AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

4-16-82
Vol. 47 No. 74
Pages 16311-16610

federal register

Friday
April 16, 1982

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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for $300.00 per year, or $150.00 for six months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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.

Contents

Federal Register
Vol. 47, No. 74
Friday, April 16, 1982

The President
PROCLAMATIONS
16313 Crime Victims Week, 1982 (Proc. 4929)
EXECUTIVE ORDERS
16311 Drunk Driving, Presidential Commission on (EO 12358)

Executive Agencies

Agricultural Marketing Service
RULES
16315 Lemons grown in Ariz. and Calif.
Milk marketing orders:
16315 Southern Illinois; suspension

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Forest Service; Soil Conservation Service.
RULES
Procurement:
16335 Small business and labor surplus area concerns

Animal and Plant Health Inspection Service
PROPOSED RULES
16534 Swine health protection; treatment of garbage used as feed

Arts and Humanities, National Foundation
NOTICES
Meetings:
16437 Humanities Advisory Panel

Bonneville Power Administration
NOTICES
Environmental statements; availability, etc.:
16368 Idaho Falls Hydroelectric Project; acquisition

Centers For Disease Control
NOTICES
Meetings:
16412 Immunization Practices Advisory Committee
16412 Mine Health Research Advisory Committee (NIOSH)
16412 Sexually transmitted diseases, treatment recommendations work group

Civil Aeronautics Board
NOTICES
16363 Certificates of public convenience and necessity and foreign air carrier permits
Hearings, etc.:
16363 A/S Conair
16363 EOA; fitness investigation (2 documents)
16364 North Pacific Airlines, Inc.; fitness investigation
16364 Northeast Sunrise Airlines, Inc.; fitness investigation
16364 Saipan/Guam/Palau-Philippines service case (2 documents)
16364 SCANAIR
16365 Sterling Airways A/S

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
16365 Arizona
16365 Iowa
16365 Kansas
16365 Missouri
16366 New Jersey

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration.

Commodity Futures Trading Commission
NOTICES
16440 Meetings; Sunshine Act

Community Planning and Development, Office of Assistant Secretary
RULES
Community development block grants:
16321 Indian tribes and Alaskan natives; housing assistance plan; application requirements removed

Defense Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
16321 Reimbursement methodology

Economic Regulatory Administration
NOTICES
Organization and functions:
16368 Oil and Gas Imports Division, Natural Gas Branch; relocation of offices

Education Department
NOTICES
Education Appeal Board hearings:
16368 Hawaii and Texas

Employment and Training Administration
NOTICES
Adjustment assistance:
16434 Dana Corp.

Employment Standards Administration
NOTICES
16506 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (Calif., Conn., Hawaii, Idaho, Ill., Kans., La., Minn., Mont., N.J., Oreg., Tenn., Tex., Utah, and Wash.)

Energy Department
See Bonneville Power Administration; Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
16564 Lead-acid battery manufacture
16582 Phosphate rock plants
Air pollution control; new motor vehicles and engines:
16334 Nitrogen oxides (NO_x) emission standards; 1981–1984 model years light-duty diesel vehicles
Air quality implementation plans; approval and promulgation; various States, etc.:
16326 Arizona
16328 Arkansas and Oklahoma
16330 New Mexico
16324 Oklahoma; correction
16325 Pennsylvania
16331 Vermont
Air quality planning purposes; designation of areas:
16333 Wisconsin
Hazardous waste:
16544 Treatment, storage, and disposal facilities, standards for owners and operators; liability coverage requirements for bodily injury and property damage; interim
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
16361 Indiana; extension of time
NOTICES
Air pollutants, hazardous; national emission standards and standards for new stationary sources:
16409 New York; authority delegation
Environmental statements; availability, etc.:
16402 Agency statements; weekly receipts
Toxic and hazardous substances control:
16403 Premanufacture notices receipts
16410 Premanufacture notification requirements; test marketing exemption applications
16406–16408 Premanufacture notification requirements; test marketing exemption approvals (4 documents)

Equal Employment Opportunity Commission
NOTICES
16440 Meetings; Sunshine Act

Federal Communications Commission
NOTICES
16440 Meetings; Sunshine Act

Federal Energy Regulatory Commission
RULES
16317 Oil pipeline companies quarterly report (Form ICC–QPS); discontinued
NOTICES
Hearings, etc.:
16368, 16369 American Electric Power Service Corp. (3 documents)
16369 Central Louisiana Electric Co., Inc.
16370 Crystal Springs Ranch
16370 Energenics Systems, Inc.
16371 Florida Gas Transmission Co., et al.
16371 Florida Power & Light Co.
16371–16373 Henderson City Utility Commission (3 documents)
16373 Indiana & Michigan Electric Co.
16374 Kansas City Power & Light Co.
16374 Long Lake Energy Corp.
16374 Mac Hydro-Power Co., Inc.
16375 Mason County Public Utility District No. 1
16376 McCarthy, Donald W.
16376 Metropolitan Water District of Southern California
16377 Montana-Dakota Utilities Co.
16377 Montana Power Co.
16377 Northern Indiana Public Service Co.
16378 Philadelphia Electric Co.
16379 Public Service Co. of New Mexico
16380 Public Utility District No. 1 of Lewis County, Wash.
16380 Springfield Utility Board
16381 Wisconsin Electric Co.

Federal Home Loan Bank Board
RULES
Federal home loan bank system:
16316 Advances secured by Federal Savings and Loan Insurance Corporation obligations

Federal Prevailing Rate Advisory Committee
NOTICES
16410 Meetings

Federal Register Office
(*Editorial note:* For list of libraries that have announced availability of **Federal Register** and Code of Federal Regulations, see Reader Aids carried in Part II of this issue.)

Federal Reserve System
NOTICES
16440 Meetings; Sunshine Act

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations:
16411 Goldsmith, Sir James (2 documents)
16411 Interstate-Federal Corp.

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
16418 Atlantic Salmon and American Shad in New England; restoration program
16417 San Bruno Mountain Habitat Conservation Plan and Endangered Species Permit, San Mateo County, Calif.

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
16320 Antibiotic, nitrofuran, and sulfonamide; furazolidone premixes in chicken and turkey feeds; correction
16320 Nitrofurazone ointment; correction
16320 Potassium phenoxymethyl penicillin tablets
Color additives:
16319 Grape color extract; nonbeverage food use; exemption certification; effective date confirmed
Food additives:
16319 Adjuvants, production aids, and sanitizers; stearoylbenzoylmethane as stabilizer for polyvinyl chloride

Human drugs:
16320 Oligosaccharide antibiotic drugs; tobramycin ophthalmic ointment; correction
Organization and authority delegations:
Food and Drug Administration rulemaking authority in matters involving significant public policy; republication (Editorial note: For a document on this subject, see entry under Health and Human Services Department)

Forest Service
NOTICES
Classification, development plans, and boundary descriptions:
16362 Salmon Wild and Scenic River, Idaho

General Services Administration
See also Federal Register Office.
RULES
Procurement
16335 Negotiated supply contract and advertised construction contracts forms; new editions of Standard Forms 18 and 21; effective date postponed
NOTICES
Authority delegations:
16412 Treasury Department Secretary

Geological Survey
PROPOSED RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
16349 Air quality standards; exemption formulas and significance levels for emissions from facilities off California withdrawn

Health and Human Services Department
See also Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Public Health Service.
RULES
Organization and authority delegations:
16318 Food and Drug Administration rulemaking authority in matters involving significant public policy; republication
NOTICES
16415 Privacy Act; systems of records

Health Care Financing Administration
RULES
Medicaid and medicare:
16339 Drugs, less than effective; interim rule; legislation affecting implementation and enforcement

Hearings and Appeals Office, Energy Department
NOTICES
16381, 16396 Special refund procedures; implementation and inquiry (2 documents)

Housing and Urban Development Department
See Community Planning and Development, Office of Assistant Secretary.

Interior Department
See Fish and Wildlife Service; Geological Survey; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office.

International Trade Administration
NOTICES
Antidumping:
16366 Steel sheet piling from Canada; postponement
Scientific articles; duty free entry:
16366 Maine Maritime Academy

Interstate Commerce Commission
NOTICES
Motor carriers:
16426 Compensated intercorporate hauling operations; intent to engage in
16427 Lease and interchange of vehicles
16429 Permanent authority applications
16428 Permanent authority applications; restriction removals
Railroad services abandonment:
16434 Consolidated Rail Corp.; correction

Labor Department
See Employment and Training Administration; Employment Standards Administration; Occupational Safety and Health Administration; Pension and Welfare Benefit Programs Office.

Land Management Bureau
NOTICES
Authority delegations:
16420 Nevada State Office; Lands and Minerals Operations Branch, Division of Operations, Chief; mining claim instruments filing
Coal leases, exploration licenses, etc.:
16422 Colorado
16420 Wyoming
Conveyance of lands:
16419 Nevada
Environmental statements; availability, etc.:
16421 Grass Creek Resource Area, Bighorn Basin, Wyo.; grazing management
16421 Outer Continental Shelf; New York; oil and gas lease sale
Exchange of public lands for private land:
16419 Idaho
16423 Federal disclaimers of interest to lands in Idaho
Meetings:
16423 National Public Lands Advisory Council
Opening of public lands:
16421 Wyoming
Organization and functions:
16419 Arizona State Office; filing applications and documents, and inspecting land status records; office hours
Withdrawal and reservation of lands, proposed, etc.:
16420 Oregon

Minerals Management Service
NOTICES
16426 Oil and gas leases, onshore Federal and Indian; drilling approval, etc.; notice to lessees and operators; inquiry
16423 Outer Continental Shelf; fair market value of natural gas for royalty purposes; opportunity for hearing

National Credit Union Administration
NOTICES
16440, 16441 Meetings; Sunshine Act (2 documents)

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
16339 Tanner crab off Alaska
NOTICES
Experimental fishing permit applications:
16367 Pacific Coast groundfish; inquiry
Meetings:
16367 Caribbean Fishery Management Council; date change

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
16438 Armed Forces Radiobiology Research Institute
16438 Duke Power Co.
16438 Florida Power & Light Co.

Occupational Safety and Health Administration
PROPOSED RULES
Health and safety standards:
16348 Commercial diving operations; extension of time
16348 Hazard communication; chemical manufacturers; hearings
NOTICES
16435 Lead; occupational exposure; new trigger levels for medical removal protection; temporary variance and interim order applications

Panama Canal Commission
PROPOSED RULES
Shipping and navigation:
16360 Tolls for use of canal; rate increase; advance notice

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; class exemptions:
16437 Fiduciaries; payment for securities lending services; correction

Personnel Management Office
PROPOSED RULES
16341 Executive and management development; Senior Executive Service recruitment
NOTICES
16466 Privacy Act; systems of records; annual publication

Postal Rate Commission
NOTICES
16438 Visits to postal facilities

Public Health Service
NOTICES
16413 Privacy Act; systems of records

Securities and Exchange Commission
PROPOSED RULES
Investment companies:
16341 Foreign banks and foreign securities depositories; exemption for custody of securities
NOTICES
16441 Meetings; Sunshine Act

Small Business Administration
NOTICES
Applications, etc.:
16439 Risa Capital Associates
Meetings; State advisory councils:
16439 Pennsylvania (2 documents)
16439 Virginia

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
16362 Oneida County Road Critical Area Treatment RC&D Measure, Idaho

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent and interim regulatory programs:
16349 Explosives use and training, examination, and certification of blasters; extension of time
16604 Subsidence control and concurrent surface and underground mining operations
16592 Surface coal mining and reclamation operations; roads, designation as primary or ancillary

Tennessee Valley Authority
NOTICES
16441 Meetings; Sunshine Act

Veterans Administration
RULES
16322 Privacy Act; implementation

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
4929 16313
Executive Orders:
12358 16311

5 CFR
Proposed Rules:
412 16341

7 CFR
910 16315
1032 16315

9 CFR
Proposed Rules:
166 16534

12 CFR
525 16316

17 CFR
Proposed Rules:
270 16341

18 CFR
357 16317

21 CFR
5 16318
73 16319
178 16319
444 16320
524 16320
540 16320
558 16320

24 CFR
571 16321

29 CFR
Proposed Rules:
1910 (2 documents) 16348

30 CFR
Proposed Rules:
250 16349
701 16592
715 16349
780 16349
784 16604
785 16604
816 (3 documents) 16349, 16592, 16604
817 (3 documents) 16349, 16592, 16604
818 16604
850 16349

32 CFR
199 16321

35 CFR
Proposed Rules:
133 16360

38 CFR
1 16322

40 CFR
52 (6 documents) 16324–16331
60 (2 documents) 16564, 16582
81 16333
86 16334
123 16544
264 16544
265 16544
Proposed Rules:
52 16361

41 CFR
Ch. 1 16335
4–1 16335

42 CFR
405 16339
441 16339

50 CFR
671 16339

Federal Register
Vol. 47, No. 74
Friday, April 16, 1982

Presidential Documents

Title 3—

The President

Executive Order 12358 of April 14, 1982

Presidential Commission on Drunk Driving

By the authority vested in me as President by the Constitution of the United States of America, and in order to aid the States in their fight against the epidemic of drunk driving on the Nation's roads, it is hereby ordered as follows:

Section 1. *Establishment.* There is hereby established the Presidential Commission on Drunk Driving. The Commission shall be composed of no more than 26 members appointed by the President. In addition, the Majority Leader of the Senate and the Speaker of the House of Representatives are invited to designate two Members of each House to participate. The President shall designate a Chairman from among the members of the Commission.

Sec. 2. *Functions.* The Commission shall undertake to:

(a) heighten public awareness of the seriousness of the drunk driving problem;

(b) persuade States and communities to attack the drunk driving problem in a more organized and systematic manner, including plans to eliminate bottlenecks in the arrest, trial and sentencing process that impair the effectiveness of many drunk driving laws;

(c) encourage State and local officials and organizations to accept and use the latest techniques and methods to solve the problem; and

(d) generate public support for increased enforcement of State and local drunk driving laws.

Sec. 3. *Administration.*

(a) The heads of Executive agencies shall, to the extent permitted by law, provide the Commission with such information on drunk driving and highway safety issues and such other support as it may request for the effective performance of its functions.

(b) Members of the Commission shall receive no compensation for their work on the Commission. However, the Secretary of Transportation may allow members to be reimbursed for travel expenses while engaged in the work of the Commission, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(c) The Department of Transportation shall, to the extent permitted by law and subject to the availability of funds, provide the Commission with such administrative services, funds, facilities, staff and other support services as may be necessary for the effective performance of its functions.

Sec. 4. *General Provisions.*

(a) The Commission is authorized to conduct public meetings and utilize such other procedures as it may deem necessary for the effective performance of its functions.

(b) The Commission shall terminate one year from this date.

Ronald Reagan

THE WHITE HOUSE,
April 14, 1982.

[FR Doc. 82-10538
Filed 4-14-82; 3:27 pm]
Billing code 3195-01-M

Editorial Note: The President's remarks of Apr. 14, 1982, on signing Executive Order 12358 are printed in the *Weekly Compilation of Presidential Documents* (vol. 18, no. 15).

Presidential Documents

Proclamation 4929 of April 14, 1982

Crime Victims Week, 1982

By the President of the United States of America

A Proclamation

The innocent victims of crime have frequently been overlooked by our criminal justice system. Too often their pleas for justice have gone unheeded and their wounds—personal, emotional and financial—have gone unattended.

The rule of law is fundamental to the preservation of the democratic principles and ideals that law-abiding Americans cherish. Our commitment to criminal justice goes far deeper than our desire to punish the guilty or to deter those considering a lawless course. We must never forget that our laws represent the collective moral voice of a free society—a voice that articulates our shared beliefs about the rules of civilized behavior, and reflects our basic precept that men and women should be treated as free individuals, responsible for the consequences of their actions. When we countenance the suffering of innocent victims of crime, we thus threaten to undermine the faith of our citizens in a legal system that lies at the heart of much that is unique and precious about our Nation itself.

We cannot afford for law-abiding Americans to lose that faith. At a time when crime remains a serious national problem, we must be ever-more zealous in our pursuit of law and justice. In that pursuit, we must never forget that the victims of crimes are not merely statistics on a police blotter; they are our friends, relatives, neighbors and fellow citizens. They are entitled to better treatment, and it is time to do something about it.

The plight of innocent citizens victimized by lawlessness deserves immediate national attention. I have, therefore, decided to establish a Presidential Task Force on Victims of Crime, to be composed of members of the public with particular knowledge and expertise in the area of victims' rights, that will evaluate current national, state and local policies and programs concerning this important issue and recommend executive and legislative action to improve our efforts to assist and protect victims of crime.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning April 19, 1982, as Crime Victims Week. I urge all Federal, state and local officials involved in the criminal justice system to devote special attention to the needs of victims of crime, and to redouble their efforts to make our system responsive to those needs. I urge all other elected and appointed officials to join in this effort to make our justice system more helpful to those for whom it was designed to protect. And I urge all citizens, from all walks of life, to remember that the personal tragedy of the victim is their own tragedy as well.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of April, in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

[FR Doc. 82-10637
Filed 4-15-82; 12:00 m]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 47, No. 74
Friday, April 16, 1982

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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 354, Amdt. 1; Lemon Reg. 355]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period April 18–24, 1982, and increases the quantity of lemons that may be shipped during the period April 11–17, 1982. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: The regulation becomes effective April 18, 1982 and the amendment is effective for the period April 11–17, 1982.

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

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation and amendment are issued under the marketing agreement, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon 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 on July 7, 1981. The committee met again publicly on April 13, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is very active.

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. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, California, Arizona, Lemons.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. Section 910.655 is added as follows:

§ 910.655 Lemon regulation 355.

The quantity of lemons grown in California and Arizona which may be handled during the period April 18, 1982, through April 24, 1982, is established at 280,000 cartons.

2. Section 910.654, Lemon Regulation 354 (47 FR 15310) is revised to read as follows:

§ 910.654 Lemon regulation 354.

The quantity of lemons grown in California and Arizona which may be handled during the period April 11, 1982, through April 17, 1982, is established at 295,000 cartons.

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

Dated: April 15, 1982.

D. S. Kuryloski,

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

[FR Doc. 82-10636 Filed 4-15-82; 11:28 am]
BILLING CODE 3410-02-M

7 CFR Part 1032

[Milk Order No. 32]

Milk in the Southern Illinois Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends certain provisions relating to how much milk not needed for fluid (bottling) use may be moved directly from farms to manufacturing plants and still be priced under the order. The suspension removes the limits on such movements of milk during the month of April 1982. The action was requested by a cooperative association to assure the efficient disposition of milk not needed for fluid use and still maintain producer status under the order for dairy farmers regularly try associated with the market. Reduced school milk sales and increased production prompted the request by the cooperative association.

EFFECTIVE DATE: April 16, 1982.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4824.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Proposed Suspension: Issued March 22, 1982; published March 26, 1982 (47 FR 12995).

It has been determined that this action is not a major rule under the criteria set forth in Executive Order 12291.

It has also been determined that any need for suspending certain provisions of the order on an emergency basis

preclude 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 issuance of the suspension on a timely enough basis since it is necessary that it be effective for the month of April 1982. In this instance, the initial request for this action was received on March 17, 1982. A notice of proposed suspension was issued on March 22, 1982, inviting interested parties to submit comments on the proposed action on or before April 2, 1982.

It has also been determined that this action would not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and would tend to insure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southern Illinois marketing area. Notice of proposed rulemaking was published in the **Federal Register** (47 FR 12995) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that for the month of April 1982 the following provisions of the order do not tend to effectuate the declared policy of the Act:

§ 1032.13 [Amended]

1. In § 1032.13(b)(2), the language "during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer".

2. In § 1032.13(b)(3), the language "for not more days of production of producer milk, by such producer than is received at a pool plant(s) pursuant to paragraph (a) of this section".

Statement of Consideration

This action removes the limits on the amount of milk that may be diverted from pool plants to nonpool plants during the month of April 1982. The order now provides that during the months of January through April and September through November not more than 8 days' production of a producer may be diverted to nonpool plants that are not other order plants. Such diversions are limited to not more than 12 days' production of a producer during August and December. Diversions to nonpool plants that are also other order plants are limited each month of the year to not more than the number of days of production of a producer that is received at pool plants.

The suspension was requested by a cooperative association that supplies milk to handlers regulated under the order. The basis for the cooperative's request is that school milk sales are down about 25 percent compared to 1981 and that producer receipts used in fluid milk products are 4 percent below the previous year. Lower fluid milk sales and seasonally increasing production will result in the need to move additional quantities of milk to manufacturing plants during the month of April. Without suspension of the limits on the amount of milk that can be moved directly from farms to manufacturing plants, uneconomic movements of milk would be made solely for the purpose of pooling the milk of dairy farmers who have regularly been associated with the market.

Interested parties were given an opportunity to submit written data, views, or arguments concerning the suspension. Comments received from another cooperative association supported the suspension action. No views in opposition to the suspension were received.

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 suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that without this action uneconomic movements of milk would be made solely for the purpose of pooling the milk of dairy farmers who have regularly been associated with the market;

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

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the month of April 1982.

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

Effective date: April 16, 1982.

Signed at Washington, D.C., on: April 12, 1982.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-10432 Filed 4-15-82; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 525

[No. 82-242]

Federal Home Loan Bank Advances Secured by Federal Savings and Loan Insurance Corporation Obligations

Dated: April 8, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board is amending its regulations to permit Federal Home Loan Banks to make advances to their members in an amount up to the principal amount of Federal Savings and Loan Insurance Corporation obligations used to secure the advances. The amendment is intended to increase funds currently available to members.

EFFECTIVE DATE: April 14, 1982.

FOR FURTHER INFORMATION CONTACT: Thomas J. Haggerty, ((202) 377–6911), Senior Attorney, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board ("Board") is amending § 525.25 of the Federal Home Loan Bank System Regulations to permit Federal Home Loan Banks to make advances under the authority of section 11(g)(3) of the Federal Home Loan Bank Act in an

amount up to the principal amount of any debt obligation of the Federal Savings and Loan Insurance Corporation ("FSLIC") used to secure the advance. This amendment accords FSLIC debt obligations the same status as Federal Home Loan Bank obligations, and means that the amount of the advance is not limited to the lesser of 80% of market value or principal amount as is the case where other securities are used to secure the advances. FSLIC debt obligations are issued in certain cases where the FSLIC assists financially troubled institutions, and the Board believes that those obligations will constitute more effective assistance to institutions by virtue of their increased ability to secure advances.

The Board has determined that the notice and public comment procedures of 5 U.S.C. 552(b) and 12 CFR 508.11, and the 30-day delayed effective date imposed by 5 U.S.C. 552(d) and 12 CFR 508.14 are unnecessary and not in the public interest because there is a present need to increase funds available to members, and the amendment merely relieves an unintended restriction upon the use of FSLIC debt obligations to secure advances.

Regulatory Flexibility Act Certification

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 19, 1980), the Board certifies that the amendment promulgated hereto will not have a significant economic impact on a substantial number of small entities. The regulation will relieve a restriction on the use of FSLIC notes as security for Federal Home Loan Bank advances and give institutions greater flexibility in using such notes for the stated purpose. The Board believes that increased flexibility will benefit institutions but does not believe that such benefit will have a significant economic impact on small institutions.

List of Subjects in 12 CFR Part 525

Federal Home Loan Banks.

Accordingly, the Board hereby amends Part 525, Subchapter B, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 525—ADVANCES

Advances on Other Security and Unsecured Advances

1. Amend § 525.25 by revising the last sentence to read as follows:

§ 525.25 Advances secured by other securities.

* * * Such advances shall not exceed the lesser of 80 percent of the market value or principal amount of such securities, except that advances secured by obligations of a Federal Home Loan Bank or the Federal Savings and Loan Insurance Corporation may equal the face value thereof.

(Secs. 11 and 17 of the Federal Home Loan Bank Act, as amended, 12 U.S.C. 1431 and 1437, Reorg. Plan No. 3 of 1947, 3 CFR Part 1071 (1943–48 Comp.))

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-10469 Filed 4-15-82; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 357

[Docket No. RM82-24-000; Order No. 222]

Final Rule to Discontinue Quarterly Report of Oil Pipeline Companies; Form ICC-QPS

Issued: April 6, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) discontinues its Form ICC-QPS, "Quarterly Report of Pipeline Companies," and deletes § 357.3 of the Commission's regulations that prescribe the filing of that form. Form ICC-QPS collects information on a quarterly basis, on oil pipeline transportation revenues and volume of traffic of crude oil and petroleum products. Because duplicate information currently is reported on an annual basis and in a more extensive fashion in the Commission's Form P the Commission has determined that it no longer needs the information provided by Form ICC-QPS, and that form will be discontinued.

EFFECTIVE DATE: This final rule is effective May 6, 1982.

FOR FURTHER INFORMATION CONTACT: Cathy Ciaglo, Federal Energy Regulatory Commission, Office of General Counsel, 825 North Capitol Street NE., Room 8104-B, Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) is eliminating Form ICC-QPS, "Quarterly Report of Pipeline Companies", and is deleting the regulations that prescribe the filing of this form.

Form ICC-QPS is required to be filed quarterly under § 357.3 of the Commission's regulations. The elimination of that form and its corresponding regulations are part of the Commission's ongoing program to review and evaluate all of the data which are required by the Commission for regulatory purposes and to eliminate unnecessary reporting burdens.

A. Background and Summary

The quarterly filing of Form ICC-QPS is required of those oil pipeline companies subject to the Commission's jurisdiction that collect revenues exceeding $500,000 annually. A company must file the report if it collects revenues exceeding this level for the three consecutive calendar years prior to the period covered by the report.[1] The form requires disclosure of transportation revenues and number of barrels of crude oil and petroleum products originating from a company's own lines and received from its connecting carriers, both for the reported quarter and the corresponding quarter for the preceding year. The form also requires disclosure of cumulative amounts for the revenues and the number of barrels at each quarter, for the reported year and for the preceding year.

The Interstate Commerce Commission (ICC), the agency first charged with regulating oil pipelines, began requiring the filing of the Form ICC-QPS in 1938.[2] Upon the transfer of oil pipeline regulatory authority from the ICC to this Commission in 1977,[3] disclosure requirements dictated by this filing were left unaffected and allowed to continue. This Commission, in the exercise of its regulatory functions, has used the data on this form for ratemaking analyses in evaluating oil pipeline tariff changes and statistical calculations in forecasting industry behavior.

[1] 18 CFR 357.3 (1981).

[2] This requirement was first published in 49 CFR 1241.62. That regulation required the first report to be filed for the three months ending September 30, 1938.

[3] Authority to regulate oil pipeline companies was transferred from the ICC to this Commission by section 402(b) of the Department of Energy Organization Act, 42 U.S.C. 7172(b) By Order No. 119, "Redesignation of Oil Pipeline Regulations", Docket No. RM81-8, issued December 19, 1980, 46 FR 9043 (January 28, 1981), this Commission transferred to Title 18 of the Code of Federal Regulations those regulations in Title 49 applicable to the ICC's oil pipeline jurisdiction. By reason of this transfer, 49 CFR 1241.62 became the current 18 CFR 357.3.

Although the Commission believes that information in the Form ICC–QPS respecting revenue amounts and volume of traffic continues to serve a useful regulatory purpose, virtually identical information is received through Form P, "Annual Report of Carriers by Pipeline".[4] Indeed, Form P requires pipeline revenue and traffic information which is more comprehensive than that required under Form ICC–QPS. To illustrate, although the QPS form requires disclosure of only total quarterly transportation revenues, Form P requires the separation of such revenues by function (gathering, trunk, and delivery) and by source (crude oil and products). Disclosure of volumes of traffic under Form P is similarly more detailed. Among other things, it requires identification of both the volume of crude oil and volume of products transported, and the type of product transported. By contrast, Form ICC–QPS requires only the volume of total traffic carried for the quarter. Therefore, the Commission believes that administrative economy, coupled with the aim of reducing the current reporting burden on jurisdictional oil pipelines, favors discontinuing the Form ICC–QPS reporting requirement.

B. Public Procedures and Effective Date

The Commission finds that prior notice and public procedure under 5 U.S.C. 553(b) are unnecessary in this rulemaking because the information now disclosed under Form ICC–QPS will continue to be reported under Form P or its successor filing, Form No. 6.

This final rule to eliminate Form ICC–QPS will be effective May 6, 1982.

(Natural Gas Act, 15 U.S.C. 717–717w; Interstate Commerce Act, 49 U.S.C. 1–67; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR Part 142)

List of Subjects in 18 CFR Part 357

Pipelines, Reporting requirements.

In consideration of the foregoing, the Commission amends Part 357 of Title 18, Chapter I, Code of Federal Regulations effective May 6, 1982, as set forth below.

Kenneth F. Plumb,

Secretary.

[4] A notice of proposed rulemaking was issued on December 4, 1981, to amend the Form P filing and to redesignate that filing as Form No. 6 (46 FR 60617, December 11, 1981). The proposed amendments, however, would leave unaffected the Form P information which duplicates that found in Form ICC–QPS.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART 1 OF THE INTERSTATE COMMERCE ACT

§ 357.3 [Removed]

Part 357 of 18 CFR is amended by removing § 357.3 in its entirety.

[FR Doc. 82–10480 Filed 4–15–82; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

21 CFR Part 5

Reservation of Rulemaking Authority of the Food and Drug Administration in Matters Involving Significant Public Policy; Revision

Note.—This document originally appeared in the Federal Register for Wednesday, April 14, 1982. It is reprinted in this issue to meet requirements for publication on the Tuesday/Friday schedule assigned to the Food and Drug Administration.

AGENCY: Office of the Secretary, HHS.

ACTION: Rule.

SUMMARY: The Secretary is amending the reservation of authority concerning the rulemaking authority of the Food and Drug Administration (FDA) to provide that the Secretary may approve or be notified of regulations that are subject to formal rulemaking procedures and that either are general procedural rules or present highly significant public issues.

EFFECTIVE DATE: April 7, 1982.

FOR FURTHER INFORMATION CONTACT: Robert Brady, Executive Assistant to the Commissioner, Office of the Commissioner (HF–9), Food and Drug Administration, 5600 Fishers Lane, Room 14–82, Rockville, MD 20857, 301–443–4124.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 11, 1981 (46 FR 26052), the Secretary published a rule amending previous delegations of authority to issue FDA regulations by providing that the Secretary reserves the authority vested in him by applicable statutes to approve regulations which establish general procedural rules or which present highly significant public issues concerning particular FDA-regulated products. The reservation of authority did not extend to those regulations to which the formal rulemaking procedures of the Administrative Procedure Act (5 U.S.C. 556 and 557) apply.

This document amends the previous reservation of authority to provide that nothing in the reservation of authority precludes the Secretary's approval of a regulation that is subject to formal rulemaking procedures (5 U.S.C. 556 and 557) and that meets one of the two criteria specified in the present reservation of authority for Secretarial approval of regulations subject to informal rulemaking. These criteria are that the regulation (1) establishes procedural rules applicable to a general class of foods, drugs, cosmetics, medical devices, or other subjects of regulation; or (2) presents highly significant public issues involving the quality, availability, marketability, or cost of one or more foods, drugs, cosmetics, medical devices, or other subjects of regulation. The amendment would also clarify that the Secretary may be notified in advance of an action (formal rulemaking or formal adjudication) subject to 5 U.S.C. 556 and 557 that meets one of these criteria. This change is being made to enable the Commissioner of Food and Drugs to obtain the Secretary's approval of regulations that are subject to formal rulemaking requirements. The amendment does not affect present clearance procedures for regulations subject to formal rulemaking procedures in cases where the Commissioner does not obtain the Secretary's approval. Hence, the amendment will not affect the issuance of the vast majority of such regulations that do not warrant Secretarial approval.

List of Subjects in 21 CFR Part 5

Authority delegations, Organization and functions (Government Agencies).

This amendment to the reservation of authority, set forth below, is effective April 7, 1982.

Dated: April 7, 1982.

Richard S. Schweiker,

Secretary.

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Section 5.11 of Title 21 of the Code of Federal Regulations is revised to read as follows:

§ 5.11 Reservation of authority.

(a) Notwithstanding provisions of § 5.10 or any previous delegations of authority to the contrary, the Secretary reserves the authority to approve regulations of the Food and Drug Administration, except regulations to

which sections 556 and 557 of Title 5 of the United States Code apply, which:

(1) Establish procedural rules applicable to a general class of foods, drugs, cosmetics, medical devices, or other subjects of regulation; or

(2) Present highly significant public issues involving the quality, availability, marketability, or cost of one or more foods, drugs, cosmetics, medical devices, or other subjects of regulation.

(b) Nothing in this section precludes the Secretary from approving a regulation, or being notified in advance of an action, to which sections 556 and 557 of Title 5 of the United States Code apply, which meets one of the criteria in paragraph (a) of this section.

(c) This reservation of authority is intended only to improve the internal management of the Department of Health and Human Services, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, the Department of Health and Human Services, the Food and Drug Administration, any agency, officer, or employee of the United States, or any person. Regulations issued by the Food and Drug Administration without the approval of the Secretary are to be conclusively viewed as falling outside the scope of this reservation of authority.

[FR Doc. 82-10253 Filed 4-13-82; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

21 CFR Part 73

[Docket No. 79C-0400]

Listing of Color Additives Exempt From Certification; Grape Color Extract; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of October 30, 1981, for a regulation that amends the color additive regulations to provide for the safe use of grape color extract as a color additive for nonbeverage food use.

DATE: Effective date confirmed: October 30, 1981.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Falci, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: FDA published a final rule in the **Federal Register** of September 29, 1981 (46 FR 47532) to amend the color additive regulations to provide for the safe use of grape color extract as a color additive in nonbeverage foods.

FDA received one objection to the listing of grape color extract. That objection was subsequently withdrawn. Thus, the agency concludes that the regulation published on September 29, 1981, for grape color extract should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Color additives exempt from certification, Color diluents, Cosmetics, Drugs.

Therefore, under the Color Additive Amendment of 1960 of the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)) 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)), notice is given that no other objections or any requests for a hearing were filed in response to the regulation of September 29, 1981. Accordingly, the amendments promulgated thereby became effective on October 30, 1981.

Dated: April 7, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-10240 Filed 4-15-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 81F-0222]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers: Stearoylbenzoylmethane as a Stabilizer for Polyvinyl Chloride

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of stearoylbenzoylmethane as a stabilizer for polyvinyl chloride polymers in contact with food. This action is being taken in response to a petition filed by Rhone-Poulenc, Inc.

DATES: Effective April 16, 1982; objections by May 17, 1982.

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: Patricia J. McLaughlin, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 18, 1981 (46 FR 41863), FDA announced that a petition (FAP 1B3545) had been filed by Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017, proposing that the food additive regulations be amended to provide for the safe use of stearoylbenzoylmethane as a stabilizer for polyvinyl chloride polymers in contact with food.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the food additive regulations should be amended as set forth below. In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

List of Subjects in 21 CFR Part 178

Food additives; Food packaging; Sanitizing solutions.

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 178 is amended in § 178.2010(b) by alphabetically inserting a new item in the list of substances to read as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
Stearoylbenzoylmethane (CAS Reg. No. 58446-52-9) consisting of a mixture of β-diketones produced by the condensation of acetophenone and technical methyl stearate.	For use only at levels not to exceed 0.5 percent by weight of vinyl chloride homopolymers modified in accordance with § 178.3790(b)(1). The finished polymers are to be used only in contact with food containing no more than 8 percent alcohol and under conditions of use B through H described in table 2 of § 176.170(c) of this chapter.
* * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 17, 1982 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 April 16, 1982.

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

Dated: April 7, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-10239 Filed 4-15-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 444

[Docket No. 81N-0406]

Oligosaccharide Antibiotic Drugs; Tobramycin Ophthalmic Ointment

Correction

In FR Doc. 82-4742 appearing on page 7827 in the issue of Tuesday, February 23, 1982; on page 7828, § 444.380b(b)(1), fifth line, "* * * weighted * * *" should read "* * * weighed * * *".

BILLING CODE 1505-01-M

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nitrofurazone Ointment

Correction

In FR Doc. 82-2996, appearing on page 5410 in the issue of Friday, February 5, 1982, the following corrections should be made:

1. The third line of the paragraph immediately following the part heading in column two should have read, "Stat. 347 (21 U.S.C. 360b(i)) and under".

2. The authority citation near the end of column two should have read, "(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))".

BILLING CODE 1505-01-M

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Potassium Phenoxymethyl Penicillin Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations concerning potassium phenoxymethyl penicillin tablets to provide for the correct name of the product and correct certification and labeling requirements.

EFFECTIVE DATE: April 16, 1982.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Bureau of Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 17, 1974 (39 FR 43628), the animal drug regulations were amended to provide for the use of potassium phenoxymethyl penicillin tablets. The use of the product was described in § 135c.133 (21 CFR 135c.133). The provisions for certification were described in § 146a.27 (21 CFR 146a.27). These amendments represent approval of NADA's filed by Elanco Products Co. and Abbott Laboratories. In the **Federal Register** of March 27, 1975 (40 FR 13802), the animal drug regulations were reorganized and republished. The document provided for the redesignation of potassium phenoxymethyl penicillin tablets to § 540.173b (21 CFR 540.173b). The redesignated section was inadvertently titled penicillin tablets and carried the certification cross-reference for procaine penicillin G tablets. This document amends the regulations to provide the correct title and certification cross-reference, and to use the correct labeling references in the certification paragraph.

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.

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics, Penicillin.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b(i) and (n))) 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 540 is amended in § 540.173b by revising the section heading and paragraphs (a) and (b) to read as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

§ 540.173b Potassium phenoxymethyl penicillin tablets.

(a) *Requirements for certification.* The requirements for certification are described under § 440.173c of this chapter, except the labeling shall comply with the requirements of paragraph (c) of this section and § 510.55 of this chapter.

(b) *Tests and methods of assay.* The tests and methods of assay are described under § 440.173c of this chapter.

* * * * *

Effective date. This amendment is effective April 16, 1982.

(Sec. 512(i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b(i) and (n)))

Dated: April 8, 1982.

Max L. Crandall,

Associate Director for Surveillance and Compliance.

[FR Doc. 82-10238 Filed 4-15-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Antibiotic Nitrofuran, and Sulfonamide Drugs in the Feed of Animals

Correction

In FR Doc. 82-8088 appearing on page 12951 in the issue of Friday, March 26, 1982; on page 12952, second column,

§ 558.15, the paragraph numbered "3.," third line, "* * * 0.02" should read "* * * 0.22".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 571

[Docket No. R-82-983]

Community Development Block Grants for Indian Tribes and Alaskan Natives, Housing Assistance Plan (HAP)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: HUD is deleting its regulations which require that an application under the Indian Community Development Block Grant (CDBG) Program include a Housing Assistance Plan (HAP) providing data on the housing assistance needs of the applicant. This deletion is appropriate because of the Department's desire to reduce unnecessarily burdensome administrative requirements which are not required by statute.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Marcia A. B. Brown, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-6092. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: As part of its continuing deregulation effort, HUD has given further consideration to the need for requiring final applicants under the Indian Community Development Block Grant Program to submit a housing assistance plan on a HUD prescribed form. A review of the HAP form determined that the requirement was unnecessarily burdensome, particularly because there is no statutory requirement that a HAP be submitted by Indian CDBG applicants. Therefore, HUD is revoking all requirements for the preparation of a housing assistance plan by applicants to the Indian CDBG Program. The withdrawal of this administrative requirement, however, does not preclude Indian CDBG applicants from developing, at their own initiative, housing needs analyses and goals for their own use.

This revocation will not adversely affect program participants. In addition, removing the HAP requirement (which is not statutorily prescribed) is consistent with the 1981 Omnibus Budget Reconciliation Act amendments which further limit the HAP requirements to entitlement communities. For these reasons, comment and public participation are unnecessary. Moreover, because it relieves a restriction and eases the burden upon program participants, this change is being made effective as soon after publication as possible, consistent with the requirement of section 7(o) of the Department of HUD Act.

The Department has determined, therefore, that in light of the above mentioned reasons, prior notice and public procedure for this rule would be unnecessary. Accordingly, this change is being adopted by final rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect 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.

A Finding of No Significant Impact with respect to environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 5218, 451 Seventh Street, S.W., Washington, D.C. 20410.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This rule was listed as item "c)24 (CPD-35-78)" under the Office of Community Planning and Development in the Department's Semi-annual Agenda of Regulations published on August 17, 1981 (46 FR 41708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance number is 14.223.

List of Subjects in 24 CFR Part 571

Community development block grants, Grant programs: housing and community development, Grant programs: Indians, Indians.

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVES

§ 571.305 and § 571.405 [Amended]

Accordingly, 24 CFR is amended by: 1. Removing § 571.305 paragraph (d) in its entirety and redesignating paragraph (e) as paragraph (d).

2. By removing § 571.405(e) in its entirety and redesignating paragraphs (f) and (g) as (e) and (f), respectively.

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq); Title I, Housing and Community Development Act of 1977 (42 U.S.C. 5301 et seq.); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Dated: March 22, 1982.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development

[FR Doc. 82-10421 Filed 4-15-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD Reg. 6010.8-R; Amdt. No. 13]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Amendment on Reimbursement Methodology

AGENCY: Office of the Secretary, DOD.

ACTION: Amendment of final rule.

SUMMARY: This amends the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) Regulation to implement The Department of Defense Authorization Act, 1982 and the Department of Defense Appropriation Act, 1982 (Pub. L. 97-86 and 97-114, respectively). These public laws require CHAMPUS to calculate prevailing charges at the 80th percentile of billed charges made for similar services in the same locality during the base period. It also allows prevailing charges (profiles) to be updated more frequently than once a

year. The intent of these changes is to simplify profile development procedures, make appropriate benefit payments, and make profiles more reflective of all providers' current charges.

DATE: This amendment is effective for claims submitted for payment for services provided on or after December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Charles M. Gallegos, Chief, Policy Branch, OCHAMPUS, Aurora, Colorado 80045; telephone (303) 361–8608.

SUPPLEMENTARY INFORMATION: Currently CHAMPUS reimbursement for individual health-care professionals and other noninstitutional providers is based on the Medicare reasonable charge system. The CHAMPUS-determined reasonable charge cannot exceed the lowest of (a) the billed charge; (b) the charge generally made by the provider for the service (which is known as the provider's customary charge); or (c) the prevailing charge level that does not exceed the 80th percentile of the customary charges made for similar services in the same locality during the last preceding calendar year elapsing before the start of the twelve-month period (beginning July 1 of each year) in which the claim for payment is received by the CHAMPUS fiscal intermediary. Prevailing charge profiles are updated once a year on July 1.

Although Pub. L. 95–485 provided that the 90th percentile of customary charges was to be used, this has been limited to the 80th percentile by the Department of Defense Appropriations Acts.

On December 1, 1981, Pub. L. 97–86 was signed into effect. Section 906 of that law establishes two changes to the CHAMPUS reimbursement methodology for individual health-care professionals and other noninstitutional health care providers which are contained in this amendment.

The first is that customary charges are eliminated altogether from the CHAMPUS reasonable charge methodology. Prevailing charges are to be calculated at the 80th percentile (as limited by Pub. L. 97–114) of billed charges made for similar services in the same locality during the base period. As a result, CHAMPUS reimbursement will be the lower of the billed charge or the prevailing charge. The result of this change is that profile development and reimbursement will be greatly simplified, since there is one less factor used to determine the allowable (reasonable) charge. This change will also result in prevailing charges which reflect the charges of all providers in the profile area rather than only those providers who have customary charges.

The second change is that prevailing charges can be updated more frequently than once a year using a base period of twelve calendar months. This change will result in prevailing charges which will much more accurately reflect providers' current charges.

This amendment also contains editorial changes which make the pertinent sections shorter and more concise.

As authorized under title 5, United States Code, Section 553(b)(3)(B), the final regulation is being published and no previous public comment has been requested. The change is mandated through public law signed into effect on December 1, 1981, and we do not believe it is in the public interest to delay the implementation through the publication of a proposed rule.

List of Subjects in 32 CFR Part 199

Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Chapter I, is amended as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

Section 199.12 is amended by revising paragraph (e)(3) to read as follows:

§ 199.12 Authorized providers.

* * * * *

(e) * * *

(3) *Reimbursement of Individual Health-Care Professionals and Other Noninstitutional Health-Care Providers.* The CHAMPUS-determined reasonable charge (the amount allowed by CHAMPUS) for the services of an individual health-care professional or other noninstitutional health-care provider shall be determined by the allowable charge method, provided that in specific cases and geographic locations the Director, OCHAMPUS, may approve an alternative method.

(i) *Allowable Charge Method.* The allowable charge method is the preferred and primary method for reimbursement of individual health-care professionals and other noninstitutional health-care providers.

(*a*) The allowable charge for authorized care shall be the lower of:

(*1*) The billed charge for the service;

(*2*) The prevailing charge level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period.

Note.—Pub. L. 97–86 provides that prevailing charges are to be determined at the 90th percentile. However, Department of Defense Appropriations Acts have limited this to the 80th percentile. Prevailing charges shall continue to be calculated in accordance with any limitations set forth in Department of Defense Appropriations Acts, as implemented in instructions issued by the Director, OCHAMPUS.

(*i*) The 80th percentile of charges shall be determined on the basis of statistical data and methodology acceptable to the Director, OCHAMPUS (or a designee).

(*ii*) The base period shall be a period of twelve calendar months, as determined by OCHAMPUS, and shall be adjusted at least once a year, on a date (or dates) specified by the Director of OCHAMPUS (or a designee).

