any dependent child if the reporting individual, his or her spouse, or dependent child has a beneficial interest in the principal or income of a qualified or excepted trust.

(6) "Broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank (15 U.S.C. 78c(a)(4)).

(7) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities, but does not include a bank or any broker, lawyer, accountant, engineer or teacher whose performance of such services is solely incidental to the practice of his or her profession (15 U.S.C. 80b–2(a)(11)). The United States Code contains an additional listing of others who do not meet this definition (15 U.S.C. 80b–2(a)(11) (D), (E) and (F)).

(8) "Relative" means relative as defined in § 20.735–31(a)(5).

(b) *General information.* Section 202(f)(3) of the Ethics in Government Act of 1978, 92 Stat. 1841, 1845, contains new provisions for the establishment of qualified trusts. Under this law no employee may establish a qualified blind or diversified trust without obtaining the approval of the Director, Office of Government Ethics, in the Office of Personnel Management. In addition, any existing blind trust established before October 26, 1978 which is still being used by an employee must be submitted to the Director, Office of Government Ethics, for approval. The Office of Government Ethics rules

governing the specifics for establishment of a qualified blind or diversified trust are contained in 5 CFR 734.401–408 and are incorporated here by reference.

(c) *Acceptable forms of trust.* Three types of trusts qualify as appropriate forms of trust for purposes of ameliorating potential conflicts of interest. They are: (1) Excepted trusts—which may be retained by any employee without the need to submit the trust document to the Office of Government Ethics for approval. Income derived from an excepted trust must, however, be reported on the SF–278.

(2) Qualified blind trust—which may be established in accordance with provisions described in this section by any employee; and

(3) Qualified diversified trust—which may be established, in accordance with provisions described in this section, only by employees appointed to a position by the President, by and with the advice and consent of the Senate.

(d) *General provisions applicable to qualified blind trusts.* (1) The trustee must be a financial institution, an attorney, a certified public accountant, a broker, or an investment adviser who: (i) Is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party;

(ii) Is not or has not been employed by any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(iii) Is not a relative of any interested party.

(2) Any asset transferred to the trust by an interested party must be free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the Director, Office of Government Ethics.

(3) The trust instrument that establishes the trust shall provide that: (i) The trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) The trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) The trustee shall promptly notify the employee and the Director, Office of Government Ethics, when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) The trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) An interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by filing requirements of the Ethics in Government Act, but such report shall not identify any asset or holding;

(vi) Except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (A) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (B) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (C) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) The interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in Section 202(f)(3) of the Ethics in Government Act of 1978.

(4) The proposed trust instrument and the proposed trustee shall be approved by the Director, Office of Government Ethics.

(5) Within thirty days of the dissolution of a qualified trust an employee shall file with the Director, Office of Government Ethics through the Designated Agency Ethics Official: (i) A report of such dissolution, and

(ii) A list of the assets of the trust at the time of dissolution, categorized as to value in accordance with 5 CFR 734.304.

Any document filed pursuant to the requirements of this subparagraph shall be subject to the public disclosure requirements of 5 CFR 734.602.

(e) How the qualified blind trust and the qualified diversified trust differ.

(1) Qualified blind trusts are authorized by Section 202(f)(3) of the Ethics in Government Act which states:

> An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purpose of section 208 of Title 18, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(2) Qualified diversified trusts are authorized by Section 202(f)(4)(B) of the Ethics in Government Act which provides that the provisions just stated in § 20.735–42(e)(1) do not apply to a trust created for the benefit of an employee appointed to office by the President, by and with the consent of the Senate, or to the spouse or dependent child, of such a person, if—

(i) The Director of the Office of Government Ethics, in concurrence with the Attorney General, finds that—

(A) The assets placed in the trust consist of a well-diversified portfolio of readily marketable securities;

(B) None of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

(C) The trust instrument prohibits the trustee, notwithstanding the provisions of paragraphs (d)(3) (iii) and (iv) of this section, from making public or informing any interested party of the sale of any securities;

(D) The trustee is given power of attorney, notwithstanding the provisions of paragraph (d)(3)(v) of this section, to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

(E) Except as otherwise provided in this paragraph, the trust instrument provides that the trust shall be administered in accordance with requirements of the Ethics in Government Act and the trustee of such trust meets the requirements of the Ethics in Government Act; and

(ii) The employee (other than an individual who is in such an office at the time of enactment of the Ethics in Government Act and has an existing

trust which is a good faith attempt to create a blind trust) has informed the Congressional committee considering his or her nomination at the time his financial disclosure statement is filed with the committee of his intention to comply with section 202(f)(4)(B) of the Ethics in Government Act.

(f) Employees wishing to establish a qualified trust shall seek counseling from the Designated Agency Ethics Official before initiating a request to the Director, Office of Government Ethics for approval of a qualified trust. A copy of each qualified trust agreement approved for an employee by the Director, Office of Government Ethics shall be filed with the Designated Agency Ethics Official. No trusts other than those allowed by these regulations will be recognized as a remedy for correction of a conflict or apparent conflict of interest.

§ 20.735-43 Appeal procedures.

(a) *When and how to appeal.* An employee has the right to appeal an order for remedial action under § 20.735-40 and shall have 30 days from the date of the remedial action order to exercise this right before any disciplinary action may be initiated. For appeals of remedial orders issued under § 20.735-40, the procedures described in 370 DM 771 may not be used in lieu of or in addition to those of this section. Each appeal shall be made in writing and shall contain:

(1) The basis for appeal,

(2) Facts supporting the basis, and

(3) The telephone number where appellant can be reached to discuss facts pertinent to the appeal.

(b) *Where to appeal.* (1) Orders for remedial action issued by the Assistant Secretary—Policy, Budget and Administration or by a bureau Ethics Counselor may be appealed to the Under Secretary whose decision shall be final.

(2) Orders for remedial action issued by the Under Secretary may be appealed to the Secretary whose decision shall be final.

(c) *Review Board analysis and recommendations.* (1) Each appeal shall be considered by a Review Board consisting of a program Assistant Secretary selected by the Designated Agency Ethics Official, the Associate Solicitor—General Law, and the Director or Deputy Director Office of Personnel. Assistant Secretaries may delegate authority to serve on the Review Board to a Deputy Assistant Secretary who has not been involved, and who has not advised or made a decision on the issue or on the order for remedial action.

(2) The Deputy Agency Ethics Official shall serve as secretary to the Board, except for cases in which he or she has previously participated. In such cases, the Board shall designate an employee who has not previously been involved with the case to serve as secretary.

(3) The Review Board members shall:

(i) Obtain from the appropriate ethics counselor a full statement of actions and considerations which led to the order for remedial action including any supporting documentation or files used by the Ethics Counselor.

(ii) Obtain from the employee all facts, information, exhibits for documents which he or she feels should be considered before a final decision is made.

(iii) The secretary to the Board shall prepare a summary of the facts pertinent to the appeal. When appropriate, the Board may provide for personal appearance by the appellant before the Board if necessary to ascertain the circumstances concerning the appeal or may designate the Board secretary or another employee to conduct further fact finding, or may do both. Fact finding procedures shall be carried out by a person(s) who

(A) Has not been involved in the matter being appealed and

(B) Who does not occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in, the matter being appealed.

(iv) Establish a file containing all documents related to the appeal, which shall be available to the appellant and his or her representative.

(v) Provide to the official who will decide the appeal an advisory recommendation on the appeal. The views of dissenting members of the review board shall also be provided.

(d) *Assurances to the appellant.* Each appellant is assured of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal in presenting an appeal,

(2) A reasonable amount of official time to present the appeal if the employee is otherwise in a duty status,

(3) The right to obtain counseling from an ethics counselor of the Department,

(4) The right to be accompanied, represented, and advised by a representative of his or her own choosing. The Board may disallow the choice of an individual as a representative if such representation would result in a conflict of interest or position which would conflict with the priority needs of the Department or which would give rise to unreasonable costs to the Government.

(e) *Assurances to the appellant's representative.* Each person chosen to represent an appellant is assured of:

(1) Freedom from restraint, interference, coercion, discrimination or reprisal, and

(2) A reasonable amount of official time to present the appeal if the representative is an employee of the Department and is otherwise in a duty status.

Subpart F—Special Government Employee Responsibilities, Ethical and Other Conduct

§ 20.735-50 Scope of subpart.

For the most part, special government employees are subject to the same conflict of interest and employee conduct provisions as regular employees. This subpart will highlight the provisions which are of concern to the special government employee and will provide information concerning the filing of financial interest forms by special government employees. Each special government employee should become familiar with the standards of conduct in Subpart B, the prohibitions in Subpart C, and the provisions of this subpart.

§ 20.735-51 Conflict of interest statutes relating to special government employees.

(a) A special government employee—that is, one who is retained, designated, appointed, or employed to perform temporary duties with or without compensation for not to exceed 130 days during any period of 365 consecutive calendar days, either on a full-time or intermittent basis—is in general subject to the following major prohibitions. A special government employee may not:

(1) Except as authorized by law, directly or indirectly receive or solicit compensation for any services rendered by the employee or another on behalf of another person before a government agency in connection with a particular matter in which the United States is a party or has an interest, and in which (i) the employee has at any time participated personally and substantially or (ii) which is pending in the Department, except (ii) is not applicable where the employee has served less than 61 days during the immediately preceding period of 365 consecutive days. (18 U.S.C. 203).

(2) Represent, except in the discharge of official duties, anyone else before a court or Government agency in a particular matter in which the United States is a party or has an interest and in which:

(i) He or she has at any time participated personally and substantially for the Government or;

(ii) Which is pending in the Department, except (ii) is not applicable where the employee has served less than 61 days during the immediately preceding period of 365 days. (18 U.S.C. 205).

(iii) Represent, except in the discharge of official duties, anyone else in a particular matter in which the United States is a party or has an interest and which is pending before the Department unless he or she has served there no more than 60 days during the past 365 days (18 U.S.C. 205). The employee is bound by this restraint despite the fact that the matter is not one in which he or she has ever participated personally and substantially.

The restrictions described in paragraphs (a)(2) (i) and (ii) of this section apply to both paid and unpaid representation of another.

(3) Participate in his or her governmental capacity in any matter in which he or she, his or her spouse, dependent child, outside business associate or person with whom he or she is negotiating for employment, has a financial interest. (18 U.S.C. 208).

(4) Represent, after his or her Government employment has ended, any other person (except the United States) before a Government agency or court in connection with a particular matter involving a specific party or parties in which the United States is a party or has an interest and in which he or she participated personally and substantially for the Government (18 U.S.C. 207(a));

(5) Represent, for two years after his or her Government employment has ended, any other person (except the United States) before a Government agency or court in connection with a particular matter involving a specific party or parties in which the United States is a party or has an interest and which was within his or her official responsibility during the last year of his or her Government service (18 U.S.C. 207(b)(i)). This temporary restraint of course gives way to the permanent restriction described in paragraph (a)(4) of this section if the matter is one in which he or she participated personally and substantially.

(b) Additional conflict of interest prohibitions applicable to special government employees may be found in §§ 20.735–21 through 20.735.29.

(c) Additional post-employment restrictions applicable to special government employees may be found in §§ 20.735–61(b) (3) and (4) and 20.735–61(c).

§ 20.735–52 Conduct provisions of particular interest to special Government employees.

(a) Special government employees are subject to the same Federal statutes and regulations relating to general standards of conduct as regular employees (Subpart B of these regulations).

(b) However, the attention of each special government employee is directed to the following regulations which are of particular application, and relate directly, to the ethical conduct of a special government employee:

(1) *Use of Government employment.* A special government employee shall not use his or her Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he or she has family, business or financial ties.

(2) *Use of inside information.* A special government employee shall not use inside information obtained as a result of his or her Government employment for private gain for himself or herself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this paragraph, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(3) *Teaching, lecturing or writing.* Special government employees may teach, lecture, or write in a manner consistent with § 20.735–10.

(4) *Coercion.* A special government employee shall not use his or her Government employment to influence or coerce, or to give the appearance of influencing or coercing, a person to provide financial benefit to himself or herself or another person with whom he or she has family, business, or financial ties.

(5) *Gifts, entertainment, and favors.* Except as provided in § 20.735–7, a special government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with the Department anything of value as a gift, gratuity, loan, entertainment, or favor for himself or herself or another person with whom he or she has family, business, or financial ties.

§ 20.735–53 Statements of employment and financial interests.

(a) *Who shall file.* Each special government employee who occupies a confidential or policymaking excepted service position shall file a Standard Form 278 in accordance with the provisions in § 20.735–31. See also, § 20.735–31(b)(3). In addition, each special government employee who occupies one of the following positions shall file a statement of employment and financial interests as provided in paragraph (b) of this section:

(1) A position of consultant or expert;

(2) Any other special government employee position which the appointing officer considers to be of such a nature or at such a level of responsibility that the submission of a statement is necessary to protect the integrity of the Government;

(3) A position of advisory council member unless such filing is expressly prohibited by law; or

(4) A position involving a temporary assignment or detail, as provided in § 20.735–30(b)(5).

(b) *What and where to file.* Special government employees who are required to submit statements of employment and financial interests pursuant to paragraph (a) of this section shall fill out and submit to the appropriate Ethics Counselor designated in § 20.735–30(d), Form DI–213, "Statement of Employment and Financial Interests". This form provides for the reporting of:

(1) All employment, including employment without compensation; and

(2) All financial interests, including any interest held by the spouse or dependent child or relative living in the same household of a special government employee. The special government employee is not required to report any connection with, or interest in:

(i) A professional society;

(ii) A charitable, religious, social, fraternal, recreational, public service, civil, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from the contracts with the Government are deemed "business enterprises" and are required to be included in a special government employee's statement of employment and financial interests.