(*b*) A charge that exceeds the prevailing charge can be determined to be allowable only where unusual circumstances or medical complications justify the higher charge. The allowable charge may not exceed the billed charge under any circumstances.

(ii) *Alternative Method.* The Director, OCHAMPUS (or a designee), may, subject to the approval of the ASD(HA), establish an alternative method of reimbursement designed to produce reasonable control over health care costs and to assure a high level of acceptance of the CHAMPUS-determined charge by the individual health-care professionals or other noninstitutional health-care providers furnishing services and supplies to CHAMPUS beneficiaries. Alternative methods shall not result in reimbursement greater than under the allowable charge method above.

* * * * *

(Pub. L. 97–86 and 97–114)

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

April 9, 1982.

[FR Doc. 82-10229 Filed 4-15-82; 8:45 am]

BILLING CODE 3810-01-M

VETERANS ADMINISTRATION

38 CFR Part 1

Privacy Act of 1974; Access to Records

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) amends one of its regulations governing an individual's access to his or her VA records. The regulation sets forth special procedures, currently provided for in internal VA manuals, to

be used in cases where an individual seeks access to his or her VA records and the granting of such access would result in harm to the individual's mental or physical health. Additionally, the VA is rearranging the provisions of 38 CFR 1.577 and 1.579 so that the first section will concern access to records by individuals, and the second section will concern amendment of records. This action is being taken to eliminate the confusion which existed in the application and understanding of the preexisting VA regulations involved. This action will clarify the VA regulations involved and thus better inform the public of their rights with regard to records pertaining to them that are maintained by the VA.

EFFECTIVE DATE: April 5, 1982.

FOR FURTHER INFORMATION CONTACT: Bill Dangoia, (202) 389–2269.

SUPPLEMENTARY INFORMATION: On pages 58095 through 58097 of the **Federal Register** of November 30, 1981, there was published a notice of proposed rulemaking to amend regulations concerning access and amendment of VA records. Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed regulations. No written comments were received.

In proposing these regulations, consideration has been given to the provisions of Executive Order 12291. These regulations, which will affect individuals seeking access to or amendment of their own records, will not have an impact on the economy and will not affect commercial businesses or any other organizations in any way. Since these regulations have no economic impact, they are considered nonmajor for the purposes of the Executive Order. Furthermore, the Administrator of Veterans Affairs hereby certifies that these regulations will not, when promulgated, have significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these regulations are, therefore, exempt from the regulatory analysis requirements of sections 603 and 604. The reason for this certification is that the regulations will impact only on individuals, primarily VA beneficiaries, who are seeking access to their own records or amendment of those records. There will be no direct impact on any small entities from these regulations. Accordingly, the proposed regulations are hereby adopted without change and are set forth below.

List of Subjects in 38 CFR Part 1

Privacy.

Approved: April 5, 1982.

Robert P. Nimmo,

Administrator.

PART 1—GENERAL PROVISIONS

38 CFR Part 1 is amended as follows:

1. Section 1.576 is amended to revise paragraph (c)(4) to read as follows:

§ 1.576 General policies, conditions of disclosure, accounting of certain disclosures, and definitions.

* * * * *

(c) * * *

(4) Inform any person or other agency about any correction or notation of dispute made by the agency in accordance with § 1.579 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

* * * * *

2. In § 1.577, paragraphs (b), (c), (d) and (e) are revised, and a new paragraph (f) is added to read as follows:

§ 1.577 Access to records.

* * * * *

(b) Any individual will be notified, upon request, if any Veterans Administration system of records named contains a record pertaining to him or her. Such request must be in writing, over the signature of the requester. The request must contain a reasonable description of the Veterans Administration system or systems of records involved, as described at least annually by notice published in the **Federal Register** describing the existence and character of the Veterans Administration's system or systems of records pursuant to § 1.578(d). The request should be made to the office concerned (having jurisdiction over the system or systems of records involved) or, if not known, to the Director or Veterans Services Officer in the nearest Veterans Administration regional office, or to the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, D.C. 20420. Personal contact should normally be made during the regular duty hours of the office concerned, which are 8:00 a.m. to 4:30 p.m., Monday through Friday for Veterans Administration Central Office and most field stations. Identification of the individual requesting the information will be required and will consist of the requester's name, signature, address, and claim, insurance or other identifying file number, if any, as a minimum. Additional identifying data or documents may be required in specified categories as determined by operating requirements and established and publicized by the promulgation of Veterans Administration regulations. (5 U.S.C. 552a(f)(1)).

(c) The department or staff office having jurisdiction over the records involved will establish appropriate disclosure procedures and will notify the individual requesting disclosure of his or her record or information pertaining to him or her of the time, place and conditions under which the Veterans Administration will comply to the extent permitted by law and Veterans Administration regulation. (5 U.S.C. 552a(f)(2)).

(d) Access to sensitive material in records, including medical and psychological records, is subject to the following special procedures. When an individual requests access to his or her records, the Veterans Administration official responsible for administering those records will review them and identify the presence of any sensitive records. Sensitive records are those that contain information which may have a serious adverse effect on the individual's mental or physical health if they are disclosed to him or her. If, on review of the records, the Veterans Administration official concludes that there are sensitive records involved, the official will refer the records to a Veterans Administration physician, other than a rating board physician, for further review. If the physician who reviews the records believes that disclosure of the information directly to the individual could have an adverse effect on the physical or mental health of the individual, the responsible Veterans Administration official will then advise the requesting individual: (1) That the Veterans Administration will disclose the sensitive records to a physician or other professional person selected by the requesting individual for such redisclosure as the professional person may believe is indicated, and (2) in indicated cases, that the Veterans Administration will arrange for the individual to report to a Veterans Administration facility for a discussion of his or her records with a designated Veterans Administration physician and for an explanation of what is included in the records. Following such discussion, the records should be disclosed to the individual; however, in those extraordinary cases where a careful and conscientious explanation of the information considered harmful in the record has been made by a Veterans Administration physician and where it is still the physician's professional medical opinion that physical access to

the information could be physically or mentally harmful to the patient, physical access may be denied. Such a denial situation should be an unusual, very infrequent occurrence. When denial of a request for direct physical access is made, the responsible Veterans Administration official will: (1) Promptly advise the individual making the request of the denial; (2) state the reasons for the denial of the request (e.g., 5 U.S.C. 552a(f)(3), 38 U.S.C. 3301(b)(1)); and (3) advise the requester that the denial may be appealed to the Administrator of Veterans Affairs and of the procedure for such an appeal. (5 U.S.C. 552a(f)(3))

(e) Nothing in 5 U.S.C. 552a, however, allows an individual access to any information compiled in reasonable anticipation of civil action or proceeding. (5 U.S.C. 552a(d)(5))

(f) Fees to be charged, if any, to any individual for making copies of his or her record, excluding the cost of any search for and the review of the record, will be as follows:

(1) Photocopy reproductions from all types of copying processes, each reproduction image * * * $.05.

(2) Where the Veterans' Administration undertakes to perform, for any other person, services which are very clearly not required to be performed under section 552a, title 5, United States Code, either voluntarily or because such services are required by some other law (e.g., the formal certification of records as true copies, attestation under the seal of the Veterans' Administration, etc.), the question of charging fees for such services will be determined by the official or designee authorized to release the information under 38 CFR 1. 556, in the light of the Federal user charge statute, 31 U.S.C. 483a, any other applicable law, and the provisions of 38 CFR 1.526(i) and 1.555(h). (5 U.S.C. 552a(f)(5))

3. In § 1.579, the title is revised, paragraphs (a), (b), (c) and (d) are revised and paragraph (e) is removed to read as follows:

§ 1.579 Amendment of records.

(a) Any individual may request amendment of any Veterans' Administration record pertaining to him or her. Not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date or receipt of such request, the Veterans' Administration will acknowledge in writing such receipt. The Veterans' Administration will complete the review to amend or correct a record as soon as reasonably possible, normally within 30 days from the receipt of the request (excluding Saturdays, Sundays, and legal public holidays) unless unusual circumstances preclude completing action within that time. The Veterans' Administration will promptly either:

(1) Correct any part thereof which the individual believes is not accurate, relevant, timely or complete; or

(2) Inform the individual of the Veterans' Administration refusal to amend the record in accordance with his or her request, the reason for the refusal, the procedures by which the individual may request a review of that refusal by the Administrator or designee, and the name and address of such official. (5 U.S.C. 552a(d)(2))

(b) The department or staff office having jurisdiction over the records involved will establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the Veterans' Administration of an initial adverse Veterans' Administration determination, and for whatever additional means may be necessary for each individual to be able to exercise fully, his or her right under 5 U.S.C. 552a.

(1) Headquarters officials designated as responsible for the amendment of records or information located in Central Office and under their jurisdiction include, but are not limited to: Administrator; Deputy Administrator, as well as other appropriate individuals responsible for the conduct of business within the various Veterans' Administration Departments and Staff Offices. These officials will determine and advise the requester of the identifying information required to relate the request to the appropriate record, evaluate and grant or deny requests to amend, review initial adverse determinations upon request, and assist requesters desiring to amend or appeal initial adverse determinations or learn further of the provisions for judicial review.

(2) The following field officials are designated as responsible for the amendment of records or information located in facilities under their jurisdiction, as appropriate: The Director of each Center, Domiciliary, Medical Center, Outpatient Clinic, Regional Office, Supply Depot, and District Counsels. These officials will function in the same manner at field facilities as that specified in the preceding subparagraph for headquarters officials in Central Office. (5 U.S.C. 552a(f)(4))

(c) Any individual who disagrees with the Veterans' Administration's refusal to amend his or her record may request a review of such refusal. The Veterans' Administration will complete such review not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual request such review and make a final determination unless, for good cause shown, the Administrator extends such 30-day period. If, after review, the Administrator or designee also refuses to amend the record in accordance with the request the individual will be advised of the right to file with the Veterans' Administration a concise statement setting forth the reasons for his or her disagreement with the Veterans' Administration's refusal and also advise of the provisions for judicial review of the reviewing official's determination. (5 U.S.C. 552a(g)(1)(A))

(d) In any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (c) of this section, the Veterans' Administration will clearly note any part of the record which is disputed and provide copies of the statement (and, if the Veterans' Administration deems it appropriate, copies of a concise statement of the Veterans' Administration's reasons for not making the amendments requested) to persons or other agencies to whom the disputed record has been disclosed. (5 U.S.C. 552a(d)(4))

4. Section 1.580 is revised to read as follows:

§ 1.580 [Amended]

(a) Upon denial or a request under 38 CFR 1.577 or 1.579, the responsible Veterans' Administration official or designated employee will inform the requester in writing of the denial, cite the reason or reasons and the Veterans' Administration regulations upon which the denial is based, and advise that the denial may be appealed to the Administrator.

* * * * *

(38 U.S.C. 210(c))

[FR Doc. 82-10394 Filed 4-15-82; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FRL 2080-2]

Oklahoma Submission of Volatile Organic Recommended on Compound (VOC) Regulations for Set II Control Technique Guideline Sources

Correction

In FR Doc. 82-19125, appearing at page 15795, in the issue of Tuesday,

April 13, 1982, make the following change: On page 15797, in the first column, the last paragraph, the sixth line should have read "appropriate circuit within 60 days of April 13,".

BILLING CODE 1505-01-M

---

40 CFR Part 52

[A-3-FRL 2090-2]

Approval of a Revision of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this notice EPA is approving a revision of the Pennsylvania State Implementation Plan (SIP) which allows continued burning of low-sulfur anthracite coal in existing space heating units in Philadelphia which have not been converted to other fuels. This revision primarily affects 43 public schools throughout Philadelphia. EPA is approving this revision because Pennsylvania requested approval and there will be no negative effect on air quality.

This action will be effective in sixty days unless critical comments are received on or before May 17, 1982 that would require EPA to reconsider this action.

EFFECTIVE DATE: June 15, 1982.

ADDRESSES: Copies of the SIP revision and the accompanying support documents are available for inspection during normal business hours at the following offices.

U.S. Environmental Protection Agency, Air Programs & Energy Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106, ATTN: Gregory Ham (3AW11);

Bureau of Air Quality Control, Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, PA 17120, ATTN: Gary L. Triplett;

Air Management Services, 801 Arch Street, 6th Floor, Philadelphia, PA 19107, ATTN: William Reilly;

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20408;

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., (Waterside Mall), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Ham, U.S. Environmental Protection Agency, Region III, Air Programs and Energy Branch, Curtis Building, 10th Floor, 6th and Walnut Streets, Philadelphia, PA 19106, Phone: (215) 597-2745.

SUPPLEMENTARY INFORMATION: On December 9, 1981, Governor Dick Thornburgh submitted a proposed revision to the SIP for the Commonwealth of Pennsylvania. This revision amends the City of Philadelphia's Air Management Regulation II, Air Contaminant and Particulate Matter Emissions, and Regulation III, Control of Emissions of Oxides of Sulfur Compounds. This notice describes the revision, announces EPA's intended action, and provides for public comment.

Description of the Revision

In Regulation II, Section V (Particulate Matter Emissions From the Burning of Fuels), a new subsection (3) has been added (previous subsections (3) and (4) are now numbered (4) and (5) respectively). Subsection (3) allows existing space heating units which burn anthracite coal to emit particulates at levels set forth in Chapter 123, Section 123.11 of Pennsylvania's Air Pollution Control Regulations. This limit is 0.4 pounds per million Btu of heat input, where the heat input is less than 50 million Btu's/hour (all of the affected boilers are below 50 million Btu's/hour). Previous limitations were 0.10 lbs. per million Btu or 0.20 lbs. per million Btu, depending on the age of the source.

Regulation III, Section III (Control of Sulfur in Fuels), Subsection (2)(C) now allows anthracite coal up to 0.6 percent sulfur by weight to be burned in existing space heating units (those burning anthracite coal after October 1, 1980). Previous regulations required sulfur content in anthracite not to exceed 0.3 percent by weight for units burning anthracite after October 1, 1975.

These regulations primarily affect 98 coal-fired boilers in 43 public schools. These boilers were scheduled for conversions to alternate fuels at a cost of $8,600,000. As a result of the changes, the boilers will be replaced when necessary, or converted when economically practical. Some other domestic space heating units will also be affected by these changes, but the number is steadily decreasing as these small units are replaced by units using alternate fuels.

Air quality modeling submitted in support of these regulations demonstrates that the regulations will not have a significant effect on air quality. (The PT MAX model was used.) The regulations have the effect of permitting the continued use of the fuels now being burned; therefore, these regulations will not change existing air quality. Most areas of Philadelphia are designated as attainment for the SO_2 and TSP standards and these regulations will not change the attainment status of these areas.

In regard to the impact on nonattainment areas, the sources affected by these regulations are located significant distances from those portions of Philadelphia that are SO_2 and/or TSP nonattainment areas. Based on conservative estimates the sources affected by these regulations contribute only approximately 1% to the SO_2 and TSP levels in the nonattainment areas. Approval of these regulations will not increase ambient levels in the nonattainment areas and, even if the previous more stringent regulations remained in effect, air quality in the nonattainment areas would not have been measurably improved.

EPA Evaluation

EPA has reviewed the regulations and supporting documents and has found that they meet the requirements for approval of SIP revisions. The public should be advised that this action will be effective June 15, 1982. However, if on or before May 17, 1982, any critical comments are received that would require EPA to reconsider this action, it will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action, and establish a comment period.

Final Action

In view of this evaluation, the Administrator approves the above described amendments as a revision to the Pennsylvania State Implementation Plan, provided that no reconsideration by EPA is required.

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

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 15, 1982, if no reconsideration of this approval is necessary. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

(42 U.S.C. 7401–7642)

Dated: April 9, 1982.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Impelmentation Plan for the State of Pennsylvania was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF STATE IMPLEMENTATION PLANS

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

Subpart NN—Pennsylvania

1. In § 52.2020, a new paragraph (c)(43) is added as follows:

§ 52.2020 Identification of plan

* * * * *

(c) * * *

(43) Amendments to Air Management Regulations II and III, with supporting documents, submitted by Governor Dick Thornburgh on December 8, 1981, allowing the continued burning of anthracite coal in existing space heating units currently burning coal.

[FR Doc. 82-10497 Filed 4-15-82; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-9-FRL 2079-8]

Arizona State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve changes to the air pollution control regulations of the Pima County Health Department submitted by the Arizona Department of Health Services as revisions to the Arizona State Implementation Plan (SIP). These revisions generally are administrative and retain equivalent emission control requirements. EPA reviewed these rules with respect to the Clean Air Act and determined that they should be approved.

DATE: This action is effective June 15, 1982.

ADDRESSES: Copies of the revisions and the technical support documents are available for public inspection during normal business hours at the EPA Region 9 office and at the following locations:

Public Information Reference Unit, Environmental Protection Agency, Library, 401 M Street SW., Room 2404, Washington, D.C. 20460

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

Arizona Department of Health Services, 1740 West Adams Street, Phoenix, AZ 85007

Pima County Health Department, Air Quality Control District, 151 West Congress Street, Tucson, AZ 85701.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, State Implementation Plan Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8222.

SUPPLEMENTARY INFORMATION: The Arizona Department of Health Services submitted as SIP revisions the following Pima County rules on the indicated dates:

June 1, 1981

Regulation 14: Hearing Board
- Rule 142: Composition

Regulation 20: Operations and Activities Which Require Permits
- Rule 204: Open Burning Permits

Regulation 24: Permit Fee Schedules/Non-Fee Requirements
- Rule 242: Installation Permit Fees/Non-Fee Requirements and Tables 243, 244–A and 244–B

Regulation 26: Inspections
- Rule 261: Compliance Inspections

Regulation 61: Recordkeeping Requirements
- Rule 611: Recordkeeping for Compliance Determinations

Regulation 70: Violations
- Rule 706: Reviews for Startup, Shutdown, or Malfunctions

Regulation 91: Reference Test Methods
- Rule 911: Emissions Discharge Testing for Common Air Pollutants

Method 19: Determination of Sulfur Dioxide Removal Efficiency and Particulate, Sulfur Dioxide and Nitrogen Oxides Emission Rates from Electric Utility Steam Generators

Method 20: Determination of Nitrogen Oxides, Sulfur Dioxide and Oxygen Emissions from Stationary Gas Turbines

October 9, 1979

Chapter I: General Provisions

Regulation 10: Preamble
- Rule 101: Declaration of Policy
- Rule 102: Purpose
- Rule 103: Authority

Regulation 11: Jurisdiction
- Rule 111: General Applicability
- Rule 112: State and/or County
- Rule 113: Limitations

Regulation 12: Administration
- Rule 121: Air Quality Control District
- Rule 122: Executive Head
- Rule 123: Governing Body

Regulation 13: Advisory Council
- Rule 131: Establishment
- Rule 132: Composition
- Rule 133: Terms; Nominations
- Rule 134: Function
- Rule 135: Officers; Procedures
- Rule 136: Meetings; Special Studies; Hearings
- Rule 137: Compensation; Absences

Regulation 14: Hearing Board
- Rule 141: Establishment
- Rule 143: Terms; Nominations
- Rule 144: Function
- Rule 145: Officers; Procedures
- Rule 146: Meetings; Hearings
- Rule 147: Compensation; Absences

Regulation 15: Legal Severability
- Rule 151: Severability Clause

Regulation 16: Interpretations
- Rule 161: Format
- Rule 162: Headings and Special Type
- Rule 163: Use of Number and Gender
- Rule 164: Copies
- Rule 165: Effective Date

Regulation 17: Definitions and Meanings
- Rule 172: Meanings of Mathematical Symbols
- Rule 173: Chemical Symbols and Abbreviations
- Rule 174: Scientific Units

Regulation 18: Procedures for Amending
- Rule 181: Legal Authority
- Rule 182: General Procedures

Chapter II: Permits

Regulation 20: Operations and Activities Which Require Permits
- Rule 201: Statutory Authority
- Rule 202: Installation Permits
- Rule 203: Operating Permits
- Rule 204: Open Burning Permits
- Rule 205: Conditional Permits (Variances)

Regulation 21: Permitting Procedures
- Rule 211: Permit Application
- Rule 212: Sampling, Testing, and Analysis Requirements
- Rule 213: Public Notification/Public Comments
- Rule 214: Permit Fee Payments
- Rule 215: Permit Revocation

Regulation 22: Conditions of the Permit
- Rule 221: General Control
- Rule 222: Permit Display or Posting
- Rule 223: Permit Transferability
- Rule 224: Fugitive Dust Producing Activities
- Rule 225: Open Burning Permit Conditions
- Rule 226: Permits for State-Delegated Emission Sources

Regulation 23: Denials of Permit Applications
- Rule 231: Non-Compliance
- Rule 232: Notification of Denial
- Rule 233: Hearings on Denial

Regulation 24: Permit Fee Schedules/Non-Fee Requirements
- Rule 241: General Provisions
- Rule 243: Open Burning Permit Fees
- Rule 244: Operating Permit Fees
- Rule 245: Conditional Permit (Variance) Fees
- Rule 246: Payment of Permit Fees
- Rule 247: Refund of Permit Fees
- Rule 248: Fees for Duplicate Permits

Regulation 25: Permit Fee Schedules Adjustments
Rule 251: Permit-Fee Studies Related to Inflation
Rule 252: Periodic Review of Individual Fee Schedules
Table 204: Open Burning Permit/Non-Permit Requirements
Table 242: Activity Installation Permit Requirements for Construction/Destruction Activities
Table 244–A: Equipment Operating Permit Fee Schedules for Categorical Sources
Table 244–B: Equipment Operating Permit Fee Schedules for Non-Categorical Sources
Table 244–C: Activity Operating Permit Fee Requirements

Chapter III: Universal Control Standards

Regulation 30: Prohibited Acts
Rule 301: Planning, Constructing, or Operating Without a Permit
Rule 302: Non-Compliance With Applicable Standards
Regulation 31: Design or Work-Practice Control Standards
Rule 312: Asphalt Kettles
Rule 313: Incinerators
Rule 314: Petroleum Liquids
Rule 315: Roads and Streets
Rule 316: Particulate Materials
Rule 317: Solvents and Other Volatile Materials (paragraphs A, B, D and E)
Rule 318: Vacant Lots and Open Spaces
Regulation 32: Emissions-Discharge Opacity Limiting Standards
Rule 321: Standards and Applicability
Regulation 33: Emissions-Discharge Opacity Limiting Standards
Rule 331: Applicability
Rule 332: Compilation of Mass Rates and Concentrations
Regulation 34: Ambient-Air Standards
Rule 341: Applicability
Rule 342: Mass-Concentration Ceilings
Rule 343: Visibility Limiting Standards
Rule 344: Odor Limiting Standards
Table 321: Emissions-Discharge Opacity Limiting Standards (excluding the "Asbestos-Containing Operation" Standards)
Table 332: Emissions-Discharge Mass Limiting Standards (all except lines (h)–(m))
Table 341: Maximum Allowable Pollutant-Concentration Ceilings in Ambient Air (excluding the "Beryllium ceilings)

Chapter IV: Performance Standards for New Major Sources

Regulation 40: General Applicability
Rule 402: Stack and Shop Emissions
Rule 403: Applicability of More Than One Standard
Regulation 41: Designation of Attainment/Non-Attainment Areas
Rule 411: Tucson Area
Rule 412: Ajo Area
Rule 413: General County Areas

Chapter V: Testing and Monitoring

Regulation 50: Periodic Testing
Rule 501: Applicability of Methodology
Rule 502: Testing Frequencies
Rule 503: Notification; Fees
Rule 505: Sampling and Testing Facilities
Rule 506: Stack Sampling
Rule 507: Waiver of Test Requirements
Regulation 51: Continuous Monitoring
Rule 511: General Requirements
Rule 512: In-Stack Monitoring

Chapter VI: Recordkeeping and Reporting

Regulation 60: Classification of Pollutants
Rule 601: Classification of Common and Hazardous Air Pollutants
Regulation 61: Recordkeeping Requirements
Rule 611: Recordkeeping for Compliance Determinations
Rule 612: Recordkeeping for Emission Inventories
Regulation 62: Reporting Requirements
Rule 621: Reporting for Compliance Evaluations
Rule 622: Reporting as a Permit Requirement
Rule 623: Reporting for Emission Inventories
Rule 624: Reporting for TSP Emission Data Bank
Regulation 63: Availability of Information
Rule 631: Confidentiality of Trade Secrets, Sales Data, and Proprietary Information
Regulation 64: Penalty for Non-Compliance
Rule 641: Suppression; False Information
Table 603: Methodology for Entering Records of Emissions into TSP Data Bank

Chapter VII: Violations and Judicial Procedures

Regulation 70: Violations
Rule 701: Criminal Complaint
Rule 702: Order of Abatement
Rule 703: Injunction
Rule 704: Precedence of Actions
Rule 705: Penalties
Rule 706: Reviews for Startup, Shutdown, or Malfunctions
Regulation 71: Conditional Permits (Variances)
Rule 711: Legal Authority
Rule 712: General Procedures
Rule 713: Judicial Review
Rule 714: Time Limitations Regarding Hearing Board Actions
Regulation 72: Circumvention
Rule 721: Evasion of Basic Requirements
Rule 722: Concealment of Emissions
Table 714: Summary of Time Limitations for Judicial Actions Before the Hearing Board

Chapter VIII: Emergency Episodes and Public Awareness

Regulation 80: Emergency Episodes
Rule 801: State Jurisdiction
Rule 802: Determination of Emergency Conditions
Rule 803: Emergency Episode Reporting
Rule 804: Enforcement Actions
Regulation 81: Availability of Monitoring Data
Rule 811: Continuous Monitoring of Ambient Air Pollution
Regulation 82: Public Awareness
Rule 821: Reports to the Public
Rule 822: General Information
Rule 823: Public Participation in Rulemaking
Table 802: Air Pollution Episode Criteria
Table 804: Possible Control Actions During Various Stages of an Air Pollution Episode

Chapter IX Appendix

Regulation 90: Delegations of Jurisdiction
Rule 901: General Affidavit of Delegation
Rule 902: Political Sub-Divisions Delegation
Rule 903: Large Power Plants Delegation
Rule 904: Unpaved Roads Delegation
Regulation 91: Reference Test Methods
Rule 911: Emissions Discharge Testing for Common Air Pollutants
Method 1: Sample and Velocity Traverses for Stationary Sources
Method 2: Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)
Method 3: Gas Analysis for Carbon Dioxide, Excess Air, and Dry Molecular Weight
Method 4: Determination of Moisture in Stack Gases
Method 5: Determination of Particulate Emissions from Stationary Sources
Method 6: Determination of Sulfur Dioxide Emissions from Stationary Sources
Method 7: Determination of Nitrogen Oxide Emissions from Stationary Sources
Method 8: Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources
Method 9: Visual Determination of the Opacity of Emissions from Stationary Sources
Method 10: Determination of Carbon Monoxide Emissions from Stationary Sources
Method 11: Determination of Hydrogen Sulfide Emissions from Stationary Sources
Method 12: [Reserved]
Method 16: Semi-Continuous Determination of Sulfur Emissions from Stationary Sources
Method 17: Determination of Particulate Emissions from Stationary Sources (In-Stack Filtration Method)
Rule 913: Ambient-Air Testing for Common Air Pollutants
Method A: Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method)
Method B: Reference Method for the Determination of Suspended Particulates in the Atmosphere (High Volume Method)
Method C: Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Spectrometry)
Method D: Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere
Method E: Reference Method for Determination of Hydrocarbons Corrected for Methane
Method F: Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence)
Method G: Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air

Method H: Interpretation of the National Ambient Air Quality Standards for Ozone
Regulation 92: Performance Specifications for Continuous Monitoring Equipment
Rule 921: General Specifications
Rule 922: Performance Specification 1 (Opacity)
Rule 923: Performance Specification 2 (SO_2 and NO_x)
Rule 924: Performance Specification 3 (CO_2 and O_2)
Regulation 93: Air Quality Modeling Guidelines
Rule 931: Guideline on Air Quality Models
Rule 932: Workbook for Comparison of Air Quality Models

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to appove or disapprove these regulations as State Implementation Plan revisions. All rules submitted have been evaluated and found to be in accordance with EPA policy and 40 CFR Part 51.

It is the purpose of this notice to approve all the rule revisions listed above and to incorporate them into the Arizona SIP. This is being done without prior proposal because the revisions are noncontroversial, have limited impact, and no comments are anticipated. The public should be advised that this action will be effective June 15, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, the approval will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action, and establish a comment period.

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

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule imposes no new regulatory requirements.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 15, 1982. This action may not be challenged later in proceedings to enforce its requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1981.

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

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

Dated: April 9, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart D—Arizona

1. Section 52.120 is amended by adding paragraphs (c)(38) and (51) as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(38) The following amendment to the plan were submitted on October 9, 1979, by the Governor's designee.

(i) Pima County Health Department.

(A) New or amended Regulation 10: Rules 101–103; Regulation 11: Rules 111–113; Regulation 12: Rules 121–123; Regulation 13: Rules 131–137; Regulation 14: Rules 141 and 143–147; Regulation 15: Rule 151; Regulation 16: Rules 161–165; Regulation 17: Rules 172–174; Regulation 18: Rules 181 and 182; Regulation 20: Rules 201–205; Regulation 21: Rules 221–225; Regulation 22: Rules 221–226; Regulation 23: Rules 231–232; Regulation 24: Rules 241 and 243–248; Regulation 25: Rules 251 and 252; Regulation 30: Rules 301 and 302; Regulation 31: Rules 312–316 and 318; Regulation 32: Rule 321; Regulation 33: Rules 331 and 332; Regulation 34: Rules 341–344; Regulation 40: Rules 402 and 403; Regulation 41: Rules 411–413; Regulation 50: Rules 501–503 and 505–507; Regulation 51: Rules 511 and 512; Regulation 60: Rule 601; Regulation 61: Rule 611 (Paragraph A.1 to A.3) and Rule 612; Regulation 62: Rules 621–624; Regulation 63: Rule 631; Regulation 64: Rule 641; Regulation 70: Rules 701–705 and 706 (Paragraphs A to C, D.3, D.4, and E); Regulation 71: Rules 711–714; Regulation 72: Rules 721 and 722; Regulation 80: Rules 801–804; Regulation 81: Rule 811; Regulation 82: Rules 821–823; Regulation 90: Rules 901–904; Regulation 91: Rules 911 (except Methods 13–A, 13–B, 14, and 15; and Rules 912, and 913; Regulation 92: Rules 921–924; and Regulation 93: Rules 931 and 932.

* * * * *

(51) The following amendments to the plan were submitted on June 1, 1981, by the Governor's designee.

(i) Pima County Health Department.

(A) New or amended Regulation 14: Rule 142; Regulation 20: Rule 204; Regulation 24: Rule 242; Regulation 26: Rule 261; Regulation 50: Rule 504; Regulation 61: Rule 611 (Paragraph A); Regulation 70: Rule 706 (Paragraphs D.1 and D.2); and Regulation 91: Rule 911 (Methods 19 and 20).

* * * * *

[FR Doc. 82–10478 Filed 4–15–82; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[A–6–FRL 2094–6]

Approval and Promulgation of Implementation Plans: Arkansas and Oklahoma: Lead Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: As required by Section 110(a)(1) of the Clean Air Act and the October 5, 1978, (43 FR 46246) promulgation of national ambient air quality standards (NAAQS) for lead, the States of Arkansas and Oklahoma have submitted State Implementation Plans (SIPs) for lead. This action approves these SIPs which provide for attainment and maintenance of the national ambient air quality standards for lead in all areas of these States.

EFFECTIVE DATE: This action will be effective June 15, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be sent to John Hepola, Chief, State Programs Section, (6AW–AP) 1201 Elm Street, Dallas, Texas 75270. Copies of the plans, the public hearing minutes, and the technical support memos which explain EPA's actions are available for public review at the following locations:

Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209
Oklahoma State Department of Health, Northeast 10th Street and Stonewall, P.O. Box 53551, Oklahoma City, Oklahoma 73106
Environmental Protection Agency, Region 6, Library, 1201 Elm Street, Dallas, Texas 75270
EPA, Public Information Reference Unit, Library, Room 2922, PM 213, 401 M Street, SW., Washington, D.C. 20460
The Office of the Federal Register, Room 8401, 110 L Street, NW., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: John Hepola at (214) 767–2746 or FTS 729–2746.

SUPPLEMENTARY INFORMATION: On October 5, 1978, the national ambient air quality standards for lead were promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air (ug lead/m^3) averaged over a calendar quarter. As required by Section 110(a)(1) of the Clean Air Act (CAA), all States must submit a SIP which will provide for attainment and maintenance of these standards. Arkansas and Oklahoma have developed and submitted such SIPs.

The general requirements for a SIP are outlined in Section 110(a)(2) of the Clean Air Act and EPA regulations 40 CFR Part 51, Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E. These provisions require the submission of air quality data, emission data, air quality modeling, a control strategy, a demonstration that the NAAQS will be attained within the time frame specified by the CAA, and provisions for ensuring maintenance of the NAAQS. EPA has evaluated these plans by comparing them to the requirements for an approvable SIP, as set forth in the above mentioned regulations.

Description of the Arkansas Lead SIP

On December 10, 1979, the Governor of Arkansas submitted a SIP to attain and maintain the NAAQS for lead. Before the State submitted the SIP to EPA, it held a public hearing on November 7, 1979. Arkansas does not have any point sources that emit five or more tons of lead per year and this is not expected to change in the forseeable future. The SIP includes lead air quality data measured from January 1, 1974 through December 31, 1978. Since 1974, only one monitor has recorded excedances of the lead standard. A concentration of 1.76 $\mu g/m^3$ occurred in the fourth quarter of 1977 at a monitor in North Little Rock. The SIP states that this monitor is not near any known lead point sources and, therefore, the cause of the exceedance is attributed to automotive lead sources. EPA performed a rollback calculation, which the State incorporated into their SIP, to demonstrate that the gasoline lead phase-down program is sufficient to reduce lead concentrations at this site. The demonstration indicates that the standard will be attained at the site by 1982.

The SIP contains a regulation for the review of new sources of lead emissions, as required by 40 CFR 51.18. However, it did not specifically state that all new or modified point sources of lead that have the potential to emit five tons/year or more of lead will be subject to review. As defined in 40 CFR 51.1 "Definitions," a point source of lead is any stationary source with actual emissions in excess of five tons/year of lead or lead compounds measured as elemental lead. A letter dated January 5, 1982, indicating that the State has the authority and intends to review any point source which emits five tons/year or more of lead is included with this submittal.

Maintenance of the lead standard will be accomplished by the phase-down of lead in gasoline and the application of best available control technology (BACT) for new sources. The SIP provides for the establishment of an air quality surveillance network to be established in accordance with 40 CFR Part 58.

Attainment of the NAAQS for lead will occur no later than three years after EPA's approval of this SIP.

Description of the Oklahoma Lead SIP

On March 5, 1980, the Governor of Oklahoma submitted a SIP to attain and maintain the NAAQS for lead. Before the State submitted the SIP to EPA, it held a public hearing on September 1, 1979. The plan identified one point source, Prestolite Battery Division, Eltra Corporation, in Oklahoma City. Dispersion modeling by the State and EPA predicted quarterly exceedances of the lead standard around the source. Since the plan was submitted, the Prestolite Battery Manufacturing Plant has ceased manufacturing batteries. In a letter to EPA dated October 19, 1981, the State said that the facility was in the process of dismantling its manufacturing equipment and removing its baghouse. The factory will be used as a warehouse in the future. In another letter dated December 9, 1981, the State clarified that it has the authority and intends to submit to review any new point source of lead which has the potential to emit five tons/year or more of lead. The SIP includes a summary of ambient air quality data for the years 1974 through 1978. One monitoring site in Oklahoma City exceeded the lead standard in the fourth quarter of 1976 (2.48 $\mu g/m^3$). A rollback calculation was used to demonstrate that the lead gasoline phase-down program is sufficient to reduce lead concentrations at this site by 1982.

Maintenance of the standard will be accomplished through implementation of existing regulations for the phase-down of lead in gasoline, the increased use of no-lead gasoline in catalyst equipped cars and controls on new or modified sources of lead as specified by Oklahoma air pollution control regulation No. 14, and further clarified in the above mentioned letter dated December 9, 1981. The SIP provides for an air quality surveillance plan in accordance with 40 CFR Part 58. Attainment of the NAAQS for lead will be no later than three years after EPA approval of this SIP.

EPA's Action

EPA has evaluated the Arkansas, and Oklahoma lead SIPs and has determined that they meet the requirements of Section 110(a) of the CAA and 40 CFR Part 51 Subparts B and E. EPA believes that these SIP's are adequate to attain and maintain the lead NAAQS and is, therefore, approving them. EPA finds that the SIPs that have been approved for other NAAQS contain regulations that satisfy general regulations not specifically mentioned in these lead SIPs and that these general regulations can be incorporated into the lead SIPs.

EPA has determined that these SIPs are of limited impact because they rely primarily on the Federal program to reduce lead in gasoline to attain the NAAQS for lead. Because of their straight forward nature, EPA does not anticipate any adverse or critical comments and is, therefore, going directly to final rulemaking with these SIPs. The public should be advised that this section will be effective June 15, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This section may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

Note.—Incorporation by reference of the State Implementation Plans for the States of Arkansas, and Oklahoma were approved by the Director of the Federal Register Office on July 1, 1981.

(Sec. 110(a) of the Clean Air Act, (42 U.S.C. 7410(a)))

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxides, Lead, Particulate matter, Carbon monoxide and Hydrocarbons.

Dated: April 9, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart E—Arkansas

Title 40, Part 52, Subpart E—Arkansas, the Code of Federal Regulations is amended to include the following:

1. Section 52.170 is amended by adding paragraph (c)(17) as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

(17) The Arkansas State Implementation Plan for lead was submitted to EPA on December 10, 1979, by the Governor of Arkansas as adopted by the Arkansas Department of Pollution Control and Ecology on November 16, 1979. A letter of clarification dated January 5, 1982, also was submitted.

2. Section 52.176 is amended by adding to the table the pollutant "lead" in a new column in the table as follows:

§ 52.176 Attainment dates for national standards.

POLLUTANT

Air quality control region	* * *	Lead
Central Arkansas Intrastate:		
a. Pulaski County	* * *	(*)
b. Remainder of AQCR	* * *	(*)
Metropolitan Fort Smith Interstate	* * *	(*)
Metropolitan Memphis Interstate	* * *	(*)
Monroe (Louisiana)—El Dorado (Arkansas) Interstate	* * *	(*)
Northeast Arkansas Intrastate	* * *	(*)
Northwest Arkansas Intrastate	* * *	(*)
Shreveport-Texarkana-Tyler Interstate	* * *	(*)

* * * * *

Subpart LL—Oklahoma

Title 40, Part 52 Subpart LL—Oklahoma of the Code of Federal Regulations is amended to include the following:

1. Section 52.1920 is amended by adding (c)(18) as follows:

§ 52.1920 Identification of Plan.

* * * * *

(c) * * *

(18) The Oklahoma State Implementation Plan for lead was submitted to EPA on March 5, 1980, by the Governor of Oklahoma as adopted by the State Air Quality Council on November 13, 1979. Letters of clarification dated October 19 and December 9, 1981, also were submitted.

2. Section 52.1925 is amended by adding to the table the pollutant "lead" in a new column in the table as follows:

§ 52.1925 Attainment dates for national standards.

POLLUTANT

Air quality control region	* * *	Lead
Central Oklahoma Intrastate (except Oklahoma and Cleveland Counties)	* * *	(3)
Oklahoma County	* * *	(3)
Cleveland County	* * *	(3)
Northeastern Oklahoma Interstate (except Mayes and Tulsa Counties)	* * *	(3)
Tulsa County	* * *	(3)
Mayes County	* * *	(3)
Southeastern Oklahoma Interstate	* * *	(3)
North Central Oklahoma Intrastate	* * *	(3)
Southwestern Oklahoma Intrastate	* * *	(3)
Northwestern Oklahoma Intrastate	* * *	(3)
Metropolitan Fort Smith Interstate	* * *	(3)
Shreveport-Texarkana Tyler Interstate	* * *	(3)

* * * * *

[FR Doc. 82-10477 Filed 4-15-82; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-6-FRL 2092-7]

Approval and Promulgation of Revisions to New Mexico State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The purpose of this notice is to approve a revision to the New Mexico Air Quality Control Regulation 401, which was submitted to EPA by the Governor on November 8, 1978. The revision to Regulation 401, "Regulation to Control Smoke and Visible Emissions," removes visible emission limits for stationary combustion equipment which are covered by mass emission limits in other State Regulations. The revised regulation is a clarification of the previous New Mexico Regulation 401 and meets the requirements of 40 Code of Federal Regulations Part 51. This notice also amends 40 Code of Federal Regulations at § 52.1620.

EFFECTIVE DATE: This rulemaking will be effective on June 15, 1982, unless notice is received by May 17, 1982, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted by New Mexico and EPA's Evaluation Report may be examined during normal business hours at the following locations:

EPA, Region 6, Library, 1201 Elm Street, Dallas, TX 75270

EPA, Public Information Reference Unit, Library Systems Branch, 401 M St., SW., Washington, D.C. 20460.

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

FOR FURTHER INFORMATION CONTACT: J. Ken Greer, Jr., State Implementation Plan Section, Air and Waste Management Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2742, (FTS) 729-2742.

SUPPLEMENTARY INFORMATION: The Governor of New Mexico submitted to EPA a revision to the State Regulation 401 on November 8, 1978. The revised Regulation 401 was adopted by the New Mexico Environmental Improvement Board on August 25, 1978 after an adequate public hearing. The revised Regulation 401 provides that a visible emission limit of 20% opacity is applicable to all stationary combustion equipment operated in New Mexico, except for equipment which is regulated by New Mexico Air Quality Control Regulations 402, 501-507, 625, 671, 672, 678 or any other regulation which specifically limits particulate emissions. The regulation also exempts emissions from cold engine start-up of diesel-powered vehicles, off-highway diesel-powered vehicles, and oil well rigs from visibility requirements. New Mexico revised Regulation 401 to fully clarify which industrial processes are covered by opacity limitations since the regulation is not applicable to industries which are regulated by specific particulate matter emission limitations. The revised Regulation 401 does not alter any of the State's regulations which provide for specific particulate matter emission limitations.

EPA's Actions

EPA approves the revised Regulation 401 as submitted by the Governor of New Mexico, titled "Regulation to Control Smoke and Visible Emissions." The revised Regulation 401 has been reviewed by EPA and found to agree with EPA guidance since the regulation provides for a maximum opacity limit of

20% for visible emissions from stationary combustion equipment which are not controlled by mass emission limitations in other New Mexico regulations. Further explanation is provided in the Evaluation Report which is available for public review at the places listed in the **ADDRESSES** section of this notice. The revised Regulation will allow New Mexico to attain and maintain the National Ambient Air Quality Standard for particulate matter throughout the State.

The public should be advised that this action will be effective June 15, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of the date of publication. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

Note.—Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the Office of Federal Register on July 1, 1981.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxides, Nitrogen dioxide, Lead, Particulate matter, Carbon dioxide, and Hydrocarbons.

(Sec. 110(a), Clean Air Act, as amended (42 U.S.C. 7410(a)))

Dated: April 9, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart GG—New Mexico

1. In § 52.1620 is amended by adding a new paragraph (c)(28) as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(28) A revision to Regulation 401, Regulation to Control Smoke and Visible Emissions, was adopted by the Environmental Improvement Board on August 25, 1978 and submitted by the Governor on November 8, 1978.

[FR Doc. 82-10476 Filed 4-15-82; 8:45 am]
BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-1-FRL 2089-7]

Approval and Promulgation of Implementation Plan Revisions; Vermont

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA received supplementary information from the Secretary of the Vermont Agency of Environmental Conservation (AEC) on February 12, 1982 completing a request to approve a revision to its State Implementation Plan (SIP). This revision, which EPA is approving, amends Vermont Environmental Regulations, Chapter 5, Air Pollution Control, Subchapter II, Regulation 5-231, "Prohibition of Particulate Matter" by adding subparagraph (3)(b) to regulate wood-fired combustion sources of particulate matter separately from fossil fuel-fired combustion sources of particulate matter.

DATE: This approval action will be effective on June 15, 1982, unless notice is received on or before May 17, 1982, that someone intends to submit adverse or critical comments.

ADDRESSES: Copies of the Vermont submittal and any documents referenced herein are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, J.F.K. Federal Building, Room 1903, Boston, Massachusetts 02203; the Public Information Reference Unit, Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460; and the Agency of Environmental Conservation, State Office Building, Montpelier, Vermont 05602.

Comments should be addressed to Harley F. Laing, Chief, Air Branch, EPA Region I, J.F.K. Federal Building, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, Air Branch, EPA Region I, J.F.K. Federal Building, Boston, Massachusetts 02203, Telephone (617) 223-4448.

SUPPLEMENTARY INFORMATION: In August 1978 the State of Vermont revised Regulation 5-231 of its Air Pollution Control Regulations to regulate wood-fired combustion sources of particulate matter separately from fossil-fired combustion sources of particulate matter. This revision added subparagraph (3)(b) to Regulation 5-231(3). Prior to the addition of subparagraph (3)(b), allowable emissions as provided by 5-231(3) were a function of the heat input to the fuel burning equipment. Because of the high variability of both the physical and chemical properties of wood and the methods of firing such fuel, the determination of heat input is a technically burdensome exercise. To amend this situation, the emission limitations of (3)(b) are expressed as concentrations of particulate matter in the flue gas, corrected to dry standard conditions and twelve percent carbon dioxide. In summary, Regulation 5-231(3)(b) imposes the following emission limitations:

(i) 0.45 grains/DSCF at 12% CO_2 for units with a rated output of greater than 90 H.P. which commenced operation prior to December 5, 1977.

(ii) 0.20 grains/DSCF at 12% CO_2 for units with a rated output of greater than 90 H.P. but less than 1300 H.P. which commenced operation after December 5, 1977.

(iii) 0.10 grains/DSCF at 12% CO_2 for units with a rated output of greater than 1300 H.P. which commenced operation after December 5, 1977.

Because of the deficiencies of the previous regulation, no increase in actual emissions resulted from the adoption of subparagraph (3)(b) as the sources to which it applies have always burned wood fuel.

The Vermont AEC initially submitted the addition of subparagraph (3)(b) to Regulation 5-231(3) to EPA as a SIP revision on March 27, 1979. EPA determined that the submittal was technically deficient because although no actual emission increases resulted from the adoption of (3)(b), it did constitute a relaxation in allowable emissions from wood-fired combustion sources. A complete submittal would have to include a demonstration that no violations of the National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP) would occur if all subject sources polluted to the maximum allowable limits.

On February 12, 1982 EPA received from the Secretary of the AEC the supplemental technical information necessary to complete the SIP revision request. It should be noted that Vermont is excluding from the scope of this SIP revision three stationary wood-fired sources, the Moran Generating Station owned by the Burlington Electric Department, Burlington; Rutland Plywood Company, Rutland; and Cersosimo Lumber Company, Brattleboro. For these three sources, the state will submit source specific SIP revisions.

In the supplemental technical analyses conducted by the State of Vermont, all of the wood-fired boilers with a rated heat output equal to or greater than 20 H.P. were inventoried. In the modeling used to demonstrate protection of the NAAQS for TSP, Vermont employed techniques specified in *Guidelines for Air Quality Maintenance Planning and Analysis Volume 10 (Revised): Procedures for Evaluating Air Quality Impact of New Stationary Sources* (EPA–450/4–77–001). The modeled impacts were added to ambient "background" air quality concentrations, determined in accordance with EPA procedures, and no violations of the NAAQS for TSP resulted for the sources included within the scope of this revision.

No area in the State of Vermont is designated as nonattainment for the primary NAAQS for TSP. Two of the sources are located in an area designated as nonattainment for the secondary NAAQS for TSP. The maximum impacts of each of these sources are less than half of the levels of significant impact (significant impact levels: 1.0 $\mu g/m^3$ annual average, 5.0 $\mu g/m^3$ 24-hour average). Further, the emissions from these sources were included in the approved attainment plan for that area (45 FR 10775).

The complete details of the technical analyses performed by the Vermont AEC in support of this SIP revision and EPA's evaluative memoranda are available for public inspection at the locations specified in the "ADDRESSES" section of this notice.

No Prevention of Significant Deterioration (PSD) increment consumption analysis was necessary for this revision as the TSP baseline date has not been triggered anywhere within the State of Vermont. Further, as previously stated, no actual emission increases result from approval of this SIP revision.

Vermont has an approved New Source Review (NSR) program (47 FR 6014) applicable in both attainment and nonattainment areas. This program subjects to review new wood-fired boilers with a rating of 90 H.P. or greater.

ACTION: EPA is approving the addition of subparagraph (3)(b) to Vermont Regulation 5–231, "Prohibition of Particulate Matter," as submitted by the Secretary of the Vermont AEC. Subparagraph (3)(b) is applicable to all but three stationary wood-fired combustion sources. Those three sources, the Moran Generating Station, Rutland Plywood Company, and Cersosimo Lumber Company have been excluded from the scope of this revision by the state, and were not included in the submittal for EPA approval.

Since this revision has already been adopted at the state level, does not result in any increase in actual emissions, and does not interfere with attainment and maintenance of the NAAQS, this action is not considered controversial.

Based on past experience with similar SIP revisions in Region I, no adverse or critical comments are expected. Therefore, approval of this SIP revision is being published as a final rulemaking without having gone through proposed rulemaking. EPA believes that publishing a notice of proposed rulemaking on this SIP revision is unnecessary.

However, if notice is received on or before May 17, 1982, that someone wishes to submit adverse or critical comments on the action taken on this SIP revision, the approval action will be withdrawn by a notice which will be published in the **Federal Register** before the effective date. A separate notice will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on June 15, 1982.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that SIP approvals under sections 110 and 172 of the Clean Air Act will not have a significant impact on a substantial number of small entities, 46 FR 8709 (January 27, 1981). The attached rule constitutes a SIP approval under sections 110 and 172 within the terms of the January 27 certification. The action only approves a state action and imposes no new requirements.

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

Under section 307(b)(1) of the Clean Air Act, judicial review of these actions is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit by June 15, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See Sec. 307(b)(2)]

After evaluation of the State's submittal, the Administrator has determined that the Vermont revision meets the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, this revision is approved as a revision to the Vermont State Implementation Plan.

List of Subjects In 40 CFR Part 52

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

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

Note.—Incorporation by reference of the State Implementation Plan for the State of Vermont was approved by the Director of the Federal Register on July 1, 1981.

Dated: April 9, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart UU—Vermont

Section 52.2370 is amended by adding paragraph (c)(16) as follows:

§ 52.2370 Identification of plan.

* * * * *

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

* * * * *

(16) A revision to Regulation 5–231, "Prohibition of Particulate Matter," by the addition of subparagraph (3)(b) submitted by the Secretary of the Vermont Agency of Environmental Conservation for all but three stationary wood-fired combustion sources (excluded from submittal: Moran Generating Station, Burlington Electric Department; Rutland Plywood Company; and Cersosimo Lumber Company) on February 12, 1982.

[FR Doc. 82–10471 Filed 4–15–82; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[A-5-FRL 2089-8]

Designations of Areas for Air Quality Planning Process; Attainment Status Designations: Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This rulemaking revises the sulfur dioxide (SO_2) designation of the City of Biron, in Wood County, Wisconsin, from unclassified to attainment. This revision is based on a request from the State of Wisconsin to redesignate this area and on the supporting data that the State submitted. Under the Clean Air Act (Act), designations can be changed if sufficient data are available to warrant such a change.

This action will be effective June 15, 1982 unless notice is received on or before May 17, 1982 that someone wishes to submit adverse or critical comments.

DATE: This action is effective June 15, 1982.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20480

Copies of the supporting material are also available at: Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Sharon Reinders, Air Programs Branch, U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6034.

SUPPLEMENTARY INFORMATION:

Background

Under section 107(d) of the Act, each state has determined the National Ambient Air Quality Standards (NAAQS) attainment status of each air quality control region within the State and submitted, to the Administrator of EPA, a list of the attainment status of each area. The Administrator promulgated the attainment status for each area of every state on March 3, 1978 (43 FR 8962), and made necessary amendments on October 5, 1978 (43 FR 45993).

According to section 107(d) of the Act, the designation for an area may be changed whenever sufficient data exists to warrant such a change. EPA criteria concerning a change in an area's designation are contained in a memorandum entitled "Section 107 Redesignation Criteria" (Richard G. Rhoads, June 12, 1979). A change in an area's SO_2 designation may be approved if there are either eight consecutive quarters of recent representative ambient air quality data which show no violations of the NAAQS or four consecutive quarters of the most recent representative ambient air quality data which show no violation of the NAAQS and which show air quality improvement based on concurrent enforceable reductions in emissions.

Summary of Wisconsin's Actions

In the period from March 10, 1976 to April 9, 1976 the Wisconsin Department of Natural Resources (DNR) operated a mobile air monitoring van in the City of Biron, in Wood County, Wisconsin. During this period, six violations of the NAAQS for SO_2 were recorded. The Wisconsin DNR determined that the violations were attributable to a single industrial facility in Biron which operates several boilers. Subsequent to the monitored exceedances, some modifications occurred at this facility thereby changing the facility's impact on ambient quality. Sufficient SO_2 monitoring data, reflecting the effect of the modifications on ambient air quality, however, could not be obtained by the time the State's original air quality status list was due. Therefore, the State of Wisconsin recommended to the EPA that the City of Biron be designated unclassified for SO_2 until further air quality analysis could be completed. The Administrator of the EPA promulgated this designation on March 3, 1978 (40 CFR 81.350).

In 1980, the Wisconsin DNR embarked on an air quality monitoring and dispersion modeling analysis of the ambient air in Biron. From June, 1980, to June, 1981, a mobile monitoring van was sited at the nearest possible location to the receptor point predicted to record the maximum ground level SO_2 concentration. This location was determined using EPA's guideline dispersion models, the Single Source (CRSTER) Model and the Industrial Source Complex (ISC) Model, with input data for the Biron facility operating at maximum and average conditions.

The results of the dispersion modeling analyses indicate that estimates of ambient concentrations of SO_2 do not exceed the NAAQS and that the NAAQS are adequately protected. The ambient air monitoring data collected at Biron have no recorded violation during the monitoring period.

Final Determination

On December 29, 1981, the Wisconsin DNR requested that the SO_2 designation for the City of Biron be revised from unclassified to attainment. To support their request, the Wisconsin DNR provided the four quarters of ambient air monitoring data and the air quality dispersion modeling analysis. EPA has reviewed the request and the technical data supporting the request and is approving the request as submitted.

Executive Order

This action is exempted from review by the Office of Management and Budget under Section 3 of Executive Order 12291.

Regulatory Flexibility Analysis

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified that revisions of attainment status designations under section 107(d) of the Act will not have a significant economic effect on a substantial number of small entities (46 FR 8709). This action constitutes a revision to an attainment status designation within the terms of this certification.

Judicial Review

If no comments are received on today's action and it, therefore, becomes final, judicial review of this action under section 307(b)(1) of the Act is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from today. If comments are received on today's action, as discussed earlier, the EPA will withdraw its final approval and propose today's action for public comment. Under these circumstances, a petition for review must then be filed within 60 days from the date of EPA's ultimate final rulemaking. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

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

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: April 9, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Title 40, Part 81, Subpart C of the Code of Federal Regulations is revised as follows:

Subpart C—Section 107 Attainment Status Designations

Within the "Wisconsin SO_x" portion of § 81.350, Wood County should be revised as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN SO_x

Designated areas	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * *		*	*	*
AQCR 238:				
* * * *		*	*	*
Wood County				x
AQCR 239:				
* * * *		*	*	*

[FR Doc. 82-10472 Filed 4-15-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 86

[AEN-FRL 2070-3]

Revised Motor Vehicle Exhaust Emission Standards for Oxides of Nitrogen (NO_x) for 1981 Through 1984 Model Year Light-Duty Diesel Vehicles; Summary of Decision and Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This amended regulation establishes interim Oxides of Nitrogen (NO_x) emission standards for 1983 and 1984 model year light-duty vehicles for which EPA has granted waivers from standards otherwise applicable under section 202(b)(6)(B) of the Clean Air Act, 42 U.S.C. 7521(b)(6)(B). This amendment applies to one diesel engine family manufactured by Nissan Motor Co., Ltd. (Nissan) which I have determined qualifies under the statutory criteria for waiver of the NO_x standard for model years 1983 and 1984. This action has the effect of setting an interim NO_x standard at the most stringent level that will permit Nissan to market this diesel engine family in model years 1983 and 1984.

EFFECTIVE DATE: May 17, 1982.

ADDRESSES: Information relevant to this rule, including the accompanying decision document, is contained in Public Docket EN-81-19 at the Central Docket Section of the Environmental Protection Agency, Gallery I, 401 M Street SW., Washington, D.C. 20460, and is available for review between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, EPA may charge a reasonable fee for copying services. Interested parties may also obtain the decision document by contacting the Manufacturers Operations Division as indicated below.

FOR FURTHER INFORMATION CONTACT: Michael Chernekoff, Attorney/Advisor, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382-2521.

SUPPLEMENTARY INFORMATION: Section 202(b)(1)(B) of the Clean Air Act, as amended (Act), 42 U.S.C. 7521(b)(1)(B), requires that regulations applicable to NO_x emissions from light-duty vehicles or engines manufactured during or after the 1981 model year shall contain standards which provide that such emissions from vehicles or engines shall not exceed 1.0 grams per vehicle mile (g/mi).

Section 202(b)(6)(B) of the Act authorizes the Administrator, upon application by any manufacturer, to waive the statutory NO_x standard for the 1981 through 1984 model years for any class or category of light-duty diesel vehicles or engines for which the Administrator can make the required statutory findings. I must promulgate interim NO_x standards applicable to the subject engine families for those model years for which I have granted waivers.

Nissan has submitted an application for waivers for its new diesel engine family for model years 1983 and 1984. My decision to grant the waiver application, which includes the statutory criteria and my determinations with respect to the vehicle model covered by the application, may be obtained as noted above.

In that decision, I granted waivers covering Nissan's new "XM1" engine family for the 1983 and 1984 model years because Nissan demonstrated and I concluded that there is a substantial risk that this new engine family will not be able to meet emission standards during the waiver period without encountering significant engine performance problems and increased levels of particulate and hydrocarbon (HC) emissions.

Granting these waivers for this engine family will not endanger public health, because there will not be a significant increase in ambient NO_x levels; moreover, denying these waivers could result in the production of diesel vehicles emitting more particulate matter. Finally, Nissan has demonstrated that this engine family has met the fuel economy and long-term air quality benefit criteria for receiving waivers.

Having decided to grant this waiver application, I am simultaneously promulgating regulations adopting emission standards not permitting NO_x emissions from 1983 and 1984 model year vehicles of this engine family to exceed 1.5 g/mi.

The public has received an opportunity to comment on the waiver application and a public hearing has been held to consider this request; however, no testimony or comments were received. For these reasons, I find that providing notice and an opportunity to comment on this rulemaking before final promulgation is impracticable and unnecessary.

The Office of Management and Budget (OMB) has exempted this action from the requirements of sections 3 and 7 of Executive Order 12291.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory analysis. The interim NO_x standards established by this rulemaking apply to Nissan only, which is not a "small entity" under the Regulatory Flexibility Act. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: April 9, 1982.

Anne M. Gorsuch,

Administrator.

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

For the reasons set forth above, 40 CFR 86.082–9(a)(1)(iii) is revised to read as follows:

§ 86.082–8 Emissions standards for 1982 and later model year light-duty vehicles

(a)(1) * * *

(i) * * *

(ii) * * *

(iii) Oxides of nitrogen—1.0 grams per vehicle mile, except that: (A) Oxides of nitrogen emissions from 1982 model year light-duty vehicles manufactured by American Motors Corporation shall not exceed 2.0 grams per vehicle mile; (B) oxides of nitrogen emissions from light-duty diesel vehicles of the following 1982 and later model year engine families shall not exceed the prescribed levels:

Manufacturer and engine family	Model years	Standard (g/mi)
General Motors Corp.:		
1.8 liter (L)	1982, 1983, 1984	1.5
4.3L	1982, 1983, 1984	1.5
5.7L	1982, 1983, 1984	1.5
EF-C	1983, 1984	1.5
Daimler-Benz AG:		
2.0L	1984	1.5
2.4L-naturally aspirated (NA)	1982, 1983, 1984	1.25
3.0L-NA	1982	1.5
3.0L-turbocharged (TC)	1982, 1983, 1984	1.5
AB Volvo:		
2.4L-NA	1982, 1983, 1984	1.5
2.4L-TC	1983, 1984	1.5
Peugeot:		
2.3L-TC-XD2S	1982	1.5
XD2S/XD3S-TC	1983, 1984	1.5
2.3L-NA-XD2C	1982, 1983, 1984	1.2
1.9L-NA-XUD9	1983, 1984	1.5
Volkswagen AG:		
1.6L-NA-2250 pound inertia weight class (I.W.)	1982, 1983, 1984	1.3
1.6L-TC-2250 I.W	1982, 1983, 1984	1.3
1.6L-NA-2500 and 2750 I.W	1982, 1983, 1984	1.4
1.6L-TC-2500 and 2750 I.W	1982, 1983, 1984	1.4
2.0L-NA	1982, 1983, 1984	1.5
2.0L-TC	1982, 1983, 1984	1.5
Nissan Motor Company:		
2.8L	1982, 1983, 1984	1.5
XM1	1983, 1984	1.5
Isuzu Motors Ltd.: 1.8L	1982, 1983, 1984	1.5
Renault: 2.0L	1982, 1983, 1984	1.5
BL Cars, Ltd.:		
2.4L-TC	1983, 1984	1.5
3.6L-TC	1983, 1984	1.5
Chrysler Corp.: 1.9L-NA	1984	1.5
Ford Motors Company:	1984	1.5
2.4L-TC		
BMW: 2.4L-TC	1984	1.5
Vehicle Technology, Inc.:		
4–86 HTA	1982, 1983	1.5
4–92 HTA	1982, 1983	1.5
5–92 HTA	1982, 1983	1.5
6–92 HTA	1982, 1983	1.5

(Secs. 202 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7521, 7601(a) (Supp. I 1977))

[FR Doc. 82-10337 Filed 4-15-82; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 1

[FPR Amdt. 216, Supplement 1]

Standard Forms 18 and 21; Change of Effective Date

AGENCY: General Services Administration.

ACTION: Final rule; change of effective date.

SUMMARY: FPR Amendment 216, 46 FR 49858, Oct. 8, 1981, provided for the use of the September 1981 editions of Standard Form 18, Request for Quotations, and Standard Form 21, Bid Form. The effective date of the amendment was February 1, 1982. Due to delays encountered in the printing and distribution of the forms, a postponement of the effective date of the amendment to May 1, 1982 is necessary.

EFFECTIVE DATE: May 1, 1982.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Director, Federal Procurement Regulations Directorate, Office of Acquisition Policy (703–523–4755).

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

Dated: April 2, 1982.

Ray Kline,

Acting Administrator of General Services.

April 2, 1982.

Federal Procurement Regulations

[Amdt. 216; Supplement 1]

To: Heads of Federal agencies.

Subject: Change to the Federal Procurement Regulations.

1. *Purpose.* This supplement revises the effective date of FPR Amendment 216.

2. *Effective date.* The effective date of this supplement is May 1, 1982.

3. *Background.* FPR Amendment 216 provided for the use of the September 1981 editions of Standard Form 18, Request for Quotations, and Standard Form 21, Bid Form. The effective date of the amendment was February 1, 1982. Due to delays encountered in the printing and distribution of the forms, a postponement of the effective date of the amendment is necessary.

4. *Explanation of changes.* The effective date of FPR Amendment 216, which prescribed the September 1981 editions of Standard Forms 18 and 21, is changed from February 1, 1982, to May 1, 1982. However, the forms may be employed if available at an earlier date.

[FR Doc. 82-10494 Filed 4-15-82; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF AGRICULTURE

41 CFR Part 4–1

Amendment of Department of Agriculture Procurement Regulations Relating to Small Business and Labor Surplus Area Concerns

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This rule prescribes revisions to the Department of Agriculture's procurement regulations further implementing the provisions of Pub. L. 95–89, 95–507 and 96–302, and Federal Procurement Regulations, Temporary Regulation 50. Numerous materials affecting procurement have been issued by the Office of Federal Procurement Policy (OFPP). In addition, the Small Business Administration (SBA) made changes in the goals and reporting procedures for the procurement preference programs. Some confusion exists among USDA contracting personnel attempting to implement OFPP and SBA policies. Numerous questions have been raised concerning the subcontracting program (Pub. L. 95–507), and the procurement priorities which affect the Labor Surplus Area Program (Executive Order 12073, August 16, 1978). This amendment attempts to clarify misunderstandings and give additional guidance to contracting officials in order to uniformly administer small business programs and policies.

EFFECTIVE DATE: April 16, 1982.

FOR FURTHER INFORMATION CONTACT: Paul J. McCloskey (202/447–7117).

SUPPLEMENTARY INFORMATION: This amendment involves matters relating to agency management and procurement and, therefore, is not subject by law to the notice and public rule-making procedures under 5 U.S.C. 553. This amendment is subject to the Secretary's Statement of Policy (36 FR 13804, July 20, 1971). As this amendment pertains to internal policies affecting the implementation of programs, no useful purpose would be served by public participation. Therefore, in accordance with the Secretary's Policy Statement, it is found for good cause that notice and other public rule-making procedures with respect to this amendment are

impracticable and unnecessary. Further, by memorandum dated April 8, 1981, the Director of the Office of Management and Budget exempted agency procurement regulations from the requirements of Executive Order 12291.

List of Subjects in 41 CFR Part 4–1

Government procurement, Small Businesses.

1. The table of contents of Part 4–1 is amended by adding sections 4–1.704, 4–1.705, 4–1.710 and 4–1.802–50 to read as follows:

PART 4–1—GENERAL

Subpart 4–1.7—Small Business Concerns

* * * * *

Sec.
4–1.704 Program direction.
4–1.704–1 Program operation.
4–1.705 Cooperation with the Small Business Administration.
4–1.705–1 General.
4–1.705–2 SBA representatives.
* * * * *
4–1.710 Subcontracting with small business concerns.
4–1.710–1 General.
* * * * *

Subpart 4–1.8—Labor Surplus Area (LSA) Concerns

* * * * *
4–1.802–50 Labor surplus area performance and goals
* * * * *

2. Section 4–1.704 is added to read as follows:

§ 4–1.704 Program direction.

The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), will be responsible for the overall supervision of the Department of Agriculture's procurement preference programs in conformance with Section 8 and 15 of the Small Business Act, as amended, and other laws, Executive Orders and OFPP policies affecting these programs.

3. Section 4–1.704–1 is added to read as follows:

§4–1.704–1 Program operation.

The head of each procuring agency, or designee(s), shall take immediate positive actions to insure maximum participation of small business concerns. These actions shall include:

(a) Develop a plan of operation to increase the share of contracts awarded to small business in LSA concerns.

(b) Review the types and classes of items and services to be purchased to determine the applicability of small business and LSA set-aside priorities prescribed in § 4–1.706–1(b).

(c) Develop adequate small business and/or LSA competition on all appropriate procurements.

(d) Make maximum utilization of SBA's Procurement Automated Source System (PASS) when considering procurement requirements.

(e) Ensure that specifications are not restrictive, therby enabling small business participation.

(f) Assist and counsel small business firms and especially those found to be nonresponsive or nonresponsible to help qualify them for future awards.

(g) Ensure preference to small business firms on multiple award Federal Supply Schedules.

(h) Review proposed large procurements to determine the potential for breaking out components suitable for purchase from small business firms or LSA concerns.

(i) Ensure that the SBA Resident Procurement Center Representative (PCR) is provided an opportunity and reasonable time to review any solicitation which meets the dollar threshold for which small business and small disadvantaged business subcontracting plans are required. Other actions pertaining to procurement matters and the PCR are outlined in §§ 1–1.705 through 1–1.705–3 of this title.

The responsibilities outlined above may be delegated to the OSDBU Coordinator.

4. Sections 4–1.705, 4–1.705–1 and 4–1.705–2 are added to read as follows:

§ 4–1.705 Cooperation with the Small Business Administration.

§ 4–1.705–1 General.

It is the policy of the Department of Agriculture to consult and cooperate with the Small Business Administration in carrying out the policies of the Small Business Act, as amended. Agencies shall cooperate with the Procurement Center Representatives, when assigned, in accordance with paragraph (b) of § 4–1.705–2.

§ 4–1.705–2 SBA representatives.

(a) SBA has assigned a full-time Procurement Center Representative (hereinafter referred to as PCR) to USDA procuring agencies located in the metropolitan Washington, D.C. area. A part-time PCR has also been assigned to the ASCS Kansas City Commodity Office (KCCO), Kansas City, MO. PCR responsibilities are described in §§ 1–1.705–3 through 1–1.705–7 of this title.

(b) Procurement offices in the metropolitan Washington, D.C. area and the KCCO shall submit purchase requests over $2,500.00 that are not set-aside for small business to the PCR for review before announcing the procurement in the Commerce Business Daily (CBD) or before public solicitation for bids/offers. The PCR shall also review solicitations and contracts exceeding $500,000 ($1 million for construction projects) awarded to large business. Agencies shall take the following actions to ensure PCR review of negotiated and formally advertised actions that require subcontracting plans:

(1) Notify the PCR when the apparent, successful offerer for a negotiated award has been identified. This action shall be taken at least 72 hours prior to the award of a contract. Under no circumstances will a negotiated award be made without PCR review of the subcontracting plan which was negotiated between the agency and the contractor. The PCR shall be provided with the solicitation number, name and address of contractor, cost of contract, type of contract, e.g., consultant, construction, etc., the contracting officer's name and a copy of the plan finally negotiated. Modifications of negotiated contracts exceeding $500,000 ($1 million for construction projects) are also affected by this policy. In addition, copies of the subcontracting plans which were formally approved shall be submitted to the Director, Office of Small and Disadvantaged Business Utilization, Room 127–W, Administration Building, Washington, D.C. 20250.

(2) Subcontracting plans shall be submitted to the PCR after the award of a formally advertised procurement citing information requested in (1) above. Subcontracting plans resulting from modifications shall be submitted to the PCR. In addition, copies of the subcontracting plans shall be submitted to the Director, Office of Small and Disadvantaged Business Utilization.

(c) Procurement officials are responsible for notifying SBA's Assistant Regional Administrator upon award of all contracts, amendments or modifications that contain subcontracting plans. The Assistant Regional Administrator in the SBA Region where contract performance is to take place shall be provided the following information:

(1) Contractor's name and address.
(2) Place of performance.
(3) Contract dollar amount.
(4) Contract performance period.
(5) Description of deliverable contract item(s).
(6) Name and address of the contracting officer.

A copy of the award document, "Solicitation, Offer and Award" (SF–33) is sufficient for this purpose.

(d) Contracting officers receiving company-wide (commercial products) plans under negotiated and advertised procurements shall forward copies of such plans and approvals to SBA, 1441 L Street, NW., Washington, D.C. 20406, Attn: Associate Administrator for Procurement Assistance.

5. Section 4–1.706–1 is amended by adding paragraph (b) to read as follows:

§ 4-1.706-1 General.

(a) * * *

(b) The order in which the various kinds of set-asides are to be made is provided by the priorities set forth in Section 15(d), (e) and (f) of the Small Business Act (Pub. L. 95–507, October 24, 1978, as amended):

(1) Total set-aside for small business concerns located in a labor surplus area.

(2) Total set-aside for small business concerns.

(3) Partial set-aside for small business concerns located in a labor surplus area.

(4) Partial set-aside for small business concerns.

(5) Total set-aside for firms not eligible under the first four priorities, not small business, and performing in labor surplus areas.

6. Sections 4–1.710 and 4–1.710–1 are added to read as follows:

§ 4-1.710 Subcontracting with small business concerns.

Federal Procurement Regulation, Temporary Regulation 50, Supplement 2 (May 23, 1980) prescribes the clauses and procedures designed to maximize subcontracting opportunities for small and small disadvantaged business concerns. Applicable clauses and procedures shall be included in all negotiated and advertised procurements exceeding $10,000 except (a) contracts for services which are personal in nature and (b) contracts which will be performed entirely (including all subcontracts) outside any State, territory, or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico. Additionally, applicable clauses and procedures shall be included in all negotiated and advertised procurements exceeding $500,000 ($1 million for construction).

§ 4-1.710-1 General.

(a) It is not necessary for the contracting officer to obtain a new subcontract plan if a modification over $500,000 ($1 million for construction) is made to a contract already containing a plan. The modification may incorporate the existing plan by reference. However, the modification must either contain separate goals for the new effort or revise the original goals.

(b) The terms of an overall or "master" company subcontracting plan may be incorporated by reference into a specific plan submitted for a given contract over the statutory thresholds, provided:

(1) The master plan contains all the elements required by the statute;

(2) Subcontract goals for small and small disadvantaged firms are specifically set forth in each contract or modification over the statutory thresholds;

(3) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification;

(4) The contracting officer has copies of the entire plan; and

(5) The resident Procurement Center Represenative of the Small Business Administration has had an opportunity to comment on the master plan.

(c) Approved commercial product plans shall apply to all deliveries made under contracts entered into during the contractor's fiscal year, even though those deliveries are made in a succeeding fiscal year. For example, a contract awarded on June 28, 1981, and deliveries made on August 15, 1981, would be acceptable if the contractor's approved fiscal year plan ran from July 1, 1980 through June 30, 1981. The contractor shall submit a new plan to the first agency with which it enters into a contract (over the statutory threshold) during a succeeding fiscal year.

(d) Contract-by-contract records, specified in paragraphs 3f(3) and 3f(6) of the Small Business and Small Disadvantaged Business Subcontracting Plan clauses (both Advertised and Negotiated) of FPR Temporary Regulation 50, Supplement 2 are incompatible with the concept and purpose of an annual company-wide plan submitted under paragraph 6. Therefore, the "contract-by-contract" records requirement shall not apply to an annual company-wide plan. However, this does not relieve the contractor from the submission of the SF–295 data required by § 4–1.1302–4(b) of this chapter.

(e) Paragraph 3d of the Small and Small Disadvantaged Business Subcontracting Plan (Negotiated) clause, as set forth in FPR Temporary Regulation 50, Supplement 2, provides for subcontracting plan requirements to be applicable to all non-small business subcontractors who receive subcontracts over the specified thresholds. Further, the prime contractor is required to describe its "procedures for the review, approval and monitoring for compliance with such plans." This requirement could result in situations such as:

(1) Several contractors monitoring the same subcontractor, to review essentially the same information, which would be disruptive and redundant;

(2) The prime contractor being monitored by one or more of the subcontractors which it is monitoring, where the prime/sub relationships are reversed; and

(3) Problems concerning access to records, particularly when the prime contractor and the subcontractor are competitors.

Consequently, contracting officers are directed to relieve the prime contractor of the monitoring obligation when it is deemed appropriate. The contracting officer should take into consideration such factors as an existing Government presence at the subcontractor's plant and whether the monitoring can be accomplished most economically and efficiently through a Government or prime contractor's activity. Whether monitoring is done by the prime contractor or the Government, the degree of monitoring will vary depending on the circumstances. Such factors as access to records, subcontract dollar amounts, and the subcontractor's past performance in meeting goals must be considered in reviewing the procedures for monitoring compliance. However, prime contractors are not to be relieved of their obligation to review and approve their subcontractor's plan.

7. Section 4–1.802–50 is added to read as follows:

§ 4-1.802-50 Labor surplus area performance and goals.

(a) Construction and other "site-specific" contract requirements are applicable to labor surplus area set-asides. Contracts which are restricted to labor surplus area concerns shall be recorded in fulfillment of labor surplus area goals.

(b) Contracts awarded under priorities (1), (3) and (5) of § 4–1.706–1(b) shall be recorded in fulfillment of labor surplus area goals. Agencies shall not record non-competitive 8(a) contracts, purchases from blind and handicapped workshops, and purchases from Federal Prison Industries toward their LSA goals. However, contracts may be counted toward LSA goals whenever there is competition among firms in labor surplus areas which are also in the 8(a) Program.

(c) Small business—small purchase set-asides accomplished under the procedures in Subpart 1–3.6 of this title

shall be counted toward fulfillment of LSA goals. The clause requiring firms to perform as LSA concerns shall be included in the purchase order or other purchase document. The contracting officer shall document a firm's acceptance of the LSA provisions whenever solicitations are conducted orally.

(d) LSA goals shall be established in accordance with the provisions of § 4–1.1302–3.

8. In § 4–1.1302–1, paragraph (h) is added to read as follows:

§ 4–1.1302–1 Definitions.

* * * * *

(h) "Procurement preference programs" as used in this section include the seven procurement areas for which annual goals are established. They are: small business, 8(a), small disadvantaged business, women-owned business, LSA, small business subcontracting, and small disadvanataged business subcontracting.

Section 4–1.1302–3 is revised to read as follows:

§ 4–1.1302–3 Goals.

(a) The Department is required by Pub. L. 95–507, Section 221, Executive Order 12138 (May 18, 1979) and Executive Order 12073 (August 16, 1978) to establish fiscal year goals for the procurement preference programs. Goals shall be reviewed and approved by the Director, Office of Small and Disadvantaged Business Utilization (OSDBU). Agency heads and staff office directors whose programs generate contract requirements shall submit to the Director, OSDBU, the following data no later than August 1 of each fiscal year:

(1) An estimate of the total dollar amount of all prime contracts regardless of dollar value to be awarded during the fiscal year, including awards to non-profit organizations, educational institutions, all transportation services and real property leases. Do not include foreign military sales, contracts to be awarded and performed entirely outside the United States and Federal Supply Schedule orders;

(2) An estimate of the total dollar value of all prime contracts having a value of $10,000 or more to be awarded during the fiscal year, including contracts to non-profit organizations, educational institutions, all transportation services and real property leases. Do not include foreign military sales, contracts to be awarded and performed entirely outside the United States and Federal Supply Schedule orders;

(3) A goal for prime contract awards valued at $10,000 or more to be made to small business concerns during the fiscal year, expressed in dollars and as a percentage of paragraph (a)(2) of this section;

(4) A goal for prime contract awards to be made to the Small Business Administration under the authority of Section 8(a) of the Small Business Act, as amended by Pub. L. 95–507, expressed in dollars and as a percentage of paragraph (a)(1) of this section;

(5) A goal for prime contract awards valued at $10,000 or more to be made to small business concerns owned and controlled by socially and economically disadvantaged individuals, expressed in dollars and as a percentage of paragraph (a)(2) of this section;

(6) A goal for prime contract awards to be made to small business concerns owned and controlled by women, expressed in dollars and as a percentage of paragraph (a)(1) of this section;

(7) A goal for prime contract awards to business concerns in Labor Surplus Areas (LSA) on the basis of set-asides, expressed in dollars and as a percentage of paragraph (a)(1) of this section. (This includes all categories of LSA set-asides authorized by Pub. L. 96–302.);

(8) An estimate of the total dollar amount of subcontracts to be awarded by all of an agency's "reporting prime contractors" (as identified in Standard Form 295) during the fiscal year;

(9) A goal for subcontracts to be awarded by prime contractors to small business concerns, expressed in dollars and as a percentage of paragraph (a)(8) of this section;

(10) A goal for subcontracts to be awarded by prime contractors to small business concerns owned and controlled by socially and economically disadvantaged individuals, expressed in dollars and as a percentage of paragraph (a)(8) of this section.

(b) The information developed in paragraph (a) of this section shall include a detailed written presentation of the method used to establish the estimates and goals submitted pursuant to paragraphs (a) (1) through (10) of this section, along with copies of the historical empirical data upon which the estimates and goals are based. Information about the types, kinds and amounts of goods and services procured and the numbers and types of contracts involved in the estimates submitted pursuant to paragraphs (a)(3) through (10) of this section is required. This information is needed to realistically evaluate the estimates and the goals related thereto. In establishing subcontracting goals, identification and justification should be provided for each class of contracts and the projected total value thereof determined by an agency to have little or no subcontract possibilities. Similarly, in establishing goals for prime contract awards to small or small disadvantaged firms, contracts which have no potential for award to such firms including the projected value thereof, should be identified.

(c) All goals are expressed in terms of dollars and percentages. However, if there is any significant variance, up or down, from the estimates in paragraph (a) (1) or (2) of this section, upon which the goals are established, the percentage goal is the controlling factor and will be used to measure actual attainment.

(d) Section 221 of Pub. L. 95–507 reserves all small purchases with certain exceptions for small business and requires that goals be established for awards over $10,000 to small and small disadvantaged business. Thus, the goals under paragraphs (a) (3) and (5) of this section do not include awards under $10,000.

10. Section 4–1.1302–4 is revised to read as follows:

§ 4–1.1302–4 Reports.

(a) The Director, OSDBU, shall be responsible for submitting reports concerning the Department's progress and achievements in the procurement preference program. Data for these reports shall be obtained from the USDA Procurement Reporting System (UPRS). Subcontracting data, however, cannot be retrieved from UPRS and shall be reported in accordance with paragraph (b) of this section.

(b) Agency procurement offices shall collect, summarize at the agency level, and submit subcontracting data elements to the Director, OSDBU. The data are to be reported quarterly for other than commercial products and annually for commercial products for contract awards in excess of $500,000 ($1 million for construction). Reports shall be submitted each quarter in the format of the Standard Form 295 (see FPR Temporary Regulation 59). An additional data form will be required in the fourth quarter for the annual report on commercial products. The following data are required no later than 30 days following the end of each quarter:

(1) Agency name and four-digit agency organization designation code.

(2) The applicable report period.

(3) Agency totals for Items 9–13 from the SF–295.

(4) The total number of prime contractors reporting for the report period.

(5) The total number of unique prime contractors reporting for the fiscal year-to-date.

(c) Explanatory comments concerning shortfalls in meeting procurement preference program goals established in accordance with § 4–1.1302–3 of this chapter shall be submitted to the Director, OSDBU. Reports may be submitted in a narrative format and shall contain appropriate justification for the goal shortfall(s). Achievements shall be based upon official AD–760 and SF–281 data as recorded in UPRS. Reports shall be submitted no later than November 20 of each fiscal year.

Done at Washington, D.C., this 9th day of April 1982.

Frank Gearde, Jr.,

Acting Director, Office of Operations.

[FR Doc. 82–10430 Filed 4–15–82; 8:45 am]

BILLING CODE 3410–98–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 441

Medicare and Medicaid Programs, Less Than Effective Drugs

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

ACTION: Notice of legislation affecting implementation and enforcement of interim final rule.

SUMMARY: We are notifying affected parties that, in accordance with recent legislation, HCFA will continue reimbursement for expenses incurred for drugs identified in section 2103 of the Omnibus Budget Reconciliation Act of 1981 through September 30, 1982.

FOR FURTHER INFORMATION CONTACT: Anthony Lovecchio, 301–594–8561.

SUPPLEMENTARY INFORMATION: Regulations were published in the Federal Register on October 1, 1981 (46 FR 48550), to implement section 2103 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). That section prohibits the use of Federal funds under the Medicare Part B and Medicaid programs for drugs that the Food and Drug Administration has proposed, in a notice of opportunity for hearing, to withdraw from the market because they are less than effective, as well as identical, related, or similar drugs. In the Federal Register notice, the Department advised that it would grant a grace period until January 1, 1982, before we would begin enforcement of this provision.

In a lawsuit brought in the United States District Court for the District of Columbia, "National Council of Senior Citizens v. Schweiker" (Civ. Action No. 81–2462), the Court on October 23, 1981, held that the Secretary was not authorized to grant a grace period and ordered the Secretary to discontinue reimbursement under Medicare Part B and Medicaid for expenses incurred on or after October 30, 1981, for the drugs identified in section 2103. Notice of the Court's order was published in the **Federal Register** on October 30, 1981 (46 FR 53664).

Notice of the President's signing of Pub. L. 97–72, a resolution continuing appropriations for government and providing that the Department shall not use any funds to implement section 2103, was published in the **Federal Register** on January 13, 1982 (47 FR 1386). This Notice informed interested parties that the Department would continue reimbursement for drugs subject to section 2103 through March 31, 1982, the date of expiration of Pub. L. 97–72.

On March 31, 1982 the President signed Pub. L. 97–161 extending the effective date of Pub. L. 97–72 through September 30, 1982. Section 131 of Pub. L. 97–72 provides that section 210 of the Department's appropriations bill (H.R. 4560) as passed by the House of Representatives on October 6, 1981 (and also incorporated as section 209 in the bill reported by the Senate Committee on Appropriations on November 9, 1981) shall be applicable with respect to sums appropriated through September 30, 1982. The provision incorporated by reference provides that:

> None of the funds appropriated or otherwise made available in this title may be used to pay the salaries of officers and employees for implementation or enforcement of section 2103 of the Omnibus Budget Reconciliation Act of 1981, or for the implementation or enforcement of rules or regulations pursuant to such section.

This section was intended to require the Department to continue reimbursement for drugs subject to section 2103 of the Omnibus Budget Reconciliation Act. Accordingly, the Department will continue to reimburse for the subject drugs through September 30, 1982, or such later date as Congress may authorize. Estimates for the July–September quarter may include estimates for section 2103 drugs for that grant award period. If HCFA has made an award covering estimated expenditures for section 2103 drugs prior to September 30, 1982, no offset will be taken with respect to final expenditure reports covering section 2103 drugs submitted after that date.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

April 13, 1982.

[FR Doc. 82–10496 Filed 4–15–82; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

Tanner Crab off Alaska

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, National Marine Fisheries Service, has determined that the desired harvest levels of Tanner crab for the Southeast, Southwest, South Mainland, and Semidi Island Sections of the Kodiak District in Registration Area J will be achieved on April 13, 1982, and that early closure of the fishery is necessary to protect Tanner crab stocks. The Secretary of Commerce, therefore, issues a notice of closure of these Sections to fishing for Tanner crab by vessels of the United States on April 13, 1982, thereby adjusting the previous closing date of (1) April 30, 1982 for the Southeast, Southwest, and South Mainland Sections, and (2) May 15, 1982, for the Semidi Island Section, to prevent overfishing of Tanner crab stocks in these Sections.

DATE: This notice is effective from 12:00 noon, Alaska Standard Time (AST), April 13, 1982, until (1) 12:00 noon, Alaska Daylight Time (ADT), May 15, 1982, for the Semidi Island Section and (2) 12:00 noon, ADT, April 30, 1982, for the remaining named sections. This notice of closure was filed for public inspection with the Office of the Federal Register on April 13, 1982, at 4:34 p.m. Public comments on this notice of closure are invited until April 28, 1982.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Robert W. McVey, 907–586–7221.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery Off the Coast of Alaska (FMP), governing

this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments, by field order, to season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that these orders will be issued by the Secretary of Commerce under the criteria set out in that section.

50 CFR 671.26(f) establishes five districts within Registration Area J to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. One of these districts is the Kodiak District, for which an overall optimum yield for all Tanner crab of 35 million pounds has been set; this optimum yield is not subdivided among the eight management sections in the Kodiak District. However, guideline harvest levels for each section have been set for the 1982 season. Except for the South Mainland and Semidi Island Sections, these are based on 1981 Tanner crab index surveys conducted by the State of Alaska. In the South Mainland and Semidi Island Sections, guideline harvest levels are based on historical fishing patterns and catches. The 1982 fishing season for the entire Kodiak District began on February 10 (the opening date was delayed from January 22 to February 20, see 46 FR 58699).

Southeast Section: The 1981 survey indicates that the desired harvest level in the Southeast Section is 700,000 pounds. As of April 5, 1982, 520,000 pounds have been harvested by about 30 vessels. Catch per unit of effort (CPUE) has declined since the fishery opened on February 10, from 43 crabs per pot to 22 crabs per pot over the area. It is estimated that the entire harvest level of 700,000 pounds will be achieved by April 13, 1982. Further fishing would result in harm to the resource.

Southwest Section: The 1981 survey indicates that the desired harvest level in the Southwest Section is 4.9 million pounds. As of April 5, 1982, 4.3 million pounds have been harvested by 52 vessels. The CPUE has declined since the fishery opened on February 10, from 43 crabs per pot to 22 crabs per pot over the area. It is estimated that the entire harvest level of 4.9 million pounds will be achieved on April 13, 1982. Further fishing would result in harm to the resource.

South Mainland Section: Historical fishing patterns and catches in the South Mainland Section indicate that the desired harvest level is 700,000 pounds. As of April 5, 1982, only 300,000 pounds have been harvested by 5 vessels. However, the CPUE has declined since the fishery opened on February 10, from 75 crabs per pot to 16 crabs per pot. This sharp reduction in CPUE indicates that stock abundance has declined, and further fishing to achieve the guideline harvest level would harm the resource.

Semidi Island Section: Historical fishing patterns and catches in the Semidi Island Section indicate that the desired harvest level is 1.6 million pounds. As of April 5, 1982, 1.0 million pounds have been harvested by 17 vessels. The CPUE has declined, since the fishery opened on February 10, from 50 crabs per pot to 24 crab per pot. It is estimated that the entire harvest level of 1.6 million pounds will be achieved by April 13, 1982. Further fishing would result in harm to the resource.

In light of this information, the Regional Director, National Marine Fisheries Service, in accordance with 50 CFR 671.27(b), has determined that:

1. The actual condition of Tanner crab stocks in the Southeast, Southwest, South Mainland, and Semidi Island Sections is substantially different from the condition that was previously anticipated; and

2. This difference reasonably supports the need to protect those Tanner crab stocks by closing these sections to further fishing for Tanner crab during the current fishing year after 12 noon, AST, on April 13, 1982.

For these reasons, the Southeast, Southwest, South Mainland, and Semidi Island Sections of the Kodiak District in Registration Area J, as defined in 50 CFR 671.26(f)(1)(i), are closed to all fishing for Tanner crab from 12 noon, AST, April 13, 1982, until (1) 12 noon, ADT, May 15, 1982, for the Semidi Island Section and (2) 12 noon, ADT, April 30, 1982, for the remaining named Sections. 1982, at which time the closures of these districts prescribed in 50 CFR 671.26(f)(2)(i) will begin.

These closures will not be effective prior to filing this notice for public inspection with the Office of the Federal Register and publicizing the closure for 48 hours through Alaska Department of Fish and Game (ADF&G) procedures, under 50 CFR 671.27(a)(2). Under 50 CFR 671.27(b)(4), public comments on this notice of closure may be submitted to the Regional Director at the address stated above for 15 days following the effective date. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8 a.m. to 4:30 p.m.) at (1) the NMFS Kodiak Field Office, ADF&G Building, at Kashevaroff and Mission Roads, Kodiak, Alaska 99615, and (2) the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802. If comments are received, the necessity of these closures will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this field order's continued effect, modifying it, or rescinding it.