(iii) Holdings in widely held mutual funds, investment clubs, or regulated investment companies not specializing in a particular industry.

(iv) Savings or deposits in banks, credit unions, U.S. savings bonds,

building and loan associations, or insurance companies.

(c) *Special filing conditions.* (1) In an instance involving the proposed employment of a special government employee for highly specialized and limited duties, the head of the bureau or office may propose to the Designated Agency Ethics Official a reporting of financial interests restricted to such interests as may be determined to be relevant to the duties the special government employee is to perform. If a restricted reporting of financial interests is approved by the Designated Agency Ethics Official in advance of employment, Form DI–213 may be revised to reflect the narrower requirement.

(2) In an instance involving the proposed employment of an expert, consultant or advisory board member it may be desirable to retain an individual who has personal financial interests in an industry or a company that may be affected by the performance of the person's official duties. In such instances retention of otherwise prohibited holdings will be allowed if the appointing officer certifies in writing that:

(i) No other equally qualified expert, consultant or member is available, or

(ii) The reason for proposing the special government employment of the individual is precisely because that individual will represent the industry involved as an employee of the industry.

(d) *When to file.* The statement of employment and financial interests shall be submitted before the special government employee enters on duty. Prior to the reappointment of a special government employee to perform the same or different functions, with or without a break in service, a new statement shall be obtained. Statements filed by special government employees shall be reviewed, processed and retained in the manner provided in § 20.735–30.

(e) *Special definitions.* For the purpose of this section, the terms "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual, but do not include:

(1) A physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients; or

(2) A veterinarian whose services are procured to provide care and service to animals.

Subpart G—Prohibitions Affecting Former Government Employees

Note.—This subpart contains a summary of the post-employment provisions. Refer to 18 U.S.C. 207 and 5 CFR Part 737 for detailed guidance.

§ 20.735–60 Scope of subpart.

(a) *Content.* (1) This subpart prescribes policies and procedures for identifying, correcting, and preventing post-employment conflicts of interest in connection with an employee's or former employee's government position. This subpart identifies the statutory provisions governing post-employment responsibilities and conduct, sets forth administrative procedures for enforcement of the post-employment conflict of interest statutes, and describes administrative sanctions which may be imposed for their violation.

(2) Statutory restrictions on post-employment conduct are contained in 18 U.S.C. 207. Pursuant to Title IV of the Ethics in Government Act of 1978, the Office of Personnel Management (OPM), has published regulations in 5 CFR Part 737 governing post-employment conflict of interest problems. This subpart supplements the OPM post-employment regulations.

(b) *Department policy.* (1) It is the policy of the Department to provide assistance promptly to employees and former employees of the Department who seek advice on post-employment restrictions and these regulations. This assistance shall include informing employees and former employees of Departmental guidelines, counseling such employees on their participation in specific matters while working for the Department, advising the former employees as to whether the United States still has an interest in the matter and providing copies of pertinent regulations and Departmental Manual provisions.

(2) The Designated Agency Ethics Official is responsible for monitoring post employment conflict of interest matters involving employees and former employees. Inquiries concerning procedures in this subpart should be addressed to the Designated Agency Ethics Official, U.S. Department of the Interior, Washington, D.C. 20240.

§ 20.735–61 Post-employment restrictions.

(a) *Definitions.* (1) "United States" or "Government" means any department, agency, court, court-martial, or any civil, military or naval commission of the United States, the District of Columbia, or any officer or employee thereof.

(2) "Agency" includes an Executive Department, a Government corporation and an independent establishment of the executive branch, which includes an independent commission. (18 U.S.C. 6.)

(3) "Former government employee" means one who was, but is no longer, a Government employee.

(4) "Particular Government matter involving a specific party" means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest.

(5) "Senior Employee" means all Executive Level employees and officers and means an officer or employee designated by the Director, Office of Government Ethics, pursuant to 18 U.S.C. 207(d) to which subsections 207 (b)(ii) and (c) shall apply (see 5 CFR 737.25). This term applies to both regular and special government employees.

(6) "Representation" means (i) acting as agent or attorney or as any other representative in an appearance.

(7) "Participated personally and substantially" means to have participated directly through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, and includes the participation of a subordinate when actually directed by the former Government employee in the matter, and that the former employee's involvement must be of significance to the matter or form a basis for a reasonable appearance of such significance. A finding of substantiality should be based not only on the effort devoted to the matter but on the importance of the effort.

(b) *Substantive provisions.* (1) *Basic prohibition of 18 U.S.C. 207(a).* No person after his or her Government employment has ceased, shall (i) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance, before, or (ii) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to (A) the United States, (B) in connection with any particular Government matter involving a specific party or parties (C) in which matter he or she participated personally and substantially as a Government employee.

(2) *Basic prohibition of 18 U.S.C. 207(b)(i).* No person, within two years after his or her employment by the United States has ceased, shall (i)

knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before, or (ii) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) (A) to the United States (B) in connection with any particular Government matter involving a specific party or parties (C) if such matter was actually pending under the employee's official responsibility within a period of one year prior to the termination of such responsibility.

(3) *Basic prohibition of 18 U.S.C. 207(b)(ii).* No former Senior Employee, within two years after his or her Government employment has ceased, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person (except the United States) by personal presence at any formal or informal appearance before, (1) the United States (2) in connection with any particular Government matter involving a specific party or parties (3) if such matter was one in which he or she participated personally and substantially.

(4) *Basic prohibition of 18 U.S.C. 207(c).* For a period of one year after his or her Government employment has ceased, no former Senior Employee (other than a special government employee who serves for less than sixty days in a calendar year) shall (i) knowingly act as an agent or attorney for, or otherwise represent, anyone other than the United States in any formal or informal appearance before, or (ii) with the intent to influence, make any written or oral communication on behalf of anyone other than the United States to (A) the Department, or any of its employees, (B) in connection with any particular Government matter, whether or not involving a specific party, which is pending before the Department, or in which it has a direct and substantial interest.

(c) *Exemptions.* (1) Anything in 18 U.S.C. 207 to the contrary notwithstanding, employees of the United States assigned to an Indian tribe as authorized under 5 U.S.C. 3372 or 25 U.S.C. 48 and former employees of the United States employed by Indian tribes may act as agents or attorneys for or appear on behalf of such tribes in connection with any matter pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: Provided, that each such employee or former employee must advise in writing the head of the department, agency, court, or commission with which he or she is dealing or appearing before on behalf of the tribe of any personal and substantial involvement he or she may have had as an employee of the United States in connection with the matter involved (25 U.S.C. 450i(f)). Such notices should be sent to the Designated Agency Ethics Official for review and filing.

(2) Other exemptions are set forth in 5 CFR 737.15 and 737.17.

§ 20.735-62 Administrative enforcement procedures.

(a) *Content.* The procedures in this subsection are for the purpose of carrying out the authority of the Secretary under 18 U.S.C. 207(j) to enforce the post-employment conflict of interest provisions of 18 U.S.C. 207(a), (b) and (c).

(b) *Investigative procedures.* (1) Information received in the Department which indicates that a former employee has violated any post-employment provision of 18 U.S.C. 207 or any post-employment regulation of the department shall be submitted to the Inspector General for determination as to whether there is reasonable cause to believe there has been a violation. Employees have a duty to report such information to the Inspector General.

(2) Allegations submitted to the Inspector General shall be reviewed and an initial determination made as to whether such allegation warrants further investigation. If such an investigation appears warranted, the Inspector General shall:

(i) Expeditiously inform the Designated Agency Ethics Official, the Director, Office of Government Ethics, and the Criminal Division, Department of Justice, and provide them with any comments and regulations deemed pertinent,

(ii) Coordinate any investigation with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Inspector General that it does not intend to initiate criminal prosecution; and

(iii) Conduct a full investigation, or as appropriate, arrange and provide oversight for Department personnel to undertake an investigation on behalf of the Inspector General.

(3) If the Designated Agency Ethics Official determines, based on the evidence gathered during the investigation and other factors, that disciplinary action should be taken, he or she shall request the Office of Hearings and Appeals, which shall appoint an impartial and qualified hearing officer, to initiate the action and render a decision. The hearing officer shall be an individual who has not participated in any way in the decision to propose such action. The Designated Agency Ethics Official, in consultation with the Inspector General should propose a penalty when he or she asks for disciplinary action.

(c) *Hearing procedures.* (1) As soon as he or she is appointed, the hearing officer shall provide written notice to the former employee that the Department intends to institute a proceeding under these regulations and inform the former employee of the penalty being proposed. The notice shall also inform the employee that:

(i) He or she may request a hearing, in writing, within 10 days after receipt of the notice;

(ii) If a written request from the employee is not received by the hearing officer within the stated time period, the right to a hearing shall be waived;

(iii) If the employee waives the right to a hearing, the hearing officer shall consider the evidence and make a decision; and

(iv) The particular penalty proposed will be in addition to any which the Justice Department may seek to obtain in a prosecution under 18 U.S.C 207.

(2) If the former employee waives a hearing, the hearing officer shall render a decision on the basis of evidence presented by the Inspector General and shall set forth in the decision findings of fact and conclusions of law.

(3) If the former employee requests a hearing, the hearing officer shall conduct such hearing in accordance with 43 CFR Part 1.

(d) *Appeals.* Within 30 days after receipt of the decision of the hearing officer, an appeal may be filed by the former employee, the Designated Agency Ethics Official or the Inspector General, with the Solicitor whose decision shall be final for the Department. If the Solicitor modifies or reverses the initial decision, he or she shall specify such findings of fact and conclusions of law as are different from those of the hearing examiner.

(e) *Administrative Sanctions.* (1) The Department may in the case of any individual found in violation of 18 U.S.C. 207(a), (b) or (c) or these regulations impose any or all of the following sanctions:

(i) Prohibit the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Department on any matter of business for a period not to exceed five years;

(ii) Cancel, or cause to be cancelled, any contract, permit, license, lease, or other business arrangement between the Department and the individual;

(iii) Take other appropriate disciplinary or administrative action.

(2) In addition, the Department reserves the right to formally notify any professional society (e.g., state bar association, American Institute of Certified Public Accountants, American Institute of Architects) to which the individual belongs and any appropriate federal, state, territorial, or tribal agency of any final decision in which the former individual is found to have violated 18 U.S.C. 207 or these regulations.

(f) An individual found to be in violation of 18 U.S.C. 207 or these regulations by the Department may seek judicial review of the administrative determination in an appropriate United States district court.

Subpart H—Bibliography of Statutes

§ 20.735-70 Bibliography of statutes.

(a) The following list consists of particularly relevant statutory provisions that relate to ethical and other conduct of federal employees. Employees must become acquainted with these provisions:

(1) House Concurrent Resolution 175, 85th Cong. 2d Sess. 72 Stat. B12, the "Code of Ethics for Government Service."

(2) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employee concerned.

(3) The prohibition against lobbying with appropriate funds (18 U.S.C. 1913).

(4) The prohibitions against disloyalty and striking (5 U.S.C 7311, 18 U.S.C. 1918).

(5) The prohibitions contained in the Freedom of Information Act against failing to disclose information disclosure of which is required by that Act (5 U.S.C. 552(a)(4)(F) and (G)).

(6) The prohibitions against (i) disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); (ii) disclosure of confidential information (18 U.S.C. 1905); and (iii) disclosure and maintenance of information which is restricted by the Privacy Act (5 U.S.C. 552a(i)(1) and (2)).

(7) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(8) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(9) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(10) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(11) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(12) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(13) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(14) The prohibitions against (i) embezzlement of Government money or property (18 U.S.C. 641); (ii) failing to account for public money (18 U.S.C. 643); and (iii) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(15) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(16) The prohibition against political activities in subchapter III of Chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 606, 607, and 608.

(17) The prohibition against an employee acting as an agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(18) The requirement that each employee of the Department performing a function or duty under the Energy Policy and Conservation Act file a written statement disclosing known financial interests in certain business and property (42 U.S.C. 6392).

(19) The requirement that each employee of the Department performing a function or duty under the Mining in the Parks Act file a written statement disclosing known financial interest in any person subject to the Act and other acts specified therein, or in any person who holds a mining claim within the boundaries of units of the National Park System (16 U.S.C. 1912).

(20) The requirement that each employee of the Secretary and of the Bureau of Land Management performing a function or duty under the Federal Land Policy and Management Act, file a written statement disclosing any known financial interest in any person who applied for or receives any permit, lease, or right-of-way under, or applies for or acquires any land or interests therein under, or is otherwise subject to the provisions of, the Act (43 U.S.C. 1743).

(21) The requirement that each employee of the Office of Surface Mining Reclamation and Enforcement or any other Federal employee performing any function or duty under the Surface Mining Enforcement and Reclamation Act file a written statement disclosing any direct or indirect financial interest in underground or surface coal mining operations (30 U.S.C. 1211(f)).

(22) The requirement that each employee of the Department performing a function or duty under the Outer Continental Shelf Lands Act, as amended, file a written statement disclosing known financial interests in any person who applies for or receives any permit or lease under, or is otherwise subject to the provisions of that Act (43 U.S.C. 1864).

(23) The requirement that prohibits employees in the Bureau of Land Management from directly or indirectly purchasing or becoming interested in the purchase of any of the public land (43 U.S.C. 11).

(24) The requirement that prohibits the Director and members of the Bureau of Mines from (i) having any personal or private interest in any mine or the products of any mine under investigation, (ii) accepting employment from any private party for services in the examination of any mine private mineral property, or (iii) issuing any report as to the valuation or the management of any mine or other private mineral property (30 U.S.C. 6).

(25) The requirement that prohibits the Director and members of the Geological Survey from having any personal or private interests in the lands or mineral wealth of the region under survey, and from executing any surveys or examinations for private parties or corporations (43 U.S.C. 31(a)).

(26) The requirement that no employee in Indian Affairs may have (other than as a lawful representative of the United States) any interest in his or her own name, or in the name of another person where such employee benefits or appears to benefit from such interest (i) in any contract made or under negotiation with any Indian, for the purchase or transportation or delivery of goods or supplies for any Indian, or (ii) in any purchase or sale of any service or real or personal property (or any interest therein) from or to any Indian, or (iii) collude with any person in attempting to obtain any such interest (18 U.S.C. 437, as amended by Sec. 1, Pub. L. 96-277, 94 Stat. 544).

(27) The requirement that no employee who has authority to take, direct others to take, recommend, or approve any personnel action shall with respect to such authority engage in personnel practices prohibited by 5 U.S.C 2302.

(b) The majority of the foregoing provisions are not discussed in depth in other sections of these regulations. They are nevertheless important provisions that employees should be reminded of

occasionally. Accordingly, the Designated Agency Ethics Official shall:

(1) Make current copies of the foregoing statutes available to each Ethics Counselor,

(2) Request Ethics Counselors to make the copies available to employees for review, and

(3) Encourage Ethics Counselors occasionally to remind employees of these provisions in appropriate annual notices or bulletins on employee conduct.

Appendix A–1

U.S. Geological Survey Employee Certification

I have been given a copy of Department of the Interior Regulations governing Responsibilities and Conduct of Employees (43 CFR Part 20). I have been advised of the name and location of the Bureau and Deputy Bureau Ethics Counselors. I understand that I may discuss questions or concerns related to my responsibilities, conduct, and financial interests with these individuals.

I certify I have been informed of the statutory restrictions contained in 43 U.S.C. 31(a), which provides that employees of the Geological Survey shall have no personal or private interest in the lands or mineral wealth under survey, and shall execute no surveys or examinations for private parties or corporations (43 CFR 20.735–22(c)(3)).

The Department has determined that these restrictions prohibit an employee of the Geological Survey from having any personal or private interest, direct or indirect, in federal lands. Further, an employee of the Geological Survey is prohibited by the U.S. Code from having any personal or private interest in the mineral wealth of such lands and from executing surveys or examinations for private parties. By paragraph 20.735–27(b)(2) of the Regulations, the Department has also prohibited an employee of the Geological Survey from having a substantial personal or private interest, direct or indirect, in any private mining activities in the United States except where specifically authorized by the Director of Geological Survey.

I certify that to the best of my knowledge I do not have any personal or private interest, direct or indirect, in Federal lands as defined in §§ 20.735–24(a).

I also certify that to the best of my knowledge I do not have any substantial personal or private interest, direct or indirect, in any private mining activities, as defined in § 20.735–27(a) doing business in the United States except where the Director has authorized me to have such interest.

Note.—The provisions in 43 CFR 20.735–24 and 20.735–27 should be read completely before this statement is signed.

Employee's name (typed or printed)

(Signature of employee)

(Title of position)

(Date)

Instructions

1. All applicable employees of the U.S. Geological Survey shall complete the certifications on this form.

2. Signed certificates shall be sent to and maintained by the appropriate Personnel Office.

3. If an employee is unable to sign the certificate, he or she must submit a statement of facts to the appropriate Ethics Counselor for review and action.

Privacy Act Notice

43 U.S.C. 31(a) and 5 U.S.C. 301 constitute the authority for requesting this certification. This certification must be signed; failure to do so can be cause for denying appointment or for appropriate disciplinary action.

This certification will be used to record officially the fact that you have knowledge of, and are in compliance with, the restrictions pertinent to your employment. The information certified to will be considered confidential and will form a part of the records of the office where you file; as such, the contents may be routinely disclosed to authorized Interior personnel, the Office of Personnel Management, the Department of Justice and to appropriate law enforcement agencies.

Appendix A–2

U.S. Department of the Interior, Indian Affairs: Employee Certification.

I have been given a copy of Department of the Interior Regulations governing Responsibilities and Conduct of Employees (43 CFR Part 20). I have been advised of the name and location of the Deputy or Assistant Ethics Counselor for my office. I understand that I may discuss questions or concerns related to my responsibilities, conduct and financial interests with this individual.

I certify I have been informed and am in compliance with the statutory restrictions contained in 18 U.S.C. 437, as amended by Pub. L. 96–277, 94 Stat. 544 which prohibits any person employed in Indian Affairs in the Department of the Interior from having an interest or concern in any trade with the Indians, except for, and on account of, the United States.

I also certify I will not in the future acquire any such interest or concern in violation of the law, so long as I am employed in the Department and involved with Indian Affairs.

Note.—The provisions in 43 CFR 20.735–28 and 20.735–29 should be read completely before this statement is signed

Employee's name (typed or printed)

(Signature of employee)

(Title of position)

(Date)

1. All applicable employees in Indian Affairs shall complete the certifications on this form.

2. Signed certificates shall be sent to and maintained by the appropriate Ethics Counselor.

3. If an employee is unable to sign the certificate, he or she must submit a statement of facts to the appropriate Ethics Counselor for review and action.

Privacy Act Notice

18 U.S.C. 437 and 5 U.S.C. 301 constitute the authority for requesting this certification. This certification must be signed; failure to do so can be cause for denying appointment or for appropriate disciplinary action.

This certification will be used to record officially the fact that you have knowledge of, and are in compliance with, the restrictions pertinent to your employment. The information certified to will be considered confidential and will form a part of the records of the office where you file; as such the contents may be routinely disclosed to authorized Interior personnel, the Office of Personnel Management, the Department of Justice and to appropriate law enforcement agencies.

Appendix A–3

U.S. Department of the Interior, Bureau of Land Management: Employee Certification

I have been given a copy of Department of the Interior Regulations governing Responsibilities and Conduct of Employees (43 CFR Part 20). I have been advised of the name and location of the Deputy or Assistant Ethics Counselor for my office. I understand that I may discuss questions or concerns related to my responsibilities, conduct and financial interests with this individual.

I certify that I understand and that I am in compliance with the statutory restrictions in 43 U.S.C. 11, which provides:

The officers, clerks, and employees in the Bureau of Land Management are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land; and any person who violates this section shall forthwith be removed from office.

I also certify that neither I nor my spouse has, nor is either of us in the process of acquiring in violation of 43 CFR 20.735–24(b), any direct or indirect interest in federal lands.

I further certify I understand that if either I or my spouse acquires during my employment, interest in lands or resources administered by the Department, by gift, devise, bequest or operation of law, that I am required to submit a statement of facts surrounding such acquisition promptly through channels to my bureau head for transmittal to the Designated Agency Ethics Official for a decision about retention or other necessary action.

Note.—The provisions in 43 CFR 20.735–24 should be read completely before this statement is signed.

Employee's name (typed or printed)

(Signature of employee)

(Title of position)

(Date)

Instructions

1. All employees of the Bureau of Land Management shall complete the certification of this form.

2. Signed certificates shall be sent to and maintained by the appropriate Ethics Counselor.

3. If an employee is unable to sign the certificate, he or she must submit a statement of facts to the appropriate Ethics Counselor for review and action.

Privacy Act Notice

43 U.S.C. 11 and 5 U.S.C. 301 constitute the authority for requesting this certification. This certification must be signed; failure to do so can be cause for denying appointment or for appropriate disciplinary action.

This certification will be used to record officially the fact that you have knowledge of, and are in compliance with, the restrictions pertinent to your employment. The information certified to will be considered confidential and will form a part of the records of the office where you file; as such the contents may be routinely disclosed to authorized Interior personnel, the Office of Personnel Management, the Department of Justice and to appropriate law enforcement agencies.

Appendix A–4

U.S. Department of the Interior, Bureau of Mines; Employee Certification

I have been given a copy of Department of the Interior Regulations governing Responsibilities and Conduct of Employees (43 CFR Part 20). I have been advised of the name and location of the Deputy or Assistant Ethics Counselor for my office. I understand that I may discuss questions or concerns related to my responsibilities, conduct and financial interests with this individual.

I certify that I have been informed of, and that I am in compliance with, prohibitions contained in 43 CFR 20.735–27 which implements the statutory restrictions in 30 U.S.C. 6. I understand that these provisions prohibit employees of the Bureau of Mines from having any personal or private interest in any mine or the products of any mine under investigation by the Bureau; accepting employment from any private party for services in the examination of any mine or private mineral property; or issuing any report as to the valuation or the management of any mine; or issuing any report as to the valuation or the management of any mine or other private mineral property other than as part of my official duties.

Note.—The provisions in 43 CFR 20.735–24 should be read completely before this statement is signed.

Employee's name (typed or printed)

(Signature of employee)

(Title of position)

(Date)

Instructions

1. All employees of the Bureau of Mines shall complete the certifications on this form.

2. Signed certificates shall be maintained in the Official Personnel Folder.

3. If an employee is unable to sign the certificate, he or she must submit a statement of facts to the appropriate Ethics Counselor for review and action.

Privacy Act Notice

30 U.S.C. 6 and 5 U.S.C. 301 constitute the authority for requesting this certification. This certification must be signed; failure to do so can be cause for denying appointment or for appropriate disciplinary action.

This certification will be used to record officially the fact that you have knowledge of, and are in compliance with, the restrictions pertinent to your employment. The information certified to will be considered confidential and will form a part of the records of the office where you file; as such the contents may be routinely disclosed to authorized Interior personnel, the Office of Personnel Management, the Department of Justice and to appropriate law enforcement agencies.

Appendix A–5

U.S. Department of the Interior, Office of the Secretary and Other Departmental Offices; Employee Certification

Instructions and Privacy Act Notice on Reverse

I have been given a copy of Department of the Interior Regulations governing Responsibilities and Conduct of Employees (43 CFR Part 20). I have been advised of the name and location of the Deputy or Assistant Ethics Counselor for my office. I understand that I may discuss questions or concerns related to my responsibilities, conduct and financial interests with this individual.

I understand that under regulations issued by the Secretary of the Interior, the statutory restrictions listed below apply to me and to other employees in the Office of the Secretary and other organizational entities reporting directly to a Secretarial officer who are required to file a Statement of Employment and Financial Interest. I certify that I understand and that I am in compliance with the following restrictions except where specifically authorized by the Designated Agency Ethics Official:

(1) 43 U.S.C. 11 and 43 U.S.C. 31(a) which provide that certain employees are prohibited from (1) having a direct or indirect interest in public lands or (2) executing surveys or examinations for private parties or corporations (43 CFR 20.735–24).

(2) 30 U.S.C. 6, which provides that employees are prohibited from owning a financial interest in any mine or the products of any mine under investigation (43 CFR 20.735–27).

(3) 18 U.S.C. 437, as amended by Sec. 1, Pub. L. 96–277, 94 Stat. 544, which provides that any person employed in Indian Affairs in the Department of the Interior is prohibited from having an interest or concern in any trade with the Indians, except for, and on account of, the United States (43 CFR 20.735–28).

I understand that any person who violates these provisions shall be subject to removal from office.

Note.—The provisions in the sections cited should be read completely before this statement is signed.

Employee's name (typed or printed)

(Signature of employee)

(Title of position)

(Date)

Instructions

1. All applicable employees of the Office of the Secretary and other organizational entities reporting directly to a Secretarial officer shall complete the certifications on this form.

2. Signed certificates shall be sent to and maintained by the appropriate Ethics Counselor.

3. If an employee is unable to sign the certificate, he or she must submit a statement of facts to the appropriate Ethics Counselor for review and action.

Privacy Act Notice

5 U.S.C. 301 constitutes the authority for requesting this certification. This certification must be signed; failure to do so can be cause for denying appointment or for appropriate disciplinary action.

This certification will be used to record officially the fact that you have knowledge of, and are in compliance with, the restrictions pertinent to your employment. The information certified to will be considered confidential and will form a part of the records of the office where you file; as such the contents may be routinely disclosed to authorized Interior personnel, the Office of Personnel Management, the Department of Justice and to appropriate law enforcement agencies.

Appendix B—Reserved

Appendix C—List of Employees, in Addition to GS–15's and Higher, Required to File Confidential Statements of Employment and Financial Interests [1]

Appendix D—List of Bureaus and Offices, or Subunits Thereof, Performing Functions or Duties Under the Federal Land Policy Management Act and Positions Which the Secretary Has Determined Are Subject To the Reporting Requirements of Section 313 of the Act [1]

Appendix E—List of Bureaus and Offices, or Subunits Thereof, Performing Functions or Duties Under the Mining in the Parks Act and Positions Which the Secretary Has Determined Are Subject To the Reporting Requirements of Section 13 of the Act [1]

Appendix F—List of Bureaus and Offices, or Subunits Thereof, Performing Functions or Duties Under the Energy Policy and Conservation Act and Positions Which the Secretary Has Determined Are Subject To the Reporting Requirements of Section 522 of the Act [1]

Appendix G—List of Bureaus and Offices, or Subunits Thereof, Performing Functions or Duties Under the Outer Continental Shelf Lands Act Amendments of 1978 and Positions Which the Secretary Has Determined Are Subject To the Reporting Requirements of Section 605 of the Act [1]

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[1] Appendices C–G filed as part of the original document. Copies may be obtained by writing to Designated Agency Ethics Official, Department of the Interior, 18th & C Streets, NW., Washington, D.C. 20240.

federal register

Tuesday
December 1, 1981

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Permanent Regulatory Program Modifications

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840, 842, 843, and 845

State Regulatory Authority Inspection and Enforcement, Federal Inspection and Enforcement and Civil Penalty Assessments; Permanent Regulatory Program Modifications

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

ACTION: Proposed rules.