Other Matters

The Tanner crab stock in the Southeast, Southwest, South Mainland, and Semidi Island Sections will be subject to damage by overfishing unless this field order takes effect promptly. I therefore find for good cause that advance notice and public comment on this order is contrary to the public interest, and that there should be no delay in its effective date.

List of Subjects in 50 CFR Part 671

Fish, Fisheries.

This action is taken under the authority of regulations specified at 50 CFR 671.27, and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-10429 Filed 4-13-82; 4:34 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 74
Friday, April 16, 1982

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 412

Executive and Management Development

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management is proposing a change to its regulation on executive and management development which would remove a statement which has the effect of exempting smaller agencies from a requirement to recruit at least Government-wide for their SES candidate development programs.

DATE: Comments will be considered if they are received on or before June 15, 1982.

ADDRESS: Send or deliver written comments to: Office of Executive and Management Development, Room 6671, Office of Personnel Management, Washington, D.C. 20415, Attn: XDY.

FOR FURTHER INFORMATION CONTACT: Merle Junker, (202) 632–4661.

SUPPLEMENTARY INFORMATION: The original OPM guidance on executive and management development, and 5 CFR Part 412 as published, exempt agencies with 150 SES positions or fewer from the requirement that recruitment for SES candidate development programs extend at least Government-wide. OPM believed that in most cases it would be unreasonable to expect more than a very small number of individuals to be selected for these programs from outside the small agencies. The exemption was based on the assumption that wider recruitment thus would not be cost-effective and that it would be detrimental to the programs because it would arouse unrealistic expectations on the part of applicants. With twenty months of operation under the guidance it now appears that the requirement can in fact be met by all agencies with no undue burden to the smaller ones, and experience has shown that organizations situated similarly to the agencies affected do not receive large numbers of applications from outside.

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

The Director, Office of Personnel Management, certifies 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.

List of Subjects in 5 CFR Part 412

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

Donald J. Devine,

Director.

PART 412—EXECUTIVE AND MANAGEMENT DEVELOPMENT

Accordingly, OPM proposes to amend 5 CFR Part 412 by revising paragraph § 412.107(c)(1)(iii) to read as follows:

§ 412.107 Criteria for agency executive and management development programs.

* * * * *

(c) * * *

(1) * * *

(iii) Provide for recruitment of candidates from all groups of qualified individuals within the civil service, or from all groups of qualified individuals whether or not within the civil service. (However, QRB's may certify the executive qualifications of candidates who were selected on or before [date this change becomes effective], for OPM-approved programs which did not involve Government-wide recruitment.) Programs that over a three-year period average eight percent candidate intake from other agencies and/or outside the civil service shall automatically be considered to be in compliance with this requirement;

* * * * *

(5 U.S.C. 3397)

[FR Doc. 82–10231 Filed 4–15–82; 8:45 am]
BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–12354; File No. S7–927]

Exemption for Custody of Securities by Foreign Banks and Foreign Securities Depositories

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing to make a change in its regulations in Part 270—Rules and Regulations, Investment Company Act of 1940, concerning the eligibility of foreign financial institutions to act as custodians of assets of domestic registered management companies. The rule would permit such companies without need for application, to place and maintain foreign securities in foreign banks and foreign securities depositories under certain conditions. Presently, the only foreign financial institutions eligible to maintain the assets of registered management investment companies are overseas branches of domestic banks because all other foreign financial institutions are excluded from acting as custodians by section 17 of the Investment Company Act of 1940 and the Rules and Regulations thereunder. This rule proposes to relieve that restriction and thus make it easier for investment companies to locate foreign financial institutions to act as custodians.

DATE: Comments must be received by June 7, 1982.

ADDRESSES: Send comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (Reference to File No. S7–

927). All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Elizabeth K. Norsworthy, Special Counsel, (202) 272–2028, 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 publishing for public comment rule 17f–5 under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) ("Act") to permit a registered management investment company to place and maintain the investment company's foreign securities in foreign banks or foreign securities depositories under certain conditions.

Background

Section 17(f) of the Act (15 U.S.C. 80a–17(f)), in relevant part, provides that a registered management investment company may place and maintain its securities and similar assets in the custody of (1) a bank or banks [1] having the qualifications set forth in section 26(a)(1) of the Act (15 U.S.C. 80a–26(a)(1)); [2] (2) a member firm of a national securities exchange, subject to such rules and regulations as the Commission may prescribe; (3) the investment company itself, only in accordance with such rules, regulations and orders as the Commission may prescribe; or (4) a system for the central handling of securities established by a national securities exchange or national securities association registered with the Commission, or such other person as may be permitted by the Commission.

As originally enacted by Congress in 1940, section 17(f) contemplated that investment company securities would be kept only in the custody of banks, members of a national securities exchange or the company itself. In 1970, amendments to section 17(f) were enacted to permit investment company securities to be kept in a system for the central handling of securities established by a national securities exchange or a national securities association or such other person as may be permitted by the Commission. In addition, the amendments required investment companies which keep securities in a qualified bank also to keep cash assets in the custody of that bank or in accordance with such rules and regulations or orders as the Commission might prescribe.[3]

Pursuant to its rule-making authority under the section and the Act, the Commission adopted rule 17f-1 (17 CFR 270.17f-1) governing custodial arrangements with member firms,[4] rule 17f-2 (17 CFR 270.17f-2) governing self-custody,[5] 17f-3 (17 CFR 270.17f-3) authorizing certain petty cash accounts,[6] and rule 17f-4 (17 CFR 270.17f-4) designating clearing agencies registered with the Commission under section 17A of the Securities Exchange Act or 1934 (15 U.S.C. 78q-1(a)) ("Exchange Act") and the Treasury/Federal Reserve book-entry system as qualified custodians.[7] In addition, the Commission published as appendices to the guidelines for the preparation of an investment company registration statement a model custody agreement for those situations where a qualified bank acts as custodian and a model safekeeping agreement for those instances where an investment company acts as its own custodian.[8]

Registered management investment companies which intend to invest in securities of foreign issuers have encountered difficulties in locating entities in foreign countries which are qualified under section 17(f) to act as custodians. No foreign bank or foreign securities depository is an eligible custodian because neither falls within the definition of "bank" as that term is defined in the Act [9] and no foreign securities depository in registered with the Commission under section 17a of the Exchange Act as required by rule 17f-4.[10]

At the present time, the only such entity which qualifies as a custodian is the overseas branch of a domestic bank.[11] However, according to applicants for exemptive relief under section 17(f), there are countries where are no overseas branches or, where there is a branch, it does not offer appropriate custodial services.[12] On several occasions in the past where a registered management investment company has been unable to locate an overseas branch of a domestic bank to act as custodian for its securities, the Commission has granted applications requesting exemption form section 17(f) to enable the company to authorize its qualified bank custodian or sub-custodian to deposit certain of its securities acquired abroad in a specific foreign bank or banks, provided certain conditions were met.[13]

---

[1] Section 2(a)(5) of the Act (15 U.S.C. 80a–2(a)(5) defines "bank" to include (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of the Act.

[2] Section 26(a)(1) provides that, in order to qualify as a trustee or custodian for the purposes therein, a bank generally "shall have at all times an aggregate capital, surplus, and undivided profits of a specified minimum amount, which shall not be less than $500,000."

[3] Pub. L. 91–547, section 9(a), 84 Stat. 1420, effective Dec. 14, 1971.

[4] *See* Investment Company Act Release No. 5 (October 30, 1940) (5 FR 4317), amended by Investment Company Act Release No. 1112 (October 3, 1947) (12 FR 6717).

[5] *See* Investment Company Act Release No. 172 (July 31, 1941) (6 FR 3827).

[6] *See* Investment Company Act Release No. 7164 (May 10, 1972) (37 FR 9989).

[7] *See* Investment Company Act Release No. 10453 (October 26, 1978) (43 FR 50869).

[8] *See* Investment Company Act Release No. 7221 (June 29, 1972) (37 FR 12790).

[9] *See* note 1 *supra*.

[10] It should be noted, however, that where an investment company has proposed to authorize its qualified bank custodian to use a foreign securities depository as a clearing agency, not as a custodian, the Division of Investment Management had taken a no-action position based on the facts presented. *See* response to request of Lehman Multi-Currency Assets Fund, Inc. (Pub. avail. April 5, 1979).

[11] *See, e.g.*, Investment Company Act Release No. 2874 (May 4, 1959), permitting International Resources Fund, Inc. to move its African securities form the custody of the London branch of Chase Manhattan Bank, N.A. ("Chase") to a wholly-owned subsidiary of Chase in Johannesburg. The Fund's application for exemptive relief was filed after the Commission determined that a foreign incorporated subsidiary (as opposed to a branch) of a domestic bank does not meet the definition of "bank" set forth in section 2(a) (5) of the Act.

[12] *See, e.g.*, applications of International Resources Fund, Inc. (File No. 812-1218) and Rowe Price New Era Fund, Inc. (File No. 812-4152), representing that , at the times of the filing of the respective applications, there were no branch offices of a domestic bank in the Union of South Africa and Australia; Eurofund, Inc. (File No. 812-1242), representing that, at the time of the filing of the application, Eurofund's custodian had no branch offices in the six member nations of the European Common Market; and The Chase Manhattan Bank (File No. 812-4475), representing that, at the time of the filing of the application, certain of its overseas branches did not offer custodial services.

[13] *See* International Resources Fund, Inc. Investment Company Act Release Nos. 2866 (April 17, 1959) (24 FR 3170) and 2874 (May 4, 1959), Erofund, Inc. Investment Company Act Release Nos. 2913 (Sept. 28, 1959) (24 FR 8013) and 2980 (March 1, 1960) (39 SEC 717 (1960)). Transatlantic Fund, Inc., Investment Company Act Release Act Nos. 3740 (July 15, 1963) (28 FR 7408) and 3801 (October 23, 1963); America and Israel Growth Fund, Inc., Investment Company Act Release Nos. 4011 (July 15, 1964) (29 FR 9851) and 4025 (July 31, 1964); Israel American Diversified Fund, Inc., Investment Company Act Release Nos. 4174 (March 3, 1965) (30 FR 3250) and 4208 (March 31, 1965); Rowe Price New Era Fund, Inc., Investment Company Act Release Nos. 10051 (December 8, 1977) (42 FR 63505) and 10086 (January 6, 1978); Templeton Growth Fund,

Continued

Recently, Chase Manhattan Bank, N.A. ("Chase") filed an application with the Commission [14] requesting that any domestic investment company registered under the Act,[15] Chase, any custodian for which Chase acts as sub-custodian and any sub-custodian of Chase [16] be exempted from the provisions of section 17(f) and rule 17f–4 thereunder to permit the deposit of securities of foreign issuers in foreign banks and foreign securities depositories under certain circumstances. The Commission ordered exemptive relief for such arrangements under conditions generally similar to those contained in the prior applications which have been granted.[17]

In applying for exemptive relief from section 17(f), Chase and prior applicants have contended that, without such relief, a registered management investment company intending to acquire foreign securities and unable to locate a qualified custodian in the country or region where the securities are to be acquired, must either move the securities away from the primary market or forego effecting transactions in that particular securities market.[18] Applicants have pointed out that any movement of securites away from the primary market has several disadvantages for the investment company. The best price for the securities is ordinarily obtained in the primary market.[19] Additional costs are incurred in hiring a servicing agent in the primary market locality to collect and disseminate information concerning the securities,[20] in transferring the securities to an eligible custodian, in exchanging coupons for interest or dividends or for new shares in connection with a rights offering,[21] and in insuring the securities and coupons for loss in transit. The company may be prevented from, or delayed in, selling securities which have been moved away from the primary market because the company is unable to make timely delivery of the securities to a prospective purchaser.[22]

The Commission believes that it is now appropriate to dispense with the requirement of individual applications and to delegate to the directors the responsibility of approving foreign custody arrangements which are consistent with the best interests of the company. Since the present requirements concerning foreign custodianship, unlike the requirements concerning domestic custodianship, might make it difficult or even impossible for funds to make certain investments which they might find desirable, and since the problem addressed by section 17(f)—the loss of the highly liquid assets of investment companies—does not arise from a potential conflict of interest, the directors should be in a position to evaluate objectively whether foreign custodial arrangements are consistent with the best interests of the company. The Commission believes that it is particularly important to allow investment companies this flexibility in view of the extent to which companies are now investing in foreign securities and, as described above, may be finding their investment opportunities curtailed.

Discussion

Proposed rule 17f–5 would procide an exemption from section 17(f) and rule 17f–4 thereunder [23] to enable registered domestic management investment companies to place and maintain fund assets in foreign banks and foreign securities depositories, provided that the companies comply with the conditions set forth in the rule. Those conditions are descried in the proposed rule in far more general terms than has been the case either in prior orders granting applications for exemptive relief under section 17(f) or in rules 17f–1 and 17f–4, governing custody by member firms and U.S. securities depositories, respectively. This departure reflects only the judgment that investment company directors and management can, consistent with their respective fiduciary duties, make foreign custody arrangements and monitor them as developments occur in a manner which protects shareholders. The Commission has not made any judgment that the terms applicable to the custody arrangements permitted under the Chase order would not be apporopriate in other cases.

Scope of the rule

The proposed rule would be available to any registered management investment company,[24] with the exception of a management investment company permitted to register under the Act pursuant to section 7(d).[25] Given the potential difficulties which a U.S. shareholder or the Commission may encounter in obtaining jurisdiction over, or enforcing a judgment against, a foreign investment company, the Commission has required, as a condition to granting an order pursuant to section 7(d), that a foreign investment company undertake to maintain its securities in a bank in the United States [26] or, under certain limited circumstances, in the overseas branch of a U.S. bank.[27] To

---

Ltd., Investment Company Act Release Nos. 10628 (March 13, 1979) (44 FR 17247) and 10657 (April 11, 1979).

[14] File No. 812–4475. *See also* Investment Company Act Release No. 12002 (October 23, 1981) (46 FR 53567), the notice of the application as amended.

[15] The requested relief did not encompass any foreign investment company authorized to register under the Act pursuant to section 7(d) (15 U.S.C. 80a–7(d)). Section 7(d) authorizes the Commission upon application by an investment company, organized or otherwise created under the laws of a foreign country, to issue a conditional or unconditional order permitting such company to register under the Act and to make a public offering of its securities in the United States.

[16] Although the Chase application requested relief under section 17(f) for Chase and other custodians and sub-custodians related to Chase, as well as for certain investment company clients of Chase, it is only registered management investment companies which are directly subject to the proscriptions of section 17(f).

[17] *See* Investment Company Act Release No. 12053 (November 20, 1981), granting the application as amended.

[18] *See, e.g.*, Chase application as amended, at p. 10.

[19] For example, International Resources Fund, Inc., represented in an application filed with the Commission (File No. 812–1218) that the best market for South African securities was in Johannesburg. The Fund further stated that, while such securities could be purchased on the London market, such purchases were subject to a 2% *ad valorem* tax. *See* Investment Company Act Release No. 2874 (May 4, 1959).

[20] Since foreign securites are often bearer instruments whose beneficial owners are not identifiable to the foreign issuer, notices with respect to such securities (e.g. tender or redemption offers) are published in the locality of the primary market instead of being mailed to the beneficial owners. Unless the investment company has an agent in the primary market area which will convey such information, the company is deprived of adequate notice with respect to a portion or all of its portfolio. *See* Chase application as amended, at pp. 10–11.

[21] Since foreign securities are often bearer instruments, the beneficial owner must present coupons to the issuer in order to exercise rights appurtenant to those instruments. *See, e.g.* notice of application of America and Israel Growth Fund, Inc., Investment Company Act Release No. 4011 (July 15, 1964) (29 FR 19851).

[22] *See* Chase application as amended, at p. 10.

[23] Because custodianship with a securities depository is prohibited except pursuant to rule 17f–4, if custodianship with a foreign depository is permitted by a new rule, that rule may also have to exempt the arrangement from rule 17f–4.

[24] Any investment company which is relying upon an exemptive order under section 17(f) would be free to rely instead on the proposed rule, if adopted.

[25] *See* note 15 *supra*.

[26] *See, e.g.*, rule 7d–1(b)(8)(v) (17 CFR 270.7d–1(b)(8)(v)) with respect to Canadian management investment companies and Investment Company Act Release No. 2756 (August 13, 1958), 38 SEC 546 (1958) with respect to American-South African Investment Co., Ltd.

[27] *See, e.g.*, Investment Company Act Release No. 10657 (April 11, 1979) with respect to Templeton Growth Fund, Ltd. and Investment Company Act Release Nos. 7795 (April 30, 1973) (38 FR 11141) and 8028 (October 10, 1973) with respect to Pan Australian Fund Limited.

date, the Commission has not authorized any foreign investment company to place and maintain its securities in a foreign bank or foreign securities depository. While such unusual custodial arrangements may be warranted unde certain conditions, the Commission believes that it should, at least for the present, retain the opportuity to evaluate separately each such contemplated arrangement through the application process. Specific comment, however, is requested as to whether rule 17f–5 should be made available to foreign investment companies and, if so, whether any additional safeguards or conditions could be incorporated which would adequately address the Commission's jurisdictional concerns.

The rule would allow the deposit only of foreign securities in a foreign bank or foreign securities depository. Foreign securities would be defined to include securities of foreign issuers [28] which have been issued and sold outside the United States and money market and other debt instruments of domestic issuers or guarantors which have been issued and sold outside the United States.

Duties of the board of directors

The proposed rule designates the board of directors of the investment company as responsible for authorizing foreign custody arrangements which are consistent with the best interests of the company. The board should request assistance from experts such as the company's U.S. custodian, attorneys and accountants whenever necessary. In addition to obtaining assistance from such nonmanagement sources, the board should also request whatever information and advice is necessary from the company's officers and investment adviser. To that extent, the officers and adviser of the company would, consistent with their fiduciary duties, share responsibility for approving a foreign custody arrangement.[29]

Selection of Country Where Securities Will Be Maintained

Pursuant to paragraph (a)(1)(i) of the proposed rule, prior to the placing of the company's securities in any foreign bank or foreign securities depository, a majority of the board of directors would be required to determine that maintaining the securities in a particular country or countries is consistent with the best interests of the company. In making that determination, the directors should weigh the risks involved in maintaining the securities in or near the country where the primary market for those securities is located, balanced against the benefits which the company may gain from the arrangement.

As pointed out in the notice to the Chase application, the Commission believes that, in evaluating the risks involved, the directors have a responsibility to consider whether applicable foreign law offers investors adequate protection of their assets.[30] In particular, the board should consider whether applicable foreign law would restrict the access afforded the company's independent public accountants to the foreign entity's books and records and the company's ability to recover securities lost while under the control of the foreign entity. In that regard, the directors should consider the advisability of using a qualified U.S. custodian as intermediary between the company and a foreign bank or foreign securities depository.[31]

Although the independent public accountants have the option under section 30(e) of the Act (15 U.S.C. 80a–29(e)) of verifying securities owned by the company by receiving confirmation from the company's custodian, the accountants may require physical examination of the company's securities.[32] If applicable foreign law would bar U.S. accountants from conducting whatever physical examination they consider necessary to meet generally accepted auditing standards, the directors should consider the risk to which the company would be exposed by maintaining securities in that location and the extent to which use of a qualified U.S. custodian as intermediary might mitigate that risk.

If applicable foreign law would bar the company from asserting jurisdication over, or enforcing a judgment against, a foreign bank or foreign securities depository, and if the ability of the company to recover securities lost while under the control of a foreign entity may be substantially diminshed where the company is dealing directly with that entity, then again the directors should consider the risk to which the company would be exposed by maintaining securities in that location and the extent to which use of a qualified U.S. cusdodian might mitigate that risk.

In addition, the board should consider whether applicable foreign law would restrict the transferability of income from a particular country and whether the government of that country would be likely to expropriate, nationalize, confiscate or freeze the assets of an American company which are in the custody of a foreign bank or foreign securities depository located there.[33]

The directors should consider whether the risks associated with the contemplated foreign custody arrangement may be mitigated by obtaining insurance (either directly or through a U.S. custodian) or by obtaining an assurance of indemnification from a U.S. custodian or other person, as well as whether the cost of such protection would exceed its benefits. If the directors decide that it is in the best interests of the company to maintain its securities in a particular country, the extent of the company's exposure to loss and the potential effect thereof upon shareholders should be disclosed, if material, in the company's prospectus.

Selection of Foreign Bank and Foreign Securities Depository

Pursuant to paragraph (a)(1)(ii) of the proposed rule, prior to the placing of the company's securities in a foreign bank or foreign securities depository, a majority of the board of directors shall have determined that maintaining the securities in that foreign entity is consistent with the best interests of the company. The Commission anticipates that, in considering the company's best interests, the directors would choose a foreign entity offering custodial services which do not differ materially from the

[28] The description of a foreign issuer set forth in paragraph (b)(1) of the proposed rule is based upon the definition of a foreign issuer contained in rule 3b–4(b) under the Exchange Act (17 CFR 240.3b–4(b)).

[29] *See* notes 1, 3, and 4 to Investment Company Act Release No. 12002 (October 23, 1981) (46 FR 53567).

[30] *See* note 1 to Investment Company Act Release No. 12002 (October 23, 1981) (46 FR 53567).

[31] It should be noted that, although the commission has treated the overseas branch of a domestic bank as an eligible custodian (*see* note 11 *supra*), the investment company's directors should consider whether it is in the best interests of the company to utilize an overseas branch in a custodial capacity without modification of the custody agreement. For example, unless there is a special provision in the agreement, foreign law may apply to the standard of care required of an overseas branch and recovery of the company's securities from the overseas branch may present considerably more difficulties than recovery of those securities from the branch's home office. *See* P. Heiniger, "Liability of U.S. Banks for Deposits Placed in their Foreign Branches", 11 LAW & POLICY IN INT. BUSINESS 903, 944–50 (1979).

[32] Rowe Price New Era Fund, Inc., for example, represented in an application filed with the Commission (File No. 812–4152) that the Fund had aranged with its domestic auditors to have their Australian affiliate verify by direct physical examination the accuracy of the books and records of the foreign bank, including at least two scheduled and one unscheduled audits each fiscal year. *See* Investment Company Act Release No. 10051 (December 8, 1977) (42 FR 63505).

[33] *See* note 4 to Investment Company Act Release No. 12002 (October 23, 1981) (46 FR 53567).

manner in which the company's U.S. custodian maintains the company's securities in the United States, if such services are available. If such services are unavailable, the directors should determine whether the custodial services offered by any foreign entity in that country would provide adequate protection for the company's securities. If, in their judgment, the directors determine that the company's securities would not be adequately protected, then, implicit in their duty to consider the company's best interests would also be the duty not to select that entity or any other which is unsuitable.

In view of the potential difficulties in asserting jurisdiction or enforceing judgments against a foreign entity, the directors should also consider whether the foreign bank has branch offices in the United States, since the existence of a United States branch could facilitate the assertion of jurisdication over the foreign bank by a U.S. court and the satifaction of a judgement against the foreign bank obtained in a U.S. court.[34]

Approval of the Custody Agreement

Paragraph (a)(1)(iii) of the proposed rule would require that, prior to the placing of any foreign securities in any foreign bank or foreign securities depository, a majority of the board of directors shall have approved, as consistent with the best interests of the company, a custody agreement which will govern the manner in which the company's securities will be maintained by the foreign custodian.[35] negotiating the custody agreement, the board should consider the extent to which the specific safekeeping provisions contained in prior orders and rules 17f–1 and 17f–4 should be incorporated in the agreement. Such specific provisions, as well as factors which the Commission believes might be appropriate for the board to consider in evaluating such provisions, are discussed below.

It likely would be consistent with the company's best interests for the custody agreement to provide that: (a) The securities will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the foreign entity or its creditors except a claim of payment for their safe custody or administration; and (b) beneficial ownership of the securities will be freely transferable without the payment of money or value other than for safe custody or administration.[36]

In addition, it is anticipated that the directors, in considering the best interests of the company, would provide for the adequate segregation of the company's securities.[37] Adequate segregation has been most recently interpreted to mean that the custodian with which the company is dealing directly should maintain the securities in an account which contains only the company's assets. If the company is dealing with the custodian indirectly, the custodian should segregate the securities in an account which contains only assets held by the depositing intermediary for its customers.[38]

The directors should consider a requirement in the custody agreement that the custodian will maintain adequate records with respect to the securities. Where the company deposits the securities directly with a foreign entity, the books of that entity should identify the securities as belonging to the company. If the company chooses to deposit the securities first with a qualified U.S. custodian which in turn deposits the securities with a foreign entity, the books of the U.S. custodian should identify the securities as belonging to the company and the books of the foreign entity should identify the securities as belonging to the U.S. custodian for its customers.

In considering the company's best interests, the directors should consider, subject to the constraints of foreign law, incorporating provisions in the custody agreement which will afford access to the independent public accountants of the company to the records kept by the custodian with respect to the company's securities.[39]

The custody agreement should also provide that the custodian will furnish periodic reports to the company with respect to its securities.[40] This information should include notification of any transfer to or from the company's account, indicating the then location of the securities. In addition, if a U.S. custodian is acting as intermediary between the company and several foreign custodians, such reports should identify the foreign custodians and describe the securities placed in their care.[41]

Considerations Relating to Decision to use Intermediary

Where the directors have decided that it is in the best interests of the company to use a qualified U.S. custodian as intermediary between the company and the foreign bank or foreign securities depository, the board should consider to what extent any or all of the following should be incorporated in the custody agreement: (i) An assignment of responsibility for choosing the foreign custodian and a statement as to the basis on which the foreign custodian was chosen; (ii) a definition of the relationship betwen the U.S. custodian and the foreign custodian; (iii) the extent of the U.S. custodian's responsibility for any loss to the company resulting from the use of the foreign custodian, including, for example, loss due to such foreign custodian's negligence, willful misconduct, fraud or bankruptcy or the negligence, willful misconduct or fraud of any of its employees or agents; and (iv) a directive that the U.S. custodian obtain insurance to cover losses, including those for which indemnification is not provided.

To clarify the role of a U.S. custodian if it acts as intermediary between the company and the foreign bank or foreign securities depository, the custody agreement could provide that the foreign bank or foreign securities depository will be subject only to the instructions of

[34] *See* application of America and Israel Growth Fund, Inc. (811–1259) wherein counsel for the Fund represented that because Israel Discount Bank maintained a branch office in New York, service of process could be made upon the Bank at the New York branch, jurisdiction over the Bank would be acquired with respect to a cause of action arising out of an act or breach committed in Israel or New York, and any judgment obtained in New York could be satisfied from the assets of the Bank's New York branch or from the assets of the Bank located in Israel.

[35] The custody agreement or amendments thereto should be filed as an exhibit to the company's registration statement on Form N–1 (17 CFR 239.15, 17 CFR 274.11) or Form N–2 (17 CFR 239.14, 17 CFR 274.11a–1)

The provisions of the model custody agreements with qualified U.S. custodians which are appended to the staff's guidelines for the preparation of the registration statement for an investment company should be incorporated to the extent practicable in custody agreements governing foreign custodial arrangements (*See* Appendices A and B to Investment Company Act Release No. 7221 (June 29, 1972) (37 FR 12790)).

[36] *See* Chase application as amended, at p. 6; *see also* rule 17f–1 (b)(2) with respect to custody of securities by member firms; *see also* Exchange Act Release No. 10429 (October 12, 1973) (38 FR 29217) publishing the Commission's guidelines for placement by brokers or dealers of customer's securities in foreign depositories, clearing agencies or banks for purposes of rule 15c3–3 under the Exchange Act (17 CFR 240.15c3–3); *see also* rule 404b–1 (29 CFR 2550.404b–1) adopted by the Department of Labor under section 404(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(b) permitting a fiduciary to entrust care over a plan's assets to a U.S. broker or dealer which in turn maintains the custody of such assets in a foreign depository, clearing agency or bank.

[37] It should be noted, however, that, with the advent of de-materialization abroad, *e.g.* the French SICOVAM system in which ownership of securities is evidenced by book entries rather than share certificates, physical segregation of securities may no longer be feasible.

[38] *See* Chase application as amended, at p. 5.

[39] *See* Chase application as amended, at p. 7.

[40] The Commission understands that it is common practice for investment companies to request standard asset holding reports on either a weekly or monthly basis.

[41] *See* Chase application as amended, at p. 5.

the U.S. custodian or its agents.[42] In that regard, the directors might consider the advisablity of requiring the U.S. custodian to warrant to the company that the instructions to be followed by the foreign bank or foreign securities depository will afford protection for the company's securities at least equal to that afforded for similar securities held by the custodian in the United States.[43]

The directors might consider also the extent to which the company can be protected by incorporating assurances of indemnification by the U.S. custodian in the custody agreement. For example, in the event of the negligence, willful misconduct or fraud of the U.S. custodian or the foreign custodian or their repective employees or agents, a provision for the U.S. custodian's liability could be added to the custody agreement.[44] The custody agreement could provide that the U.S. custodian will indemnify the company for loss by reason of its own or the foreign custodian's negligence, willful misconduct or fraud as through the U.S. custodian were holding the securities in the United States.[45] Given the risks involved, the directors may consider even broader indemnification provisions desirable or necessary before they approve the custodial arrangements. For example, the directors may find that circumstances warrant the custody agreement stating that the U.S. custodian will indemnify the company for non-negligent losses, such as those which might result from the foreign custodian's bankruptcy or other financial failure, as well as for losses caused by negligence, willful misconduct or fraud.[46]

The directors also should consider whether to obtain directly or through the U.S. custodian insurance against certain types of losses.[47] In considering whether to obtain insurance, the directors should take into account the extent of the U.S. custodian's responsibility for the actions and omissions of the foreign custodian under applicable state law and pursuant to any assurances of indemnification continued in the custody agreement, as well as other risks (such as expropriation) involved in maintaining portfolio securies abroad. If the directors determine that it is in the best interests of the company to provide in the custody agreement that the U.S. custodian carry some type of insurance with respect to the company's foreign securities held in foreign bank or foreign securities depositories, the Commission is of the opinion that the custody agreement also should provide that the U.S. custodian will give the company adequate advance notice of any change in that coverage.[48]

Re-Evaluation of Custody Agreement

Since the conditions pursuant to which securities are held abroad, and the risks associated therewith, may be subject to change, paragraph (a)(2) of the proposed rule provides that, as soon as practicable after any material change in circumstances, and any event at least annually, the broad must re-evaluate the custody agreement and the custodial arrangements made pursuant thereo and determine whether or not the agreement and such arrangement should be continued. At least a majority of the board would be required to approve continuance.[49]

Request for Specific Comments[50]

Although the Commission has not received any applications to permit investment companies to deal directly with foreign custodians or to use a member firm as intermediary, the proposed rule would permit such arrangement, in recognition of the evolving nature of this area. Specific comment is requested, however, as to whether the rule should require a company to use a qualifed U.S. custodian as intermediary and, if so, whether such intermediation should be restricted to qualified U.S. banks.

Specific comment is also requested with repect to whether the rule should permit registered investment companies to place and maintain their foreign securities in the custory of foreign entities other than foreign banks or foreign securities depositories (as defined in the proposed rule) and if so, which types of entities and the manner of defining them.

Specific comment is also requested as to whether the definition of "Foreign Securities Depository" set forth in section (b)(3) of the proposed rule reaches the foreign counterparts of U.S. securities depositories qualified to serve as custodians pursuant to section 17(f) and rule 17f–4 thereunder.[51]

List of Subjects in 17 CFR Part 270

Accountants, Accounting, Fraud, Investment companies, Investment, Securities, Variable annuities, Variable life insurance; Securities, Business development companies, Investments; Surety bonds.

Text of Proposed Rule

PART 270 OF CHAPTER II OF TITLE 17 OF THE CODE OF FEDERAL REGULATION

It is proposed to amend Part 270 of Chapter II of Title 17 of the Code of Federal Regulation by adding § 270.17f–5 to read as follows:

§ 270.17f–5 Custody of securities in foreign banks and foreign securities depositories.

(a) Any management investment company registered under the Act, other than a management investment company permitted pursuant to section 7(d) to register under the Act, may place and maintain any foreign securities of the company in foreign banks and foreign securities depositories, Provided That:

(1) Prior to the placing of any such securities in any foreign bank or foreign securities depository, a majority of the board of directors of the company shall have:

(i) Determined that maintaining the securities in a particular country or countries is consistent with the best interests of the company;

(ii) Determined that maintaining the securities in a particular foreign bank or foreign securities depository is consistent with the best interests of the company;

(iii) Approved, as consistent with the best interests of the company, a custody agreement which will govern the manner in which the securities will be maintained; and

(2) A majority of the board of directors, as soon as practicable after any material change of circumstances, and in any event at least annually, reviews and approves the continuance

---

[42] *See, e.g.*, Chase application as amended, at p. 5.

[43] *Id.*, at p. 12.

[44] *Id.*, at pp. 6–7.

[45] *Id.*

[46] To the extent that a contractual commitment to indemnify the company would be enforceable under applicable foreign law, the directors should also consider obtaining such assurances directly from the foreign custodian.

[47] Chase, for example, represented in its application (File No. 812–4475) that it intends to maintain a Bankers Blanket Bond which provides "standard fidelity and non-negligence loss coverage" with repect to securities which may be held in the offices of non-affiliated foreign banks and foreign securities depositories, so long as such coverage is available at reasonable cost. *Id.*, at p. 13.

[48] *See* Investment Company Act Release No. 12002 (October 23, 1981) (46 FR 53567).

[49] *See* Chase application as amended, at p. 5; *see also* rule 17f–1(d) with respect to custody of securities by member firms and rule 17f–4 (c)(3) and (d)(5) with respect to custody of securities by registered clearing agencies and by the Federal Reserve/Treasury book-entry system.

[50] Specific comment is also requested with respect to whether the proposed rule should be made available to foreign investment companies. *See* discussion *supra* under "Scope of the rule."

[51] The following are examples of foreign securities depositories intended to be covered by the rule: Canadian Depository for Securities, Ltd., Frankfurter Kassenverein, SICOVAM.

of the custody agreement and custody arrangements made pursuant thereto as consistent with the best interests of the company.

(b) As used herein,

(1) "Foreign Securities" include: securities issued and sold outside the United States by a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country and certificates of deposit, evidences of indebtedness and other similar securities issued or guaranteed by the Government of the United States or by any State or any political subdivision thereof or by any agency thereof or any securities issued by any entity organized under the laws of the United States or of any State thereof which have been issued and sold outside the United States.

(2) "Foreign Bank" means a banking institution organized in, and regulated by the banking authorities of, a country other than the United States.

(3) "Foreign Securities Depository" means an entity incorporated or organized under the laws of a foreign country which operates a system outside the United States for the central handling of securities and which is regulated by a foreign government or agency thereof.

Instruction: The provisions of rule 17f–5 set forth the ultimate determinations which the directors of a registered investment management company must make in connection with approving a foreign custodial arrangement. Those determinations should be made only after consideration of any matters which the directors, in carrying out their fiduciary duties, would find relevant. For a discussion of factors which the directors should consider in making their determinations, see Investment Company Act Release No. 12354, April 5, 1982. In complying with rule 17f–5, in addition to any other relevant factors, consideration should be given to the following:

1. With respect to the selection of the country where the securities will be maintained, the directors should weigh the risks involved in maintaining the securities in or near the country where the primary market is located, balanced against the benefits from such an arrangement, including consideration of:

a. Whether applicable foreign law offers investors adequate protection;

b. Whether applicable foreign law restricts access to books and records of the foreign entity by the company's independent public accountants and, if so, any risks U.S. companies might be exposed to as a result;

c. Whether applicable foreign law restricts the transferability of income;

d. The company's ability to recover securities lost while under control of the foreign entity;

e. The advisability of using a qualified U.S. custodian as intermediary between the company and the foreign entity;

f. The likelihood of expropriation, nationalization, freezes, or confiscation of the company's assets;

g. Whether any such risks may be mitigated by obtaining insurance (directly or through a U.S. custodian) or by obtaining an assurance of indemnification from a U.S. custodian or other person;

2. With respect to the selection of an appropriate foreign bank or foreign securities depository, the Commission anticipates that the directors will choose a foreign entity whose custodial services do not differ materially from the manner in which the company's U.S. custodian maintains the company's securities in the United States, if such services are available. If not, the directors should consider whether the custodial services of any foreign bank or foreign securities depository in that country would be adequate. The directors should also consider whether the foreign bank has branch offices in the United States in order to facilitate the assertion of jurisdiction and enforcement of judgments against such foreign entity.

3. With respect to the approval of the custody agreement, the directors should consider whether the safekeeping provisions contained in prior Commission orders and in rules 17f–1 and 17–4 should be incorporated. It likely would be consistent with the company's best interests for the custody agreement to provide that:

a. The securities will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the foreign entity or its creditors except a claim payment for their safe custody or administration;

b. Beneficial ownership of the securities will be freely transferable without payment of money or value other than for safe custody or administration;

c. The company's securities will be adequately segregated in an account which contains only the assets of the company or only assets of the depositing intermediary for its customers;

d. Adequate records will be maintained by the foreign entity identifying the securities as belonging to the company or as belonging to the depositing intermediary for its customers;

e. The company's independent public accountants will be afforded access to the records maintained by the foreign entity with respect to the company's securities;

f. The foreign entity and any U.S. intermediary will furnish sufficiently detailed and current periodic reports to the company with respect to its securities;

4. With respect to the use of a U.S. custodian as an intermediary, the directors should consider incorporating the following provisions in the custody agreement with that intermediary:

a. An assignment of responsibility for choosing the foreign custodian and a statement as to the basis on which the foreign custodian was chosen;

b. A provision that the foreign custodian will be subject only to the instructions of the U.S. custodian or its agents;

c. A warranty by the U.S. custodian to the company that the instructions to be followed by the foreign custodian will afford protection for the company's securities at least equal to that afforded for similar securities held by the U.S. custodian in the United States.

d. A statement of the extent of the U.S. custodian's responsibility for any loss to the company resulting from the use of the foreign custodian, including, for example, loss due to the negligence, willful misconduct or fraud of the foreign custodian or any of its employees or agents or non-negligent losses such as those which might result from the foreign custodian's bankruptcy or other financial failure.

e. A directive that the U.S. custodian obtain insurance to cover losses (including those losses for which indemnification is not provided) and furnish the company with adequate notice of any change in that coverage.

Statutory Basis

Rule 17f–5 is proposed pursuant to sections 6(c) (15 U.S.C. 80a–6(c)) and 38(a) (15 U.S.C. 80a–37(a)) of the Act.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (15 U.S.C. 605 (b)), the Chairman of the Commission has certified that rule 17f–5 proposed herein will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to the release.

By the Commission.

Dated: April 5, 1982.

Shirley F. Hollis,

Assistant Secretary.

Regulatory Flexibility Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed rule 17f–5 (17 CFR 270.17f–5) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), set forth in Investment Company Act Release No. 12354, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed rule would simply provide an exemption to enable a domestic management investment company to make foreign custodial arrangements under certain conditions without obtaining an exemptive order from the Commission, thereby reducing the costs involved in preparing and filing applications for exemptive orders with the Commission.

Dated: April 5, 1982.
John S. R. Shad,
Chairman.
[FR Doc. 82-10513 Filed 4-15-82; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-550]

Commercial Diving Operations; Extension of Comment Period

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.
ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for written responses to the questions OSHA presented in the advance notice of proposed rulemaking for Commercial Diving Operations (47 FR 8379, February 26, 1982). The written responses were to have been received by April 12, 1982. OSHA has been requested to extend the comment period. In order to ensure that interested parties have sufficient time to compile data and prepare responses to the issues raised in the notice, OSHA has decided to extend the written comment period to June 14, 1982.

DATE: Written responses to the notice must be postmarked by June 14, 1982.

ADDRESS: The written information should be submitted, in quadruplicate, to the Docket Officer, Docket S-550, Room S6212, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, D.C. 20210, (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Mr. Glen E. Gardner or Ms. Joanne E. Slattery, Directorate of Safety Standards Programs, Office of Fire Protection Engineering and Systems Safety Standards, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3463, 200 Constitution Avenue NW., Washington, D.C. 20210, (202) 523-7225.

SUPPLEMENTARY INFORMATION: On February 26, 1982, OSHA published a notice in the **Federal Register** concerning its standards for commercial diving operations. In the notice, OSHA requested written responses to general and specific issues pertaining to commercial diving operations. The written responses were to have been received by April 12, 1982.

OSHA has been requested to extend the comment period. In order to ensure that interested parties have sufficient time to compile data and prepare responses to the issues raised in the notice, OSHA has decided to extend the written comment period to June 14, 1982.

Additionally, several interested parties requested clarification of whether they should limit their responses to only those questions posed in the notice. It was not OSHA's intent to limit discussion of the standard to only those questions posed in the notice. Comments pertaining to any area of the standard are invited.

Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Consititution Avenue NW., Washington, D.C. 20210.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911; Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, D.C., this 9th day of April 1982.

Thorne G. Auchter,
Assistant Secretary of Labor.
[FR Doc. 82-10334 Filed 4-15-82; 8:45 am]
BILLING CODE 4510-26-M

29 CFR Part 1910

[Docket No. H-022]

Hazard Communication; Notice of Public Hearings

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.
ACTION: Notice of proposed rulemaking; public hearings.

SUMMARY: On March 19, 1982, OSHA published a notice of proposed rulemaking (NPRM) on hazard communication in the **Federal Register** (47 FR 12092). The NPRM stated that several public hearings would be convened to receive oral testimony, beginning on June 15, 1982, in Washington, D.C. This notice announces the specific dates and locations for these hearings. The hearings will be conducted in accordance with the procedures specified in the March 19 NPRM at 47 FR 12119.

DATES: Comments and notices of intention to appear at the public hearings must be received on or before May 18, 1982. Statements and any documentary evidence to be presented at the hearings must be submitted by June 1, 1982.

The length of the hearing in each location will depend upon the number of notices of intention to appear that OSHA receives. The date each hearing will begin and the cities in which they will be held are as follows:

Date Hearing Begins	*City*
1. June 15, 1982	Washington, D.C.
2. July 13, 1982	Houston, Tex.
3. July 20, 1982	San Diego, Calif.
4. July 27, 1982	Detroit, Mich.

ADDRESSES: Notices of intention to appear at the hearings, statements and documentary evidence should be submitted to Mr. Tom Hall, Division of Consumer Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Room N3635, Washington, D.C. 20210; (202) 523-8024.

The hearings will be held at the following locations:

1. Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C.

2. Terrace Ball Room, University of Houston, Downtown College Center, 101 Main Street, Houston, Texas.

3. Royal Room, Royal Quality Inn, 4875 N. Harbor Drive, San Diego, California.

4. Mackinac West, Detroit Plaza Hotel, Renaissance Center, Detroit, Michigan.

Notices of intention to appear at the public hearings, as well as any other information gathered by the Agency during this rulemaking, will be available for inspection and copying in the Docket Office, Docket H-022, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room S6212, Washington, D.C. 20210; telephone (202) 523-7894.

FOR FURTHER INFORMATION CONTACT:

Hearings: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3635, Washington, D.C. 20210; (202) 523-8024.

Proposal: Ms. Jennifer Silk, Office of Special Standards, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3663, Washington, D.C. 20210; (202) 523-7166.

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

(Sec. 6(b), 8(c) and 8(g), Pub. L. 91-596, 84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657; 29 CFR Part 1911; Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, D.C. this 9th day of April, 1982.

Thorne G. Auchter,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 82-10335 Filed 4-15-82; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 715, 780, 816, 817, and 850

Permanent Regulatory Program: Use of Explosives and Training Examination, and Certification of Blasters; Notice to Extend the Public Comment Periods

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

ACTION: Notice of extension of comment periods.

SUMMARY: On March 24, 1981 (47 FR 12760) OSM published proposed rules for public comment which would amend existing rules in 30 CFR Parts 715, 780, 816, and 817 relating to the use of explosives. Also, on March 24, 1982 (47 FR 12779) OSM published proposed rules in 30 CFR Part 850 for public comment which would amend its rules governing the training, examination, and certification of persons engaging in or directly responsible for blasting or the use of explosives in surface coal mining. Since the publication OSM has received a number of requests to extend the public comment periods. In order to ensure that all interested persons are afforded an adequate opportunity to comment, OSM is extending the comment periods.

DATES:

Written comments: The comment periods on the proposed rules will extend until 5 p.m. (eastern time) on May 24, 1982.

Public meetings: Scheduled on request only.

ADDRESSES:

Written comments: Hand-deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C.; or *mail* to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record, Room 5315L, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Comments on the proposal concerning the use of explosives should be identified with the notation "TSR 14.06" and comments on the proposal concerning the training, examination and certification of blasters should be identified with the notation "TSR 14.31."

Public meetings: OSM offices in Washington, D.C.; Charleston, W. Va.; Knoxville, Tenn.; Indianapolis, Ind.; Pittsburgh, Pa.; and Denver, Colo.

FOR FURTHER INFORMATION CONTACT:

Jerry R. Ennis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; 202-343-7887.

SUPPLEMENTARY INFORMATION:

Public Commenting Procedures

Written comments: Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "Addresses"). Comments received after the time indicated under "Dates" or at locations other than Washington, D.C., may not necessarily be considered or be included in the Administrative Record for the final rulemaking.

Public meetings: Persons wishing to meet with OSM representatives to discuss these proposed rules may request a meeting at any of the locations listed in "Addresses" by contacting Jose del Rio (202-343-4022).

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record Room (1100 L Street). A written summary of each public meeting will be made a part of the Administrative Record.

Dated: April 13, 1982.

J. Steven Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82-10493 Filed 4-15-82; 8:45 am]

BILLING CODE 4310-05-M

Geological Survey

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Geological Survey, Interior.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of the Interior (DOI) is withdrawing the proposed revisions which would have amended its Outer Continental Shelf (OCS) air quality rules, 30 CFR 250.57, to establish separate exemption formulas and significance levels for emissions from OCS facilities in areas adjacent to the State of California. The proposed revisions were published at 45 FR 15147 on March 7, 1980. Because the OCS nationwide rules are consistent with the Clean Air Act (CAA) and because the proposed California rules would go beyond that required by the CAA, the Secretary considers that a stricter regulatory program for OCS facilities off California would be inappropriate.

FOR FURTHER INFORMATION CONTACT:

David A. Schuenke, Chief, Branch of Offshore Rules and Procedures, Offshore Minerals Regulation, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 640, Reston, Virginia 22092 (703) 860-7395.

SUPPLEMENTARY INFORMATION:

Background

Section 5(a)(8) of the OCS Lands Act (OCSLA), 43 U.S.C. 1334(a)(8), requires that the Secretary of the Interior prescribe regulations with provisions for compliance with the national ambient air quality standards (NAAQS) pursuant to the Clean Air Act (CAA), 42 U.S.C. 7401 et seq., to the extent that activities authorized under the OCSLA significantly affect the air quality of any State. On March 7, 1980, DOI published final rules, 30 CFR 250.57, establishing a program to implement section 5(a)(8) for the regulation of air pollutants emitted from oil and gas operations on the OCS. 45 FR 15128 (1980). These rules became effective on June 2, 1980. Also on March 7, 1980, DOI proposed revisions to amend 30 CFR 250.57 to incorporate a separate set of exemption formulas and significance levels to apply to OCS facilities in areas adjacent to the State of California and to establish a provision under which other affected States with ambient air quality standards (AAQS) more stringent than the NAAQS could petition the U.S. Geological Survey (USGS) for treatment similar to that proposed to be afforded California.

Authors

John Goll, Mitchell Baer, and Jane Roberts, USGS, DOI (703/860-6461, -6461 and -7395, respectively); and Poe Leggette, Office of the Solicitor, DOI (703/860-6736).

Comments

Nineteen organizations commented on the proposed rules. The comments varied widely in nature, scope, and content and represented views from 10 industry and trade organizations, 4 State and local governments, 3 public citizen groups, and 2 Federal Agencies.

In addition to the public comments received in this rulemaking, the

Department has also considered the information contained in the detailed air quality assessments for the Pacific OCS by the Bureau of Land Management (BLM) for OCS Sales Nos. 53 and 68. (Air Quality Impact of Proposed OCS Sale No. 53 Offshore Central and Northern California, POCS Reference Paper No. 53–5, March 1980, and Supplement July 1980; Air Quality Impact of Proposed OCS Sale No. 68 Offshore Southern California, POCS Technical Paper No. 81–7, 1981, and Supplement, 1981.) These documents have been subject to full public review, and the Department has given full consideration to the comments. (Note: For the purposes of this Notice, these studies will be referred to as the "BLM California air quality studies.") The term, "nationwide rules" refers to the existing DOI OCS air quality rules as published on March 7, 1980 (45 FR 15128); "proposed California rules" refers to the revisions proposed on March 7, 1980 (45 FR 15147).

Decision To Withdraw the Proposal

The Department decision to withdraw the proposal is based on the information assessed and referenced in this Notice and in the accompanying environmental assessment (EA). The Department has discretionary authority to protect State AAQS that are more stringent than the NAAQS; but the Department must protect only those standards required by the CAA that have nationwide application. We consider that the DOI OCS air quality rules should be consistent with the way the CAA treats State AAQS. Because the nationwide rules are consistent with the CAA and because the proposed California rules would go beyond that required by the CAA, we consider that a stricter regulatory program for OCS facilities off California would be inappropriate.

The nationwide rules are consistent with Federal policy on air pollution in several respects. First, they are consistent with the CAA, which does not require that stricter State AAQS be met. Second, they are consistent with the interstate pollution provisions within the CAA, which require that a State does not interfere with the ability of a neighboring State to attain or maintain the NAAQS (not a State AAQS). Third, they are consistent with the implementation of the CAA by the Environmental Protection Agency (EPA), in that EPA determines "attainment status designation" based on NAAQS, not State AAQS. Finally, they are consistent with the language of the Conference report, in that the report stated that DOI should protect stricter State AAQS if they are contained within a State implementation plan (SIP). California is not using its SIP to achieve its own AAQS.

A secondary reason to retain the nationwide rules for areas adjacent to California is that little added environmental protection will result from stricter rules. As noted in the environmental assessment, the onshore impact from emissions regulated by the nationwide rules is small and comparable to the onshore impacts which would result from stricter rules, such as the proposed California rules or rules suggested by the State of California. In addition, the nationwide rules will be less costly to implement.

We consider that the nationwide rules are sufficient to protect the onshore air quality of California. We have received no evidence showing that air emissions from OCS facilities regulated by the nationwide rules would prevent California from attaining and maintaining the NAAQS.

Discussion of Major Issues

1. Authority To Protect State Standards

The proposed rules would create a special exemption formula and significance levels for OCS areas adjacent to California. These special, stricter levels and formula would apply to emissions of sulphur dioxide (SO_2), nitrogen oxides (NO_x), total suspended particulates (TSP), and volatile organic compounds (VOV). The levels are keyed to the AAQS issued by the California Air Resources Board (CARB). 17 Cal. Admin. Code, section 70200 (1977). (See "Significance Levels" and "Exemption Formula.") Many commenters said the Department has no authority to adopt special levels; many others said the Department must adopt them. Having consulted with the Office of the Solicitor on this matter, we disagree with both groups of comments. The Secretary has discretionary authority to protect a State's stricter-than-national AAQS but must protect only those standards under the CAA having nationwide application.

Considering first the Secretary's authority to protect stricter State standards, we begin our analysis with the original OCSLA. Although the Act gave the Secretary of the Interior broad rulemaking authority, it did not give him power to regulate emissions for the purpose of protecting onshore air quality. A close reading of the original section 5(a)(1) supports this contention. 43 U.S.C.A. 1334(a)(1) (1964 ed.). That section created two kinds of rulemaking authority for the Secretary. He could make "leasing" rules, exercising the Government's power as lessor. Such rules included those governing assignments of leases, rental and royalty, sale of oil or gas taken in kind, leasing procedures, and so forth. He could also make "conservation" rules for "the prevention of waste and conservation of the natural resources of the outer continental shelf, and the protection of correlative rights therein." Such rules included those for unitization, suspensions of operations, and so forth. In making conservation rules, the Secretary exercises the Government's authority as sovereign. See Christopher, "The Outer Continental Shelf Lands Act: Key to a New Frontier," 6 Stan. L. Rev. 23, 43–46 (1953). The Secretary, therefore could have regulated emission of air pollutants, but only if his purpose was to protect the resources of the OCS. See *Unior Oil Co. v. Morton*, 512 F. 2d 743, 749 (9th Cir. 1975). (Secretary has broad authority to protect "the environmental quality of the continental shelf".) See also 43 U.S.C. 1333(d)(1) (formerly codified as section 1333(e)(1)). (Secretary of Transportation may regulate emissions to promote safety of life on OCS facilities.) We disagree with the suggestion that the Secretary's authority to issue leasing rules is broad enough to include rules to protect onshore air quality. Air quality rules are conservation rules, not rules of the Government as proprietor.

Congress, however, granted the Secretary new authority in 1978. Section 5(a) now reads in relevant part:

> The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf * * *. The regulations prescribed by the Secretary under this subsection shall include, but not be limited to, provisions—
>
> (8) for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), to the extent that activities authorized under this Act significantly affect the air quality of any State. 43 U.S.C. 1334(a)(8).

Industry commenters have assumed that section 5(a)(8) sets the outer bounds of the Secretary's authority to protect onshore air quality. However, section 5(a) merely specifies what regulations the Secretary must have *at the least*. His regulations "shall include, but not be limited to" those listed in subsections (1) through (8). One might argue, however, that section 5(a)(8) is an isolated exception to the words of section 5(a), which limit the Secretary's authority to conserving the resources of the OCS. Thus, one might say that any rule requiring more than compliance with national standards is unauthorized. But

other language in the Act shows that Congress did not intend to restrict the Secretary. For example, the Act allows the Secretary to suspend any OCS operation "if there is a threat of serious, irreparable, or immediate harm * * * to the marine, coastal, or human environment * * *." 43 U.S.C. 1334(a)(1)(B). The terms "marine environment," "coastal environment," and "human environment" are defined broadly by the Act, easily encompassing the authority to protect onshore air quality standards set by a State. Section 43 U.S.C. 1331 (g) and (h). Similarly, the Secretary may require modifications in an exploration plan or development and production plan to protect the marine, coastal, or human environment. 43 U.S.C. 1340(f) and 1351(h)(1). Under a current doctrine of administrative law, the Secretary is not limited to applying this authority case by case. He may find facts and structure his discretion through informal rulemaking. *United States* v. *Florida East Coast Railway*, 410 U.S. 224 (1973).

Therefore, the Secretary's authority to prevent "serious harm" to the "atmospheric components" of the "marine [and] terrestrial ecosystem[s]" permits him to protect the AAQS set by an adjacent coastal State. This conclusion is consistent with the congressional declaration that "the Federal Government must assume responsibility for the minimization or elimination of any conflict" between oil and gas operations and other uses of the marine environment. 43 U.S.C. 1801(13). It is also consistent with the Federal policy that "the rights and responsibilities of all States * * * to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses should be considered and recognized." 43 U.S.C. 1332(5).

2. What Section 5(a)(8) Requires

The Department's final air quality rule protects a State's ability to meet national primary and secondary AAQS. In areas where a State already meets those standards, the rule protects the State's efforts to comply with the CAA's requirements preventing significant deterioration of the quality of the air. In both instances, the Department's rule is keyed to national standards set by the EPA or the CAA itself. Industry commenters say our rule goes too far; Government and environmental commenters from California say it does not go far enough.

Industry commenters argue that the section 5(a)(8) words "national ambient air quality standards" is a "term of art" meaning solely the primary and secondary standards created under section 109 of the CAA. From this premise they conclude that our rule to prevent significant deterioration of air quality in attainment areas, 30 CFR 250.57–1(g)(2), is not required. California commenters, on the other hand, argue that Congress used the phrase quite loosely. They believe Congress' true meaning is found in the Conference Committee Report:

> The conferees agreed that if an approved State implementation plan has ambient air quality standards which are more stringent than the national ambient air quality standards, the Secretary of the Interior shall * * * assure that offshore operations * * * do not prevent the attainment of those State standards * * *. S. Rep. No. 95–1091, 95th Cong., 2d Sess. 85 (1978).

To interpret the statute we must begin with its language. "The primary rule of statutory construction is to ascertain and give effect to the plain meaning of the language used." *Hughes Air Corp. v. Pubic Utilities Comm'n.*, 644 F. 2d 1334, 1337 (9th Cir. 1981). Section 5(a)(8) requires rules for "compliance with the national ambient air quality standards pursuant to the CAA (42 U.S.C. 7401 et seq.)." In response to the argument that the statute adopts a term of art, we note that the phrase "national ambient air quality standards" is used throughout the CAA to refer solely to the primary and secondary standards set under 42 U.S.C. 7409. See e.q., 42 U.S.C. 7409(d)(2)(B), 7426(a)(1)(B), and 7473(a).

We also note, however, that the Department's Deputy Solicitor disagreed with this technical reading of section 5(a)(8) and used what may be called a plainer "plain-meaning" interpretation of the statute:

> Regulation of OCS emissions to protect clean onshore air is consistent with the language of section 5(a)(8) which refers to national standards. The increments and ceilings established in section 163 of the Clean Air Act are applicable throughout the country. They are *national* standards for attainment areas just as the primary and secondary standards are *national* standards for nonattainment areas. A regulatory program which includes their consideration is, therefore, consistent with the language of section 5(a)(8) which refers to "compliance with national ambient air quality standards." Memorandum of DOI Deputy Solicitor Ferguson to DOI Assistant Secretary, Energy and Minerals p. 3 (April 23, 1979) [Emphasis in original.]

The Deputy Solicitor's point was that section 163 has nationwide effect and sets "ambient air quality standards." See Currie, "Nondegradation and Visibility Under the Clean Air Act," 68 Cal. L. Rev. 48, 68 (1980). ("The net effect of these ceilings or 'increments' is to fix air quality standards more stringent than those set under section 109, varying according to existing air quality.") See also Cal. Health and Safety Code, section 39014. (The phrase "ambient air quality standards," as defined by California law, would include standards like those set by section 163.) Because the Deputy Solicitor's memorandum was a contemporaneous interpretation of section 5(a)(8) by one of the officials responsible for "setting its machinery in motion," a court will show it "great deference." *Udall v. Tallman*, 380 U.S. 1, 16 (1965).

To guarantee that the Deputy Solicitor's view is worthy of deference, we must turn to the legislative history. One industry commenter argued that it is inappropriate to look to that history, given the commenter's term-of-meaning of the statute. "But ascertainment of the meaning apparent on the face of a single statute need not end the inquiry * * *. This is because the plain meaning rule is 'rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists.' " *Watt v. Alaska*, 101 S. Ct. 1673, 1677 (1981), quoting *Boston Sand Co. v. United States*, 278 U.S. 41, 48 (1928) (Holmes, J.). The legislative history and policy of section 5(a)(8), thoroughly analyzed in the Deputy Solicitor's memorandum, show the Deputy Solicitor to be correct. This explains why, when citing the CAA in section 5(a)(8), Congress cited the AAQS standards in the entire CAA, rather than just those created by section 109. In other words, that is why the citation reads "42 U.S.C. 7401 et seq.," rather than "42 U.S.C. 7409." Consequently, section 5(a)(8) requires the Department to adopt a rule comparable to 30 CFR 250.57–1(g)(2).

A more difficult task is to determine whether the Department must protect California's stricter State AAQS. Starting again with the language of the statute, we must initially doubt that State standards are "national" standards. Under the Deputy Solictor's contemporaneous interpretation, national standards are standards having nationwide application. California's standards, of course, apply only within California's boundaries. (Incidentally, although CARB has adopted AAQS having statewide application, it has authority to create a different set of AAQS for each of California's 14 air basins. Cal. Health and Safety Code, section 39606(b).) Furthermore, when Congress has wanted the Department to honor State air quality standards, it has said so expressly. See e.g., 43 U.S.C. 1712(c)(8) (Federal Land Policy and

Management Act). Nevertheless, "even the most basic general principles of statutory construction must yield to clear contrary evidence of legislative intent." *National RR Passenger Corp. v. National Ass'n of R.R. Passengers,* 414 U.S. 453, 458 (1974). So we must turn again to the legislative history "mindful that the plainer the language [of the statute], the more convincing contrary legislative history must be." *United States v. United States Steel Corporation,* 482 F. 2d 439, 444 (7th Cir. 1973).

Language requiring compliance with air quality standards first appeared in H.R. 1614. The bill required the Secretary of the Interior to issue regulations under section 5(a):

> (8) For compliance with any standard established by a State pursuant to the Clean Air Act to the extent that activities authorized under this Act affect the air quality of such State; and
>
> (9) For the establishment of air quality standards for operations on the Outer Continental Shelf under this Act.

H.R. Rep. No. 95–590, 95th Cong., 1st Sess. 9 (1977).

The House Report's commentary on proposed section 5(a)(8) suggested that the word "standard" could mean both an emission standard (a limit on what may be discharged from an individual pollution source) and an air quality standard (a concentration of a pollutant from all sources in a given volume of air). *Id.* at 133.

On January 31, 1978, however, Congressman Miller amended the proposed language, "after some counsel with [Representative Rogers] from the Committee on Interstate and Foreign Commerce, and with industry." 123 Cong. Rec. 1624 (1978) (remarks of Rep. Miller). His amendment was to require rules:

> (8) For compliance with the national ambient air quality standards or requirements pursuant to the Clean Air Act to the extent that activities authorized under this Act affect the air quality of any State; and
>
> (9) For the establishment of air quality standards for operations on the Outer Continental Shelf under this Act consistent with standards or requirements under the Clean Air Act. *Id.*

Representative Miller believed that OCS operations were not subject to the CAA. His reason for amending the language of section 5(a)(8) was:

> to clarify that we have the Secretary of the Interior administer this provision in accordance with the standards and requirements of the Clean Air Act. [This is] * * * so we do not have the strange situation where, 3 miles outside the jurisdiction of EPA, [lessees] cause pollution which does not allow for the development of onshore facilities you need to develop the Outer Continental Shelf. *Id.*

The Miller Amendment clarified that the Secretary was not to focus on standards established by an affected State but rather on the Federal air quality standards. Perhaps more importantly, it stressed that the Secretary's regulations were to be consistent with the CAA. The floor debate and the Conference Committee Report show this convincingly:

> [The Miller Amendment] would simply make the clean air requirements, as to State impacts, consistent with the present Clean Air Act. *Id.* (remarks of Rep. Murphy).
>
> [The Miller Amendment] will require the operation of the development of the Outer Continental Shelf and give us the facts, so that we do not disturb the intent of the Clean Air Act. *Id.* (remarks of Rep. Miller).
>
> [The Miller Amendment] is to assure that actions authorized by this act will be consistent with, and comply with, the Clean Air Act. It is my understanding that it merely clarifies that the Secretary's regulations assure compliance and consistency with national ambient air quality standards as well as all other Clean Air Act requirements. *Id.* at 1625 (remarks of Rep. Rogers).
>
> Specifically, the conferees intend that the Secretary of the Interior shall be guided by the Clean Air Act, in consultation with the Environmental Protection Agency, in promulgating regulations to maintain consistency with ambient air quality standards, and its procedures establishing the technological means for controlling air emissions. S. Rep. No. 95–1091, 95th Cong., 2d Sess. 86 (1978).

Because the phrase "compliance with the national ambient air quality standards" was ultimately enacted, our interpretation of section 5(a)(8) must be consistent with the way the CAA treats State AAQS. This is the light in which we must read the transcript of the Conference Committee hearing and the subsequent Report.

After reading these two documents, we think the conferees' purpose remains unclear. True, all agreed that the Secretary was to protect a State's stricter AAQS if they were somehow "in" the federally-approved SIP. S. Rep. No. 95–1091, 95th Cong., 2d Sess. 85 (1978). But why they wanted to protect these standards is open to debate. The most plausible reading of the hearing transcript is that most conferees believed the CAA *required* the protection of stricter State AAQS, if the State put them in its SIP. For example, Representative Miller, who stressed that his amendment required the Secretary to protect stricter State standards in a SIP, also said the standards in section 5(a)(8) were to be "no more stringent than the national Clean Air Act." Transcript of Conference on S. 9, p. 16 (June 19, 1978). Representative Hughes also noted his belief that the "standards are set by each particular State as part of [its] State implementation plan, so the EPA could not impose on Louisiana [the] stricter standard [of] California. Your plan in Louisiana would determine it." *Id.* at 20. Similarly, Representatives Breaux and Miller noted their belief that stricter State air quality standards "become the Clean Air Act for that area." *Id.* at 28.

If the conferees' belief were true, we would find the legislative history clearly to require the Secretary to protect stricter AAQS, provided they were "in" the SIP. However, their belief was false. The CAA gives no special treatment to a State's stricter AAQS, only to a State's stricter emission standards. Consequently, we are unsure whether to follow the Conference Committee Report's directive to be consistent with the CAA or the Report's directive to protect State AAQS. With no clear contrary legislative history, we must follow the language of the statute.

The CAA's treatment of State AAQS is not an easy point to grasp, so we will discuss it more thoroughly. To begin with, we observe that the AAQS, whether State or Federal, are not really "in" the SIP required by the CAA. A SIP is to contain emission limitations, transportation controls, and permit and enforcement programs. 42 U.S.C. 7410(a)(2). These are methods to achieve the Federal standard for air quality. The plan contains the methods only, not the goals. See Currie, "Federal Air-Quality Standards and Their Implementation," 1976 Am. Bar. Foun. Res. J. 365, 399–400 ("It is clear, on the other hand, that the air-quality standards themselves are not directly enforceable even by the EPA, although a plan provision outlawing emission that violate them is; for they are not 'requirement[s] of an applicable implementation plan.' ")

Nor are we niggling over the contents of a SIP because, in a more important sense, a State's stricter AAQS do not "become the Clean Air Act for that area." A State is permitted to adopt stricter emission limitations than are needed to meet the Federal air quality standards on time. 42 U.S.C. 7416. A State could have more than one reason for doing so. It might wish to attain the Federal standards sooner than required, or it might want to attain its own AAQS. See Union Electric Co. v. EPA, 427 U.S. 246, 265 (1976). Whatever the State's purpose, EPA has no official interest.

When approving a plan, EPA looks to see whether it shows "reasonable further progress" toward meeting the

NAAQS, not State AAQS. 42 U.S.C. 7502(a) and (b)(3). When reviewing the "attainment status designation" of an area, EPA looks to see whether the relevant NAAQS have been violated, not the State AAQS. For example, EPA recently redesignated western San Diego County, California, as an attainment area for nitrogen dioxide (NO_2). The county had not violated the Federal (NO_2) standard for the past 2 years. Violations of California's stricter (NO_2) standard had no bearing on EPA's decision. 46 FR 37896 (1981). Finally, when deciding whether Federal grants are to be cut off, EPA looks to see only whether the State has met the NAAQS. 42 U.S.C. 7506(a). In short, a State cannot be penalized under the CAA for failing to achieve its stricter AAQS.

On the other hand, a State can be affected under the CAA if it puts stricter-than-necessary emissions standards in its SIP. If EPA finds that a State is not enforcing its SIP, EPA may assume enforcement. 42 U.S.C. 7413. If it does, EPA will enforce the emissions standards in the SIP, even though they are stricter than needed to achieve Federal air quality standards. However, the goal of enforcement is still only to assure compliance with Federal standards. Whether an area's air meets CAA requirements is still based on NAAQS. See letter of Darryl D. Tyler, Acting Director, Control Programs Development Division, Office of Air Quality Planning and Standards, EPA, to Robert L. Rioux, Deputy Division Chief, Offshore Minerals Regulation, Conservation Division, USGS (Sept. 4, 1981).

Other evidence shows that the CAA does not require protection of stricter State AAQS. Persuasive on this point is the position taken by EPA in its April 18, 1978, Notice. There EPA tried to assert authority to regulate air pollution from OCS facilities. Its goal was to protect the coastal State's efforts to meet the NAAQS.

> EPA has determined, moreover, that application of the applicable State implementation plan to exploration and production facilities located on the Outer Continental Shelf is necessary to assure that national ambient air quality standards can be achieved in those areas presently classified as nonattainment areas. Unless regulated, emissions of air pollutants from sources located on the OCS will adversely impact air quality in such areas by adding additional pollutants to areas where air quality is presently worse than national ambient air quality standards. 43 FR 16397 (1978).

Our interpretation, then, is consistent with EPA's rationale for trying to apply the CAA offshore.

Most persuasive is that our intepretation of section 5(a)(8) is consistent with the way the CAA treats air pollution across State lines. No State is required to protect the more stringent AAQS of its neighbor. All it must do is keep its polluters from preventing "attainment or maintenance by any other State of any such *national* primary or secondary ambient air quality standard" or from interfering with the neighboring State's plan to prevent "significant deterioration of air quality." 42 U.S.C. 7410(a)(2)(E)(i). (Emphasis added.) A Nevada plant, located 100 yards from California, is regulated only to the degree necessary to help California meet and maintain the NAAQS. See 42 U.S.C. 7426 (a) and (c).

Our analysis of the language of the statute would worry us if we were being faithless to the policy behind the statute, but we believe we are honoring it. The problem section 5(a)(8) was designed to solve was explained by Representative Miller during the House debate and the Conference Committee hearing. He believed the CAA did not apply to OCS operations, and that without controls, OCS lessees would so pollute California's air that California's coastal region could never attain the national standards:

> In the committee bill, the Committee included an amendment which I sponsored to make sure that the development of the Outer Continental Shelf did not interfer with the air quality of onshore areas. We have a situation in California where prevailing winds take the emissions from the Outer Continental Shelf and blow it on shore, thereby raising the air pollution on shore and *prohibiting new development* in the State of California. 124 Cong. Rec. 1624 (1978) (remarks of Rep. Miller). [Emphasis added.]
>
> We find ourselves in a situation now where development on the Outer Continetal Shelf, if improperly done, due to prevailing winds and atmospheric conditions, could cause an increase in on-shore pollution, if you will, and then *halt further on-shore development*, be it related to the OCS or simply the matter of increased housing, industry or manufacturing, or what will you, because of the off-shore pollution coming on shore.
>
> We find that we have now created an economic problem, at a minimum, plus perhaps an increased health and environmental problem, if you will. Transcript of Conference on S. 9, pp. 10–11 (June 19, 1978) (remarks of Rep. Miller). [Emphasis added.]

Representative Miller's reference to a possible "health and environmental problem" most likely meant that if OCS operations kept the California coast from attaining the national primary and secondary standards, then that area would be considered under the CAA to have unhealthy air. His principal concern was that emissions from OCS facilities would prohibit onshore development.

Having reviewed the CAA and California's Health and Safety Code, we find that only the CAA has provisions prohibiting onshore development. That Act gives States until 1982, or 1987 for photochemical oxidants and carbon monoxide in certain areas, to meet the NAAQS. 42 U.S.C. 7502(a). The consequences of failure are harsh: "Existing sources of pollutants either should meet the standard of the law or [should] be closed down * * *." S. Rep. No. 1196, 91st Cong., 2d Sess. 3 (1970). Even before the deadline draws near, the CAA places other bans on new development. In a nonattainment area, no one may build or modify a major stationary source unless the SIP shows "reasonable further progress" toward meeting Federal standards. 42 U.S.C. 7502. In an attainment area, new development generally will stop once sources have used up "maximum allowable increases over baseline concentrations of" the given pollutant. 42 U.S.C. 7473(a). To repeat, these provisions enforce Federal, not State, AAQS.

We find no comparable bans or sanctions protecting State AAQS under California law. The California statutes generally do not set deadlines for attaining State standards. Air pollution control districts are to make "reasonable provision" to achieve State standards, and the basinwide air pollution control plan is to achieve those standards "within a reasonable time." Cal. Health and Safety Code, sections 40001 and 41601. Where California has required a district to set a deadline for achieving State AAQS, as in the South Coast Air Basin, the deadline may be revised from time to time, as long as "furture growth and development within the South Coast Air Basin are to the maximum extent feasible, consistent with the goal of achieving and maintaining the air quality standards." Cal. Health and Safety Code, section 40462. The deadline is to be the earliest date the State standards can be achieved "by the application of all reasonably available control measures and technologies"—language which also suggests the deadline may be revised by authorities in the basin. *Id.* Additionally, although CARB has broad supervisory authority over the manner in which local districts try to achieve State standards, it apparently cannot prohibit growth within a district. It may withhold "subvention money" from a district if the district is not "actively and effectively engaged in the reduction of air contaminants" under the basinwide

control plan. Cal Health and Safety Code, section 39806. But it apparently could not cut off these funds if the district's failure were caused by sources of pollution outside its control. See 17 Cal. Admin. Code, section 90155 (1977).

Of course, if California were to adopt today a set of prohibitions like those in the CAA, it would not change our analysis. Congress required the Secretary to be consistent with CAA standards only. That a State may independently enforce its own AAQS does not bind the Secretary under the OCSLA. We reviewed California law for a different reason. It reinforces our conclusion that, when speaking of probibiting new onshore development in 1978, Representative Miller was referring to CAA prohibitions, not to State law prohibitions.

3. Effect of California Senate Bill 815

Even if we have misread the intent of Congress in section 5(a)(8), the Secretary need not publish special rules for operations off California's coast. California's federally-required implementation plan is not being used to achieve stricter State AAQS.

Under State law, the CARB is responsible for perparing the implementaton plan required by the CAA. However, effective September 19, 1979, "the state implementation plan shall only include those provisions necessary to meet the requirements of the Clean Air Act." Cal. Health and Safety Code, section 39602. In our March 7, 1980, notice, we asked for comments on the meaning of this law. Industry commenters argued it prevents CARB from using the implemention plan to achieve stricter State AAQS. While California did not deny this, it replied:

> Insofar as S.B. 815 may be relevant to this question, it is anomalous if not totally absurd to think that the California legislature, by limiting the provisions that may be included in the SIP, intended to also prevent the Department from protecting California's ambient air quality standards. Such a result is totally inconsistent with California's long-standing and comprehensive air regulatory program; it should be rejected out of hand.

We think this comment misses the point. Assuming the Conference Committee Report's remark on stricter State AAQS accurately states the intent of Congress, the most the Secretary must do is protect State AAQS that are somehow "in" the federally-approved implementation plan. If California is not using its federally-approved plan to achieve its own standards, the Secretary is not obliged to help.

A more recent enactment of the California Legislature persuades us that industry commenters are right. New sections 40460 through 40470 govern the development of the State-required air quality management plan and the federally-required SIP for the South Coast Air Basin. As it did in Senate Bill 815, the California Legislature said "the state impementation plan for the air basin shall only include those provisions necessary to meet the requirements of the Clean Air Act." Cal. Health and Safety Code, section 40460(d). Here, however, the Legislature clarified what this means for the development of the SIP:

> With the active participation of the Southern California Assocation of Governments, a South Coast Air Basin emission carrying capacity for each State and Federal ambient air quality standard shall be established by the south coast district board for each formal review of the plan consistent with subdivision (a) and shall be updated to reflect new data and modeling results. A carrying capacity is the maximum level of emissions which would enable the attainment and maintenance of an ambient air quality standard for a pollutant. Emission carrying capacity for State standards shall not be a part of the State implementation plan requirements of the Clean Air Act of the South Coast Air Basin. Section 40463(b).

The emission carrying capacity is used to determine what emission limitations are needed to achieve the AAQS for each pollutant. Because of section 40463(b), the South Coast Air Basin will have separate emission limitations for State and Federal standards, and only those needed to meet the Federal standards will be put in the SIP.

4. Effect of Section 176(c) of the Clean Air Act

The EPA commented that "Congress intended that the section 176(c) conformity requirements should apply to GS approval of OCS exploration, [and] development and production plans affecting California and other coastal states." EPA recommended that our rule create a procedure for making findings of conformity. Section 176(c) says:

> No department * * * of the Federal Government shall * * * (3) license or permit, or (4) approve, any activity which does not conform to a plan after it has been approved or promulgated under section 7410 of this title [section 110 of this Act] * * *. The assurance of conformity to such plan shall be an affirmative responsibility of the head of such department. 42 U.S.C. 7506(c).

EPA's view is based on a remark in the Senate Report on the CAA Amendments of 1977, commenting on language substantially similar to section 176(c):

> The requirement that Federal licenses, permits, and other activities must conform to implementation plans may be one of the most important in assuring the eventual attainment of the ambient standards. Without the ability of a State or local planning agency to consider and provide for control of emissions from Federally licensed activities such as Outer Continental Shelf oil or gas leasing, it would be considerably more difficult for some areas to attain the oxidant standards. A Legislative History of the Clean Air Act Amendments of 1977, 95th Cong., 1st Sess. 1414–15 (Comm. print 1978) (Volume 3.)

Nothing in the statute suggests, however, that these words of sympathy became law. Section 176(c) does not apply to permits for oil and gas operations on the OSC; it applies only to activities located within the State of California. For federally-approved activity to conform to a SIP, the activity must be located within the boundaries of the State.

For example, if a federally-approved activity to be located in California will pollute Nevada's air, section 176(c) requires it conform to California's plan, not Nevada's. See 42 U.S.C. 7410(a)(2)(E) and 7426.

The language of section 110 amplifies this point. Under that section, the State asserts its authority over air quality through its SIP. However, the State is limited to controlling sources within its borders. Section 110(a)(1) authorizes the State to enforce primary and secondary standards "in each air quality control region (or portion thereof) *within* such State." 42 U.S.C. 7410(a)(1). (Emphasis added.) Similarly, section 110(a)(2)(D) says the State must enforce emission limitations and regulate stationary sources "within such air quality control region. "42 U.S.C. 7410(a)(2)(D). Section 110(a)(2)(E) requires the State to prevent "any stationary source within the State" from polluting in amounts which would prevent any other State from meeting national air quality standards. 42 U.S.C. 7410(a)(2)(E).

The language of the CAA is not the only proof that section 176 is inapplicable. The Ninth Circuit has found a conflict between the OCSLA and the CAA and has ruled that the OCSLA prevails. In *California v. Kleppe*, 604 F.2d 1187 (9th Cir. 1979), the issue was whether EPA's new source review rules applied to Exxon's proposed offshore storage and treatment facility in the Santa Barbara Channel. The Court ruled that the Secretary of the Interior has exclusive authority to regulate emissions of air pollutants from OCS facilities. *Id.* at 1199. Neither EPA nor a coastal State could use section 176(c) to force the Secretary to comply with a SIP, for to do so would conflict directly with the Secretary's authority. As the Court observed in Kleppe:

* * * the EPA determined that SIP's are incorporated by the OCSLA and that the NSR and PSD provisions for certain districts in the California plan * * * should apply to [Exxon's] Platform Hondo. Thus, under the EPA's view, SIP's are the "basic mechanisms" for protecting United States air quality * * *. In contrast, the rules proposed by the Secretary * * * do not originate in individual SIP's. Rather, they propose a regulatory scheme wholly independent of them * * *. The potential for confusion and conflict is clear. *Id.* at 1194.

EPA cannot require an OCS operation to conform to a SIP. A coastal State cannot have more authority under the CAA than EPA has. So we must respectfully disagree with EPA's reading of section 176(c). See also Transcript of Conference on S. 9. at 27 (remarks of Counsel Belsky). (Concerning State authority over the OCS under the CAA, he noted, "these activities are occurring outside their jurisdiction; section 116 provides for activities occurring within their jurisdiction.")

5. Significance Levels

In the proposed California rules, the Department proposed significance levels for California which were more stringent than the significance levels in the nationwide rules. 30 CFR 250.57–1(e). These "California" significance levels were derived from the California AAQS such that they were equivalent, on a percentage basis, with the relationship between the nationwide rule significance levels and the NAAQS. 45 FR 15147 (1980). In the preamble to the nationwide rules, the Department outlined its rationale for adopting the nationwide significance levels, stating that the levels were adopted from those significance levels used in the EPA Emission Offset Interpretive Ruling. 44 FR 3283 (1979).

Most commenters were opposed to the significance levels proposed by the Department for California; however, reasons for opposition varied widely. California State and local Governments and citizen groups opposed the concept of significance levels which were related to pollutant concentrations. They maintained that any increase in a nonattainment pollutant was significant and must be controlled. They stated that virtually all emissions within 70 miles of the California coast (defined by California as the California coastal waters) are transported onshore and should be completely controlled.

Finally, industry commenters in comments for this and earlier rulemaking, which they incorporated into their comments, continues to dispute the California claim that all OCS emissions within the California coastal waters would come onshore. They stated, that based on an industry study, offshore airflow travels parallel to the coastline. They also stated that CARB had performed a series of offshore tracer tests several years ago, but that CARB had never released the test results to confirm or deny any adverse impact of OCS activities on onshore California.

California stated that the situation addressed by the EPA ruling was not analogous for OCS activities and that the EPA requirements were not appropriate to apply to OCS activities. California reasoned that the EPA significance levels applied only to sources locating attainment areas, and that pollutant concentrations on the OCS offshore of Southern California often exceed Federal standards. Thus, the California OCS would be classified as nonattainment, such as for ozone, if attainment status classification were done. California did note that "these violations are to a large extent due to winds transporting pollutants from inland areas over OCS waters."

The Department still maintains that the criterion for significance should be based, to the extent possible, on pollutant concentration levels that are deemed to be insignificant. The OCSLA requires that DOI prescribe rules for compliance with the NAAQS. The NAAQS are concentrations, not emission rates, which protect the public health and welfare; thus, any impact should be measured in terms of concentrations, not emission rates. Even if all OCS emissions within the California coastal waters were to come onshore, as asserted by California, the pollutants will contribute to the onshore concentrations only after being diluted in the atmosphere over the distance of travel from the source to the measurement location. The effects of this dilution on the resulting concentration attributable to the OCS facilities must be considered when determining impacts concerning the NAAQS.

EPA recognized this principle when it initially proposed the significance levels in its Emission Offset Interpretive Ruling. 44 FR 3274 (1979). EPA developed the significance levels to quantify the incremental level of pollution that would be considered as contributing to an existing violation of a NAAQS. EPA stated that the significance levels applied when a major source was located in a "clean" area, but would impact an area that exceeds the NAAQS some distance away. The situation was analogous to that faced by the Department in determining "significant affect," that is, a source in one area impacting the air quality of a second area. If EPA determined that such a contribution would not impede a nonattainment area from attaining the NAAQS, then, likewise, OCS facilities with emissions that result in onshore concentrations less than those significance levels will not impede an onshore area from attaining or maintaining the NAAQS.

We disagree with California's statement that the offset policy significance levels were not appropriate because the Pacific OCS would be a nonattainment area. DOI's mandate from Congress was to prescribe regulations such that emissions from OCS facilities did not significantly affect the onshore air quality of any State. It did not require that the air above the OCS meet the NAAQS. Because, as admitted by California, the concentrations exceeding the NAAQS which occur over the OCS are caused by onshore emissions transported offshore, California has within its own power the ability to control the onshore emissions and "prevent violations of the NAAQS" on the OCS. Regardless, the determination for significance must be based on onshore concentrations, and the DOI test for significance is no different than that used by EPA for nonattainment areas by the Emission Offset Interpretive Ruling.

Another commenter stated that many coastal area nonattainment plans (NAP's), required by the CAA to aid a State to bring a nonattainment area into attainment, did not consider OCS emissions and, even so, could not demonstrate attainment with the NAAQS. They stated that such NAP's clearly could not demonstrate compliance if OCS emissions were considered.

Although in its comments for this and earlier rulemaking, which it incorporated into its comments, California repeatedly has stated that virtually any increase in a nonattainment pollutant is significant; it has not presented any studies as evidence that the nationwide rules will prevent the State from attaining and maintaining the NAAQS. Likewise, no evidence has been offered by any control district showing that consideration of OCS sources in a NAP would appreciably alter the NAP.

Industry commenters maintained that the significance levels chosen by the Department for the nationwide rules were overly stringent in themselves, and the more stringent California levels were totally inappropriate. They stated that the concentration levels allowed by the significance levels are much lower than those concentrations from onshore sources which emit an amount of a

pollutant just under the amount allowed by onshore air pollution control districts. For example, the California New Source Review model rule exempts from review sources which emit less than 250 pounds per day (ppd) of a pollutant. Such an onshore source with 250 ppd emissions would cause a pollutant concentration many times longer than the DOI–EPA significance levels; that is, such a source would be subject to control if it were an OCS facility but would not be controlled as an onshore facility. They state that the California districts did not consider such higher concentrations from exempt sources as significant enough to require review.

One industry commenter stated that the 2 percent of the NAAQS chosen by the EPA to derive the significance levels was arbitrary and ultra-conservative. Several commenters stated that use of significance levels assumes that all onshore areas are nonattainment or Class I areas. The Western Oil and Gas Association (WOGA) maintained that, if one accepted the use of the significance levels, only one set of significance levels should apply to the entire country. It stated that only the EPA significance levels should be used because they have been defined by EPA as being the minimum amount of impact that is significant. WOGA reiterated its comments from the nationwide rules that the EPA significance levels themselves were so low that pollutants at such concentrations could not be measured by monitoring equipment and that they were within the natural background variability of the pollutants. WOGA further stated that, if USGS believed that special significance levels should be made for California, those levels should be based on the maximum ground-level concentration caused by an onshore facility emitting 46 tons per year (tpy) of a pollutant, with source characteristics similar to OCS facilities.

Most of the industry comments concerning the EPA significance levels were addressed in the preamble to the nationwide rules. 45 FR 15131 (1980). Because the Department has decided to ensure attainment and maintenance of the NAAQS and not of the California AAQS, the Department agrees that only one set of significance levels should apply to the entire country. However, if in the future the Department were to decide to ensure maintenance of State AAQS, then it may be proper to relate the determination of significance to those State standards.

6. Exemption Formula

The nationwide rules contain two exception formulas which are used to "screen out" from the the review process those facilities which would not significantly affect the onshore air quality of a State. 30 CFR 250.57–1(d). The formulas exempt facilities based on a relationship between the amount of a pollutant emitted and the distance of the facility from shore, such that facilities closer to shore can emit a lesser amount of a pollutant than the facilities further from shore. Because the Department used the EPA significance levels as the criteria for a significant onshore impact, the formulas were derived considering the amount of emissions that would result in onshore concentrations equal to the significance levels and considering the atmospheric dilution that the emitted pollutants would undergo. 45 FR 15129 (1980).

In the proposed California rules, the Department proposed an exemption formula for California for pollutants other than carbon monoxide (CO) which was twice as stringent as that in the nationwide rule. For example, a facility 3 miles off California would be exempt only if it emitted less than 46 tpy. A facility 3 miles offshore any other State would be exempt if it emitted up to 100 tpy.

The Department maintains that the nationwide rule exemption formulas are sufficient to "screen out" those OCS facilities which will not cause significant onshore impacts as defined by the EPA significance levels. The Department derivation of the exemption formulas is described in a USGS Files Note (*Emission Amount v. Offshore Distance Exemption Formula,* J. Goll, April 21, 1980) and in the preamble to the nationwide rules. 45 FR 15129, (1980). Following is a summary of the Files Note.

The Department adopted the exemption formula based on a suggestion from EPA to develop an offshore distance emission amount relationship based on the EPA significance level concentrations. Letter from W. N. Hedeman, Jr., EPA, to the Chief, Conservation Division, USGS, June 9, 1979. The Department chose emission source characteristics and meteorological conditions that tended to maximize, or overestimate, onshore concentrations. Use of these assumptions reasonably ensured that emissions from a facility deemed exempt by the formula would not cause a significant onshore impact, as defined by the significance levels.

To derive the formulas, the Department assumed a pollutant plume height of 50 meters above water level and chose reasonably stable atmospheric conditions with low windspeeds. The meteorological conditions chosen varied with the averaging periods of the significance levels. The Department assumed that all NO_x was converted to NO_2 by the time the pollutant reached the shoreline. The Files Note discusses the limitations of these assumptions with regard to the effect of choosing other plume heights and other meteorological conditions.

For each significance level, i.e., combination of pollutant and averaging period, the Department derived an emission amount versus distance curve. Except for CO, the curves produced about the same results for each pollutant-averaging period combination. The Department chose one line to represent all of the curves and, to keep the formula simple, made the formula linear (a straight-line relationship) such that at 3 miles the exemption amount would be 100 tpy (equivalent to the CAA definition of a major stationary source in a nonattainment area). A separate formula was derived for CO.

California State and local Governments and citizen group commenters stated that the exemption formula proposed for California was invalid and should be revised or discarded. Several commenters stated that an emission limit of 46 tpy should be used regardless of offshore distance. California stated that both the nationwide rule and proposed rule formulas had two major deficiencies: (1) That the formulas were based on the incorrect premise that there is a linear decrease in onshore pollutant concentrations based on distance from shore of an emissions source; and (2) that use of the formulas would exempt facilities that could cause onshore concentrations above the significance levels. The State provided two CARB studies to demonstrate these points.

With regard to the California statement that the formula should not be linear, the Department found, as did California, that for a particular set of meteorological conditions the formula of emission amount versus distance is not linear. However, to keep the non-CO nationwide formula simple, the Department used on line to represent the family of curves. California also stated that exempt sources may exceed by a wide margin several significance levels for both the nationwide and proposed California rules. The Department could not duplicate the California calculations, although it used the assumptions and equations outlined by CARB. Using the California assumptions, the Department calculated values four times lower than the CARB values, and the significance levels were not exceeded except for the 1-hour NO_2 values and the 3-hour SO_2

values using the California case assumptions of Class F Stability, a windspeed of 2 meters per second, and onshore fumigation of the plume (meteorological conditions that usually cause high ground-level concentrations from an elevated plume). The fumigation assumption was more conservative than the assumptions used by the Department to derive the formula. It is unlikely that plumes frequently will fumigate continuously over the same location because, as the wind direction and solar heating change, the ground location of plume fumigation will move.

California and several other commenters also stated that any exemption formula must consider the special meteorological conditions off California. The Department did consider the meteorological conditions of the California coastal area when developing the formula by reviewing meteorological data observed at 10 California coastal locations.

California stated that the formula should be in terms of daily, rather than annual, emissions which would be more consistent with several air quality standards, and that it should be based on a rate of 150 ppd rather than 250 ppd. (250 ppd is equivalent to the 46 tpy limit at 3 miles in the proposed California rule.)

As noted in the USGS Files Note, the formula was not based on annual averages only but was based also on averaging periods of 1, 3, 8, and 24 hours for which the significance levels are defined. Normally, emission rates from OCS facilities are relatively constant with few extreme changes. To safeguard that extreme short-term emissions do not cause onshore problems, a lessee must present a frequency distribution of total emissions from the facility expressed in pounds per day in each development and production plan. 30 CFR 250.34–3(b)(4)(ii)(A). In reviewing lessee plans, the USGS assesses these distributions to determine whether and how often short-term emissions could cause significant impacts. See "Ozone/Volatile Organic Compounds" for a discussion on such reviews.