SUMMARY: The Office of Surface Mining (OSM) is proposing to amend 30 CFR Parts 840, 842, 843 and 845, which set forth the standards and procedures governing State regulatory authority inspection and enforcement, Federal inspection and enforcement and civil penalty assessments.

OSM has drafted these revisions as a part of the Secretary's effort to remove burdensome or counter-productive regulations and in response to comments from the States and the general public.

DATES: Comments must be received by 5:00 p.m. on February 1, 1982, at the address listed below. Comments received after that time will not be considered. Public hearings will be held on January 4, 1982 in Lexington, Kentucky, Denver, Colorado, and Washington, D.C.

Representatives of OSM will be available to meet with interested persons upon request before the close of the public comment period.

ADDRESSES: Written comments must be mailed or hand delivered to the Office of Surface Mining, U.S. Department of the Interior, Room 125 South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, Attention: Carl S. Pavetto. A summary of meetings with representatives of OSM and copies of all written comments submitted will be available for public review in Room 153, Interior South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Carl S. Pavetto, Chief, Branch of Inspection, Office of Surface Mining, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone: (202) 343-5384.

SUPPLEMENTARY INFORMATION:

I. Public Hearings

Public hearings will be held at 9:30 a.m. (local time) on January 4, 1982, at the following locations: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky; 1823 Stout Street, Room 269, Denver, Colorado; and in the main auditorium, Department of the Interior, 18th and 'C' Streets NW., Washington, D.C. Persons wishing to testify at the hearings should contact Carl S. Pavetto, Chief, Branch of Inspection, at the address and telephone shown at "FOR FURTHER INFORMATION CONTACT:" immediately above.

Individual testimony will be limited to 15 minutes. The hearings will be transcribed. Filing of a written statement prior to or at the time of giving oral testimony would be helpful to the hearing panel and would facilitate the job of the court reporter.

After all persons scheduled to speak at the hearing have been heard, persons in the audience who have not been scheduled to speak, but who wish to do so, will be heard. The hearing will end after all persons scheduled to speak and all persons in the audience wishing to speak have been heard.

II. Background

The Secretary of the Interior has decided to review all regulations promulgated by the Department under the Surface Mining Control and Reclamation Act of 1977 (the Act). The Secretary believes that fundamental changes in these regulations are necessary. He intends to administer the Act in a manner which ensures the protection of society and the environment, but does not unnecessarily restrict coal development or improperly intrude upon the role of the States. This approach attempts to reconcile the potentially competing mandates of the Act which require the Secretary to (1) establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining (§ 102(a)); (2) recognize that the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface coal mining and reclamation operations should rest with the States (section 101(f)); and (3) ensure that coal supplies are adequate to meet the Nation's requirements (§ 102(f)).

To implement the provisions of sections 501(b), 503 and 504 of the Act, the Secretary promulgated Parts 840, 842, 843 and 845 of Title 30, Code of Federal Regulations (CFR) (44 FR 15455-15463, March 13, 1979).

Part 840 contains the minimum requirements for inspection and enforcement by a State where the State is the regulatory authority under an approved State program or cooperative agreement. Part 842 sets forth the procedures applicable to Federal inspections in the permanent regulatory program. Part 843 relates to Federal enforcement in the permanent regulatory program pursuant to Federal programs, the Federal lands program and any State program being enforced by the Office pursuant to sections 504(b) or 521(b) of the Act. Part 845 contains regulations regarding the assessment of civil penalties under section 518 of the Act.

III. Proposed Revisions

The proposed revisions are designed to streamline the regulations, remove burdensome or counter-productive requirements, and provide editorial clarity. Accordingly, the Secretary proposes to revise Parts 840, 842, 843 and 845 as described below.

Subchapter L is being printed in its entirety solely for continuity and the convenience of the reader. Some sections are unchanged. The Office is neither proposing substantive change to, nor soliciting comments on the following sections:

Sec.
840.1
842.1
843.1
843.15 through 843.18
845.1 through 845.16
845.20

All references in the current rules to the terms "Regional Director" and "Regional Office" have been replaced in these proposed rules with references to "Director" and "Office" to conform to the September 13, 1981, reorganization of OSM, which abolished the Office's previous regional structure.

Part 840—State Regulatory Authority Inspection and Enforcement

1. § *840.1 Scope.* Section 840.1 is proposed to be revised for precision by inserting the work "approved" before the words "State program" at the end of the sentence. The same revision is proposed throughout these rules; no change in effect is intended.

2. § *840.11 Inspections by State Regulatory Authority.* Section 840.11(a) is proposed to define partial inspections as including aerial inspections in order to allow States to use this valuable tool. Standards and procedures governing aerial inspections are contained in proposed § 840.11(d). The requirement of § 840.11(d)(1) that aerial inspections "be conducted in a manner which reasonably ensures the identification * * *" of site conditions refers to at least two aspects of aerial inspections: (1) the suitability of the

aircraft involved, and (2) the types of conditions being inspected.

The Office recognizes that regional variations both in terrain and in the characteristics of surface mining make fixed-wing aircraft more effective for aerial inspections in the West than in Appalachia. Consequently, the Office will not oridinarily consider the use of fixed-wing aircraft for aerial inspections in Appalachia as reasonably ensuring the identification of on-the-ground conditions. With respect to the types of conditions being inspected, the Office notes that certain performance standards are observed as easily from the air as on the ground, others are more easily seen from above, and still others can be observed only on-site. Aerial inspections are a useful but limited tool, and the Office considers this tool to be adequate only if it is used in ways which recognize its limitations.

The provisions in §§ 840.11 (a), (b), and (c) which mandates the collection of evidence during inspections is proposed to be deleted. The Office considers this language to be superfluous, inasmuch as it is subsumed by the larger requirement that the State regulatory authority adequately enforce its aproved program. This provision is proposed to be deleted in an effort to streamline the Chapter; no change in effect is intended.

Section 840.11(c) is proposed to be revised by changing the standard for frequency of inspections to be conducted at coal exploration operations from "periodic" to "as necessary." This is intended to recognize and provide for regional differences which warrant flexibility in determining the appropriate frequency of inspections to be conducted at coal exploration operations.

Section 840.11(d) is proposed to be redesignated § 840.11(e), and revised to replace the phrase "person being inspected" with the word "permittee." Similar revisions are proposed throughout these rules for precision, and are not intended to change the scope of OSM's jurisdiction.

The Interior Board of Surface Mining Appeals held in *Delight Coal Corporation v. OSM* (1 IBSMA 186, June 5, 1979) that the definition of "permittee" contained in 30 CFR 700.5 includes persons who, through ignorance or dishonesty, fail to obtain a permit prior to conducting coal mining operations. Subsequently, in *Claypool Construction Company v. OSM* (1 IBSMA 259, September 26, 1979), the definition was interpreted to include persons who fail to obtain a permit for *any* reason. The Secretary believes that the term "permittee," as interpreted by the Interior Board of Surface Mining Appeals, encompasses all persons presently subject to OSM's jurisdiction.

The reference in renumbered § 840.11(e)(3)—existing § 840.11(d)(3)—to violations of "* * * the State program, the Act, this Chapter, the exploration approval and the permit" is proposed to be replaced with "the approved State program." OSM believes that the terms of an approved State program encompass all requirements for which the State is responsible. Here and elsewhere in this Part, the phrase "approved State program" is proposed to replace more cumbersome phrases and references for editorial clarity and simplicity. No substantive change is intended.

3. § *840.12 Right of entry.* Proposed §§ 840.12 (a) and (b) change the requirement that a State regulatory authority "have statutory authority" to inspect surface coal mining operations within its borders to "have authority." OSM does not believe that statutory authority is necessary to safeguard inspection authority, so long as the State program provides some valid authority.

The Office notes the relevance here of the United States Supreme Court's recent holding in *Donovan* v. *Dewey* (No. 80-901, June 17, 1981, ——— U.S. ———). The Court held in *Donovan* that the warrantless inspections required by § 103 of the Federal Mine Safety and Health Act of 1977 (similar to those provided for in these rules) do not violate the Fourth Amendment to the United States Constitution, but instead are reasonable within the meaning of that Amendment (Decision at 3). While this holding confirms the State's right to provide for warrantless inspections of surface coal mining operations, proposed § 840.12(a) authorizes States to provide for the use of search warrants with respect to entry into buildings.

Section 840.12(b) is proposed to replace reference to "the Act, this Chapter, the State program, the exploration approval, or the permit" with "the approved State program." The rationale for this and similar proposed changes is described in the preceding discussion of renumbered § 840.11(e)(3).

4. § *840.13 Enforcement authority.* Proposed §§ 840.13 (b) and (c) contain minor grammatical changes for precision; no change in effect is intended.

5. § *840.14 Availability of records.* New § 840.14(c) is proposed to provide flexibility with respect to the methods by which States make records available to interested persons. This flexibility will assist those States (principally in the West) which do not have offices throughout coal mining regions. The Office believes that allowing for mail responses to requests for information submitted by interested persons would meet the "conveniently available" requirement of Section 517(f) of the Act.

Proposed § 840.14(b) limits the time during which records are to be made immediately available to the public in the area of mining to the period during which an operation is active or is covered by any portion of a reclamation bond.

6. § *840.15 Public participation.* Section 840.15 requires that State programs contain provisions for public participation in enforcement "consistent with 30 CFR Parts 842, 843, and 845 and 43 CFR Part 4." The existing preamble to this provision states that OSM interprets the regulation to provide for citizens' suits in State courts. 44 FR 15297 (March 13, 1979); see 44 FR 14965 (March 13, 1979). The United States District Court for the District of Columbia upheld this as a reasonable interpretation of the Act. *In re Permanent Surface Mining Regulation Litigation*, Civ. No. 79-1144 (D.D.C. Feb. 26, 1980), slip op. at 11-13. The District Court's ruling is now on appeal. Examination of this issue in the course of litigation has led OSM to question the validity of its existing interpretation of the Act's public participation requirements. OSM proposes to alter its interpretation of § 840.15 so that State programs need not provide for citizens' suits in State courts, and hereby solicits comment on this proposed change.

Additionally, the preamble to § 840.15 explains that the regulation is intended to require that citizens have the right to accompany State inspectors onto the mine site when the inspection is a result of a citizen's request. 44 FR 15297 (March 13, 1979); *see* 44 FR 14965 (March 13, 1979). The United States District Court for the District of Columbia has upheld this interpretation as a reasonable construction of the Act. *In re Permanent Surface Mining Regulation Litigation*, slip op. at 13-14. This ruling is now on appeal. Examination of this issue in the course of litigation has led OSM to question the validity of its existing interpretation of this issue. Accordingly, OSM proposes to delete the requirement that State programs contain this requirement, and hereby solicits comment on this proposed change.

Furthermore, on November 4, 1981, OSM published a notice in the **Federal Register** (46 FR 54761) postponing consideration of a petition by the State of Colorado to amend 30 CFR 840.15 by deleting the requirement that each State program provide for public participation consistent with 43 CFR 4.1294(b). The

regulations at 43 CFR Part 4 describe the procedures applicable to surface coal mining hearings and appeals. Specifically, 43 CFR 4.1294(b) permits the award of appropriate costs and expenses, including attorneys' fees, from OSM to any person other than a permittee or his or her representative, if the person initiates or participates in any proceeding under the Act, upon a finding that the person made a substantial contribution to a full and fair determination of the issues.

30 CFR 840.15 operates to make this provision a requirement of each State program. The petition and a clarifying letter, dated May 12, 1981, argue that 43 CFR 4.1294(b), as applied to State programs through 30 CFR 840.15, is arbitrary, capricious and inconsistent with all applicable law, including Section 525(e) of the Act.

In the November 4, 1981 **Federal Register** notice, OSM determined that it would make sense to consider this petition as part of the overall rule changes herein proposed, and to solicit public comments at that time. OSM hereby seeks public comments as to whether this petition should be granted in whole or in part.

Public comment on the petition may consider the entire OSM record relevant to the question of requiring that each State program provide for the award of appropriate costs and expenses as described in 30 CFR 840.15 and 43 CFR 4.1294(b), including, but not limited to, the petition, the clarifying letter of May 12, 1981, and the preamble to the permanent program regulations (44 FR 15296, March 13, 1979).

Copies of the petition and clarifying letter published in the November 4, 1981 **Federal Register** notice, and copies of 30 CFR Chapter VII, Subchapter L are available for inspection and may be obtained at OSM Headquarters, Department of the Interior, South Building, Room 153, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; (202) 343-4728.

7. § *84016 Compliance conference.* Proposed new § 840.16 would authorize the inclusion in a State program of a provision for "compliance conferences," in an effort to provide guidance to surface coal mine operators in conforming planned activities to the requirements of the Act.

Proposed § 840.16(e) limits the use of compliance conferences to one per operation in any six-month period to minimize any potential for abuse of this device and to prevent the compliance conference from supplanting competent professional advice from consultants. Additionally, the six-month limitation properly accommodates conditions which change as a function of seasonal variations.

OSM Solicits comments on the advisability of limiting the use of compliance conferences to newly opened mines (or, in the case of abandoned and inactive mines, newly re-opened mines), or, alternatively, broadening their use to include existing, rather than just prospective, conditions and practices. Since proposed § 840.16(b) specifically provides that a compliance conference would not constitute an inspection within the meaning of Section 517 of the Act, and proposed § 840.16(f) makes it clear that inspection frequency would not be affected by the use of a compliance conference, it may be counterproductive to cite a permittee for violations which exist at the time a compliance conference is held. Rather, it may be preferable to give the permittee who desires to bring his or her operation into compliance the benefit of the regulatory authority's assessment of "on-the-ground" conditions without making him or her vulnerable, at that time, to being cited for violations (other than those involving an imminent danger or significant, imminent environmental harm.)