Several commenters stated that the linear formula was totally inappropriate when dealing with complex photochemical pollutants and VOC emissions. The Department considers that use of the linear exemption formula is appropriate for VOC emissions, when considered in the context of the full regulatory program. See "Ozone/Volatile Organic Compounds" for a further discussion of this issue.

Industry commenters stated that the exemption formulas in the nationwide rules were ultraconservative and, thus, the stricter formula proposed for California was unnecessary. Several commenters critiqued the USGS assumptions used to derive the nationwide formula and showed that the nationwide formula was more than sufficient to protect the California AAQS. The commenters stated that the USGS used unrealistic assumptions for pollutant plume rise, windspeed and direction, atmospheric stability, overwater dispersion, and conversion of NO_x to NO_2.

The Department disagrees with these comments which state that the assumptions on which the exemption formulas were based were ultraconservative and unrealistic. The USGS Files Note on the formula derivation explains the realism of many of the assumptions, such as plume rise, overwater dispersion, and atmospheric stability. The Department used assumptions that maximized impacts reasonably. Worse source and meteorological conditions could have been postulated. BLM is sponsoring a series of atmospheric tracer tests on the OCS off California to determine the validity of using present day air quality models for OCS air quality evaluations. As these and other experiments are completed, more knowledge on overwater dispersion will be gained and used by the Department to evaluate the rules.

With regard to the industry comment on conversion of NO_x to NO_2, the Department has evaluated the assumption that all NO_x is converted immediately to NO_2. Using the EPA technique (Cole, H. S. and J. E. Summerhays, "A Review of Techniques Available for Estimating Short-Term NO_2 Concentrations," JAPCA, Vol 29, No. 8, p. 812, August 1979) cited in the WOGA comments, the Department determined that for ozone concentrations ranging from 2 to 25 parts per hundred million (pphm) (reasonably expected ozone concentrations), all NO_x would be converted to NO_2 by the time that the pollutant from an OCS facility reached the shoreline. The industry commenters maintained that the exemption formula should be based on significance levels equivalent to the onshore impact of onshore sources emitting 100 tpy (or 46 tpy if special rules are adopted for California). They proposed both nationwide and California formulas which allowed about two and one-half times more emissions than the DOI formulas.

The Department discussed the concept of basing the exemption formula on a significance level equivalent to the onshore impact of an onshore source (whether emitting 46 or 100 tpy) in the preamble to the nationwide rules at 45 FR 15129 and 15131 (1980).

7. Ozone/Volatile Organic Compounds

Both the nationwide and proposed California rules state that the projected emissions of VOC from any facility which is not exempt by the exemption formula are deemed to significantly affect the air quality of the onshore area for VOC. 45 FR 15131 (1980) and 30 CFR 250.57–1(f)(2). Several commenters stated that the linear exemption formula is not applicable to VOC because VOC-ozone relationships are not linear.

The Department considers that the approach in the nationwide rules to control VOC emissions is sufficient to prevent significant effects on onshore ozone concentrations. This approach considers the exemption formula, the cumulative impact provisions in the rules, and the causes of large VOC emissions from OCS activities.

Ozone formation is complex, involving numerous pollutants, chemical reaction rates, concentration ratios, and attendant meteorological conditions. As summarized in the Report of the Photochemical Oxidant Panel to the National Commission on Air Quality (NCAQ) (1980), it is generally accepted that control of hydrocarbons, of which VOC are a part, will tend to reduce ozone levels. Thus, EPA has required VOC controls in areas classified as nonattainment for ozone. NO_x also contributes to ozone concentrations, but in a much less certain manner, sometimes causing higher ozone concentrations and sometimes actually reducing ozone concentrations. The NCAQ panel was less certain on NO_x controls for ozone. They considered that reasonable control levels were advisable, but recognized the technical difficulties, expense, and energy penalties associated with NO_x controls. EPA generally does not require NO_x controls to reduce ozone, but does not discourage them. See, for example, 46 FR 5972 (1981).

Power generation equipment is usually the major source of VOC emissions from OCS facilities, but these emissions generally are small. Emission inventories of existing and projected facilities on the OCS off California show that less than 60 tons of VOC are emitted each year from each facility. This amount is less than the 100 tpy that the CAA defines as a major stationary source in a nonattainment area. For example, Platforms Elly (Beta), Gilda, Habitat, and Gina are projected to emit about 50, 45, 2, and 2 tpy of VOC, respectively.

The only situation for which larger amounts of VOC will occur are those facilities from which oil will be barged. Uncontrolled VOC emissions from barging would be relatively high over a short period of time. For example, uncontrolled VOC emissions while loading the shuttle tankers at the Exxon Hondo Offshore Storage and Treating Vessel (OS&T) were projected to be 6 tons for a 7-hour loading every 6 days (about 360 tpy). Exxon has installed controls on the OS&T and tankers to reduce the VOC emissions to 120 pounds per loading. Although the total annual amount of uncontrolled VOC emissions from barging could be less than that exempted by the exemption formula, the short-term high rate of emissions greatly exceeds the usual steady rate of emissions assumed in the exemption formula, and such VOC emissions might cause an adverse onshore impact.

The nationwide rules contain provisions to ensure that this potentiality is addressed. For all development and production plans, lessees must submit the frequency distribution of total emissions by air pollutant expressed in ppd. 30 CFR 250.34–3(b)(4)(ii)(A). The USGS reviews this information to determine whether facility emissions are relatively constant in rate or frequently occur at higher rates, such as would be evident from vessel loading. If the USGS determines, considering the frequency and amount of these high-rate emissions, that short-term emissions might significantly affect the air quality of an onshore area, then the USGS would require more information from the lessee and could require controls for the facility through 30 CFR 250.57–1(j). The affected State would be consulted as required in 30 CFR 250–34. Because rules cannot be written to cover every eventuality, decisions for cases of this nature must be on a case-by-case basis. However, the USGS likely will require VOC emission controls on facilities which use vessels to transport production and which are located in areas highlighted by the BLM California air quality studies as having potential adverse OCS-caused onshore ozone impacts.

The BLM California air quality studies included photochemical modeling to assess onshore ozone impacts attributable to OCS activities. The modeling used realistic worst-case assumptions; therefore, it is unlikely that the modeled results will underpredict actual concentrations from future development. The modeling consists of estimating changes of ozone concentrations in a parcel of air which, to maximize impacts, was modeled to pass over several OCS facilities before reaching shore. Most parcels were modeled to pass over at least one OS&T at which vessel loading of oil was occurring.

The majority of the 30 cases modeled showed that ozone impacts would be very small when compared with ozone concentrations without OCS development. Most of the modeling for OCS Sale No. 53 assumed no control of VOC emissions and, thus, did not reflect the reductions required by the DOI rules. Five of these cases showed that ozone could increase by 2 to 3 pphm, and three of these cases might contribute to, or cause new, ozone standard violations if all of the modeling assumptions were to occur (the Nipomo, Santa Ynez, and Bay Area 4 trajectories). (The NAAQS for ozone is 12 pphm.) The OCS Sale No. 68 study, which considered the minimum amount of controls that could be required by the DOI air quality rules, included the cumulative impacts from all OCS activities existing and projected for southern California. Only one case showed impacts of 2 pphm (the South Coast 2A trajectory). Most cases showed no increase in ozone levels and several showed decreases.

Present day photochemical models have several shortcomings because of the chemical, physical, and meteorological complexities involved in understanding ozone formation. They cannot predict exact results but can be used to indicate the trend of what may happen. Thus, the BLM California air quality studies are important in showing that the dominant trend is that most of the projected activity on the OCS will not cause adverse onshore ozone impacts. However, the studies do highlight that, in several areas, increases in ozone concentrations might occur if OCS and onshore growth occur as projected and that VOC controls may be needed.

To date, California has offered no modeling evidence to the Department to show that a regulatory program more stringent that the DOI/USGS nationwide rules is needed to ensure that OCS facilities do not cause adverse onshore ozone impacts. The OCSLA requires that the Department control only those emissions that are causing a significant onshore problem. As noted by the BLM California air quality studies, most OCS sources cause imperceptible impacts. Control of these sources would be unreasonable and have no effect on maintaining or improving onshore air quality. (Also, see "Cumulative Impacts.") The nationwide rules contain sufficient provisions to address and mitigate any potential ozone problems, whether caused by short-term or cumulative emissions.

Several commenters also stated that NO_x should be considered as a precursor to ozone. The Department of course agrees that NO_x is part of the chemical chain in ozone formation. However, because NO_x controls do not always predictably reduce ozone concentrations, it considers that for OCS facilities only VOC emissions should be controlled as a measure to reduce ozone.

8. Cumulative Impacts

The preamble to the proposed California rules did not directly mention cumulative impacts. In the preamble to the nationwide rules, the Department stated that, in certain infrequent instances, emissions from several OCS facilities might interact to increase notably onshore pollutant concentrations, but the usual spacing of facilities made this unlikely. 45 FR 15135 (1980). To ensure that cumulative effects would be considered and regulated, § 250.57–1(j) was included in the nationwide rules.

In its comments, California disagreed with the overall approach taken by the Department for the nationwide and proposed California rules, stating that they were based on the impacts of single facilities. It stated that if cumulative impacts were not considered then the State might be unable to achieve the NAAQS in nonattainment areas of the State and the State would lose Federal assistance grants.

Although recognizing that the Department has included § 250.57–1(j) in the nationwide rules, several commenters stated that there were no assurances that the USGS would ever implement the provisions, that the burden of proof of a cumulative impact rests primarily with the State, that no criteria exist to determine what cases will be examined, and that the provision does not empower the USGS to require additional controls.

California restated its position that the prevailing meteorological conditions off the California coast and the close proximity of several proposed and existing facilities to each other could cause adverse cumulative onshore air quality impacts.

In its comments on the nationwide rules, which it incorporated into this rulemaking, California presented the results of a modeling study performed by its staff to show the potential of cumulative impacts. The study assumed nine facilities equivalent to the Beta

project, a large OCS facility, each with an emission rate equivalent to over 400 tons of NO_x per year and over 60 tons of SO_2 per year located between 3 and 5 miles from shore. Three facilities were assumed to be located at 3 miles from shore, three at 3.8 miles, and three at 4.4 miles. No alongshore spacing of the platforms was given. The maximum onshore hourly average ground-level concentration for NO_2 was 37 micrograms per cubic meter, and for SO_2 was 6 micrograms per cubic meter. These onshore concentrations represent less than 8 percent of the State 1-hour NO_2 standard and 0.5 percent of the State 1-hour SO_2 standard. California stated that this study clearly showed that cumulative impacts would occur.

The American Petroleum Institute (API) submitted a similar study in its comments on the nationwide rulemaking (which it incorporated into this rulemaking) on the cumulative impact issue. It assessed the impact of four platforms spaced at the corners of a 2-mile square. It stated that this represented the densest spacing of platforms based on 35 years of operations in the gulf coast area. Based on modeling using Gulf of Mexico data and 250 tons of NO_x per year per facility, the four facilities would produce annual average concentrations at 3 miles less than 1 microgram per cubic meter, the significance level value for NO_2. Further, it stated that building a multitude of small facilities (designed to emit less than the significance levels would allow and thus not needing controls) in place of one large facility (that would need controls because of the amount of emissions) was not economically feasible.

The Department based its determination that cumulative impacts would be rare, in part, on the California and API modeling studies. The California scenario of nine facilities the size of the large Beta project being located within 2 miles of each other is totally unreasonable, based on past OCS experience and future predicted development. The Shell portion of the Beta project will have 2 drilling platforms, with 60 wells and 2 drilling rigs each, and one production platform to develop the Beta unit, which consists of five 3-mile square lease tracts. A 60-well platform is among the largest on the OCS. Locating 540 wells on nine facilities within 21 miles is infeasible from a practical and economic standpoint.

In fact, the nationwide rules already have three safeguards to handle the cumulative impact problem of several facilities all located within the same area. The three safeguards are: (1) The Department definition of "facility," (2) the provisions of 30 CFR 250.57–1(j), and (3) consultation with the State required in 30 CFR 250.34.

First, the Department has defined "facility" such that multiple installations that are directly related to the production of oil or gas at a single site would be considered as a single facility. 30 CFR 250.2(zz). Thus, if a leaseholder proposed several platforms on a site emissions from the platforms would be totalled together to obtain the facility emissions on which controls would be based. For example, Platforms Ellen and Elly of the Shell Beta project are considered to be one facility. This approach reduces the number of "facilities" and causes emissions at a site to be combined.

Secondly, the Department considers that the provisions of 30 CFR 250.57–1(j) within the nationwide rules inherently ensure that cumulative impacts are considered and will enable California to achieve the NAAQS. As part of its regulatory responsibilities, USGS will periodically review the overall development off California to determine whether cumulative impacts are occurring. Thus, the burden of proof will not rest solely on California.

To assess the cumulative impact of non-VOC pollutants, USGS will track the actual growth of activities on the OCS and periodically use air quality models to assess the onshore impacts of the emissions. If emissions from a facility in combination with other facilities in the area significantly affect the air quality of an onshore area, the USGS will invoke the provisions of 30 CFR 250.57–1(j), request additional information from the lessee, and require emission control measures if they are necessary.

To assess cumulative ozone impacts, USGS will use the BLM California air quality studies as an indicator of potential problems. (See "Ozone/Volatile Organic Compounds.") Essentially, the studies have shown that the cumulative onshore ozone impact attributable to OCS activities is imperceptible, but the reports did note that there may be increases in a few locations if the assumptions of the modeling occur. USGS will monitor OCS development off California as it occurs and compare that to the modeled assumptions. If the actual development approaches or exceeds that assumed in the studies, then USGS will invoke the provisions of 30 CFR 250.57–1(j), request additional information from the lessee, and require emission controls if necessary.

Finally, 30 CFR 250.34 contains provisions by which the State is consulted on all development and production plans. This ensures that the USGS will be notified if a State considers that cumulative impact problems may occur. The USGS must consider State comments and respond in writing if it rejects any recommendations.

Based on information received in the rulemaking and in the publicly reviewed BLM California air quality studies, the Department still considers that cumulative impacts are highly unlikely and that air emissions from OCS facilities regulated by the nationwide rules will not prevent California from attaining the NAAQS. Although it apparently has performed modeling studies for its SIP, California has not submitted to the Department any modeling studies that show that emissions from OCS facilities, whether considered singlely or cumulatively under the nationwide rules, will prevent the State from attaining or maintaining the NAAQS.

99. Other Issues

The Department also received a limited number of comments on several other issues, such as definitions, modeling, monitoring, offsets, and emission factors. The Department considers that such comments were beyond the scope of this proposal and that the issues were discussed sufficiently in the preamble to the nationwide rules.

Environmental Impact, Regulatory Impact Analysis and Impact on Small Entities

The Department of the Interior has determined that withdrawal of these proposed rules does not constitute a major Federal action significantly affecting the quality of the human environment and that an environmental impact statement is not required. An environmental assessment and a finding of no significant impact have been prepared. The Department also has determined that withdrawal of these proposed rules is not a major action and does not require the preparation of a regulatory impact analysis under Executive Order 12291. Finally, the Department has determined that the withdrawal of these proposed rules will not have a significant economic effect on a substantial number of small entities and does not requre a small entity analysis under the Regulatory Flexibility Act.

Daniel N. Miller, Jr.,

Assistant Secretary of the Interior.

December 24, 1981.

Editorial Note.—This document was received at the Office of the Federal Register on April 12, 1982.

[FR Doc. 82–10427 Filed 4–15–82; 8:45 am]

BILLING CODE 4310–31–M

PANAMA CANAL COMMISSION

35 CFR Part 133

Tolls For Use of Canal; Proposed Revision

AGENCY: Panama Canal Commission.

ACTION: Advance notice of proposed rulemaking; request for comments; notice of public hearing.

SUMMARY: The Panama Canal Commission proposes an increase of approximately 9.8% in the rates of tolls for use of the Panama Canal, to become effective October 1, 1982. This advance notice of proposed rulemaking announces the availability from the Commission of an analysis showing the basis and justification for the proposed change, solicits written data, views, or arguments from interested parties, and sets a time and place for public hearing. The Commission anticipates that, beginning in Fiscal Year 1983, it will experience a significant loss of tolls revenue resulting from the diversion of Alaskan North Slope oil traffic from the Canal route to a trans-Panama oil pipeline scheduled to become operational in November 1982. The proposed increase is necessary to comply with the requirements of law that tolls be set to produce revenues sufficient to cover all costs of maintenance and operation of the Panama Canal, including capital for plant replacement and improvements.

DATES: Written comments must be received on or before May 20, 1982; public hearing, June 2, 1982, 10:00 a.m.; requests to present oral testimony or notice of intention, at the hearing, to present data supplementary to any material already submitted must be received on or before May 24, 1982.

ADDRESSES: Comments and requests to testify or present supplementary data at the hearing may be mailed to: Michael Rhode, Jr., Secretary, Panama Canal Commission, Rm. 312, Pennsylvania Bldg., 425 13th Street, NW., Washington, D.C. 20004; copies of the Commission's analysis showing the basis and justification for the proposed change are available from the Secretary (at the above address) or from the Office of Financial Management, Panama Canal Commission, Balboa Heights, Republic of Panama; the hearing will be held in *The Assembly Room, Sheraton-LaGuardia Hotel, 9–10 Grand Central Parkway, East Elmhurst, New York 11369.*

Oral presentations should be limited to 20 minutes. The content of the notice of appearance or intention to present supplementary data at the hearing is prescribed by sections 70.8 and 70.10 of the Revised Procedures for Changing Rules of Measurement of Rates of Tolls, published in 47 FR 8178 (1982).

FOR FURTHER INFORMATION CONTACT: Michael Rhode, Jr., (202) 724–0104.

SUPPLEMENTARY INFORMATION: Section 1602(b) of the Panama Canal Act of 1979, Pub. L. 96–70, 93 Stat. 489, requires that Canal tolls be prescribed at rates calculated to produce revenues to cover, as nearly as practicable, all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto, and capital for plant replacement, expansion and improvements. The rates of tolls for use of the Panama Canal were last increased on October 1, 1979. That increase, which averaged 29.3%, was necessitated by the need to compensate for the added cost imposed on Canal operations by the new treaty with the Republic of Panama. The rates placed in effect at that time have proven adequate to provide, in the aggregate, sufficient revenues to cover all operating and capital costs of the Canal in fiscal years 1980 and 1981, and should also be adequate to cover such costs in fiscal year 1982.

Starting in fiscal year 1983, however, the Canal will experience a substantial loss in toll revenues resulting from the diversion of Alaskan North Slope oil shipments from the Canal to a trans-Panama oil pipeline, which is scheduled to become operational in November 1982. In anticipation of the pending loss of this important segment of Canal revenues, Commission management has taken action over the last two years to both minimize costs and increase productivity. Efforts in this regard will continue and are reflected in cost estimates for fiscal year 1983. Despite this continuing and successful effort to reduce costs and increase efficiency, the loss of the North Slope oil trade revenues is so significant that, for the Canal to remain self-sufficient, a 9.8% toll rate increase will be required beginning October 1, 1982.

Section 1604 of the Panama Canal Act of 1979, Pub. L. 96–70, 93 Stat. 490, establishes the procedures that the Panama Canal Commission must follow in proposing a toll rate increase. Those procedures have been supplemented by recently adopted regulations, published in 47 FR 8176 (1982) (to be codified in 35 CFR Part 70), which, in addition, provide interested parties with instructions for participating in changes in the rates of tolls. The statute and regulation require this advance notice of proposed rulemaking in order for the Commission to announce the proposed change and afford interested parties an opportunity to submit written data, views or arguments and participate in a public hearing. A written analysis is also made available to the public showing the basis and justification for the change.

All pertinent data, views or arguments presented in writing, or orally at the hearing, will be considered, along with other relevant information, before the Commission publishes a notice of proposed rulemaking in the **Federal Register** and forwards a complete record and its final recommendation to the President of the United States. In considering the proposal, the President has authority to approve, disapprove, or modify any recommendation of the Commission. The final rule, approved and published by the President, shall be effective no earlier than 30 days from the date of publication in the **Federal Register.**

This advance notice of proposed rulemaking does not constitute a "major rule" as defined in Section 1(b) of Executive Order 12291, dated February 17, 1981. Analysis of the proposed toll increase indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) have a significant adverse effect 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.

An assessment of the environmental effect of the proposed increase in the rates of tolls concludes that the proposed increase will not have a significant effect on the quality of the human environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. Furthermore, the Regulatory Flexibility Act is inapplicable, since this regulation is one relating to "rates," or "practices relating" thereto (5 U.S.C. 601(2)).

List of Subjects in 35 CFR Part 133

Panama Canal, Vessels.

PART 133—TOLLS FOR USE OF CANAL

Accordingly, it is proposed that 35 CFR 133.1 be amended to read as follows:

§ 133.1 Rates of toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, $1.83 per net vessel ton of 100 cubic feet each of actual earning capacity—that is, the net tonnage determined in accordance with Part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, $1.46 per net vessel ton.

(c) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, $1.02 per ton of displacement.

Dated: April 14, 1982.

Michael Rhode, Jr.,

Secretary.

[FR Doc. 82-10537 Filed 4-15-82; 8:45 am]

BILLING CODE 3640-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2103-2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking; extension of comment period.

DATE: Comments on the sulfur dioxide (SO_2) and ozone revisions to the Indiana State Implementation Plan (SIP) and on EPA's proposed action must be received by May 7, 1982.

SUMMARY: On March 12, 1982 (47 FR 10860) EPA proposed rulemaking on the deadline by which the State of Indiana has committed itself to remedy the conditionally approved portions of the SO_2 SIP. Public comments were due by April 12, 1982. On March 15, 1982 (47 FR 11042) EPA proposed rulemaking on a portion of the State's control strategy for attainment of the ozone standard. Public comments were due by April 14, 1982. Indiana requested an extension of the public comment periods. Indiana wishes to obtain the concurrence of the Indiana Air Pollution Control Board at the Board's May meeting prior to submitting its comments. EPA, therefore, is extending the public comment period until May 7, 1982, two days after the Board's May meeting.

ADDRESSES: Comments on both of the proposed rules should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, EPA, Region V (5AP-11), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Air Programs Branch, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: April 5, 1982.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82-10479 Filed 4-15-82; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 47, No. 74
Friday, April 16, 1982

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

DEPARTMENT OF AGRICULTURE

Forest Service

Classification, Boundaries and Maps, and Management Plan for the Salmon Wild and Scenic River; Availability

The Central Idaho Wilderness Act of 1980, Pub. L. 96–312, amended the Wild and Scenic Rivers Act (82 Stat. 906, as amended; 16 U.S.C. 1271 et seq.) to include the Salmon River as a unit of the Wild and Scenic River System as follows:

(24)(A) Salmon, Idaho—The segment of the main river from the mouth of the North Fork of the Salmon River downstream to Long Tom Bar in the following classes:

(i) The forty-six mile segment from the mouth of the North Fork of the Salmon River to Corn Creek as a recreational river; and

(ii) the seventy-nine mile segment from Corn Creek to Long Tom Bar as a wild river.

Section 3(b) of the Wild and Scenic Rivers Act provides that the classification, boundaries, and development (management) plan shall be published in the **Federal Register** and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives (16 U.S.C. 1274(b)).

The classification, boundaries and maps, and management plan for the involved unit consist of about 87 single-spaced pages and 12 map sheets. Costs to publish this material in the **Federal Register** are estimated to be $20,400. In the interest of economy, this notice of availability is published to provide public notice that this material is on file for public inspection and may be reviewed by interested parties in the following offices:

Chief, Forest Service, USDA, South Agriculture Building; Room 4238, 12th and Independence Avenue, SW., Washington, DC 20013

Regional Forester, Intermountain Region, Forest Service, USDA, Federal Building, 324 25th Street, Ogden, UT 84401

Forest Supervisor, Salmon National Forest, Forest Service, USDA, Forest Service Building, Salmon, ID 83467

Regional Forester, Northern Region, Forest Service, USDA, Federal Building, Missoula, MT 59807

Forest Supervisor, Nezperce National Forest, Forest Service, USDA, 319 E. Main Street, Grangeville, ID 83530

The boundaries and maps, and the management plan have been sent to the President of the Senate and the Speaker of the House of Representatives.

Further information is available from Charles R. Joy, Forest Service, USDA, Recreation Management Staff, P.O. Box 2417, Washington, DC 20013; telephone (202) 447–2422.

Douglas R. Leisz,

Associate Chief.

April 12, 1982.

[FR Doc. 82–10489 Filed 4–15–82; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Oneida County Road Critical Area Treatment R.C. & D. Measure, Idaho; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Amos I. Garrison, Jr., State Conservationist, Soil Conservation Service, Room 345, 304 North Eighth, Boise, Idaho 83702, telephone (208) 334–1601.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental 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 Oneida County Road Critical Area Treatment R.C. & D. Measure, Oneida County, Idaho.

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, Amos I. Garrison, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Oneida County Road Critical Area Treatment R.C. & D. Measure will help prevent road "washouts" due to flooding on five critical sites along Oneida County roads. Planned treatments include reconstruction of the roadway and paving to allow flood flows to overtop the road without eroding it away. Other treatments include rock-filled baskets under the roadway, critical area plantings, and grading and shaping.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewing by contacting Mr. Amos I. Garrison, Jr. The FONSI has been sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the first page.

Implementation of the proposal will not be initiated until May 17, 1982.

Dated: April 6, 1982.

(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)

Amos I. Garrison, Jr.,

State Conservationist.

[FR Doc. 82–10313 Filed 4–15–82; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations (See, 14 CFR 302.1701 et. seq.); Week Ended April 9, 1982

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.

Dated filed	Docket No.	Description
Apr. 6, 1982	40603	Air Niagara, Inc., Peter J. Nickles, Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, D.C. 20044. Application of Air Niagara, Inc. pursuant to Section 401(b) of the Act and Subpart Q of the Board's Procedural Regulations applies for a determinaton of its fitness, willingness and ability to provide scheduled interstate and overseas air transportation of passengers, property and mail properly and in conformity with all relevant statutes and regulations, and for a certificate of public convenience and necessity authorizing Niagara to engage in such air transportation. Niagara initially proposes to engage in scheduled air transportation of passengers, property and mail between the terminal points of Niagara Falls, New York and Newark, New Jersey. Conforming Applications, motions to modify scope, and Answers may be filed by May 6, 1982.
Do.	40604	Arista International Airlines, Inc., c/o Stephen D. Potts, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036. Application of Arista International Airlines, Inc. pursuant to Section 401(d)(1) of the Act, Parts 201 and 204 of the Board's Economic Regulations, and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity to engage in transatlantic cargo charter air transportation. Conforming Applications, motions to modify scope, and Answers may be filed my May 6, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-10450 Filed 4-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Order 82-4-58; Docket No. 39817]

A/S Conair (Consolidated Aircraft Corp., LTD); Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause: Order 82-4-58.

SUMMARY: The Board proposes to approve the following application:

Applicant: A/S Conair (Consolidated Aircraft Corporation, LTD)

Application Date: July 16, 1981; Docket 39817.

Authority Sought: A foreign air carrier permit to engage in charter foreign air transportation of passengers between points in Denmark, Norway and Sweden and the United States.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall no later than May 5, 1982, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassadors of Denmark, Norway and Sweden in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

ADDRESSES FOR OBJECTIONS:

Docket 39817, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428;

Applicant: A/S Conair c/o Morris R. Garfinckle Galland, Kharasch, Calkins & Short, P.C. 1054 Thirty-First Street, NW. Washington, D.C. 20007.

TO GET A COPY OF THE COMPLETE ORDER: request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Ave., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Gordon H. Bingham, Regulatory Affairs Division, Bureau of Inernational Aviation, Civil Aeronautics Board; (202) 673-5134.

By the Civil Aeronautics Board: May 5, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-10451 Filed 4-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 40507]

EOA Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on April 30, 1982 at 10:00 a.m. (local time) in Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C. before the undersigned administrative law judge.

Dated at Washington, D.C., April 13, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-10452 Filed 4-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 40507]

EOA Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Adminstrative Law Judge John M. Vittone. Future communications should be addressed to him.

Dated at Washington, D.C. April 12, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-10453 Filed 4-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 40350]

North Pacific Airlines, Inc., Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to him.

Dated at Washington, D.C., April 12, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-10454 Filed 4-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 40253]

Northeast Sunrise Airlines, Inc., Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on May 20, 1982 at 10:00 a.m. (local time) in Hearing Room "A", Universal North Building, 1875 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., April 9, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-10455 Filed 4-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 40583]

Saipan/Guan/Palau-Philippines Service Case; Prehearing Conference

By Order 82-3-179, adopted March 31, 1982, the Board instituted the Saipan/Guam/Palau-Philippines Service Case, Docket 40583, to consider which carrier or carriers should be authorized to engage in foreign air transportation of persons, property and mail between Saipan, Guam, Palau and points in the Philippines, and what terms, conditions, or limitations should be attached to that authority. The Board's order consolidated into this proceeding the applications of Continental Air Lines, Inc., Docket 40346, of Air Micronesia, Inc., Docket 40347 and of Island Aviation, Inc., Docket 40369. Because Island Aviation has never held a certificate under section 401 of the Federal Aviation Act or been found fit by the Board to provide certificated air service, its fitness to provide the scheduled air transportation set forth in its application is also at issue.

In light of the time constraints made applicable to the instant proceeding by section 401(c)(2) of the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978, it is imperative that procedural steps in this proceeding be commenced without delay.

Accordingly, notice is herby given that a prehearing conference in the above-captioned proceeding will be held on May 11, 1982, at 9:30 a.m. (local time), in Room 1003, Hearing Room A, North Universal Building, 1875 Connecticut Avenue, NW., Washington, D.C. before the undersigned administrative law judge. This date takes into consideration that Order 82-3-179 determined that additional applications and preliminary motions and petitions would be filed no later than April 26, 1982, and that responsive answers to any such pleadings would be filed no later than May 6, 1982.

The matters to be considered at the prehearing conference will include the substantive issues to be dealt with in this proceeding as set forth in the instituting order, proposed procedural dates designed to ensure that the statutory time limits for completion of the proceeding are fully observed, and such other matters as may contribute to the orderly, efficient, and expeditious conduct of this proceeding.

In order to facilitate the conduct of the conference, parties are directed to submit one copy to each party and five copies to the judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. Such submissions should be delivered to the parties and to the judge no later than May 6, 1982. Parties with Washington counsel should hand-deliver such submissions, and other parties should utilize express services to ensure that delivery is timely made.

Dated at Washington, D.C., April 12, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-10456 Filed 4-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 40583]

Saipan/Guam/Palau-Philippines Service Case; Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to him.

Dated at Washington, D.C., April 12, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-10457 Filed 4-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Order 82-4-56; Docket No. 39726]

Scanair; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause: Order 82-4-56.

SUMMARY: The Board proposes to approve the following application:

Applicant: SCANAIR

Application Date: June 17, 1981; Docket 39726

Authority Sought: A foreign air carrier permit to engage in charter foreign air transportation of passengers between points in Denmark, Norway and Sweden and the United States.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall no later than May 5, 1982, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassadors of Denmark, Norway and Sweden in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

ADDRESSES FOR OBJECTIONS:

Docket 39726, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428;

Applicant: SCANAIR c/o Robert Reed Gray Hale, Russell & Gray, Suite 400, 1025 Connecticut Avenue, NW., Washington, D.C. 20036.

TO GET A COPY OF THE COMPLETE ORDER: Request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Ave., NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Gordon H. Bingham, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5134.

By the Civil Aeronautics Board: April 9, 1982.

Phillis T. Kaylor,

Secretary.

[FR Doc. 82-10458 Filed 4-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Order 82-4-57; Docket No. 39767]

Sterling Airways A/S; Order to Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause: Order 82-4-57.

SUMMARY: The Board proposes to approve the following application:

Applicant: Sterling Airways A/S

Application Date: June 30, 1981; Docket 39767

Authority Sought: A foreign air carrier permit to engage in charter foreign air transportation of passengers between points in Denmark, Norway and Sweden and the United States.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusion that this authority should be granted, as described in the order cited above, shall no later than May 5, 1982, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassadors of Denmark, Norway and Sweden in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tenative findings and conclusions and issue the proposed permit.

ADDRESSES FOR OBJECTIONS:

Docket 39767, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428;

Applicant: Sterling Airways A/S c/o Frederick S. Hird, Jr., Kaler, Worsley, Daniel & Hollman, 710 Ring Building, Washington, D.C. 20036.

TO GET A COPY OF THE COMPLETE ORDER: Request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Ave., NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Gordon H. Bingham, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5134.

By the Civil Aeronautics Board: April 9, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-10459 Filed 4-15-82; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Arizona Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 2:00 p.m. on May 8, 1982, at the Ramada Inn, I Ten Sunland Gin Road, Casa Grande, Arizona 85222. The Planning Subcommittee will meet to discuss program plans and activities for the remainder of Fiscal Year 1982.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Dr. Morrison F. Warren, 1061 East Magdalena Drive, Tempe, Arizona 85283, (602) 965-6529 or the Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California 90010, (213) 688-3437.

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

Dated at Washington, D.C., April 13, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-10435 Filed 4-15-82; 8:45 am]

BILLING CODE 6335-01-M

Iowa Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 1:00 p.m. on May 18, 1982, at the Hotel Fort Des Moines, Walnut and 10th Streets, in the Board Room, Des Moines, Iowa 50309. The purpose of this meeting will be to discuss program plans and activities for the remainder of Fiscal Year 1982.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Lee B. Furgerson, 1225 Stephenson Way, Des Moines, Iowa 50307, (515) 245-4848 or the Central States Regional Office, Old Federal Office Building, 911 Walnut Street, Room 3103, Kansas City, Missouri 64106, (816) 374-5253.

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

Dated at Washington, D.C., April 13, 1981.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-10436 Filed 4-15-82; 8:45 am]

BILLING CODE 6335-01-M

Kansas Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 8:30 p.m. on May 7, 1982 and will convene at 9:00 a.m. and will end at 11:30 a.m. on May 8, 1982, at the Best Western-Fountain Plaza Inn, 104 West 11th Street, in Room 110, Coffeyville, Kansas, 67337. The purpose of this meeting will be to discuss program plans and activities for the remainder of Fiscal Year 1982.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Benjamin H. Day, 313 Prospect, Leavenworth, Kansas, 66048, (913) 296-3469 or the Central States Regional Office, Old Federal Office Building, 911 Walnut Street, Room 3103, Kansas City, Missouri, 64106, (816) 374-5253.

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

Dated at Washington, D.C., April 13, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-10437 Filed 4-15-82; 8:45 am]

BILLING CODE 6335-01-M

Missouri Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 1:00 p.m. on May 11, 1982 at the Hyatt Regency Hotel, 2345 McGee Street, Kansas City, Missouri, 64108. The purpose of this meeting will be to discuss program plans and activities for the remainder of Fiscal Year 1982.

Persons desiring additional information or planning a presentation

to the Committee, should contact the Chairperson, Joanne M. Collins, 4030 Bellefontaine, Kansas City, Missouri, 64130, (816) 274–1312 or the Central States Regional Office, Old Federal Office Building, 911 Walnut Street, Room 3103, Kansas City, Missouri, 64106, (816) 374–5253.

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

Dated at Washington, D.C., April 13, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–10438 Filed 4–15–82; 8:45 am]

BILLING CODE 6335–01–M

New Jersey Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 12:00 p.m. on May 5, 1982, at the State Capitol, in the Assembly Majority Lounge, Trenton, New Jersey. The purpose of this meeting will be to discuss followup activities to the Committee's Battered Women's report.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Clyde C. Allen, 620 Sheridan Avenue, Plainfield, New Jersey, 07060, (212) 572–7577 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., April 13, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–10439 Filed 4–15–82; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Steel Sheet Piling From Canada; Postponement of Antidumping Duty Preliminary Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Postponement of antidumping duty preliminary determination.

SUMMARY: The antidumping duty preliminary determination involving steel sheet piling from Canada is being postponed. We intend to issue the antidumping duty preliminary determination not later than June 22, 1982.

EFFECTIVE DATE: April 16, 1982.

FOR FURTHER INFORMATION CONTACT: Michael Hudak, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230 (202–377–3530).

SUPPLEMENTARY INFORMATION: On November 19, 1981, we announced our initiation of an antidumping duty investigation to determine whether imports of steel sheet piling from Canada are being, or are likely to be, sold at less than fair value (46 FR 57586–57587). The notice stated that we would issue our preliminary determination by May 3, 1982.

Section 733(c)(1)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(c)(1)(A)), provides that:

> If * * * the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1) * * * then the administering authority may postpone making the preliminary determination under subsection (b)(1) until not later than the 210th day after the date on which * * * an investigation is commenced under section 732(a).

As we have determined previously, in self-initiated investigations, the administering authority stands in the role of the petitioner, and is such for purposes of this provision. As petitioners, the Department is extending the period for making the preliminary determination.

Therefore, we intend to issue our antidumping duty preliminary determination not later than June 22, 1982.

This notice is published pursuant to section 733(c)(2) of the Act.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 82–10490 Filed 4–15–82; 8:45 am]

BILLING CODE 3510–25–M

Maine Maritime Academy; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81–00271. Applicant: Maine Maritime Academy, Castine, ME 04421. Article: Marine Diesel Propulsion Simulator and Electrical Switchboard with Independent Instructors Console. Manufacturer: MacGregory Canada, Ltd., Canada. Intended use of article: See notice on page 41125 in the **Federal Register** of August 14, 1981. Application received by Commissioner of Customs: June 4, 1981. Advice submitted by: National Bureau of Standards: December 8, 1981.

Comments: No comments have been received with respect to this application.

Decision: Application denied. Because the article possesses no scientific value for the purpose for which it is intended, a prima facie case is not presented upon which to base a finding of scientific equivalency.

Reasons: This application is a resubmission of Docket Number 80–00166 which was denied without prejudice to resubmission on January 29, 1981 for informational deficiencies. Item 851.60 of the Tariff Schedules of the United States (TSUS) provides, *inter alia*, for duty-free treatment with respect to "Articles entered for the use of any nonprofit institution, whether public or private, established for educational or scientific purposes * * * if no instrument or apparatus *of equivalent scientific value for the purposes for which the instrument or apparatus is intended to be used* is being manufactured in the United States" (Emphasis supplied). The law provides that the Secretary of Commerce, whose authority has been delegated to this office, is to determine "whether an instrument or apparatus of equivalent scientific value to such (the foreign) article, for the purpose for which the instrument or apparatus is intended to be used, is being manufactured in the United States" (headnote 6(c), Schedule 8, Part 4, TSUS). In order to make the determination of scientific equivalency, it is clear that some scientific use of the foreign article, whether educational or research, must be intended. Although the foreign article falls within the tariff items eligible for duty-free consideration, it is intended for use in the undergraduate engineering curriculum in modern Diesel operations. In connection with this use, the National Bureau of Standards advises in its memorandum dated December 8, 1981 that the foreign article does not qualify for duty-free entry under Pub. L. 89–651

[item 851.60 TSUS] because it is not related to scientific research or educational purposes. It is rather, an article intended entirely for vocational training purposes not related to scientific research or science-related education. In view of the intended use of the article and the requirements of Pub. L. 89–651, the Department cannot make the finding of scientific equivalency upon which duty-free entry must be based. The application is therefore denied.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director Statutes, Import Program, Staff.

[FR Doc. 82-10465 Filed 4-15-82; 8:45 am]

BILLING CODE 3410-25-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council's Administrative Subcommittee; Meeting Amendment

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of change in meeting dates for the Caribbean Fishery Management Council's Administrative Subcommittee.

SUMMARY: The scheduled public meeting of the Caribbean Fishery Management Council's Administrative Subcommittee as published in the **Federal Register**, March 5, 1982, (47 FR 9490–9491), has been changed as follows:

From: Convening on Wednesday, April 21, 1982, at approximately 9:30 a.m., and adjourning at noon.

To: Convening on Tuesday, April 20, 1982, at approximately 1:30 p.m., and adjourning at approximately 5 p.m.; reconvening on Wednesday, April 21, 1982, at approximately 9:30 a.m., adjourning at approximately noon.

All other information remains unchanged.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Banco de Ponce Building—Suite 1108, Hato Rey, Puerto Rico 00918, Telephone: (809) 753–4926.

Dated: April 13, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-10466 Filed 4-15-82; 8:45 am]

BILLING CODE 3510-22-M

Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of experimental fishing permit application for Pacific groundfish and request for comment.

SUMMARY: This notice acknowledges receipt of an experimental fishing permit application and announces a public comment period as required in the proposed regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The applicant proposes to conduct an experimental fishery to harvest sablefish and incidental catches of lingcod and various rockfishes with set nets along and outside the 100 fathom curve off the Washington coast. If granted, the permit would allow a fishery which otherwise would be prohibited by Federal regulation.

DATE: Comments on this experimental fishing permit application must be received by May 7, 1982.

ADDRESS: Send comments to H. A. Larkins, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins at 206–527–6140.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved by the Secretary of Commerce on January 4, 1982. The FMP specifies that experimental fishing permits (EFPs) may be issued to authorize fishing which otherwise would be prohibited. The procedures for issuance of EFPs appear in the proposed regulations for the FMP at 50 CFR 663.10 (see 47 FR 60 53). EFP applications will be considered but will not be granted or denied until the FMP regulations become final, approximately May of 1982.

An EFP application to harvest groundfish with set nets was received by the Director of the Northwest Region of the National Marine Fisheries Service on March 2, 1982. This application is complete, according to the specifications in § 663.10(b). The Pacific Fishery Management Council (Council) will discuss this application at its May 12–13, 1982 meeting at the Cosmopolitan Motel, 1030 N.E. Union Avenue, Portland, Oregon (503–235–8433).

The FMP regulations would prohibit set netting north of 38° 00′ N. latitude. Although this decision was based on limited data, the Council was concerned with the demonstrated efficiency of set netting for salmon and the abundance of salmon in the FCZ, lack of information on other incidentally caught species, the 1957 U.S./Canada agreement to ban net fishing for salmon in the ocean, the ability of set nets to fish indefinitely if lost or unattended, and the considerable history of conflict between mobile and fixed gears when they occur together.

The EFP application is summarized as follows:

(1) *Purposes and goals.* The purpose of the experiment is to build a data base from which to evaluate the pros and cons of set netting for groundfish in the ocean. Disposition of all species harvested, except prohibited species, would accord with established marketing procedures for other West Coast fisheries.

(2) *Significance.* The applicant expects the results of the experiment to document the efficacy of set netting for groundfish. He submits that this technique is superior to common harvest method in terms of target specificity, environmental impact, energy conservation, and quality of fish harvested. Consequently, the impacts of the experiment are expected to extend beyond the individual goals of the applicant.

(3) *Vessel.* One vessel, 54 feet 6 inches long and with a load capacity near 25 metric tons, would be involved.

(4) *Species and amounts.* The target species would be sablefish (*anoplopoma fimbria*), with some incidental catches of lingcod (*Ophiodon elongatus*) and various rockfishes (*Sebastes* spp. and *Sebastolobus* spp.). The applicant states that incidental catches of salmon (Oncorhyncus spp.), Pacific halibut (*Hippoglossus stenolepis*), and Pacific ocean perch (*Sebastes alutus*) are expected to be insignificant to non-existent.

(5) *Time, place and gear.*

(a) Time: The applicant requested a year-round fishery. EFPs are granted for a period of up to one year and may be renewed.

(b) Place: The fishery would be conducted along and outside the 100 fathom curve off the Washington coast.

(c) Gear: Approximately four set nets 300 to 400 fathoms in length would be used. The nets would be monofilament, 6-inch minimum mesh size, and not more than 25 meshes deep. Nets would not be left unattended. When a trip is completed, all gear would be retrieved and retained on the vessel.

(6) *Additional information.* The applicant suggests on-board observation by National Marine Fisheries Service personnel to observe fishing methods, net retrieval, and catch patterns. The applicant has offered to keep detailed

records of catch and effort with the intent of evaluating availability of groundfish to set nets, potential gear conflicts, potential incidental catches of non-target species, and efficiency and desirability of set nets as an additional method to harvest groundfish.

(16 U.S.C. 1801 *et seq.*)

Dated: April 13, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-10498 Filed 4-15-82; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF EDUCATION

Education Appeal Board; Proceedings

AGENCY: Education Department.

ACTION: Notice of Education Appeal Board proceedings scheduled for April 26, 1982, and June 8, 1982.

INFORMATION: This notice advises readers that the Education Appeal Board has scheduled oral arguments in the following: (a) Appeal of the State of Texas, Docket No. 7-(43)-78, to start at 10:00 a.m. on April 26, 1982, in the Barnard Auditorium (Room 1134), 400 Maryland Avenue, SW., Washington, D.C.; and (b) Appeals of the State of Hawaii, Docket Nos. 3-(39)-78 and 4-(50)-79, to start at 10:00 a.m. on June 8, 1982, in the Sanchez Room (Room 1130), 400 Maryland Avenue, SW., Washington, D.C. The Board originally accepted jurisdiction in these appeals on July 26, 1979 (44 FR 43807).

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 2141, FOB-6), Washington, D.C. 20202, Telephone (202) 245-7835.

SUPPLEMENTARY INFORMATION: Under the Education Amendments of 1978 (20 U.S.C. 1234), the Education Appeal Board has authority to conduct (1) audit appeal proceedings, (2) withholding, termination, and cease and desist proceedings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board. For information concerning the Board and its procedures, see the Board's final regulations published in the **Federal Register** on May 18, 1981 (46 FR 27304).

Dated: April 13, 1982.

David S. Pollen,

Chairman, Education Appeal Board.

[FR Doc. 82-10482 Filed 4-15-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Acquisition of the City of Idaho Falls Hydroelectric Project

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of (1) Acquisition of the City of Idaho Falls Hydroelectric Project, and (2) Availability of decision record which includes a determination of no significant impact regarding BPA's acquisition of the Idaho Falls Hydroelectric Project, and acquisition contract.

SUMMARY: On April 1, 1982, the Administrator of the Bonneville Power Administration signed a long-term contract with the City of Idaho Falls, a BPA customer, to acquire the electric power produced by the City's rehabilitated hydroelectric project under the authority contained in Section 6 of the Regional Power Act, Pub. L. 96-501.

EFFECTIVE DATE: This notice is effective on April 1, 1982.

FOR FURTHER INFORMATION CONTACT: Requests for the decision record and the contract may be directed to Ms. Donna L. Geiger, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon, 97212, 503-230-4261. Oregon callers outside of Portland may use the toll-free number 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800-574-6048.

Requests for other information concerning the project may be directed to Jack G. Hornor, Resource Acquisition Manager, P.O. Box 3621, Portland, Oregon 97208, 503-230-5341.

SUPPLEMENTARY INFORMATION: The City of Idaho Falls Hydroelectric Project consists of a series of three rehabilitated electricity-generating facilities on the Snake River within and near the City of Idaho Falls in Idaho. The generating facilities include three 8-megawatt bulb turbine generators. The project is expected to produce about 175,000,000 kilowatthours annually based on average water flows. In addition, the project will provide about 17 megawatts of firm capacity to the regional power system and is expected to reduce the Administrator's wheeling costs and transmission losses incurred in serving the City of Idaho Falls.

Issued in Portland, Oregon, April 8, 1982.

Peter T. Johnson,

Administrator.

[FR Doc. 82-10485 Filed 4-15-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Notification of Relocation of the Economic Regulatory Administration Oil and Gas Imports Division, Natural Gas Branch

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notification of relocation of offices.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the relocation of offices and the Docket Room of the Natural Gas Branch, Oil and Gas Imports Division, Economic Regulatory Administration, DOE. The new location and phone number are: Federal Building, Room 6144, 12th Street and Pennsylvania Avenue, NW., Washington, D.C. 20461, (202) 633-9296.

Issued in Washington, D.C., on April 12, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-10422 Filed 4-15-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER82-436-000]

American Electric Power Service Corp.; Filing

April 12, 1982.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on behalf of its affiliate, Indiana & Michigan Electric Company (I&M) tendered for filing on, April 5, 1982, a new schedule, Amendment No. 23 to the Operating Agreement among I&M, Consumers Power Company (Consumers), and The Detroit Edison Company (Detroit). Consumers and Detroit are jointly referred to as the Michigan Companies.

The Amendment provides for the sale of 250,000 kilowatts of power to the Michigan Companies under a new rate schedule entitled Annual Economy Energy.

Annual Ecomomy Energy is an experimental service in which energy will be purchased by the Michigan Companies at the following rates:

On-Peak (7:00 a.m. through 11:00 p.m. Monday through Friday)—35 mills/kWh
Saturday (7:00 a.m. through 11:00 p.m.)—30 mills/kWh
Off-Peak (All other hours plus holidays)—24 mills/kWh

AEP requests an effective date of March 15, 1982, and therefore requests waiver of the Commission's notice requirements.

And person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure on or before April 27, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10395 Filed 4-15-82; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket No. ER82-434-000]

American Electric Power Service Corp.; Filing

April 12, 1982.

The filing Company submit the following:

Take notice that American Electric Power Service Corporation (AEP) on April 2, 1982, tendered for filing on behalf of its affiliates Appalachian Power Company (Appalachian) Ohio Power Company (Ohio Power, and Wheeling Electric Company (Wheeling), Modification No. 13, dated March 22, 1982 to the Operating Agreement, dated June 1, 1971, among Ohio Power, Wheeling, Appalachian, Monogahela Power Company and West Penn Power Company.

Section 1 of this Agreement revises the Short Term Power Service Schedule to include a provision which shall allow Appalachian, Ohio Power, and Wheeling to sell Short Term Power on a daily basis at the rate of one-fifth of their weekly demand rate. The terms and conditions of this proposed change are substantially the same as the Short Term Power Service Schedule presently on file with the Commission between Indiana & Michigan Electric Company (I&M) (an AEP affiliated company) and Illinois Power Company (IP) (Docket No. ER81-767-000) which has been accepted by the Commission by Letter Order dated November 9, 1981.

AEP requests an effective date of March 25, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 27, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10396 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-430-000]

American Electric Power Service Corp.; Filing

April 12, 1982.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on behalf of its affiliate Wheeling Electric Company (Wheeling) tendered for filing on April 1, 1982, a change of rate schedule, Modification No. 3 to the Transmission Facilities Agreement, dated March 1, 1963, and Modification No. 1 to the Transmission Facilities Agreement, dated December 7, 1966, between Wheeling and Ohio Power Company (Ohio Power).

These modifications provide for an increase in the factor, applied to the capital cost of facilities leased under these Agreements, upon which payments by Ohio Power to Wheeling are based. This factor will increase from 1.25 percent per month to 1.615 percent per month.

These modifications also provide for Wheeling to directly bill Ohio Power for certain actual maintenance expenses incurred.

AEP requests an effective date of June 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 26, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10397 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-435-000]

Central Louisiana Electric Company, Inc., Filing

April 12, 1982.

The filing Company submits the following:

Take notice that on April 2, 1982, Central Louisiana Electric Company, Inc. (CLECO) tendered for filing alternative transmission service agreements relating to its transmission of power and energy from Rodemacher Unit No. 2. CLECO filed a Transmission Service Agreement between it and the Louisiana Public Power Authority (LPPA) with an attached rate schedule for transmission service for LPPA from Rodemacher Unit No. 2 to the City of Lafayette, Louisiana. In service agreements between it and LPPA, the City of Lafayette, and the Louisiana Energy and Power Authority (LEPA), respectively, for transmission service from Rodemacher Unit No. 2 to various points on CLECO's system. The proposed transmission services are filed to reflect the existing contractual arrangements or arrangements currently under negotiations to provide for new transmission service upon commencement of service the new coal-fired generating unit. CLECO proposes an effective date of June 1, 1982.

Copies of the filing have been served upon the transmission service customers and the Louisiana Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 27, 1982. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10398 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6098-000]

Crystal Springs Ranch; Application for Preliminary Permit

April 12, 1982.

Taken notice that Crystal Springs Ranch (Applicant) filed on March 17, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6098 to be known as the Cedar Draw Hydro-Electric Project located on Cedar Draw Creek in Twin Falls County, Idaho. The application is on file with the Commision and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. L. Bylund, Crystal Springs Ranch, P.O. Box 109, Buhl, Idaho 83316.

Project Description. The proposed project would consist of: (1) A 5-foot high diversion structure; (2) a 60-inch diameter, 4,050-foot long conduit; (3) a 54-inch diameter, 300-foot long penstock; (4) a powerhouse containing a generating unit with a rated capacity of 750 kW; and (5) a 4-mile long, 12.5-kV transmission line connecting to an existing Idaho Power Company line. Applicant estimates a 4,905,600 kWh average annual energy production.

Proposed Scope of Studies Under Permit. A preliminary permit, if issued, does not authorize construction. Applicant has requested a 24-month permit to prepare a definitive project report including preliminary designs, and geological, environmental, and economic feasibility studies. The cost of forementioned activities along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, and preparing a license application is estimated by the Applicant to be $22,500. Power would be sold to Idaho Power Company.

Competing Applications. Anyone desiring to file a competing application for preliminary permit must submit to the Commision, on or before June 21, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et. seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before June 21, 1981, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than August 20, 1982.

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10382 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6079-000]

Energenics Systems, Inc.; Application for Preliminary Permit

April 12, 1982.

Take notice that Energenics Systems, Inc. (Applicant) filed on March 12, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6079 to be known as the Deer Creek Project located on Deer Creek in Pickaway County, Ohio. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas H. Clarke, Jr., Energenics Systems, Inc., 1717 K Street, NW, Washington, D.C. 20006.

Project Description. The proposed project would utilize the existing Corps of Engineers' Deer Creek Dam and Reservoir and would consist of: (1) Two new 6–foot diameter penstocks 15 feet long; (2) a new powerhouse built directly downstream of the dam containing two 1.1–MW turbine/generator units under a head of 39 feet; (3) two 138–kV transmission lines four miles long; and (5) appurtenant facilities. The average annual generation of 4.8 GWh would be sold to the Columbus and Southern Electric Company.

Proposed Scope of Studies Under Permit. A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would perform surveys and geological investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license, including an environmental report. Applicant estimates the cost of studies under the permit would be $35,000.

Competing Applications. Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 19, 1982, the competing application itself (see: 18 CFR 4.30 et. seq. (1981)). A notice of intent to file a competing

application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before June 21, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10383 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP81-124-002 etc.]

Florida Gas Transmission Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

April 9, 1982.

Take notice that the pipelines listed in the Appendix below have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix below.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before April 23, 1982. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
3/25/82	Florida Gas Transmission Co.	RP81-124-002	LFUT Report.
3/29/82	Columbia Gas Transmission Corp.	RP80-146-006	Report.
3/29/82	Locust Ridge Gas Gathering Co.	RP80-141-006	Report.
3/29/82	National Fuel Gas Supply Corp.	RP80-95-006	SRO Report.
3/30/82	Sea Robin Pipeline Co.	RP80-118-003	Report.
3/24/82	Consolidated Gas Supply Corp.	RP81-114-002	LFUT Report.
3/31/82	Natural Gas Pipe Line Co. of America.	RP80-11-008	Report.
3/31/82	Texas Gas Transmission Corp.	RP81-102-003	LFUT Report.
4/1/82	South Georgia Natural Gas Co.	RP73-49-003	Report.

[FR Doc. 82-10399 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-432-000]

Florida Power & Light Co.; Filing

April 12, 1982.

The filing Company submits the following:

Take notice that on April 2, 1982, Florida Power & Light Company (FPL) tendered for filing an Exhibit A to its FERC Electric Tariff, Revised Volume No. 1, for the termination of service to Glades Electric Cooperative, Inc. at its Sears Delivery Point. In accordance with the terms of the Exhibit A, all load previously served at that delivery point has been transferred to a different existing delivery point as of March 3, 1982.

FPL proposes an effective date of March 3, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 26, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10400 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6110-000]

Henderson City Utility Commission; Application for Preliminary Permit

April 12, 1982.

Take notice that Henderson City Utility Commission (Applicant) filed on March 19, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 6110 to be known as the Smithland Hydroelectric Project located on the Ohio River near Smithland in Livingston County, Kentucky. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. B. L. Perry, General Manager, Henderson City Utility Commission, Fifth and Water Streets, P.O. Box 8, Henderson, Kentucky 42420.

Project Description. The proposed project would consist of: (1) A proposed powerhouse on the Kentucky side of the Corps of Engineers Smithland Dam with generating units having an estimated installed capacity of 120,000 kW; (2) a proposed step-up transformer; (3) a proposed substation; (4) a proposed 2-

mile transmission line to the Big Rivers Electric Corporation transmission system; (5) proposed recreational facilities as appropriate; and (6) appurtenant facilities. Energy produced at the project would be used by the Applicant's system load requirements with excess sold to the Big Rivers Electric Corporation. The estimated annual power developed at the site is 500,000 MWh.

Proposed Scope of Studies Under Permit. A preliminary permit, if issued, does not authorize construction. Applicant has requested a 24-month permit to prepare a project report including preliminary designs, and results of hydrological, environmental and economic feasibility studies. The cost of these activities along with obtaining agreements with Big Rivers Electric Corporation and other Federal, State, and local agencies; conducting final field surveys; and preparing a license application is estimated by the Applicant at $150,000.

Competing Applications. Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 19, 1982, the competing application itself (see: 18 CFR 4.30 et. seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before June 21, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10384 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6109-000]

Henderson City Utility Commission; Application for Preliminary Permit

April 12, 1982.

Take notice that Henderson City Utility Commission (Applicant) filed on March 19, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 6109 to be known as the Newburgh Hydroelectric Project located on the Ohio River near Newburgh in Henderson County, Kentucky. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. B. L. Perry, General Manager, Henderson City Utility Commission, Fifth and Water Streets, P.O. Box 8, Henderson, Kentucky 42420.

Project Description. The proposed project would consist of: (1) A proposed powerhouse on the Kentucky side of the Corps of Engineers Newburgh Locks and Dam with generating units having an estimated installed capacity of 60,000 kW; (2) a proposed step-up transformer; (3) a proposed substation; (4) a proposed 9-mile transmission line to the Henderson County substation; (5) proposed recreational facilities as appropriate; and (6) appurtenant facilities. Energy produced at the project would be used by the Applicant's system load requirements with excess sold to the Big Rivers Electric Corporation. The estimated annual power developed at the site is 250,000 MWh.

Proposed Scope of Studies Under Permit. A preliminary permit, if issued, does not authorize construction. Applicant has requested a 24-month permit to prepare a project report including preliminary designs, and results of hydrological, environmental and economic feasibility studies. The cost of these activities along with obtaining agreements with Big Rivers Electric Corporation and other Federal, State, and local agencies; conducting final field surveys; and preparing a license application is estimated by the Applicant at $150,000.

Competing Applications. Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 19, 1982, the competing application itself (see: 18 CFR 4.30 et. seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before June 21, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party

to the proceeding. Any comments, protests or petitions to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this Notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10385 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6111-000]

Henderson City Utility Commission; Application for Preliminary Permit

April 12, 1982.

Take notice that Henderson City Utility Commission (Applicant) filed on March 19, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)) for Project No. 6111 to be known as the Uniontown Hydroelectric Project located on the Ohio River near Uniontown in Union County, Kentucky. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. B. L. Perry, General Manager, Henderson City Utility Commission, Fifth and Water Streets, P.O. Box 8, Henderson, Kentucky 42420.

Project Description. The proposed project would consist of: (1) A proposed powerhouse on the Kentucky side of the Corps of Engineers' Uniontown Locks and Dam with generating units having an estimated installed capacity of 75,000 kW; (2) a proposed step-up transformer; (3) a proposed substation; (4) a proposed 6-mile transmission line to the Big Rivers Electric Corporation's Island Creek-Hamilton No. 2 mine substation; (5) proposed removal of approximately 900 feet of existing over-flow weir; (6) proposed recreational facilities as appropriate; and appurtenant facilities. Energy produced at the project would be used by the Applicant's system load requirements with excess sold to the Big Rivers Electric Corporation. The estimated annual power developed at the site is 320,000 MWh.

Proposed Scope of Studies under Permit. A preliminary permit, if issued, does not authorize construction. Applicant has requested a 24-month permit to prepare a project report including preliminary designs, and results of hydrological, environmental and economic feasibility studies. The cost of these activities along with obtaining agreements with Big Rivers Electric Corporation and other Federal, State, and local agencies; conducting final field surveys; and preparing a license application is estimated by the Applicant at $150,000.

Competing Applications. Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 19, 1982, the competing application itself (see: 18 CFR 4.30 et. seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption for licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before June 18, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 18, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INVERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10393 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-431-000]

Indiana & Michigan Electric Co.; Filing

April 12, 1982.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on April 2, 1982, tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&ME), Amendment No. 22 dated January 1, 1982 to the Operating Agreement dated March 1, 1966 among Consumers Power Company (Consumers), The Detroit Edison Company (Detroit), (collectively the Michigan Companies), and I&ME's Rate Schedule FERC No. 68.

Sections 2 and 3 of Amendment No. 22 increase the demand charge for Short Term Power and Limited Term Power and revises the Short Term Power Service Schedule to allow either party to sell Short Term Power on a daily basis at the rate of one-fifth of the newly proposed demand rate. Both the rate increase and the provisions for Daily Short Term Power have been accepted by the Commission in other American Electric Power Service Corporation filings with the Federal Energy Regulatory Commission.

AEP requests an effective date of March 10, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consumers Power Company, The Detroit Edison Company, Public Service Commission of Indiana, and Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 26, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10401 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-439-000]

Kansas City Power & Light Co.; Filing

April 12, 1982.

The filing Company submits the following:

Take notice that Kansas City Power & Light Company (KCPL) on April 5, 1982, tendered for filing a Notice of Cancellation of its Rate Schedule FPC No. 81, as supplemented, to be effective May 31, 1982. The Rate Schedule is applicable to KCPL's Firm Power Service to the City of Slater, Missouri (City).

By letter dated November 20, 1980, the City officially notified KCPL that the City wished to terminate the Municipal Firm Power Contract (KCPL's Rate Schedule FPC No. 81) between KCPL and the City on May 31, 1982. KCPL proposes an effective date of May 31, 1982.

Copies of this filing were served upon the City and upon the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before April 27, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10402 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 436-001]

Long Lake Energy Corp.; Application for License (Over 5 MW)

April 9, 1982.

Take notice that the Long Lake Energy Corporation (Applicant) filed on September 21, 1981, an application for license (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for construction and operation of a water power project to be known as the LaChute River Project No. 4356. The project would be located on the LaChute River in Essex County New York. Correspondence with the Applicant should be directed to: Mr. Donald E. Hamer, Vice President-Operations, 330 Madison Avenue, New York, New York, 10017.

Project Description. The proposed project would consist of: (1) the existing Lake George outlet dam, 110 feet long and 8 feet high, with two sluice gates on the southern abutment, one on the northern and a spillway between them; (2) Lake George, with a normal maximum surface elevation area and usable storage of 319.43 feet msl, 29,000 acres and 44,000 acre-feet, respectively; (3) a new bellmouth intake structure, approximately 16.5 feet wide and 20 feet high; (4) a new 10-foot diameter penstock, 6,200 feet long, to be located along the river's eastern bank; (5) a new concrete powerhouse 110 feet long by 28 feet wide, containing three turbine-generator untis operating under a head of 207 feet with a total capacity of 8,775 kW; (6) a new step-up substation located 100 feet northwest of the powerhouse; (7) a new three-phase 34.5-kV transmission line 6,850 feet long; and (8) appurtenant facilities.

Purpose of Project. The average annual generation of 39,530,000 KWh would be sold to the Niagara Mohawk Power Corporation.

Competing Applications. This application competes with International Paper Company's applications for Projects Nos. 5760 and 5762. Public notices of the filings of these applications have already been given, and established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing applications for licenses or exemptions, or notices of intent to file competing applications, will be accepted for filing in response to this notice. (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Comments, Protests, or Petitions To Intervene Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 18, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10386 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5020-001]

Mac Hydro-Power Company, Inc.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

April 9, 1982.

Take notice that on February 23, 1982, Mac Hydro-Power Company, Inc. (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as*

amended), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 5020) would be located on North Yuba River, near Sierra City, within the lands of the Tahoe National Forest, Sierra County, California. Correspondence with the Applicant should be directed to: Mr. H. L. Pete Childers, Mac Hydro-Power Company, P.O. Box 5193, Auburn, California 95603.

Project Description. The project would consist of: (1) A 2-foot high, 40-foot long diversion structure; (2) a 5000-foot long, 48-inch diameter low pressure conduit; (3) a 5000-foot long, 48-inch diameter penstock; (4) a powerhouse containing two generating units with total installed capacity of 4.9 MW and (5) a 100-foot long, 12-kV transmission line from the powerhouse to an existing PG&E line. The Applicant estimates that the average annual energy production would be 17.1 million KWh.

Purpose of Exemption. An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments. The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications. Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before May 28, 1982, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application not late than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (b).

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before May 28, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10387 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6006-000]

Mason County Public Utility District No. 1; Application for Preliminary Permit

April 12, 1982.

Take notice that Mason County Public Utility District No. 1 (Applicant) filed on February 19, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6006 to be known as the Washington Creek Hydroelectric Project located on Washington Creek within Olympic National Forest in Mason County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robertson, Manager, Public Utility District No. 1, Route 5, Box 555, Shelton, Washington 98584, and CH2M HILL, Attn: Mr. Orumchian, 1500 114th Avenue, S.E., Bellevue, Washington.

Project Description. The proposed project would consist of: (1) A 10-foot high, 70-foot long diversion structure; (2) a 6-foot diameter, 10-foot high intake structure; (3) a 2.5-foot diameter, 4,300-foot long penstock; (4) a powerhouse containing a turbine-generating unit with a rated capacity of 560 kW; and (5) a 8.7-mile long, 12-kV transmission line connecting to an existing Mason County PUD No. 1 distribution line. The Applicant estimates a 2.5 million kWh annual energy production.

Proposed Scope of Studies Under Permit. A preliminary permit, if issued, does not authorize construction. Applicant has requested a 24-month permit to prepare a definitive project report including preliminary designs, and geological, environmental, and economic feasibility studies. The cost of the forementioned activities along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, and preparing a license application is estimated by the Applicant to be $32,000. Power would be sold to utilities or industrial users.

Competing Applications. Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before June 21, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et. seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response

to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before June 21, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than August 20, 1982.

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10388 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1763-001]

Donald W. McCarthy; Application

April 12, 1982.

The filling individual submits the following:

Take notice that on March 29, 1982, Donald W. McCarthy filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Chairman of the Board: Northern States Power Company (Minnesota)
Director: Northern States Power Company (Minnesota)
Director: Lake Superior District Power Company

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 29, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10403 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6093-000]

Metropolitan Water District of Southern California; Application for Exemption of Small Conduit Hydroelectric Facility

April 12, 1982.

Take notice that on March 15 1982, The Metropolitan Water District of Southern California (Applicant) filed an application, under Section 30 of the Federal Power Act (Act) (16 U.S.C. 823(a)), for exemption of a proposed hydroelectric project from requirements of Part I of the Act. The proposed Rio Hondo Small Conduit Hydroelectric Project (FERC Project No. 6093) would be located on the Applicant's Middle Feeder Pipeline, in Los Angeles County, California. Correspondence with the Applicant should be directed to: Mr. Evan L. Griffith, General Manager, The Metropolitan Water District of Southern California, P.O. Box 54153, Terminal Annex, Los Angeles, California 90054.

Purpose of Project. The power generated by the project would be sold to a public or private utility.

Project Description. The project would consist of a powerhouse with an installed capacity of 1.9 MW operating under a head of 220 feet. The powerhouse would generate approximately 12.3 million kWh annually.

Agency Comments. The U.S. Fish and Wildlife Service and the California Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 4, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS,"

"PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10389 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-441-000]

Montana Power Co.; Filing

April 12, 1982.

The filing Company submits the following:

Take notice that the Montana Power Company (Montana) on April 5, 1982, tendered for filing in accordance with Section 35 of the Commission's regulations, a Letter Agreement with Washington Water Power Company (Washington). Montana states that this Letter Agreement provides for the sale of firm energy between Montana and Edison.

Montana indicates that the proposed Letter Agreements increased revenues from jurisdictional sales by $1,873,795.00, based upon energy delivered from December 1, 1981 through December 31, 1981. Montana states that the rate for firm energy under this Letter Agreement was negotiated. Montana further states that these agreements have expired on their own terms and have not been renewed.

An effective date of December 1, 1981, is proposed and waiver of the Commission's requirements is therefore requested.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 27, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10404 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-49-000]

Montana-Dakota Utilities Co.; Purchased Gas Cost Adjustment Filing

April 7, 1982.

Montana-Dakota Utilities Co. ("MDU"), on March 31, 1982, submitted for filing as part of its FERC Gas Tariff the following tariff sheets:

Original Volume No. 4

Twentieth Revised Sheet No. 3A

First Revised Volume No. 2

Fourteenth Revised Sheet No. 10

The proposed effective date of MDU's PGA filing is May 1, 1982.

MDU states that this tariff filing is being made pursuant to the Purchased Gas Cost Adjustment Provisions of its FERC Gas Tariff. The proposed changes included a gas cost adjustment of a negative 20.321 cents per Mcf to Rate Schedules G-1, PR-1, I-1, and X-1. In addition, MDU proposes a surcharge adjustment of 10.401 cents per Mcf applicable to Rate Schedules G-1, PR-1, and I-1.

Rate Schedule X-4 shows a negative gas cost adjustment of 14.899 cents per Mcf and a surcharge adjustment of 18.475 cents per Mcf. The proposed changes are supported by exhibits attached to the filing.

In addition, MDU states that, pursuant to an order issued by the Commission on February 19, 1982 in Docket No. CP81-316-000, MDU was authorized to commence off-system sales to Colorado Interstate Gas Company (CIG) and MIGC, Inc., under MDU's Rate Schedules X-5 and X-6 respectively. Fourteenth Revised Sheet No. 10 reflects a gas cost adjustment for the sales under Rate Schedules X-5 of 24.125 cents per Mcf.

Finally, MDU notes that the downward gas cost adjustment reflected in those rates to customers receiving service under Rate Schedules G-1, PR-1, I-1, X-1, and X-4 are due to the off-system sales to CIG and MIGC. Such reductions were made in order to comply with the Commission's Order issued in Docket No. CP81-316-000.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 22, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become to party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene. Copies of the filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10390 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-438-000]

Northern Indiana Public Service Co.; Filing

April 12, 1982.

The filing Company submits the following:

Take notice that on April 5, 1982, Northern Indiana Public Service Company (NIPSCo) tendered for filing Fourth Revised Sheet No. 3 to its FERC Electric Service Tariff—Third Revised Volume No. 1 which has been revised to include additional delivery points for Wabash Valley Power Association—Steuben County Rural Electric Membership Corporation—Wall Lake. Northern Indiana Public Service Company also tendered for filing the following:

Exhibit B-6, a supplement to the Service Agreement between NIPSCo and Wabash Valley Power Association—Steuben County Rural Electric Membership Corporation, which covers the supply of electric energy for resale at a delivery point located in Milgrove Township, Steuben County, Indiana.

Exhibit B-3, a supplement to the Service Agreement between NIPSCo and the Town of Walkerton, Indiana which covers the supply of electric energy for resale at a delivery point located in the Town of Walkerton, Indiana.

Copies of this filing were served upon all customers receiving electric service under NIPSCo's FERC Electric Service Tariff—Third Revised Volume No. 1 and the Public Service Commission of Indiana.

NIPSCo also requests a waiver of the notice requirements, pursuant to Section

205(d) of the Fedral Power Act and § 35.11 of the Commission's regulations.

Any person desiring to be heard or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before April 27, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10405 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-294-000 and ER82-295-000]

Philadelphia Electric Co.; Order Accepting for Filing and Suspending Revised Rates, Consolidating Dockets, Granting Intervention, Denying Motion To Reject, Granting Summary Disposition in Part, and Establishing Price Squeeze and Hearing Procedures

April 9, 1982.

On February 8, 1982, Philadelphia Electric Company (PE) tendered for filing revised rates for service to the Borough of Lansdale (Lansdale) (Docket No. ER82-294-000) and the Conowingo Power Company (Conowingo) (Docket No. ER82-295-000).[1] The proposed rates would result in increased revenues of approximately $882,900 (12.0 percent) from Lansdale and $3,077,600 (9.3 percent) from Conowingo, based on the calendar 1982 test year. PE requests an effective date of April 10, 1982, for the revised rates.

Notices of PE's filings were issued on February 16, 1982, and February 18, 1982, with comments due on or before March 3, 1982. The Public Service Commission of Maryland filed a timely notice of intervention noting that the filing will have an impact on retail customers of Conowingo in Maryland. On February 26, 1982, the Office of Peoples' Counsel for the State of Maryland (Peoples' Counsel) filed a petition to intervene, also stating that the filing will affect residential customers of Conowingo in Maryland.

On March 3, 1982, Lansdale filed a motion for summary disposition and rejection, protest, and petition to intervene. Lansdale request rejection of the filing on the grounds that it is patently discriminatory and anticompetitive and that the filing is deficient in that the workpapers do not provide a full explanation of the company's cost of service. Lansdale also requests summary rejection of the company's proposal to include in its cost of service permanent nuclear fuel disposal costs and nuclear decommissioning costs; alternatively, Lansdale requests that the Commission resolve these issues by way of rulemaking proceedings, phase the instant proceeding on these issues pending such rulemakings, and in the interim, preserve the *status quo ante* by precluding recovery of the proposed disposal and decommissioning costs at this time. Absent rejection, Lansdale seeks a five month suspension, challenging PE's claimed rate of return and cash working capital allowance, purportedly unsupported increases in Period II expenses, possible non-compliance with the Commission's normalization requirements, and possible inclusion of inappropriate capital costs in the cost of service.

On March 18, 1982 PE filed a response opposing Lansdale's motions for summary disposition and rejection and for a five month suspension.

Discussion

The Commission finds that participation in this proceeding by the Peoples' Counsel and Lansdale is in the public interest. Accordingly, the petitions to intervene will be granted. Further, the timely notice filed by the Maryland Commission is sufficient to initiate its participation as an intervenor.

Having considered the pleadings as well as PE's submittal, we find that the proposed rates should not be summarily rejected inasmuch as the submittal substantially complies with the Commission's filing requirements.[2] As to Lansdale's contention that PE's proposed rates are patently discriminatory and anticompetitive, we believe the more appropriate course, consistent with that generally taken by the Commission, is to consider these matters on the basis of an evidentiary hearing. Accordingly, we shall deny Lansdale's motion to reject and, as to the price squeeze allegations, we shall institute phased proceedings in accordance with Commission policy established in "Arkansas Power and Light Company," Docket No. ER79-339- (August 6, 1979).

Lansdale urges summary disposition with respect to costs associated with permanent disposal of spent nuclear fuel, citing "Virginia Electric & Power Company," Opinion No. 118 (April 10, 1981)[3] and "Carolina Power & Light Company," Opinion No. 132 (November 5, 1981) for the proposition that such costs must necessarily be excluded from the wholesale cost of service. While these decisions did deny recovery of permanent disposal costs, they were based upon evidentiary records developed at hearing and did not establish a *per se* exclusionary rule. Although the Commission has recognized the uncertainties regarding possible disposal or reprocessing scenarios, we noted in Opinion No. 132 that "(Carolina Power & Light Company was not) precluded from presenting . . . evidence which might justify the pass-through of permanent transportation and storage costs associated with spent nuclear fuel disposal." Consistent with that policy determination, we shall deny Lansdale's request for summary disposition on this issue.

Similarly, we believe that Lansdale's request for summary rejection of PE's proposed decommissioning costs raises questions of fact requiring further investigation during an evidentiary hearing.[4] Accordingly, we shall deny summary disposition of this issue as well. We shall also deny Lansdale's request for a phased hearing on these issues; requests for proposed rulemakings should be filed separately in accordance with §§ 1.7(e) and 2.1(a) of the Commission's regulations, rather than in connection with a specific rate proceeding. In the limited statutory time available for action on this (or any) rate increase filing, the Commission is not prepared to address the broad policy considerations associated with initiating a generic rulemaking proceeding. Accordingly, we decline to address the merits of Lansdale's call for a rulemaking at this time, although this decision is without prejudice to a subsequent proposal under the pertinent provisions of the regulations.

The Commission notes that PE's wholesale cost of service includes

---

[1] *See* Attachment A for rate schedule designations. The filings in Docket No. ER82-295-000 involve rate schedules for service to Conowingo by both PE and Susquehanna Electric Company. Conowingo and Susquehanna both are wholly-owned subsidiaries of PE.

[2] "*See* Municipal Light Boards of Reading and Wakefield, Massachusetts v. FPC." 450 F.2d 1341 (D.C. Cir 1971).

[3] *See also* Opinion No. 118-A (November 20, 1981).

[4] See "Commonwealth Edison Company", Docket No. ER82-146-000 (February 5, 1982).

expenses associated with the company's contributions to EPRI. In "Northern States Power Company (Wisconsin)", Docket No. ER81–653–000 (October 2, 1981), we observed that the EPRI issue had been fully litigated in several Commission rate cases and we concluded that this matter "has been resolved with sufficient clarity and in sufficiently generic terms to render further litigation on the issue inappropriate." The only potential issue present in the instant proceeding involves the appropriateness of recovering a portion of the EPRI expenditures from Conowingo, a PE affiliate. As to Lansdale, we shall summarily reject PE's cost of service inclusion of EPRI expenses; however, given the relatively small revenue impact of this adjustment, we shall not require PE to refile its cost of service or rates at this time.

Our preliminary examination indicates that PE's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

We recently addressed the commission's suspension policy in "West Texas Utilities Company", Docket No. ER82–23–000 (February 26, 1982). As explained there, where our preliminary review suggests that increased rates may be unjust and unreasonable, but may not be substantially excessive as described in "West Texas", we shall suspend the rates for one day. Where however, as here, preliminary examination indicates that the rates may be substantially excessive, we shall suspend for the maximum period. Because we find that the proposed rates may yield substantially excessive revenues, we shall suspend the rates for five months, permitting the rates to take effect subject to refund thereafter on September 10, 1982.

Because the increases proposed in Docket Nos. ER82–294–000 and ER82–295–000 are based on the same test period data, reflect identical cost of services methodologies, and present common questions of law and fact, we shall consolidate these dockets for purposes of hearing and decision.

Finally, we note that PE's cost of service reflects the company's use of the Accelerated Cost Recovery System (ACRS) for tax depreciation under the Economic Recovery Tax Act of 1981. PE did not, however, normalize in its prior rate case in Docket Nos. ER80–557 and ER80–558. While we can conclude that the instant filing reflects a normalization method of accounting for the 1982 test year property, further information will be required in order to determine whether PE has properly calculated the effects of normalization in its jurisdictional cost of service.

The Commission Orders

(A) The motions of Lansdale to reject PE's filing or to summarily reject portions thereof are hereby denied except as noted in Paragraph (C) below.

(B) PE's proposed rates are hereby accepted for filing and suspended for five months from sixty days after filing to become effective, subject to refund, on September 10, 1982.

(C) Summary disposition is hereby ordered with respect to PE's inclusion of EPRI expenses in cost of service and rates allocable to Lansdale. This determination shall be reflected in any compliance cost of service and rates at the conclusion of this proceeding.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR Ch. I), a public hearing shall be held concerning the justness and reasonableness of PE's rates.

(E) The proceedings in Docket Nos. ER82–294–000 and ER82–295–000 are hereby consolidated for purposes of hearing and decision.

(F) The petitioners are hereby permitted to intervene in this proceeding subject to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act; *Provided, however,* That participation by such intervenors shall be limited to the matters set forth in the petitions to intervene; *And provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any order or orders entered by the Commission in this proceeding.

(G) Lansdale's motion to phase the proceeding with respect to the nuclear fuel disposal and nuclear decommissioning issues is hereby denied.

(H) We hereby order initiation of price squeeze procedures and further order that the proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may order a change in this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) The Commission staff shall serve top sheets in this proceeding on or before April 20, 1982.

(J) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss) as provided for in the Commission's rules of practice and procedure.

(K) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A—Philadelphia Electric Co. Rate Schedule Designations, Docket Nos. ER82–294–000 and ER82–295–000

Designation	Other party
Docket No. ER82–294–000:	
(1) Philadelphia Electric Company, Supplement No. 7 to Rate Schedule FPC No. 44 (Supersedes Supplement No. 6).	Borough of Lansdale.
Docket No. ER82–295–000:	
(2) Philadelphia Electric Company, Supplement No. 9 to Rate Schedule FPC No. 36 (Supersedes Supplement No. 8).	Conowingo Power Co.
(3) Susquehanna Electric Company, Supplement No. 9 to Rate Schedule FPC No. 2 (Supersedes Supplement No. 8).	Conowingo Power Co.

[FR Doc. 82–10406 Filed 4–15–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–437–000]

Public Service Company of New Mexico; Filing

April 12, 1982.

The filing Company submits the following:

Take notice that on April 5, 1982, Public Service Company of New Mexico (PNM) submitted for filing an Amendment No. 1 to the Contingent Capacity Sales (Agreement)

(Agreement) between PNM and San Diego Gas & Electric Company (SDG&E) for sale of 236 MW of contingent capacity from PNM's San Juan Generation Station Unit 4. The date of initial service under the Agreement is anticipated to be May 1, 1982. To enable the parties to have the assurance that the Amendment will become effective on the date of initial service and thereby allowing the mutual benefits which are anticipated to be obtained for their respective customers under the amendment, the parties have requested waiver of the Commission's 60 day notice provision.

PNM indicates the amendment would revise the banking provisions of the agreement and incorporate a new provision allowing SDG&E to sell energy to PNM at split-savings in lieu of banking energy at times when it is mutually beneficial and SDG&E would otherwise be banking energy with PNM.

Copies of the filing have been served upon SDG&E and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said Amendment should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 27, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[Doc. 82-10407 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6014-000]

Public Utility District No. 1 of Lewis County; Application for Preliminary Permit

April 12, 1982.

Take notice that Public Utility District No. 1 of Lewis County (Applicant) filed on February 22, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6014 to be known as the Silver Creek Waterpower Project located on Silver, Lynx, and Lake Creeks in Lewis County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Gary H. Kalich, Manager, Public Utility District No. 1 of Lewis County, 321 NW. Pacific Avenue, Post Office Box 330, Chehalis, Washington 98532.

Project Description. The proposed project would consist of: (1) Three proposed concrete-gravity diversion dams approximately 100 feet long and 6 feet high, each with ungated spillway sections; (2) a proposed power conduit consisting of a 72-inch diameter steel pipeline, approximately 15,300 feet long, a concrete lined 7.5-foot diameter tunnel, approximately 3,200 feet long, and a 72-inch steel penstock, approximately 700 feet long; (3) a proposed powerhouse containing two turbine generators with a combined installed capacity of 13.2 MW; (4) proposed transmission lines; and (5) appurtenant facilities. The Applicant estimates that the aveage annual energy output would be 48.3 GWh. The proposed project is located on the Gifford Pinchot National Forest.

Purpose of Project. Power at the proposed project would be sold to the Bonneville Power Administration (BPA).

Proposed Scope of Studies Under Permit. A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, state, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $300,000.

Competing Applications. This application was filed as a competing application to Hydro Resources Company's application for Project No. 5275 filed on August 25, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exempton from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Aplications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-10391 Filed 4-15-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5889-000]

Springfield Utility Board; Application for Preliminary Permit

April 12, 1982.

Take notice that Springfield Utility Board (Applicant) filed on January 18, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)) for Project No. 5889 to be known as the Eastern River Water Power Project located on Hills Creek in Lane County, Oregon. The application is on file with the

Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Steve L. Loveland, Springfield Utility Board, P.O. Box 300, Springfield, Oregon 97477.

Project Description. The proposed project would consist of: (1) A proposed diversion structure, 8 feet high, and 350 feet long; (2) a proposed circular steel penstock, approximately 5000 feet long; (3) a proposed powerhouse containing one turbine generator with an installed capacity of 2500 Kw; (4) a proposed 34.5 kV transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 10,660,000 kWh. The proposed project is located on the Willamette National Forest.

Purpose of Project. Power at the proposed project would be sold to the Bonneville Power Administration.

Proposed Scope of Studies Under Permit. A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, state, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $80,000.

Competing Applications. Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before June 21, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before June 21, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et. seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than August 20, 1982.

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intevene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents. Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATIONS," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–10392 Filed 4–15–82 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–433–000]

Wisconsin Electric Power Co.; Filing

April 12, 1982.

The filing Company submits the following:

Take notice that Wisconsin Electric Power Company (WEP) on April 2, 1982, tendered for filing an executed service agreement to become effective March 11, 1982 with Upper Peninsula Power Company (UPPCo) and an Exhibit C to the service agreement with the Town of Florence (Florence) to become effective February 5, 1982. Under an assignment agreement, Florence has assigned its rights and duties under their existing service agreement with the Company to Wisconsin Public Power Incorporated (WPPI), a bulk power supply municipal electric company created under Wisconsin law.

WEP requests waiver of the Commission's 60-day notice requirements in order to allow the said effective dates.

Copies of this filing have been served on UPPCo., Florence, WPPI and the Public Service Commissions of Wisconsin and Michigan.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10). All such petitions or protests should be filed on or before April 26, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–10408 Filed 4–15–82; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures and solicitation of further comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding over $38.9 million in consent order funds. These funds were obtained from 33 different firms and individuals in settlement of enforcement proceedings brought by the Office of Enforcement [now the Office of Special Counsel] of the Department of Energy.

DATES AND ADDRESSES: Applications for refund must be postmarked on or before July 15, 1982, and should be addressed to Adams Resources and Energy, Inc. *et al.* Consent Order Refund Proceeding, Office of Hearings and Appeals,

Department of Energy, 12th Street and Pennsylvania Ave., N.W., Washington, D.C. 20461. Further comments must be postmarked on or before May 17, 1982, and should also be addressed to the Office of Hearings and Appeals, Department of Energy, 12th Street and Pennsylvania Ave., N.W., Washington, D.C. 20461. Applications and comments should refer to Case No. BEF–0055.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 12th Street and Pennsylvania Ave., N.W., Washington, D.C. 20461, (202) 633–9834.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the final decision and order set out below. The final decision and order related to consent orders entered into by Adams Resources and Energy, Inc. and 32 other firms and individuals. The names of the parties and amount of each consent order are listed in the decision. All 33 parties are producers or resellers of crude oil. Pursuant to the consent orders, these parties have agreed to make refunds totaling over $38.9 million with respect to violations of DOE crude oil pricing regulations.

On January 25, 1982, the Office of Hearings and Appeals issued a proposed decision and order which referred to another determination issued to the Office of Enforcement in the Matters of Alfred B. Alkek and others, 9 DOE 82,521 (1982). 47 FR 4583 (February 1, 1982). The *Alkek* decision involved issues which are identical to those in the *Adams* proceeding. In *Adams*, the DOE therefore determined that it would be administratively efficient to aggregate the funds involved in the *Adams* and *Alkek* proceedings. Since more than $21 million is involved in the *Alkek* proceeding and $38.9 million is involved in the *Adams* proceeding, the total funds available for distribution using the mechanism announced in the *Alkek* determination are now nearly $60 million.

The *Adams* final decision and order reflects our analysis of comments received from interested parties. As we indicate in the final decision, applications for refund from the consent order funds may now be filed. Applications will be accepted provided thay are postmarket no later than July 15, 1982. *See* 10 CFR 205.283. We will accept applications from all claimants that can affirmatively demonstrate that they have been directly injured by the violations alleged in the consent orders. A detailed discussion of what information a party must provide in order to assert a successful claim is set forth in the final decision and order appended to this notice.

The final decision additionally refers to the comments received in response to the portion of the proposed decision and order concerning the funds, if any, which may remain after all meritorious claims have been paid. The final decision reaches no determination with regard to the disposition of any funds in the second stage of the refund proceeding, however, because the most appropriate disposition of the remaining funds may be determined, to a great extent, by the amount of money that remains after the first stage of the refund proceeding. Instead, the final decision solicits further comments on the appropriate distribution of these funds.

Commenting parties are requested to submit two copies of their comments. Comments should be postmarked on or before May 17, 1982 and should be addressed to the address set forth at the beginning of that notice. All comments received in this proceeding will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., April 8, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

April 8, 1982.

Name of Petitioner: Office of Enforcement, Economic Regulatory Administration: In the Matters of Adams Resources and Energy, Inc., and others listed in Appendix A.

Dates of Filing: June 1, 1981, and others listed in Appendix A.

Case Numbers: BEF–0055, and others listed in Appendix A.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration's Office of Enforcement (OE) may request the Office of Hearings and Appeals (OHA) to formulate and implement a specially-designed process to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of an alleged violation of DOE regulations. 10 CFR Part 205, Subpart V.(*1*) In accordance with these regulatory provisions, OE has filed Petitions for the Implementation of Special Refund Procedures in connection with consent orders entered into by Adams Resources and Energy, Inc. and the other firms and individuals listed in Appendix A to this Decision and Order. Pursuant to consent orders, these parties have agreed to make refunds totaling $38,974,185.78 for alleged violations of DOE pricing regulations. Those funds, which have already been paid to the DOE, are now being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding final distribution. As will be discussed in greater detail below, each violation of the DOE pricing regulations alleged in the consent orders is similar, and the parties injured by each of the alleged violations are for the most part identical. Therefore these cases have been consolidated for purposes of this Decision.

I. Background

The consent orders in this proceeding resulted from audits or investigations conducted by the DOE and its predecessor agencies. As a result of these audits, the DOE alleged that the parties in each of these cases were involved in the sale of crude oil at prices in excess of those established in the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.

Those regulations generally required crude oil producers to determine the first sale price of crude oil on the basis of production from a property during a specified base period, *i.e.*, the base production control level (BPCL). *See* 6 CFR 150.354; 10 CFR 212.72–.74. Crude oil production that did not exceed the BPCL for the particular property was generally subject to the lower tier ("old" oil) ceiling price rule. 6 CFR 150.354; 10 CFR 212.73. Crude oil production that exceeded the BPCL ("new" oil) could generally be sold without regard to the ceiling price rule prior to February 1, 1976, and at the upper tier ceiling price level after the date. 6 CFR 150.354(c)(2); 10 CFR 212.74(a). Prior to February 1, 1976, in months in which new oil could be sold from a property, additional volumes of crude oil could be sold as "released" oil at prices in excess of the applicable lower tier ceiling price level. 6 CFR 150.354(c)(3); 10 CFR 212.74(b). Additionally, crude oil produced from a "stripper well property" could generally be sold at market price levels. The term "property" was defined as the right to produce crude oil which arises from a lease or fee interest. 6 CFR 150.354(b)(2); 10 CFR 212.72. Producers and resellers of crude oil were generally required to certify in writing to each purchaser in

the distribution chain the respective volumes of the various categories of price-controlled domestic crude oil included in each purchase. 10 CFR 212.131(a)(4), (b)(1).