The Office further solicits comments on the advisability of providing that compliance conferences be conducted by State technical staff, rather than by inspectors.

Part 842—Federal Inspections and Monitoring

8. Part 842 (and § 842.11) is proposed to be retitled for precision: "Federal Inspections and Monitoring."

9. § *842.11 Federal inspections and Monitoring.* Proposed § 842.11(a)(1) provides for OSM inspections to be conducted jointly with State personnel "where possible and where the State so requests." This proposal is made in recognition of the State's role as primary enforcer of its approved program. The Office notes that this provision does not affect OSM's obligations under the Act to conduct certain inspections, and to do so without notice or warning to the permittee. While OSM will make every effort to accommodate the State's wishes with respect to joint inspections, the inability to arrange joint inspections cannot affect any of OSM's statutory obligations or responsibilities.

Proposed § 842.11(b)(1) deletes unnecessary language; no change in effect is intended.

The requirement in §§ 842.11(c) (1), (2) and (3) that an inspector collect evidence of every observed violation is proposed to be deleted, on the basis of the rationale contained in the preceding discussion of §§ 840.11 (a), (b) and (c).

Proposed § 842.11(c) defines partial inspections as including aerial inspections in order to enable OSM to use this valuable tool. Standards and procedures governing aerial inspections are contained in proposed §§ 842.11)c)(1)(i) (A) and (B), and are explained in the preceding discussion of proposed § 840.11.

Proposed §§ 842.11(c) (1) and (2) distinguish between active and inactive mine sites. In administering the Act and these regulations, OSM has found that inactive mine sites present different problems than do active mine sites, both in kind and degree. Consequently, the Office believes that different standards and procedures should govern inspections of inactive mine sites, and is proposing § 842.11(c)(2).

The Office further believes that the criteria for designating a site "inactive" should be specific and reasonable. The first criterion in proposed § 842.11(c)(2)(ii) refers to the process by which the operator may notify the regulatory authority of his or her intention to temporarily cease mining and reclamation operations.

The second criterion is proposed § 842.11(c)(2)(ii) describes sites which are successfully revegetated, which are not contributing excessive suspended solids to streamflow or runoff, and, in the case of prime farmlands, which have been restored to requisite levels of productivity. Such sites clearly require a different type of surveillance by the regulatory authority than do active sites, and § 842.11(c)(2) is proposed in recognition of this.

Proposed § 842.11(c)(3) makes clear that regulatory authority jurisdiction over coal exploration operations (as provided in § 512 of the Act) is limited to those operations which substantially disturb the natural land surface.

Proposed § 842.11(d) replaces the phrase "person being inspected" with the word "permittee," and otherwise removes unnecessary language. No change in effect is intended.

10. § *842.12 Citizens' requests for Federal inspections.* Proposed § 842.12(a) would make it clear that a citizen who requests a Federal inspection must have initially contacted the State regulatory authority, if any. If the State then fails to take appropriate action, a request for a Federal inspection would be proper.

This paragraph also replaces the term "person" with "citizen" for precision.

Proposed § 842.12(d) qualifies the word "inspection" by inserting "Federal" before it for clarity.

11. § *842.13 Right of entry.* Proposed § 842.13(a)(2) deletes unnecessary language; no change in effect is intended.

This subsection also makes it clear that an authorized representative of the Secretary has a right of entry onto coal exploration operations when conducting inspections pursuant to § 842.11.

Proposed new § 842.13(a)(3) confirms the right of the Secretary's authorized representative to gather evidence in order to document observed conditions, practices and violations.

12. § *842.14 Review of adequacy and completeness of inspections.* Proposed § 842.14 has been rephrased to eliminate redundant language; no change in effect is intended.

13. § *842.15 Review of decision not to inspect or enforce.* Proposed new § 842.15(d) provides that any determination made under this section shall constitute a "Decision of OSM" within the scope of 43 CFR 4.1281, and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR Part 4.

14. § *842.16 Availability of records.* Portions of proposed § 842.16 have been rephrased for simplicity; no change in effect is intended, except where corresponding substantive changes in proposed § 840.14 have been accommodated.

Proposed § 842.16(a) limits the time during which records are to be made immediately available to the public in the area of mining to the period during which an operation is active or is covered by any portion of a reclamation bond. Proposed new § 842.16(b) specifies the methods by which OSM will make records and other information available for public inspection. See the preceding discussion of proposed § 840.14.

These provisions taken together more clearly define the regulatory authority's information-keeping responsibilities.

Section 842.16(b) is proposed to be redesignated § 842.16(c).

Part 843—Federal Enforcement

15. § *843.1 Scope.* Proposed § 843.1 deletes unnecessary language; no change in effect is intended.

16. § *843.5 Definitions.* Proposed new § 843.5 contains the definitions of "unwarranted failure to comply" and "willful violation" presently incorporated into the text of § 843.13. The definitions are unchanged.

17. § *843.11 Cessation orders.* Proposed § 843.11 contains various instances of rephrasing for clarity; no changes in effect are intended. Duplicative language concerning interim steps in the abatement process has been deleted. The authority to impose interim steps is still provided in § 843.11(c).

The Office believes that certain illegal mining activities should compel the issuance of a cessation order within the criteria set forth in § 521(a)(2) of the Act. A surface coal mining operation that has neither an approved permit nor a pending permit application should constitute a condition or practice which "* * * can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources * * *." Section 521(a)(2) of the Act, 30 USC 1271(a)(2).

In *Claypool Construction Company v. OSM* (2 IBSMA 81, decided May 16, 1980), the Interior Board of Surface Mining and Reclamation Appeals) (the Board) interpreted the language of § 521(a)(2) of the Act to mean that a surface mine operator's failure to have a permit does not in itself constitute a condition, practice or violation which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. This ruling prohibits OSM from issuing a cessation order under the existing regulations on the sole basis that an operator is found mining without a permit.

The Board held futher in *West Virginia Energy, Inc. v. OSM* (3 IBSMA 301, decided September 17, 1981) that where OSM issues a notice of violation to an operator for mining without a permit (in violation of § 502(a) of the Act, 30 U.S.C. 1252(a)), the only remedial action appropriate to such a violation is to cease mining until a permit is obtained. Accordingly, the Board vacated that portion of the citation at issue which required reclamation of the disturbed area.

The Office believes that the permitting process is central to the health, safety and environmental protection provisions of the Act. Where the permitting process is circumvented or disregarded, that fact alone should compel issuance of a cessation order and the imposition of reclamation requirements. To the extent that the Board's decisions in *Claypool* and *West Virginia Energy* are inconsistent with the Office's determination of this issue, the Secretary proposes to alter the Department's interpretation of the relevant provisions of the Act and regulations.

Proposed new § 843.11(a)(2) implements this proposal by providing for the issuance of cessation orders where surface coal mining operations are conducted by anyone without a valid permit or pending permit application.

Proposed § 843.11(a)(2) deletes reference to the use of "existing" or additional personnel and equipment," since this language unnecessarily goes beyond that contained in § 521(a)(2) of the Act. The Office believes that, since § 843.18 provides that inability to comply with a notice of violation or cessation order is no defense to its issuance, any limitations on a permittee's resources would likewise be no defense. Further, while the Secretaty's authorized representative should specify what must be accomplished, it will not ordinarily be appropriate to specify how the permittee should abate a given violation.

Proposed § 843.11(c) recognizes that a cessation order may expire pursuant to § 521(a)(5) of the Act.

18. § *843.12 Notices of violation.* Proposed § 843.12 contains various instances of rephrasing for clarity; except as noted below, no changes in effect are intended.

Proposes § 843.12(a)(2) provides that OSM "shall," rather than "may," inform the State regulatory authority of violations observed during an inspection, and "shall," rather than "may," reinspect where the State fails to take appropriate action within ten days after notification. This is in keeping with section 521(a)(1) of the Act and the Office's recognition of the State as the primary enforcer of its approved program.

Proposed § 843.12(a)(2) also deletes the last sentence, and replaces the language at the end of the preceding sentence, "issue a notice of violation or cessation order, as appropriate," with the words "take appropriate action."

This proposed change is intended to raise the question whether, in a case where a State has failed to take appropriate action to ensure abatement of any violation, OSM's recourse may be with the State rather than the permittee. The Office believes that, where and approved State program is in force, OSM may lack authority to issue citations directly to permittees except in those limited circumstances where public health and safety, or significant, imminent environmental harm would justify issuance of a cessation order under section 521(a)(2) of the Act. The reinspection provided for in 30 CFR 843.12(a)(2) may simply be for the purpose of evaluating a State's performance under its approved program, rather than enforcing the Act directly against permittees.

Alternatively, OSM is considering retention of the language presently contained in 30 CFR 843.12(a)(2) which mandates issuance of a notice of

violation where a State fails to take appropriate action within ten days of notification that a violation exists.

The Office solicits public comment on the advisability of and authority for removing or retaining the provision in 30 CFR 843.12(a)(2) which mandates issuance of a notice of violation where a State is the regulatory authority during the permanent regulatory program.

Proposed § 843.12(d) makes discretionary the issuance of a cessation order for failure to meet an interim step in abatement of a violation cited in a notice of violation. This is due to the absence in the Act of any reference to interim steps with respect to notices of violation. Further, the Office believes that the imposition by the regulatory authority of step-by-step abatement requirements may intrude unnecessarily into the permittee's method of operation. It should be sufficient for the permittee to be notified of a violation and given a reasonable time within which to abate it; it will not ordinarily be appropriate to specify the detail of how the permittee should abate. Where certain sequential or immediate steps are necessary to mitigate or prevent environmental harm, however, the authorized representative must be able to direct those steps. It would be absurd to define the "abatement" called for in section 521 of the Act as being simply an ending date without component actions. Proposed § 843.12(d) therefore provides the authorized representative with authority to establish and enforce interim abatement steps where necessary, but removes the inflexible requirement of the existing regulations.

19. § *843.13 Suspension or revocation of permits.* The requirements of § 843.13(c) are inserted in proposed § 843.13(a)(1).

Sections 843.13(a)(3) and 843.13(b) are proposed to be deleted. Section 843.13(a)(3) presently requires the Director to determine that a pattern of violations exists where the listed criteria for such a determination are met. Section 843.13(b) gives the Director discretion to decline to issue a show cause order where such issuance would be "demonstrably unjust." The combination of the mandatory finding of a pattern of violations with this broad waiver provision presents a potential for inequities which can be avoided by relying on the general standards governing pattern-of-violation determinations contained in § 843.13(a)(2). As proposed, the Director is able to determine the existence of a pattern of violations in every case where such a finding is appropriate, but is no longer required to make such a finding where he or she knows it to be demonstrably unjust to issue the required show cause order. The Office believes no useful purpose is served by forcing the issuance and vacation of a show cause order which the Director knows in advance to be demonstrably unjust.

Sections 843.13 (d), (e) and (f) are proposed to be redesignated §§ 843.13 (b), (c) and (d).

Proposed § 843.13(a)(4)(ii) limits the violations which the Director may consider in determining whether a pattern of violations exists to those mentioned in § 843.13(a)(4)(i); any other violations may only be considered insofar as they evidence a willful or unwarranted failure to comply, as specified in § 521(a)(4) of the Act.

20. § *843.14 Service of notices of violation, cessation orders, and show cause orders.* Present unnecessary distinctions between notices of violation, cessation orders and show cause orders with respect to proper service are proposed to be eliminated. Section 843.14 has otherwise been modified for clarity; no change in effect is intended.

Section 843.14(b) is proposed to be deleted. Sections 843.14 (c) and (d) are proposed to be redesignated §§ 843.14 (b) and (c), respectively.

21. § *843.15 Informal public hearing.* Proposed §§ 843.15 (b) and (d) contain minor grammatical changes; no change in effect is intended.

22. § *843.19 Injunctive relief.* Section 843.19 is proposed to be deleted as superfluous. The right of the Secretary to seek injunctive relief and the jurisdiction of the United States District Courts to grant such relief are fixed by section 521(c) of the Act.

23. § *843.20 Compliance conference.* Proposed new § 843.20 provides for "compliance conferences." See the discussion of this proposal (and request for comments) in the preceding discussion of proposed § 840.16.

Part 854—Civil Penalties

24. § *845.17 Procedures for assessment of civil penalties.* Proposed § 845.17(b)(2) provides that the Office's failure to serve any proposed assessment within 30 days after a citation issues does not require vacation of the assessment, absent actual prejudice to the permittee resulting from such delay. This proposal implements the Office's interpretation that 30 CFR 723.16(b) is directory rather than mandatory, and that where no prejudice results from the Office's failure to meet the 30-day requirement, the penalty should stand.

25. § *845.18 Procedures for assessment conference.* Proposed § 845.18(b)(1) provides that the Office's failure to hold an assessment conference within 60 days after a request for a conference does not require vacation of the assessment, absent actual prejudice as a result of the delay. This proposal implements the agency's interpretation that 30 CFR 723.18(b) is directory rather than mandatory, and that where no prejudice results from the delay, no relief is appropriate. (*See Badger Coal Co. v. OSM*, 2 IBSMA 147, July 25, 1980.)

26. § *845.19 Request for hearing.* OSM is considering a provision for waiver of the penalty prepayment requirement of 30 CFR 845.19 where prepayment of all or part of a proposed penalty would prevent the person charged with the penalty from continuing in business.

Section 845.19 implements the requirement of section 518(c) of the Act that a permittee who "wishes to contest either the amount of the penalty or the fact of the violation" must "forward the proposed amount to the Secretary for placement in an escrow account."

In *Hodel v. Virginia Surface Mining & Reclamation Association* (No. 79-1538, June 15, 1981, ——— U.S. ———), the United States Supreme Court left open the question of the constitutionality of the prepayment requirement.

The application of Section 518(c) of the Act could force insolvent permittees to choose between contesting a violation or staying in business. Accordingly, OSM is considering a provision which would allow a total or partial waiver of the prepayment requirement under such circumstances to ensure that insolvency will not prevent a permittee from availing himself or herself of the full range of hearings and appeals otherwise available to all permittees. Additionally, the application of the prepayment requirement before the first adjudicatory hearing on the amount of the proposed assessment may impermissibly limit permittees' access to the administrative process, in violation of the constitutional guarantee of due process. Thus, OSM is considering a provision in 30 CFR 845.19 which would require prepayment by all permittees only with respect to proceedings which occur after an administrative law judge has determined that a penalty is lawfully due. With respect to both methods under consideration for altering the provisions of 30 CFR 845.19, OSM solicits comment on its authority to modify the interpretation of the prepayment provisions of section 518(c) of the Act contained in the existing regulations, on the basis of OSM's belief that application of the prepayment requirement in certain circumstances

would violate the constitutional guarantee of due process.

The current regulations shall remain in effect pending final promulgation of these proposed rules.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and does not require a small entity flexibility analysis under the Regulatory Flexibility Act.

A draft environmental assessment (EA) of the impacts of these proposed rules has been prepared and is on file in Room 153 listed under "Addresses."

The information collection requirements in existing 30 CFR Subchapter L were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507. Those approvals were identified in "notes" at the introduction to 30 CFR Parts 840, 843, and 845. OSM will delete those "notes" and codify the OMB approvals under new sections 10 in each of those Parts that contain information collection requirements. OSM is requesting OMB approval of the following information collection requirements being proposed in this rulemaking and will codify the OMB approvals in the new sections when the final rules are promulgated: 30 CFR 840.11(e), 840.14(a), 840.14(b), 842.12(a), 842.14, 842.15(a), 843.14(c), 843.16, and 845.18(c).

The information required by 30 CFR Part 840 will be used by the States in assessing penalties as evidence in enforcement cases and as an inspection management record. The information required by 30 CFR Part 843 is needed to assure that the right people in the organization are made aware of violations so that they can be corrected in a timely manner and to afford the operator an opportunity to respond to those violations. The information required by 30 CFR Parts 840 and 843 is mandatory.

The information required by 30 CFR Part 845 will be used by OSM to schedule assessment conferences with violators to discuss penalties and make necessary corrections. The information is voluntary.

Drafting Information: These regulations were drafted by Murray Newton, Chief, Branch of Regulatory Programs, and Neil Stoloff, Enforcement Specialist, Branch of Inspection.

Dated: October 30, 1981.

Daniel N. Miller,

Assistant Secretary, Energy and Minerals.

Accordingly, Subchapter L of 30 CFR is proposed to be revised as follows.

SUBCHAPTER L—PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES

PART 840—STATE REGULATORY AUTHORITY INSPECTION AND ENFORCEMENT

Sec.

840.1 Scope.
840.11 Inspections by State regulatory authority.
840.12 Right of entry.
840.13 Enforcement authority.
840.14 Availability of records.
840.15 Public participation.
840.16 Compliance Conference.

Authority: Secs. 102, 201, 501(b), 503, 512, 517, 518, and 521 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 483, 498, 499 (30 U.S.C. 1202, 1211, 1251, 1253, 1262, 1267, 1268).

§ 840.1 Scope.

This Part sets forth the minimum requirements for the Secretary's approval of the provisions for inspection and enforcement by a State of surface coal mining and reclamation operations and of coal explorations which substantially disturb the natural land surface, where a State is the regulatory authority under an approved State program.

§ 840.11 Inspections by State regulatory authority.

(a) The State regulatory authority shall conduct an average of at least one partial inspection per month of each surface coal mining and reclamation operation under its jurisdiction. A partial inspection is an onsite or aerial review of a person's compliance with some of the permit conditions and requirements imposed under an approved State program.

(b) The State regulatory authority shall conduct an average of at least one complete inspection per calendar quarter of each surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an onsite review of a person's compliance with all permit conditions and requirement imposed under the State program, within the entire area disturbed or affected by the surface coal mining and reclamation operations.

(c) The State regulatory authority shall conduct such inspections of coal explorations as are necessary to ensure compliance with the approved State program.

(d)(1) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(d)(2) Any potential violation observed during an aerial inspection shall be investigated onsite within three days: *Provided,* That any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under Section 521(a)(2) shall be investigated onsite immediately.

(e) The inspections required under paragraphs (a), (b), (c) and (d) of this section shall:

(1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary onsite meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the approved State program.

§ 840.12 Right of entry.

(a) Within its jurisdiction, the State regulatory authority shall have authority that grants its representatives a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation without advance notice upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

(b) The State regulatory authority shall have authority that authorizes its representatives to inspect any monitoring equipment or method of exploration or operation and to have access to and copy any records required under the approved State program. This authority shall provide that the representatives may exercise such rights at reasonable times, without advance notice, upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

§ 840.13 Enforcement authority.

(a) The civil and criminal penalty provisions of each State program shall contain penalties which are no less stringent than those set forth in Section 518 of the Act and shall be consistent with 30 CFR Part 845.

(b) The enforcement provisions of each State program shall contain sanctions which are no less stringent than those set forth in Section 521 of the Act and which provisions shall be consistent with §§ 843.11, 843.12, 843.13, 843.19 and Subchapters G and J of this Chapter.

(c) The procedural requirements of each State program relating to the

penalties and sanctions mentioned in Paragraphs (a) and (b) of this Section shall be the same as or similar to those provided in Sections 518 and 521 of the Act, respectively, and consistent with 30 CFR 808, 843, 845 and Subchapter G of this Chapter.

(d) Nothing in the Act or this Part shall be construed as eliminating any additional enforcement rights or procedures which are available under State law to a State regulatory authority, but which are not specifically enumerated in Sections 518 and 521 of the Act.

§ 840.14 Availability of records.

(a) Each State regulatory authority shall make available to the Director, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions.

(b) Copies of all records, reports, inspection materials, or information obtained by the regulatory authority shall be made immediately available to the public in the area of mining for the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except—

(1) As otherwise provided by Federal law; and

(2) Information not required to be made available under 30 CFR 776.17, 786.15, or 840.14(d).

(c) The State regulatory authority shall ensure compliance with Paragraph (b) by either:

(1) Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a Federal, State or local government office in the county where the mining is occurring or proposed to occur; or,

(2) At the regulatory authority's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur.

(d) In order to protect preparation for hearings and enforcement proceedings, the Director and the State regulatory authority may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

§ 840.15 Public participation.

Each State program shall provide for public participation in enforcement of the State program consistent with that provided by 30 CFR Parts 842, 843 and 845 and 43 CFR Part 4, except that State programs are not required to provide citizens with the right to participate in inspections which result from citizens' requests, or authorize legal actions by citizens in State courts similar to the citizens' legal actions which Section 520 of the Act authorizes in the Federal courts.

§ 840.16 Compliance conference.

(a) The State program may provide for compliance conferences between a permittee and an authorized representative as described in paragraphs (b)–(f) of this section.

(b) A permittee may request an onsite compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of Section 517.

(c) The State regulatory authority may accept or refuse any request to conduct a compliance conference under paragraph (b). Where the State regulatory authority accepts such a request reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

(d) The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to advise whether any such condition or practice may become a violation of any requirement of the Act, the approved State program, or any applicable permit or exploration approval.

(e) No more than one compliance conference may be held with respect to any coal exploration or surface coal mining and reclamation operation in any six-month period.

(f) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the regulatory authority or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

PART 842—FEDERAL INSPECTIONS AND MONITORING

Sec.

842.1 Scope.
842.11 Federal inspections and monitoring.
842.12 Citizens' requests for Federal inspections.
842.13 Right of entry.
842.14 Review of adequacy and completeness of inspections.
842.15 Review of decision not to inspect or enforce.
842.16 Availability of records.

Authority: Secs. 102, 201, 501(b), 504, 507, 512, 517, 518, 521, and 523 of Pub. L. 95–87, 91 Stat. 448, 449, 468, 471, 474, 483, 498, 499, 504, 510 (30 U.S.C. 1202, 1211, 1251, 1254, 1257, 1262, 1267, 1268, 1271, 1273).

§ 842.1 Scope.

This part sets forth general procedures governing Federal inspections under the permanent regulatory program.

§ 842.11 Federal inspections and monitoring.

(a) Authorized representatives of the Secretary shall conduct inspections of surface coal mining and reclamation operations as necessary—

(1) To monitor and evaluate the administration of approved State programs. Such monitoring and evaluation inspections shall be conducted jointly with the State regulatory authority where possible and where the State so requests;

(2) To develop or enforce Federal programs and Federal lands programs;

(3) To enforce those requirements and permit conditions imposed under a State program not being enforced by a State, under Section 504(b) or Section 521(b) of the Act, 30 CFR Part 733, or as provided in this Section; and

(4) To determine whether any notice of violation or cessation order issued during an inspection authorized under this Section has been complied with.

(b)(1) An authorized representative of the Secretary shall immediately conduct a Federal inspection:

(i) When the authorized representative has reason to believe on the basis of information available to him or her (other than information resulting from a previous Federal inspection) that there exists a violation of the Act, this Chapter, the applicable program, or any condition of a permit or an exploration approval, or that there exists any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources and—

(ii)(A) There is no State regulatory authority or the Office is enforcing the State program under Section 504(b) or 521(b) of the Act and 30 CFR Part 733; or

(B) The authorized representative has notified the State regulatory authority of the possible violation and within 10 days after notification the State regulatory authority has failed to take appropriate action to have the violation abated and to inform the authorized representative that it has taken such action or has a valid reason for its inaction; or

(C) The person supplying the information supplies adequate proof that an imminent danger to the public health and safety or a significant; imminent environmental harm to land, air or water resources exists and that the State regulatory authority has failed to take appropriate action.

(2) An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in paragraph (b)(1)(i) of this section.

(c) The Office, when acting as the regulatory authority under a Federal program or a Federal lands program and when enforcing a State program, in whole or in part, pursuant to Section 504(b) or Section 521(b) of the Act and 30 CFR Part 733, shall conduct inspections of all coal exploration and surface coal mining and reclamation operations under its jurisdiction. The Office shall—

(1) With respect to active surface coal mining and reclamation operations:

(i) Conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation. A partial inspection is an onsite or aerial review of a person's compliance with some of the permit requirements and conditions imposed under an applicable program.

(A) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(B) Any potential violation observed during an aerial inspection shall be investigated onsite within three calendar days: Provided, that any indication of a condition, practice or violation constituting cause for issuance of a cessation order under Section 521(a)(2) shall be investigated onsite immediately.

(ii) Conduct an average of at least one complete inspection per calendar quarter of each active surface coal mining and reclamation operation. A complete inspection is an onsite review of a person's compliance with all permit conditions and requirements imposed under the applicable program within the entire area disturbed or affected by surface coal mining and reclamation operations.

(2) With respect to inactive surface coal mining and reclamation operations:

(i) Conduct an average of at least one complete inspection per calendar quarter of each inactive surface coal mining and reclamation operation.

(ii) For purposes of this Section, an inactive surface coal mining and reclamation operation is one for which—

(A) The Office has secured from the permittee the written notice provided for under § 816.131(b) or § 817.131(b) of this Chapter; or,

(B) Reclamation Phase II as defined at § 807.12(e) has been completed and the liability of the permittee reduced to 0.25 by the Office as provided at § 807.12(b) of this Chapter.

(3) With respect to coal explorations, conduct such inspections as are necessary to ensure compliance with the Act by those coal explorations which substantially disturb the natural land surface.

(d) The inspections required under paragraphs (a), (b), and (c) of this section shall:

(1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary onsite meetings; and,

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the applicable program.

§ 842.12 Citizens' requests for Federal inspections.

(a) A citizen may request a Federal inspection under 30 CFR 842.11(b) by furnishing to an authorized representative of the Secretary a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition or practice referred to in 30 CFR 842.11(b)(1)(i) exists, that the State regulatory authority, if any, has failed to take appropriate action, and setting forth a phone number and address where the person can be contacted.

(b) The identity of any person supplying information to the Office relating to a possible violation or imminent danger or harm shall remain confidential with the Office, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Freedom of Information Act (5 U.S.C. 552) or other Federal law.

(c) If a Federal inspection is conducted as a result of information provided to the Office by a citizen as described in paragraph (a) of this Section, the citizen shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Secretary during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within ten days of the Federal inspection or, if there is no Federal inspection, within 15 days of receipt of the citizen's written statement, the Office shall send the citizen the following:

(1) If a Federal inspection was made, a description of the enforcement action taken, which may consist of copies of the Federal inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;

(2) If no Federal inspection was conducted, an explanation of the reason why; and

(3) An explanation of the citizen's right, if any, to informal review of the action or inaction of the Office under 30 CFR 842.15.

(e) The Office shall give copies of all materials in paragraphs (d)(1) and (d)(2) of this section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted under paragraph (b) of this section.

§ 842.13 Right of entry.

(a) Each authorized representative of the Secretary conducting a Federal inspection under 30 CFR 842.11:

(1) Shall have a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation without advance notice or a

search warrant, upon presentation of appropriate credentials;

(2) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of exploration or operation required under the applicable program; and,

(3) Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at the site.

(b) No search warrant shall be required with respect to any activity under paragraph (a) except that a search warrant may be required for entry into a building.

§ 842.14 Review of adequacy and completeness of inspections.

Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the Director or his or her designee in writing of any alleged failure on the part of the Office to make adequate and complete or periodic Federal inspections. The notification shall include sufficient information to create a reasonable belief that the regulations of this Part are not being complied with and to demonstrate that the person is or may be adversely affected. The Director or his or her designee shall within 15 days of receipt of the notification determine whether adequate and complete or periodic inspections have been made. The Director or his or her designee shall furnish the complainant with a written statement of the reasons for such determination and the actions, if any taken to remedy the noncomplicance.

§ 842.15 Review of decision not to inspect or enforce.

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the Director or his or her designee to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for Federal inspection under 30 CFR 842.12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The Director or his or her designee shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the citizen shall not be disclosed unless confidentiality has been waived or disclosure is required under the Freedom of Information Act or other Federal law.

(c) Informal review under this Section shall not affect any right to formal Review under Section 525 of the Act or to a citizen's suit under Section 520 of the Act.

(d) Any determination made under paragraph (b) shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR 4.1281 and the regulations at 43 CFR Part 4.

§ 842.16 Availability of records.

(a) Copies of all records, reports, inspection materials, or information obtained by the Office under Title V of the Act, this Chapter, a Federal program or Federal lands program, and a State program being enforced by the Office under Sections 504(b) or 521(b) of the Act and 30 CFR Part 733 or 30 CFR 842.11 or 842.12 shall be made immediately available to the public in the area of mining for the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except—

(a) As otherwise provided by Federal law; and

(2) Information not required to be made available under 30 CFR 776.17, 786.15, or 840.14(d).

(b) The Office shall ensure compliance with Paragraph (a) by either:

(1) Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a Federal, State or local government office in the county where the mining is occurring or is proposed to occur; or,

(2) At the Office's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur.

(c) Copies of documents and information required to be made available under Paragraph (a) shall be provided to the State regulatory authority, if any.

PART 843—FEDERAL ENFORCEMENT

Sec.

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Authority: Secs. 102, 201, 501(b), 503, 504, 510, 517, 518, 520, 521, 523, 525, 526 and 701 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 480, 498, 499, 504, 510, 511, and 516 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1260, 1267, 1268, 1271, 1273, 1275, and 1291).

§ 843.1 Scope.

This Part sets forth general rules regarding enforcement by the Office of the Act, this Chapter, any Federal program, the Federal lands program, State programs being enforced by the Office under Section 504(b) or 521(b) of the Act and 30 CFR Part 733 and (in limited circumstances) under 30 CFR 842.11 or 842.12, and all conditions of permits and coal exploration approvals imposed under any of these programs, the Act, or this Chapter.

§ 842.5 Definitions.

As used in this Part, the following terms have the specified meanings:

(a) *Unwarranted failure to comply* means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

(b) *Willful violation* means an act or omission which violates the Act, this Chapter, the applicable program, or any permit condition required by the Act, this Chapter, or the applicable program, committed by a person who intends the result which actually occurs.

§ 843.11 Cessation orders.

(a)(1) An authorized representative of the Secretary shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he or she finds, on the basis of any Federal inspection, any condition or practice, or any violation of the Act, this Chapter, any applicable program, or any condition of an exploration approval or permit imposed under any such program, the Act, or this Chapter which:

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining and reclamation operations conducted by any person without a valid surface coal

mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operation, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

(3) If the cessation ordered under Paragraph (a)(1) of this Section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Secretary shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(b)(1) When a notice of violation has been issued under 30 CFR 843.12(a) and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Secretary shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this paragraph shall require the permittee to take all steps the authorized representative of the Secretary deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity: (1) the nature of the condition, practice or violation; (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, if appropriate; and (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified or terminated in writing by an authorized representative of the Secretary, or until the order expires pursuant to Section 521(a)(5) of the Act and 30 CFR 843.15.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the Secretary may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

(f) An authorized representative of the Secretary shall terminate a cessation order by written notice to the permittee when he or she determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under 30 CFR Part 845.

§ 843.12 Notices of violation.

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

(2) When, on the basis of any Federal inspection other than one described in paragraph (a)(1), an authorized representative of the Secretary determines that there exists a violation of the Act, the State program, or any condition of a permit or exploration approval required by the Act which does not create an imminent danger or harm for which a cessation order must be issued under 30 CFR 843.11, the authorized representative shall give a written report of the violation to the State and to the permittee so that appropriate enforcement action can be taken by the State. Where the State fails within ten days after notification to take appropriate action to cause the violation to be corrected, or to show good cause for such failure, the authorized representative shall reinspect and, if the violation continues to exist, shall take appropriate action.

(b) A notice of violation issued under this Section shall be in writing signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the violation;

(2) The remedial action required, which may include interim steps;

(3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(c) An authorized representative of the Secretary may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one of more of the circumstances in Paragraph (f) of this Section. An extended abatement date pursuant to this Section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(d)(1) If the permittee fails to meet the time set for abatement the authorized representative shall issue a cessation order under § 843.11(b).

(2) If the permittee fails to meet the time set for accomplishment of any interim step the authorized representative may issue a cessation order under § 843.11(b).

(e) An authorized representative of the Secretary shall terminate a notice of violation by written notice to the permittee when he determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under 30 CFR Part 845.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(3) Where the permittee cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or,

(5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in paragraph (f)(1–5) exists, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of § 843.12 (c) and (f). In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(i) Any determination made under paragraph (h) of this section shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR 4.1281 and the regulations at 43 CFR Part 4.

(j) No extension granted under paragraph (h) may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph (h).

§ 843.13 Suspension or revocation of permits.

(a)(1) The Director shall issue an order to a permittee requiring him or her to show cause why his or her permit and right to mine under the Act should not be suspended or revoked, if the Director determines that a pattern of violations of any requirements of the Act, this Chapter, the applicable program, or any permit condition required by the Act exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage. The Director shall promptly file a copy of any order to show cause with the Office of Hearings and Appeals and the State regulatory authority, if any.

(2) The Director may determine that a pattern of violations exists or has existed, based upon two or more Federal inspections of the permit area within any 12-month period, after considering the circumstances, including:

(i) The number of violations, cited on more than one occassion, of the same or related requirements of the Act, this Chapter, the applicable program or the permit;

(ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this Chapter, the applicable program, or the permit; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The Director shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the Act, this Chapter, the applicable program, or the permit during three or more Federal inspections of the permit area within any 12-month period. If, after such review, the Director determines that a pattern of violations exists or has existed, he or she shall issue an order to show cause as provided in paragraph (a)(1).

(4)(i) In determining the number of violations within any 12-month period, the Director shall consider only violations issued as a result of a Federal inspection carried out—

(A) During enforcement of a Federal program or a Federal lands program;

(B) During the interim program and before the applicable State program was approved pursuant to Section 502 or 504 of the Act; or

(C) During Federal enforcement of a State program in accordance with Section 504(b) or 521(b) of the Act.

(a)(4)(ii) The Director may not consider violations issued as a result of inspections other than those mentioned in paragraph (a)(4)(i) in determining whether to exercise his or her discretion under paragraph (a)(2) except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

(b) If the permittee files an answer to the show cause order and requests a hearing under 43 CFR Part 4, a public hearing shall be provided as set forth in that Part. The Office of Hearings and Appeals shall give thirty days written notice of the date, time and place of the hearing to the Director, the permittee, the State regulatory authority, if any, and any intervenor. Upon receipt of the notice, the Director shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the State or field office closest to those operations.

(c) Within sixty days after the hearing, and within the time limits set forth in 43 CFR Part 4, the Office of Hearings and Appeals shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the Office of Hearings and Appeals revokes or suspends the permit and the permittee's right to mine under the Act, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(1) If the permit and the right to mine under the Act are revoked, complete reclamation within the time specified in the order; or

(2) If the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

(d) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this Section, and shall issue an order to show cause as appropriate pursuant to 30 CFR 845.15(b)(2).

§ 843.14 Service of notices of violation, cessation orders, and show cause orders.

(a) A notice of violation, cessation order, or show cause order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based

upon reasonable inquiry, appears to be in charge. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his or her designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

(b) Designation by any person of an agent for service of notices and orders shall be made in writing to the appropriate State or field office of the Office.

(c) The Office shall furnish copies of notices and orders to the State regulatory authority, if any, promptly after their issuance. The Office may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area.

§ 843.15 Informal public hearings.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the minesite so that it may be viewed during the hearing or at any other location acceptable to the Office and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the minesite shall be deemed to be reasonably close to the minesite unless a closer location is requested and agreed to by the Office. Expiration of a notice or order shall not affect the Office's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice, or violation in question has been abated or the hearing has been waived. For purposes of this Section only, "mining" includes (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a minesite.

(b) A notice of violation or cessation order shall not expire as provided in Paragraph (a) of this Section if the informal public hearing has been waived, or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this subsection:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order was issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this Section, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this Section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than 5 days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his or her request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) The Office shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to that notice or order; and

(3) The State regulatory authority, if any.

(d) The Office shall also post notice of the hearing at the State or field office closest to the mine site, and, where practicable, publish it in a newspaper of general circulation in the area of the mine.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the Office, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearing, the Office shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to—

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The State regulatory authority, if any.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under sections 518(b), 521(a)(4), or 525 of the Act.

(h) The person conducting the hearing for the Office shall determine whether or not the minesite should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the minesite will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

§ 843.16 Formal review of citations.

(a) A person issued a notice of violation or cessation order under 30 CFR 843.11 or 843.12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing under 43 CFR Part 4, within 30 days after receiving notice of the action.

(b) The filing of an application for review and request for a hearing under this section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

§ 843.17 Failure to give notice and lack of information.

No notice of violation, cessation order, show cause order, or order revoking or suspending a permit may be vacated for failure to give the notice to the State regulatory authority required under 30 CFR 842.11(b)(1)(ii)(B) or because it is subsequently determined that the Office did not have information sufficient, under 30 CFR 842.11(b)(1) and 842.11(b)(2), to justify an inspection.

§ 843.18 Inability to comply.

(a) No cessation order or notice of violation issued under this part may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violation exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under 30 CFR Part 845 and of the duration of the suspension of a permit under 30 CFR 843.13(c).

§ 843.20 Compliance conference.

(a) A permittee may request an onsite compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of Section 517.

(b) The Office may accept or refuse any request to conduct a compliance conference under paragraph (a). Where the Office accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

(c) The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act or of any applicable permit or exploration approval.

(d) No more than one compliance conference may be held with respect to any coal exploration or surface coal mining and reclamation operation in any six-month period.

(e) Neither the holding of a compliance conference under this Section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the Office or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

PART 845—CIVIL PENALTIES

Sec.

845.1 Scope.
845.2 Objective.
845.11 How assessments are made.
845.12 When penalty will be assessed.
845.13 Point system for penalties.
845.14 Determination of amount of penalty.
845.15 Assessment of separate violations for each day.
845.16 Waiver of use of formula to determine civil penalty.
845.17 Procedures for assessment of civil penalties.
845.18 Procedures for assessment conference.
845.19 Request for hearing.
845.20 Final assessment and payment of penalty.

Authority: Secs. 102, 201, 501(b), 517, 518, 521, 523, and 525 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 498, 499, 504, 510, and 511 (30 U.S.C. 1202, 1211, 1251, 1267, 1268, 1271, 1273 and 1275).

§ 845.1 Scope.

This Part covers the assessment of civil penalties under Section 518 of the Act with respect to cessation orders and notices of violation issued under Part 843 (Federal enforcement).

§ 845.2 Objective.

Civil penalties are assessed under Section 518 of the Act and this Part to deter violations and to ensure maximum compliance with the terms and purposes of the Act on the part of the coal mining industry.

§ 845.11 How assessments are made.

The Office shall review each notice of violation and cessation order in accordance with the assessment procedures described in 30 CFR 845.12, 845.13, 845.14, 845.15, and 845.16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

§ 845.12 When penalty will be assessed.

(a) The Office shall assess a penalty for each cessation order.

(b) The Office shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in 30 CFR 845.13.

(c) The Office may assess a penalty for each notice of violation assigned 30 points or less under the point system described in 30 CFR. 845.13. In determining whether to assess a penalty, the Office shall consider the factors listed in 30 CFR 845.13(b).

§ 845.13 Point system for penalties.

(a) The Office shall use the point system described in this section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in 30 CFR 845.12(b).

(b) Points shall be assigned as follows:

(1) *History of previous violations.* The Office shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(i) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year.

(ii) No violation for which the notice or order has been vacated shall be counted; and

(iii) Each violation shall be counted without regard to whether it lead to a civil penalty assessment.

(2) *Seriousness.* The Office shall assign up to 30 points based on the seriousness of the violation, as follows:

(i) *Probability of occurrence.* The Office shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Probability of occurrence	Points
None	0
Insignificant	1-4
Unlikely	5-9
Likely	10-14
Occurred	15

(ii) *Extent of potential or actual damage.* The Office shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the Office shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the Office shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(iii) *Alternative.* In the case of a violation of an administrative requirement, such as a requirement to keep records, the Office shall, in lieu of paragraphs (b)(2) (i) and (ii) of this section, assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) *Negligence.* (i) The Office shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(C) A violation which occurs through a greater degree of fault than negilgence shall be assigned 13 to 25 points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(A) *No negligence* means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) *Negligence* means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or this Chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

(C) *A greater degree of fault than negligence* means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) *Good faith in attempting to achieve compliance.* (i) The Office shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

Degree of good faith	Points
Rapid compliance	−1 to −10
Normal compliance	0

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this section:

(A) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) Normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

§ 845.14 Determination of amount of penalty.

The Office shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 845.13 to a dollar amount, according to the following schedule:

Points	Dollars
1	20
2	40
3	60
4	80
5	100
6	120
7	140
8	160
9	180
10	200
11	220
12	240
13	260
14	280
15	300
16	320
17	340
18	360
19	380
20	400
21	420
22	440
23	460
24	480
25	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800
59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600
67	4,700
68	4,800
69	4,900
70 and above	5,000

§ 845.15 Assessment of separate violations for each day.

(a) The Office may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Office shall consider the factors listed in 30 CFR 845.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points under 30 CFR 845.13(b), the Office shall assess a civil penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in paragraph (a), whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to Section 521(a) of the Act, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under Section 525(c) of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Office of Hearings and Appeals issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under Section 526 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to Section 526(c) of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court;

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to Section 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

§ 845.16 Waiver of use of formula to determine civil penalty.

(a) The Director, upon his own initiative or upon written request

received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in 30 CFR 845.13 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this Chapter, any applicable program, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in 30 CFR 845.13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

§ 845.17 Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the office and to the inspector who issued the notice of violation or cessation order. The Office shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Office shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, within 30 days of the issuance of the notice or order.

(1) If the mail is tendered at the address of that person set forth in the sign required under 30 CFR 816.11, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of this Paragraph shall be deemed to have been complied with upon such tender.

(2) Failure by the Office to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed—

(A) Proves actual prejudice as a result of the delay; and,

(B) Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review.

(c) Unless a conference has been requested, the Office shall review and reassess any peanlty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Office shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in Paragraph (b), within 30 days after the date the violation is abated.

§ 845.18 Procedures for assessment conference.

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 15 days from the date the proposed assessment or reassessment is mailed.

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment shall not be govered by Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later, Provided: that a failure by the Office to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The Office shall post notice of the time and place of the conference at the State or field office closest to the mine at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the Office and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than $500 shall not be final and binding on the Secretary, until approved by the Director or his or her designee.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in 30 CFR 845.17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(d)(2) If full payment of the amount specified in the settlement agreement is not received by the Office within 30 days after the date of signing, the Office may enforce the agreement or rescind it and proceed according to Paragraph (b)(3)(ii) within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At formal review proceedings under Sections 518, 521(a)(4), and 525 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

§ 845.19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b)) within 30 days from receipt of the proposed assessment or reassessment or 15 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under 30 CFR 843.16.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) to the Office, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in 30 CFR 845.20.

§ 845.20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued

fails to request a hearing as provided in 30 CFR 845.19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Secretary, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this Section, the escrowed funds shall be transferred to the Office in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this Part, the Office shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Office within 15 days after the order is mailed to such person.

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FEDERAL REGISTER PAGES AND DATES, DECEMBER

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER, 1981

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day. When a date falls on a weekend or a holiday, the next Federal business day is used (see 1 CFR 18.17).

A new table will be published in the first issue of each month.

All January, February, and March dates are in 1982

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
December 1	December 16	December 31	January 15	February 1	March 1
December 2	December 17	January 4	January 18	February 1	March 2
December 3	December 18	January 4	January 18	February 1	March 3
December 4	December 21	January 4	January 18	February 2	March 4
December 7	December 22	January 6	January 21	February 5	March 8
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December 11	December 28	January 11	January 25	February 9	March 11
December 14	December 29	January 13	January 28	February 12	March 15
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December 23	January 7	January 22	February 8	February 22	March 23
December 24	January 8	January 25	February 8	February 22	March 24
December 28	January 12	January 27	February 11	February 26	March 29
December 29	January 13	January 28	February 12	March 1	March 29
December 30	January 14	January 29	February 16	March 1	March 30
December 31	January 15	February 1	February 16	March 1	March 31

CFR CHECKLIST; 1980/81 ISSUANCES

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1980/81. New units issued during the month are announced on the back cover of the daily **Federal Register** as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription service to all revised volumes is $525 domestic, $131.25 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

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Title	Price
1-2	$5.00
3	7.50
4	7.50
5	10.00
6	4.00
7 Parts:	
0-52	8.50
53-209	7.50
210-299	8.00
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400-699	7.50
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9 Parts:	
1-199	8.50
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200-399	8.50
400-499	8.00
500-end	8.50
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12 Parts:	
1-199	7.00
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300-499	7.00
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13	8.00
14 Parts:	
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20 Parts:	
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400-499	8.50
500-end	9.00
21 Parts:	
1-99	7.00
100-169	7.50
170-199	7.50
200-299	5.50
300-499	9.00
500-599	8.50
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800-1299	7.00
1300-end	5.50
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200-499	9.00
500-799	7.00
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26 Parts:	
1 (§§ 1.0-1.169)	9.00
1 (§§ 1.170-1.300)	7.50
1 (§§ 1.301-1.400)	6.50
1 (§§ 1.401-1.500)	8.00
1 (§§ 1.501-1.640)	8.50
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1 (§§ 1.1201-end)	9.50
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AGENCY ABBREVIATIONS

Used in Highlights and Reminders

(This List Will Be Published Monthly in First Issue of Month.)

USDA Agriculture Department

AMS Agricultural Marketing Service
APHIS Animal and Plant Health Inspection Service
ASCS Agricultural Stabilization and Conservation Service
CCC Commodity Credit Corporation
CSRS Cooperative State Research Service
EOA Energy Office, Agriculture Department
EQOA Environmental Quality Office, Agriculture Department
ERS Economic Research Service
FmHA Farmers Home Administration
FAS Foreign Agricultural Service
FCIC Federal Crop Insurance Corporation
FGIS Federal Grain Inspection Service
FNS Food and Nutrition Service
FS Forest Service
FSIS Food Safety and Inspection Service
FSQS Food Safety and Quality Service
IGO Inspector General Office
PSA Packers and Stockyards Administration
REA Rural Electrification Administration
SCS Soil Conservation Service
SEA Science and Education Administration
SRS Statistical Reporting Service
TOA Transportation Office, Agriculture Department

COMMERCE Commerce Department

BEA Bureau of Economic Analysis
BIE Bureau of Industrial Economics
Census Census Bureau
EDA Economic Development Administration
FSPSO Federal Statistical Policy and Standards Office
FTZB Foreign-Trade Zones Board
ITA International Trade Administration
MBDA Minority Business Development Agency
NBS National Bureau of Standards
NOAA National Oceanic and Atmospheric Administration
NTIA National Telecommunications and Information Administration
NTIS National Technical Information Service
PTO Patent and Trademark Office
USTS United States Travel Service

DOD Defense Department

AF Air Force Department
Army Army Department
DCAA Defense Contract Audit Agency
DIA Defense Intelligence Agency
DIS Defense Investigative Service
DLA Defense Logistics Agency
DMA Defense Mapping Agency
DNA Defense Nuclear Agency
EC Engineers Corps
Navy Navy Department

ED Education Department

NCH National Council for the Handicapped

DOE Energy Department

APA Alaska Power Administration
BPA Bonneville Power Administration
CRE Conservation and Renewable Energy, Office of Assistant Secretary
EIA Energy Information Administration
ERA Economic Regulatory Administration
ERO Energy Research Office
ETO Energy Technology Office
FERC Federal Energy Regulatory Commission
OHA Hearings and Appeals Office, Energy Department
SEPA Southeastern Power Administration
SWPA Southwestern Power Administration
WAPA Western Area Power Administration

HHS Health and Human Services Department

ADAMHA Alcohol, Drug Abuse, and Mental Health Administration
CDC Centers for Disease Control
FDA Food and Drug Administration
HCFA Health Care Financing Administration
HDSO Human Development Services Office
HRA Health Resources Administration
HSA Health Services Administration
NIH National Institutes of Health
NIOSH National Institute for Occupational Safety and Health
PHS Public Health Service
SSA Social Security Administration

HUD Housing and Urban Development Department

CARF Consumer Affairs and Regulatory Functions, Office of Assistant Secretary
CPD Community Planning and Development, Office of Assistant Secretary
E&EO Environment and Energy Office, Housing and Urban Development Department
FHC Federal Housing Commissioner, Office of Assistant Secretary for Housing
FHEO Fair Housing and Equal Opportunity, Office of Assistant Secretary
GNMA Government National Mortgage Association
ILSRO Interstate Land Sales Registration Office
NCA New Communities Administration
NCDC New Community Development Corporation
NVACP Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary
SEECB Solar Energy and Energy Conservation Bank

INTERIOR Interior Department

BIA Bureau of Indian Affairs
BLM Bureau of Land Management
FWS Fish and Wildlife Service
GS Geological Survey
Mines Mines Bureau
NPS National Park Service
OHA Office of Hearings and Appeals, Interior Department
RB Reclamation Bureau
SMREO Surface Mining Reclamation and Enforcement Office

JUSTICE Justice Department

ANTITRUST Antitrust Division
BJS Bureau of Justice Statistics
DEA Drug Enforcement Administration
FCSC Foreign Claims Settlement Commission
INS Immigration and Naturalization Service
JJDPO Juvenile Justice and Delinquency Prevention Office
LEAA Law Enforcement Assistance Administration
NIC National Institute of Corrections
NIJ National Institute of Justice
OJARS Justice Assistance, Research and Statistics Office
PARCOM Parole Commission
PB Prisons Bureau

LABOR Labor Department

BLS Bureau of Labor Statistics
ESA Employment Standards Administration

ETA Employment and Training Administration
FCCPO Federal Contract Compliance Programs Office
LMSEO Labor Management Standards Enforcement Office
MSHA Mine Safety and Health Administration
OSHA Occupational Safety and Health Administration
P&WBP Pension and Welfare Benefit Programs Office
W&H Wage and Hour Division

STATE State Department

FSGB Foreign Service Grievance Board

DOT Transportation Department

CG Coast Guard
FAA Federal Aviation Administration
FHWA Federal Highway Administration
FRA Federal Railroad Administration
MA Maritime Administration
NHTSA National Highway Traffic Safety Administration
RSPA Research and Special Programs Administration
SLSDC Saint Lawrence Seaway Development Corporation
UMTA Urban Mass Transportation Administration

TREASURY Treasury Department

ATF Alcohol, Tobacco and Firearms Bureau
Customs Customs Service
Comptroller Comptroller of the Currency
FACO Foreign Assets Control Office
FS Fiscal Service
IRS Internal Revenue Service
Mint Mint Bureau
PDB Public Debt Bureau
RSO Revenue Sharing Office
SS Secret Service

Independent Agencies

ACHP Historic Preservation, Advisory Council
ANGTS Alaska Natural Gas Transportation System, Office of Federal Inspector
ATBCB Architectural and Transportation Barriers Compliance Board
CAB Civil Aeronautics Board
CEQ Council on Environmental Quality
CFTC Commodity Futures Trading Commission
CITA Textile Agreements Implementation Committee
CPSC Consumer Product Safety Commission
CRC Civil Rights Commission
CSA Community Services Administration
DIDC Depository Institutions Deregulation Committee
EEOC Equal Employment Opportunity Commission
EPA Environmental Protection Agency
ESC Endangered Species Committee
EXIMBANK Export-Import Bank of the U.S.
FCA Farm Credit Administration
FCC Federal Communications Commission
FDIC Federal Deposit Insurance Corporation
FEC Federal Election Commission
FEMA Federal Emergency Management Agency
FEMA/USFA United States Fire Administration
FFIEC Federal Financial Institutions Examination Council
FHLBB Federal Home Loan Bank Board
FHLMC Federal Home Loan Mortgage Corporation
FLRA Federal Labor Relations Authority
FMC Federal Maritime Commission
FRAC Federal Register Administrative Committee
FRS Federal Reserve System
FSIDP Foreign Service Impasse Disputes Panel
FSLRB Foreign Service Labor Relations Board
FTC Federal Trade Commission
GAO General Accounting Office
GOLD Gold Commission
GPO Government Printing Office
GSA General Services Administration
GSA/ADTS Automated Data and Telecommunications Service
GSA/FPRS Federal Property Resources Service
GSA/FSS Federal Supply Service
GSA/NARS National Archives and Records Service
GSA/OFR Office of the Federal Register
GSA/PBS Public Buildings Service
GSA/TPUS Transportation and Public Utilities Service
ICA International Communication Agency
ICC Interstate Commerce Commission
IDCA International Development Cooperation Agency
IDCA/AID Agency for International Development
ITC International Trade Commission
IRLG Interagency Regulatory Liaison Group
LSC Legal Services Corporation
MB Metric Board
MSPB Merit Systems Protection Board
MWSC Minimum Wage Study Commission
NACEO National Advisory Council on Economic Opportunity
NASA National Aeronautics and Space Administration
NCCB National Consumer Cooperative Bank
NCUA National Credit Union Administration
NFAH National Foundation for the Arts and the Humanities
NLRB National Labor Relations Board
NRC Nuclear Regulatory Commission
NSF National Science Foundation
NTSB National Transportation Safety Board
OMB Office of Management and Budget
OMB/FPPO Federal Procurement Policy Office
OPIC Overseas Private Investment Corporation
OPM Office of Personnel Management
OPM/FPRAC Federal Prevailing Rate Advisory Committee
OSTP Office of Science and Technology Policy
PADC Pennsylvania Avenue Development Corporation
PBGC Pension Benefit Guaranty Corporation
PRC Postal Rate Commission
PS Postal Service
RRB Railroad Retirement Board
SBA Small Business Administration
SEC Securities and Exchange Commission
SFC Synthetic Fuels Corporation
SSS Selective Service System
Trade Representative Trade Representative, Office of United States
TVA Tennessee Valley Authority
VA Veterans Administration
WRC Water Resources Council

REMINDERS

List of Public Laws

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