The types of violations allegedly committed by the parties who entered into the consent orders involved in this proceeding fall into three categories. Most of the alleged violations concern firms which were "producers" of crude oil as defined in 10 CFR 212.31. These firms were alleged to have sold price-controlled oil at uncontrolled prices. Specifically, they were alleged to have incorrectly certified "old" price-controlled crude oil they produced as "new" or "stripper well" oil, which was subject to less stringent controls. The firms were therefore alleged to have overcharged purchasers by the amount per barrel which represents the difference between the "new" or "stripper well" prices and the maximum price permitted for "old" oil. (*2*) The second type of violation alleged concerns a producer who was alleged to have sold "old" oil at levels in excess of the applicable ceiling price. In this type of case, the producer allegedly determined May 15, 1973 posted prices for crude oil incorrectly and thus sold crude oil at a price higher than that permitted by the regulations. (*3*) The third type of violation alleged concerns a reseller that was alleged to have miscertified "old" crude oil which it owned and sold it at the higher "new" or world market level (uncontrolled) oil prices. (*4*)

In all of these consent orders, the Government agreed to terminate the pending investigations and administrative proceedings, and the parties agreed to pay a stipulated sum of money to the DOE. Notices of the consent orders were published in the Federal Register. (*5*) Interested parties were provided an opportunity to comment on the terms of the consent orders and to submit written notices to ERA of potential claims against the settlement funds. In a number of cases the DOE also issued press releases concerning the consent orders. In many cases, parties submitted claims for a portion of the consent order fund. (*6*)

II. Jurisdiction

The procedural regulations of the Department of Energy set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process is intended to be used in situations where the Department of Energy is unable to readily identify persons who are entitled to refunds or to readily ascertain the amounts that such persons are entitled to receive as a result of enforcement proceedings. 10 CFR 205.280. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶82,508 (1981); *Office of Enforcement*, 8 DOE ¶82,597 (1981) (hereinafter cited as Vickers). After reviewing the records developed in each of the cases involved in this proceeding, we have concluded that the implementation of Subpart V proceedings in each case is appropriate. In each of the cases, there is a significant degree of difficulty inherent in identifying the persons who were injured by the alleged overcharges. Moreover, even in cases where an injured person can be identified, it is difficult to ascertain the level of refunds that each person should receive. Until recently, crude oil and refined petroleum products were subject to a comprehensive price regulation scheme which could be utilized to facilitate the channeling of refunds to ultimate consumers. However, on January 28, 1981, the President exempted crude oil and all refined petroleum products from the DOE regulatory program. Exec. Order No. 12287, 46 FR 9909 (1981). As a result of decontrol price rollbacks are no longer an effective means of refunding money to purchasers who were overcharged in the past. Moreover, to refund money to the parties actually affected by the alleged overcharges, a determination must be made regarding the extent to which purchasers of the crude oil involved absorbed the overcharges or passed the higher costs through to downstream customers by raising their own sales prices. In these cases, therefore, the persons entitled to refunds are not readily identifiable, and the amount of the refunds that persons should receive are not readily ascertainable. Under these circumstances, Subpart V provides the most useful mechanism for devising a procedure to effect restitution. The Office of Hearings and Appeals therefore will accept jurisdiction over the funds received by the DOE in settlement of the enforcement proceedings underlying the Petitions for Implementation of Special Refund Proceedings set forth in Appendix A to this Decision.

III. Authority to Fashion Refund Procedures

Subpart V authorizes the Office of Hearings and Appeals, upon request by the appropriate enforcement official, to fashion special procedures to distribute refunds obtained as part of settlement agreements. 10 CFR 205.281, 205.282. The special refund procedures are part of an overall regulatory program and are intended to implement several different statutes.

Congress provided for mandatory price controls on crude oil, residual fuel oil, and refined petroleum products in the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 *et seq.* (1976). The authority to enforce the regulations governing the pricing of crude oil and refined petroleum products was first exercised by the Cost of Living Council under the Economic Stabilization Act (ESA), 12 U.S.C. 1904 note (1976), then delegated in turn to the Federal Energy Office, Administrator of the Federal Energy Administration and finally, in 1977, to the Secretary of Energy. Federal Energy the Administration Act (FEAA) Section 5, 15 U.S.C. 765 (1974); Department of Energy Organization Act (DOE Act), Section 3o1(a), 42 U.S.C. 7151(a) (1979). To carry out these statutory mandates, the regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, and the Department of Energy have provided throughout the existence of the price control program for the issuance of remedial orders "requiring a person to cease a violation or to eliminate or compensate for the effects of a violation, or both." 6 CFR 155.81(b) (1973); 10 CFR 205.2 (1974) (defining "remedial order").

Restitution of overcharges is designed to accomplish two independent purposes: disgorgement of the fruits of a regulatory violation from the wrongdoers, and refunding money to persons injured by the regulatory violation. *See Sauder v. DOE*, 648 F. 2d 1341 (Temp. Emer. CT. App. 1981). The latter objective—refunding money to overcharged persons—furthers the specific goal in section 4 (b)(1)(F) of the EPAA of providing for the "equitable distribution of * * * refined petroleum products at equitable prices * * * among all user." 15 U.S.C. 753 (b)(1)(f).

IV. Proposed Refund Procedures

On January 25, 1982, the Office of Hearings and Appeals issued a Proposed Decision and Order in which we tentatively established a refund procedure to be adopted for the distribution of the $39 million made available by the consent orders involved in this proceeding. In the Proposed Order, we referred to a final Decision and Order establishing refund procedures in connection with 25 allege crude oil price violations which are virtually identical to the types of violations involved in the present proceeding *Office of Enforcement*, 9

DOE ¶ 82,521 (1982) (hereinafter cited as *Alkek*). A copy of that Decision is appended to this Order as Appendix B. Since the two proceedings involve similar transactions and present identical issues, we proposed in our January 25 Order, to aggregate the moneys involved in the present proceeding with the funds involved in *Alkek*. We stated our belief that such a consolidation would be equitable and administratively efficient. The total amount of money made available for refunds in *Alkek* was approximately $21 million. The firms involved in the present proceeding remitted a total of approximately $39 million to the DOE. Therefore, as we pointed out in our Proposed Order, the total funds available for distribution through the plan announced in *Alkek* are nearly $60 million.

The *Alkek* distribution plan set forth a two-stage refund process. We stated that in the first stage of that process we would consider claims from parties who believe that they were injured as a result of the violations alleged in the consent orders. The second stage of the refund proceedings would refund any moneys remaining after the initial distribution to those parties had been effected. We indicated that we could not determine precisely the manner in which that distribution should be made until the first stage had been completed. However, we stated our belief that it might be appropriate to distribute that money to state governments for use in energy related programs, or direct that the money be deposited into the United States Treasury.

V. Analysis of Comments

Since the issuance of the January 25 Proposed Decision, we have received several comments regarding our first stage refund plan as set forth in *Alkek* and incorporated into the present proceeding. As an initial matter, most comments strongly supported our proposal to consolidate the present proceeding with the *Alkek* proceeding, and also endorsed our plan that refunds be disbursed in a two-stage process. However, we did receive several comments regarding the refund mechanism which we believe should be addressed in detail. Atlantic Richfield Company (ARCO), Cities Service Company and Marathon Oil Company submitted a combined response to our January 25 Proposed Decision and Order. In that response, the firms contend that all the refund moneys should to the maximum extent possible, be distributed to direct purchasers of the crude oil involved in the consent orders. If after such a distribution, some funds remain, the firms assert that those funds should be returned to participants in the Entitlements Program.

The three firms maintain that the two-stage refund plan, as set forth in *Alkek*, is unlawful because the Office of Hearings and Appeals has authority to distribute refunds only to direct purchasers who were actually overcharged. In support of their position, the firms assert that only direct purchasers have standing to sue under Section 210 of the Economic Stabilization Act of 1970 (ESA), as amended, 12 U.S.C. 1904 note. *Arnson v. General Motors Corp.*, 377 F. Supp. 209, 212 (N.D. Ohio 1974). The three firms therefore contend that the Office of Hearings and Appeals has no authority to distribute refunds to indirect purchasers in the instant proceeding.

We do not agree. The firms appear to confuse a party's private right of action to recover damages under section 210 of the ESA with DOE enforcement actions brought pursuant to Section 209 of the ESA. The instant consent orders were issued pursuant to proceeding initiated in connection with DOE enforcement authority which is based on section 209 of the ESA. Contrary to the firms' contention, the consent orders do not involve section 210. These two Sections provide for very different types of actions and serve different purposes.

> [I]n contrast to private remedies, administrative remedies are not concerned with *punishing* a violator for his illegal conduct or with *compensating* a victim for his injuries. Rather, the purpose of administrative remedies' * * * is to insure, on a national scale, the *enforcement* of [the DOE's administrative] regulations.

Bulzan v. Atlantic Richfield Co., 620 F. 2d 278, 282 (Temp. Emer. Ct. App. 1980) (emphasis in original).

Unlike section 210, section 209 does not require that in order to be eligible for refunds, a party must be a direct purchaser of the alleged violator. Through section 209 of the ESA, the DOE is accorded broad discretion in fashioning appropriate restitution. See *Bonray Oil Co. v. DOE*, 472 F. Supp. 899, (W. D. Okla. 1978) *aff'd on basis of district court opinion*, 601 F. 2d 1191 (Temp. Emer. Ct. App. 1979). See also, *Office of Enforcement, Economic Regulatory Administration: in The Matters of Coline Gasoline Corp.*, 9 DOE ¶ 82,508 (1981) (hereinafter cited as *Coline*).

The three firms also object to the requirement enunciated in *Alkek*, that in order to receive refund moneys a firm must demonstrate that it absorbed the overcharges itself, rather than pass them on to its own customers. In this regard, the firms maintain that under the ESA and EPAA "a passing on defense is insufficient as a matter of law to defeat a claim for damages by a direct purchaser, which makes irrelevant OHA's evident belief that the financial effect of any alleged overcharges were passed down the distribution chain." In support of their position the firms cite *Illionis Brick Co. v. Illinois*, 431 U.S. 720 (1977) and *Hanover Shoe, Inc. v. United Machinery Corp.*, 392 U.S. 481 (1968). In *Hanover Shoe*, the Court held that a defendant in a private antitrust action could not assert as a defense to the action the allegation that the plaintiff had passed on the resulting overcharges to its customers and had therefore suffered no injury. In *Illinois Brick*, the Court reasoned that if the passing on argument could not be used defensively, it could also not be used offensively by a plaintiff who claimed that the effects of an antitrust violation had been passed on by an intermediate party to it.

In *Coline*, we discussed in detail our reasons for determining that the principles which formed the basis for the results in *Hanover Shoe* and *Illinois Brick* are not applicable to Subpart V proceedings. Specifically we stated:

> *Hanover Shoe* and *Illinois Brick* were private antitrust cases brought under section 4 of the Sherman Act, 15 U.S.C. 4, which is analogous to section 210 of the ESA. Both of those statutory provisions permit a private party to recover treble damages for violations of the law, and they were enacted in order to ensure that violators would be discovered and deterred by persons bringing private actions. *Compare Illinois Brick with Go-Tane Service Stations, Inc., v. Ashland Oil, Inc.*, No 79 C1675 (N.D. Ill., February 5, 1981) (memorandum opinion and order striking affirmative defense). Consequently, courts have held that in order to advance this policy plaintiffs do not have to demonstrate that they absorbed overcharges in order to recover damages for violations of federal antitrust laws and the ESA. Since private actions in these types of cases may be brought independently of government action to enforce the law, it is clear that they are intended to be separate from but complementary to government enforcement of the important policies enacted in each respective statute. In fact, as noted above, the Temporary Emergency Court of Appeals has expressly held that section 210 actions are independent of section 209 actions. *Bulzan v. Atlantic Richfield Co.*, 620 F. 2d 278 (Temp. Emer. Ct. App. 1980). Accordingly, although we may refer to private antitrust cases, particularly those settled by court-approved consent decrees, for assistance in formulating an equitable plan for the distribution of refunds obtained through government enforcement proceedings, we are not legally bound by the procedures which courts have adopted in private antitrust suits. To the contrary, this inquiry as to whether a

claimant was injured in fact is most appropriate in a proceeding of this type where refunding moneys obtained through DOE enforcement proceedings is the primary focus. *Cf. State of West Virginia v. Chas Pfizer & Co.*, 440 F. 2d 1079 (2d Cir. 1971).

9 DOE at 85,051.

We also found that none of the underlying policy reasons cited by the Court in *Hanover Shoe* and *Illinois Brick* as the basis for its decision to exclude evidence of passing on was applicable to special refund cases. In *Hanover Shoe*, the Court barred the passing on defense because of its concern that violators would retain the fruits of their illegality, since indirect purchasers would have only a tiny stake in the lawsuit and, hence, little incentive to sue. 392 U.S. 431, 494. In *Coline*, we stated that

> the adoption of a pass-on theory at this stage of the proceedings does not create a danger that the government will be deterred from pursuing an enforcement action. Unlike the plaintiff in a private action, the agency has no peceniary interest in the funds. The DOE's purpose in prosecuting these cases is to remedy violations of the regulations by forcing disgorgement of illegally obtained funds, thereby fostering the goal in section 4(b)(1)(F) of the EPAA of providing for the "equitable distribution of * * * refined petroleum products at equitable prices * * * among all users."

9 DOE ¶ 82,508, at 85,053

ARCO, Cities Service and Marathon have offered no reasoning or data which would lead us to conclude that our position regarding passing on in the context of Subpart V proceedings should be re-evaluated.

The firms also contend that *United States v. Ringer*, 492 F. Supp. 350 (D. Colo. 1980) stands for the proposition that the DOE may not order restitution of overcharges to indirect purchasers. In *Ringer*, the court refused to enforce a price rollback provision because it was not evident that future purchasers, who would benefit from the rollback, were the same parties as previously overcharged customers. As we stated in *Coline*, that opinion is not binding upon this office. 9 DOE at 85,049. Nevertheless, as a matter of fairness, we are mindful of the importance of insuring that the plans we shall implement with this Decision provide for a sufficient nexus between the individuals who receive refunds and the alleged violations themselves. We see no difficulties in establishing such a nexus with regard to our plans to distribute refunds to overcharged direct purchasers. We further believe that we can provide for the requisite nexus with regard to any second stage distribution to state governments, by approving of the use to which any refunds to individual states will be put prior to the disbursement of those funds. In fact, in our *Alkek* Decision we specifically rejected plans for use of refund moneys suggested by several states in those instances in which it appeared that the benefits of the plans would not be equitably derived by all citizens who were likely to have been overcharged. 9 DOE at 85,138–39.

The firms also contend that opinion letters of the Comptroller General of the United States support their position that we may not distribute refunds to indirect purchasers. In a letter of October 10, 1980, the Comptroller General discussed a proposal for distribution of funds obtained through a consent order with Getty Oil Company and specifically stated that "in order for any distribution of the Getty funds to satisfy the statutory and regulatory requirements for restitution, it must be made in approximatee proportion to the injury actually sustained to Getty customers and to ultimate customers of Getty products who were the victims of the overcharges." GAO letter at 7. In an April 1, 1981 letter, while espousing a view of our authority to institute the proposed second stage refund procedures which we find overly narrow, *see Vickers*, 8 DOE at 85,398, the Comptroller General again directed his criticism towards refunds "to persons or organizations with no necessary nexus to the alleged violations which gave rise to the consent orders." April 1, 1981 Letter at 8. In a letter of March 9, 1982 the GAO did not raise any objection to our first stage refund plan as enunciated in *Alkek*. However, that Office expressed its concern that a proposed second stage refund procedure achieve adequate restitution to ultimate consumers and other purchasers who do not demonstrate entitlement to refunds during the first stage of the refund procedures.

As we indicated in *Coline*, the GAO opinions are not binding on this Office, and they are further inconsistent with our broad remedial authority conferred in section 209 of the EPAA. 9 DOE at 85,049. In any event, the fears of the Comptroller General that our second stage refund plan may lack sufficient nexus are unfounded. As we indicated above, we are mindful of the need to insure that second stage distribution of refunds provides for a sufficient nexus between those who receive benefits of the refunds and the violations which gave rise to the consent orders.

ARCO, Cities Service and Marathon also claim that permitting indirect purchasers to receive refunds would subject the firms entering into consent orders to multiple liability. In this regard, the three firms claim that direct purchasers would still have the right to recover damages in a private action instituted pursuant to section 210 of the ESA, even if, through this Subpart V proceeding, refunds were made to downstream customers of that direct purchaser or to the state governments. The firms appear to take the position that by distributing refunds to indirect purchasers, we will subject consent order parties to private recovery suits from direct purchasers, which will result in multiple liability of the firms entering the consent orders. The firms state that such multiple liability is a result not contemplated by Congress in the EPAA, and that we may therefore not disburse refunds to indirect purchasers.

The firms' position is not well taken. As we pointed out in *Coline:* "Congress expressly set a policy of permitting double exposure to liability by providing in sections 209 and 210 of the ESA that a firm be subject to suit by both the government and by private firms." 9 DOE at 85,054.

Thus, the DOE's authority to make restitution to indirect purchasers is not limited by a consenting firm's potential liability in private actions for damages. Any distribution of refunds made pursuant to a Subpart V proceeding is totally independent of the right of private action provided for in section 210. That Section in no way limits our authority under Subpart V to the effect a disbursement of refunds. Furthermore, in this instance, we do not have jurisdiction to vary or limit rights granted by statute. Therefore, we may not limit the rights of direct purchasers to bring private recovery actions pursuant to section 210.

In any event, the fear of multiple liability expressed by the firms is unrealistic. The courts and the Office of Hearings and Appeals would certainly reduce or offset any firm's recovery in one proceeding by any amount it already recovered in another proceeding. In addition, the actions covered by the consent orders involved here took place, in many cases, so many years ago that the applicable statute of limitations for private section 210 actions may have run on them. Finally, the three firms raising this objection were not parties to any consent order involved in the present proceeding. Thus, we fail to see their interest in protecting the signatories to those consent orders from multiple liability. Consequently, we are unable to accept the firms' claim that the possibility of multiple liability supports their position

that refunds may only be distributed to direct purchasers of the crude oil involved in the consent orders.

The firms also cite *Citronelle-Mobile Gathering, Inc. v. Edwards*, 3 Fed. Energy Guidelines (CCH) ¶ 26,354 (Temp. Emer. Ct. App. 1982) as support for their position that all refunds must go to direct purchasers without regard to whether those purchasers are able to demonstrate injury. The firms maintain that in *Citronelle* TECA would have ordered restitution to direct purchasers without regard to injury, but for their unclean hands. Hence, the firms assert that the DOE has no authority to order restitution other than to direct purchasers. We do not agree. As an initial matter we are not persuaded by the firms' speculation as to what TECA's ruling would have been had the court been presented with a different fact pattern. In *Citronelle*, because of direct purchasers' unclean hands, TECA considered the issue of whether refunds of adjudicated overcharges should be paid to the United States Treasury or to indirect purchasers. The court concluded that in the circumstances of clear harm present in that case "the government has a duty to try to ascertain those overcharged, and refund them, with interest, from the restitution funds." *Id.* at 28,673. TECA therefore decided that the district court exceeded its authority by directing that the funds be automatically deposited into the Treasury without a determination as to whether there were identifiable victims. The facts in *Citronelle* are fundamentally different from those in the present proceeding. As an initial matter, the instant case involves consent order refunds with no actual adjudication of violation, whereas *Citronelle* involved an adjudicated overcharge and an identified overcharged firm. Moreover, in *Citronelle*, TECA reviewed a district court's discretion to distribute refunds. TECA did not refer to the present situation which involves an agency's authority to fashion restitutionary plans in the context of a purely administrative proceeding for the distribution of refunds. In *Citronelle*, TECA made no finding that the DOE may not make its own inquiries as to whether it may not be appropriate for direct purchasers to receive refunds. In the present case, we are involved in just such an inquiry for the purpose of ascertaining the appropriate parties to receive money from a refund pool. We cannot agree with ARCO, Cities Service and Marathon that we are permitted only to ascertain those who were directly overcharged and to disburse refunds to those parties. TECA has construed Section 209 of the ESA as conferring an extremely broad remedial authority on the DOE. In *Sauder v. DOE*, 648 F.2d 131 (Temp. Emer. Ct. App. 1981) the court stated that it did not "believe that Congress intended to limit the agency's and the court's power to restore overcharges" by enacting section 210 of the ESA. The court further stated that "[t]here is no indication * * * that [section 209] * * * attempts to limit the power of the courts or the agency to restitution or to a particularly strict interpretation of restitution." *Id.* Thus, in *Sauder* TECA's interpretation of our restitutionary authority does not prohibit us from ordering restitution to indirect purchasers. *Citronelle* is not to the contrary.

The three firms also contend that the refund procedures adopted in *Alkek* might take several years to complete. They maintain that such an extended proceeding is inconsistent with the Executive Order decontrolling price and allocation of crude oil and petroleum products issued on January 28, 1981 and is inconsistent with the expiration of the Emergency Petroleum Allocation Act (EPAA) on September 30, 1981. We cannot agree. Neither the January 28 Executive Order nor the expiration of the EPAA abrogated our authority to fashion refund procedures. That authority derives, in part, from section 644 of the DOE Act, 42 U.S.C. 7254, which authorizes the Secretary "to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him." Those functions include the statutory directive to "promote stability in energy prices to the consumer * * * [and] prevent unreasonable profits within various segments of the energy industry * * * FEAA section 5(B)(5), 15 U.S.C. 764(b)(5). *See also* 44 FR 8562 (February 9, 1979); *Office of Special Counsel*, 1 DOE ¶ 82,586 (1978). Moreover, we firmly believe that even with the expiration of the EPAA we maintain any authority granted under the Act to remedy the effects of violations which occurred during the period in which the Act was in effect. Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 760g. We therefore conclude that we may properly continue to consider petitions for implementation of Subpart V proceedings and formulate appropriate refund plans pursuant to the authority granted by that Subpart.

In addition to these general challenges to our authority to direct the disbursement of refunds through the Subpart V process, ARCO, Cities Service and Marathon also have raised a specific objection to the distribution plan we set forth in *Alkek*. The firms refer to our statement in *Alkek* that "it is not possible for [OHA] to specify how every potential applicant for refund should document its claims." They object to the fact that we did not explicitly provide for the opportunity to supplement a refund claim once it has been determined what documentation is necessary. We do not find that this objection establishes a basis for concluding that our *Alkek* determination and our Proposed Order in the present proceeding are unlawful. An applicant for a refund has the burden of submitting the best possible evidence to document its claim. However, under § 205.284(b), the Office of Hearings and Appeals may solicit and consider additional information in its evaluation of a refund application. Pursuant to that section, an applicant for a refund will be provided with an opportunity to submit additional information, if necessary.

We also received comments from Energy Resources & Gas Corporation, successor to Alta Loma Oil Company (Alta Loma), a firm which entered into one of the consent orders that are the subjects of this proceeding. One of the alleged violations that was covered by the Alta Loma consent order involved a property incorrectly certified as a stripper well lease by the inclusion of an injection well in the well count for purposes of determining average daily production (ADP). Ruling 1974–29, which set forth the DOE's position that injection wells could not be considered in computing ADP of stripper well properties, formed the basis for the DOE's allegation that Alta Loma had violated DOE price regulations. The DOE's position in that Ruling has been rejected by a Federal District Court in Kansas which found that injection wells should be counted in determining the number of wells on a stripper well property. *In Re DOE Stripper Well Exemption Litigation*, 520 F. Supp. 1231 (D. Kan. 1981). That determination has been appealed to TECA by the DOE. *Energy Reserves Group Inc. v. DOE*, No. 10–39 (Temp. Emer. Ct. App. filed October 20, 1981). Pending a determination with respect to that appeal, the DOE has declined to follow the holding of the district court and has affirmed its previous position on the injection well issue. *Garrett Production Co.*, 8 DOE ¶ 83,034 (1981). In spite of the fact that litigation involving the injection well issue is pending, Alta Loma signed a consent order agreeing to make refunds of $294,617.21 plus interest in 36

monthly installments. The final installment is due in August 1982. Of the total refund amount, approximately $290,000 is attributable to alleged stripper well violations involving the injection well issue. In its comments, Alta Loma contends that this latter amount should not be disbursed by the DOE until a final decision is reached on the injection well issue. Alta Loma claims that the 36-month refund schedule provided for in the consent order demonstrates the DOE's recognition of the need to preserve the integrity of the $290,000 refund until the injection well issue is determined. We do not agree. The consent order is a final settlement of the alleged stripper well violations involving the injection well issue. Because the consent order is a final settlement on that issue, any subsequent judicial determinations concerning the injection well issue would simply be irrelevant.

Alta Loma also contends that 10 CFR Part 205, Subpart J and § 205.199J(d), incorporated by reference into the consent order, support its position that the funds must not be distributed until the injection well issue is decided. This position is not persuasive. Section 205.199J(d) provides that a consent order may be modified or rescinded upon discovery of new evidence materially inconsistent with the evidence upon which the consent order is based. Part 205, Subpart J establishes the procedures for filing an application for modification or rescission of a DOE Order. References to these provisions are found in nearly every DOE consent order and are included, in part, in order to permit the DOE to revise or withdraw consent orders in the event that it determines that the information it received which formed the basis for the order was incorrect. However, it would be illogical to conclude that mere references to those regulations in a consent order prevent the DOE from disbursing consent order funds. As we stated above, these provisions are incorporated into may consent orders. Therefore, if we were to accept Alta Loma's reasoning, we would be forever precluded from disbursing refunds made available in any consent order referring to those regulations because of the possibility that at some time in the future the firm signing the order or the DOE might be able to provide information indicating that the basis for the consent order was incorrect. Such a result is contrary to one of the main goals of the DOE enforcement process which is to insure that consumers pay equitable prices for petroleum products through the refunding of overcharges.

Moreover, Alta Loma was certainly in a position to negotiate, as a condition of settlement, the inclusion of a provision in the consent order that the funds not be disbursed until a final judicial determination has been reached with respect to the injection well issue. For example, Alta Loma could have agreed to sign a consent order only on the condition that the Office of Enforcement refrain from filing a Petition to implement Subpart V proceedings or make other final disbursement of the consent order funds until litigation involving Ruling 1974–29 was decided. Since the firm was unable or neglected to negotiate such a provision, we are not convinced that the Office of Enforcement ever agreed to such a condition, or that the DOE is required to refrain from distributing the Alta Loma funds.

VI. Initial Refund Procedures

In *Alkek* we discussed the type of showing that would be sufficient to establish eligibility for a portion of the consent order funds during the first stage of the refund proceedings. We indicated that we were unable to specify how every potential applicant for a refund should document its claim, but we did state that all applicants must provide sufficient information to prove that the violation alleged in one of the consent orders had a direct, measurable impact on them and that this impact caused an injury that they were unable to minimize or eliminate by passing on to subsequent purchasers or through entitlements benefits. However, in our *Alkek* decision we did not specify precisely what type of information a successful claimant would be required to submit. Therefore, in order to provide additional guidance to firms wishing to submit claims, we shall set forth in more detail at this time the documentation we believe might be appropriate in order to establish eligibility for a portion of the consent order funds during the first stage of the refund proceedings.

The type of documentation a claimant must submit will vary depending on whether a claimant's injury was offset by benefits received from the DOE Entitlements Program. A claimant's injury was not affected by the Entitlements Program:

(i) If the alleged violation occurred prior to the inception of the Entitlements Program on November 1, 1974;

(ii) If the claimant sells crude oil before it has been refined;

(iii) If the violation is a miscalculation of the ceiling price; or

(iv) If the overcharge caused by a certification violation exceeds the revenue received from the entitlements program.

Firms claiming a refund in this type of situation should submit information showing the source of the crude oil, the volume of crude oil obtained, the price of the crude oil, the lawful ceiling price, the time at which it was obtained and, if the claimant is a refiner, the time at which the crude oil was reported to the Entitlements Program. The claimant should also show how the price for crude oil it purchased from the firm signing the consent order compared to the prevailing market price for comparable crude oil at the time. In addition, a claimant must show through the existence of banks or otherwise that it was unable to pass through to its customers the price increases caused by the alleged violations.

After November 1, 1974, violations attributable to miscertifications were affected by the Entitlements Program. To the extent that a direct purchaser has been compensated by the Entitlements Program for the miscertification, it would not be entitled to receive refunds for those overcharges through this Subpart V proceeding. To the extent the Entitlements Program did not fully compensate these refiners for the violation, they should file the information described above. Such claimants should also submit information establishing why they were not fully compensated for the alleged overcharges by the Entitlements Program.

As a final matter, we received several comments in which refiners claimed that due to the operation of the Entitlements Program, the violations alleged in the consent orders could have caused injury to all refiners, whether or not they were direct purchasers of the firms that signed the consent orders involved in the instant proceeding.(7) Those refiners contend that all participants in the Entitlements Program should be permitted to file applications for refunds based on such a claim. We have carefully examined this possibility and it is our preliminary judgment that refiners who claim injury based merely on their participation in the Entitlements Program should not be considered proper recipients of refund moneys. We base this judgment on our belief that any increased costs that they may have incurred as a result of miscertifications were compensated for by the increased prices which all refiners were generally able to charge. When miscertifications occurred, the NOOSR fell for all refiners, thereby increasing the marginal and average costs of crude oil equally to all domestic refineries. We believe that

over the long run these universal marginal cost increases were passed through to the consuming public in the form of higher prices.

At this time it is our preliminary view that a refiner will not necessarily be entitled to receive a refund based solely on a claim that its costs were increased merely by participation in the Entitlements Program. Nevetheless, we will accept refund claims from participants in the Entitlements Program based on increased costs which they believe that they incurred as a result of the overcharges alleged in the consent orders. However, such claimants should set forth specific reasons why they believe that those increased costs were not passed through to the general public. We particularly solicit their views as to alternative theories which could form an appropriate basis for disbursing refunds to participants in the Entitlements Program.

Accordingly, this Decision announces that OHA will accept Applications for Refund from the consent order amounts pursuant to 10 CFR 205.283 beginning immediately. Applications must be filed no later than July 15, 1982. It should be noted that in establishing these procedures, we intend to avoid excessive processing costs that would be out of proportion to the amount of the consent order funds available for distribution. *See* 10 CFR 205.286(b). Consequently, because the cost of considering claims for small refund amounts may render such a process administratively inefficient, we may decide at some point in the future to estalbish a minimum amount for which an Application for Refund may be filed. The minimum amount could be based upon the administrative cost of processing a claim, issuing a check, and transmitting the check, which we are informed amounts to approximately $15.00. However, we will not impose a lower limit at this time, but will consder all Applications for Refund that are timely filed.

VII. Distribution of the Remainder of the Consent Order Funds

We received comments from 24 states and the District of Columbia addressing our plan, as set forth in *Alkek*, for the distribution of whatever consent order funds may remain after the first stage of the refunds process is completed.(*8*) In this Decision, we are not implementing the second-stage refund procedure. This would be difficult to do before the analysis and processing of Applications for Refund, because the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme. *See Office of Enforcement, Economic Regulatory Administration; In the Matter of Vickers Energy Corporation*, 8 DOE ¶ 82,597 (1981). However, we continue to believe that distribution of refunds to all consumers of petroleum products through state governments may well be appropriate if sufficiently large amounts remain after the claims process has been completed.

Not surprisingly, the comments we have received so far from the various state governments strongly support the plan set forth in *Alkek* to distribute remaining consent order funds to the stages for use in energy related programs. We also received comments focusing on the second state of the refund plan from two consumer groups, both of which generally supported our *Alkek* Decision. One group, the National Consumer Law Center, Inc., suggests that 25% of the funds returned to the states should be set aside for low income consumers. The other group, The Valley Opportunity Council, suggests that in Massachusetts the funds should be used for weatherization and conservation programs. These appear to be useful and commendable programs, and we will certainly consider these types of possibilities at a later stage in these proceedings. However, as we stated in *Alkek*, we are not inclined to approve a plan whose benefits are unduly weighted in favor of one particular sector of the population.

We also received comments from The Transportation Group. The Group is an organization composed of four trade associations whose members provide public transportation services. The Group generally objects to our proposals regarding the mechanism for distribution of refunds to ultimate consumers of gasoline in the transportation sector. The Group generally contends that refunds to gasoline purchasers in the transportation sector should be made based on volumes of gasoline purchased by each claimant, rather than, as we had originally suggested, by reducing licensing fees that those gasoline purchasers must pay. As we indicated above, we are far from implementing the second stage of the refund process at this time. These comments and those of the states will be considered in detail at a later stage in these proceedings when we are prepared to implement a refund of the moneys remaining after distribution to direct purchasers has been effected. We continue to seek comments regarding second stage refund procedures.

VIII. Conclusion

The refund mechanisms and procedures outlined above for claims filed with the DOE will be adopted. In addition, with respect to the second stage of the refund process, although we continue to believe that the plan for distribution of the remainder of the consent order funds outlined in the *Alkek* Decision is authorized by the DOE's statutory and regulatory provisions, and represents an equitable and efficient method of distributing the settlement funds, we have concluded that it would be premature at this time to authorize the implementation of that second-stage procedure.

We will therefore accept Applications for Refund of a portion of the consent order funds filed on or before July 15, 1982. *See* 10 CFR 205.283. We will consider all applications, although we may later impose a lower dollar limit on claims. *See* 10 CFR 205.286(b). Applications made on behalf of a class of claimants will be considered on a case-by-case basis. An application must be in writing, signed by the applicant, and specify that it pertains to the Matters of Adams Resources and Energy, Inc., Case No. BEF–0055. Any application for a refund must be filed in duplicate, and a copy of that application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, 12th and Pennsylvania Avenue, N.W., Washington, D.C. Any applicant who believes that his application contains confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information that the applicant claims is confidential has been deleted, together with a statement specifying why such information is privileged or confidential. Each application shall indicate whether the applicant or any person acting on his instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in this proceeding or the underlying enforcement proceedings. Each application shall also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

It is Therefore Ordered That:

The refund amounts provided in connection with the consent orders listed in Appendix A of this Decision and Order and in connection with the consent orders listed in Appendix B of the Decision and Order issued in *Office*

of Enforcement, Economic Regulatory Adminstration: In the Matters of Alfred B. Alkek on January 6, 1982 shall be disbursed in the manner set forth in the foregoing Decision.

Dated: April 8, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) The Economic Regulatory Administration has recently been reorganized. Under that reorganization the Office of Enforcement has been integrated into the Office of Special Counsel. However, throughout this decision we will continue to refer to the Office of Enforcement.

(2) This type of violation was alleged in the following cases: Adams Resources and Energy, Inc.; J&C Drilling Co.; Mohegan Co./James B. Kite Operating Co.; T–C Oil Co.; N.C. Ginther; D.R. Cummings; Quintana Petroleum Corp.; Kirkpatrick Oil and Gas Co.; William Gruenewald & Assoc., Inc.; Marbob Energy Corp.; Mabee Petroleum Corp.; Michaelson Producing Co.; Rocky Petroleum Corp.; Homestake Production Co.; Louis H. Haring, Jr.; Diamond Shamrock Corp.; Rollert-Waddell Co.; BTA Oil Producers; Liberty Oil & Gas Co., Inc; Phoenix Resources Co.; Parthow & Cochonour; Connally Oil Co.; Alta Lona Oil Co.; Benson-Montin-Greer Drilling Corp.; M.C. Milam, Inc.; Milinda Oil Co.; An-Son Corp.; Calvin Petroleum Corp.; and Century Refining Company. These violations were alleged to have resulted from the misapplication of the term "base production control level," misapplication of the definition of "property," or incorrect certification of a property as a "stripper well property," as these terms are defined in the DOE regulations. One other firm, Westland Oil Co., allegedly sold gas well condensate at prices in excess of the lawful ceiling price.

(3) This type of violation was alleged in the Marbob Energy Corp. case.

(4) This type of violation was alleged with respect to Summit Transportation Co. and Coastal Corporation.

(5) The following table indicates the date that the consent order was published in the Federal Register and the amount to be paid to the DOE pursuant to the consent order.

Case	Date on which the consent order was published	Refund amount
Adams Resources and Energy, Inc.	Nov. 2, 1979, 44 FR 63136 *corrected* Nov. 16, 1979, 44 FR 66204.	$80,000.00
Mohegan Co./James B. Kite Operating Co.	May 5, 1980, 45 FR 29626.	34,000.00
T–C Oil Co	July 10, 1979 44 FR 40378.	345,000.00
N.C. Ginther	Nov. 26, 1979, 44 FR 67500.	40,000.00
D.R. Cummings	Apr. 29, 1980, 45 FR 28414.	[1] 14,000.00
Summit Transportation Co.	Mar. 4, 1981, 46 FR 15203.	17,000,000.00
J&C Drilling Co	Nov. 26, 1979, 44 FR 67496.	350,000.00
Marbob Energy Corp.	July 31, 1979, 44 FR 44925.	[1] 34,000.00
Westland Oil Development Corp.	Oct. 2, 1980, 45 FR 65280.	2,634,189.00
Quintana Petroleum Corp.	Oct. 29, 1979, 44 FR 61994.	3,750,000.00
Kirkpatrick Oil and Gas Co.	Apr. 28, 1980, 45 FR 28190.	[1] 325,000.00
William Gruenewald & Assoc., Inc.	Dec. 3, 1979, 44 FR 69321.	46,906.55
Mabee Petroleum Corp.	May 1, 1981, 46 FR 24622.	435,308.00
Michaelson Producing Company.	Nov. 15, 1979, 44 FR 65813.	280,000.00
Rocky Petroleum Corp.	Oct. 23, 1979, 44 FR 61090.	32,000.00
Rollert-Waddell Co.	Sept. 27, 1979, 44 FR 55630.	90,000.00
Homestake Production Co.	June 26, 1979, 44 FR 37332.	62,000.00
Louis H. Haring Jr.	June 28, 1979, 44 FR 37670.	160,897.79
Diamond Shamrock Corp.	June 26, 1979, 44 FR 37330.	55,056.78
Coastal Corporation.	Feb. 25, 1980, 45 FR 12286.	9,000,000.00
Century Refining Co.	Feb. 29, 1980, 45 FR 13502.	2,700,000.00
Alta Loma Oil Co.	Sept. 6, 1979, 44 FR 52018.	294,617.21
Benson-Montin-Greer Drilling Co.	Jan. 22, 1980, 45 FR 4371.	68,369.13
BTA Oil Producers.	July 26, 1979, 44 FR 43762.	415,816.87
Clark & Clark	July 6, 1979, 44 FR 39577.	57,911.81
Connally Oil Co	June 26, 1979, 44 FR 37331.	100,000.00
Liberty Oil & Gas Co., Inc.	Aug. 2, 1979, 44 FR 45436.	80,000.00
M. C. Milam, Inc.	Aug. 3, 1979, 44 FR 45665.	52,440.69
Partlow & Cochonour.	Oct. 15, 1979, 44 FR 59267.	152,138.68
Phoenix Resources Co.	Jan. 25, 1980, 45 FR 6157.	105,772.64
Milinda Oil Co	Jan. 29, 1980, 45 FR 6642.	80,000.00
Calvin Petroleum Corp.	June 1, 1981, 46 FR 29302.	45,000.00
An-Son Corp	June 28, 1979, 44 FR 37667.	53,760.54
Total		38,974,185.78

[1] Plus interest.

APPENDIX A

Name of petitioner	Date of filing	Case No.
Office of Enforcement, Economic Regulatory Administration: in the matters of:.		
Adams Resources and Energy, Inc.	June 1, 1981	BEF–0055.
Mohegan Co./James B. Kite Operating Co.	June 3, 1981	BEF–0057.
T–C Oil Co	May 6, 1981	BEF–0047.
N. C. Ginther	June 5, 1981	BEF–0059.
D. R. Cummings	do	BEF–0058.
Summit Transportation Co.	May 20, 1981	BEF–0053.
J&C Drilling Co	May 13, 1981	BEF–0050.
Marbob Energy Corp	May 18, 1981	BEF–0052.
Westland Oil Development Corp.	Dec. 23, 1980	BEF–0026.
Quintana Petroleum Corp.	June 18, 1981	BEF–0060.
Kirkpatrick Oil and Gas Co.	do	BEF–0061.

APPENDIX A—Continued

Name of petitioner	Date of filing	Case No.
William Gruenewald & Assoc., Inc.	do	BEF–0062.
Mabee Petroleum Corp	July 8, 1981	BEF–0068.
Michaelson Producing Co.	June 10, 1981	BEF–0063.
Rocky Petroleum Corp	July 21, 1981	BEF–0071.
Rollert-Waddell Company.	June 11, 1981	BEF–0064.
Coastal Corporation	May 15, 1980	BEF–0005.
Homestake Production Co.	Aug. 20, 1981	BEF–0074.
Louis H. Haring, Jr	Aug. 27, 1981	BEF–0075.
Diamond Shamrock Corp.	do	BEF–0076.
Century Refining Co	Aug. 31, 1981	BEF–0077.
Alta Loma Oil Co	Sept. 1, 1981	BEF–0080.
Benson-Montin-Greer Drilling Co.	Sept. 4, 1981	BEF–0087.
BTA Oil Producers	do	BEF–0083.
Clark & Clark	do	BEF–0084.
Connally Oil Company	do	BEF–0082.
Liberty Oil & Gas Co., Inc.	Sept. 24, 1981	BEF–0092.
M. C. Milam, Inc	Sept. 11, 1981	BEF–0090.
Partlow & Cochonour	do	BEF–0091.
Phoenix Resources Company.	do	BEF–0088.
Milinda Oil Co	Oct. 8, 1981	HEF–0001.
Calvin Petroleum Corp	Oct. 9, 1981	HEF–0003.
An-Son Corp	do	HEF–0004.

(6) Claims were filed in the following cases: Adams Resources and Energy, Inc.; T–C Oil Co.; D.R. Cummings; J&C Drilling Co.; Quintana Petroleum Corp.; Kirkpatrick Oil and Gas Co.; and William Gruenewald & Assoc., Inc.; Mabee Petroleum Corp.; Michaelson Producing Co.; Diamond Shamrock Corp.; Homestake Production Co.; Alta Loma Oil Co.; Connally Oil Co.; Partlow & Cochonour; Phoenix Resources Co.; Liberty Oil & Gas Co., Inc.; and BTA Oil Producers.

(7) The following firms filed comments expressing this position: Tosco Corporation, Standard Oil Company (Indiana), Ashland Oil Company, Champlin Petroleum Corporation, ARCO, Cities Service and Marathon. Further comments from Cities Service, Commonwealth Oil and Refining Company and Energy Cooperative, Inc. generally supported our *Alkek* determination and the consolidation of this proceeding with the *Alkek* proceeding. Mobil Oil Corporation filed comments objecting to the consolidation of the two proceedings because it believes that the Alkek refund procedures are unlawful. Mobil bases its position on its belief that we incorrectly assumed in these proceedings that increased costs were passed through and refineries therefore did not generally sustain any injury as a result of the overcharges. We believe that we have responded to Mobil's objections in our present decision. The first stage of the refund plan provides a sufficient opportunity for refiners to demonstrate that they were not able to pass through increased costs or were not compensated fully for those increased costs through the Entitlements Program and that such refiners are therefore entitled to a refund.

(8) Comments were received from energy offices or other offices of the following states: New Jersey, California, Tennessee, Wisconsin, Michigan, Oregon, Florida, North Carolina, Vermont, Idaho, Maine, Mississippi, Kentucky, New Mexico, Colorado, Indiana,

Ohio, Massachusetts, Minnesota, New York, Utah, Arkansas, Missouri, Virginia.

Appendix B—Decision and Order of the Department of Energy

Special Refund Procedures

January 6, 1982.

Name of Petitioner: Office of Enforcement, Economic Regulatory Administration: In the Matters of Alfred B. Alkek and others listed in Appendix A.

Dates of Filing: April 19, 1979, and others listed in Appendix A.

Case Numbers: DFF–0002 and others listed in Appendix A.

This proceeding concerns Petitions for the Implementation of Special Refund Procedures submitted to the Office of Hearings and Appeals pursuant to 10 CFR Part 205, Subpart V, by the Economic Regulatory Administration's Office of Enforcement (OE).(*1*) In the petitions, OE requests that the Office of Hearings and Appeals establish procedures for the disposition of over $21 million obtained by the DOE in connection with consent orders entered into by Alfred B. Alkek and the other 23 firms and individuals listed in Appendix A, and a remedial order issued to James M. Forgotson.(*2*) The consent orders settled DOE claims that these firms violated the DOE Mandatory Petroleum Price Regulations found in 6 CFR Part 150 and 10 CFR Part 212. The funds are now being held in escrow pending receipt of instructions from the OHA regarding their distribution.

In four previous decisions, the Office of Hearings and Appeals accepted jurisdiction over the refund amounts involved in this proceeding. *Office of Enforcement,* 8 DOE ¶ 82,516 (1981) (all cases except Alkek, Delta, Enserch, Forgotson and Guenther); *Office of Enforcement,* 8 DOE ¶ 82,515 (1981) (Forgotson, Delta and Enserch cases); *Office of Enforcement,* 6 DOE ¶ 82,571 (1980) (Guenther case); *Office of Enforcement,* 4 DOE ¶ 82,574 (1979) (Alkek case).

On May 8, 1981, the Office of Hearings and Appeals issued a Proposed Decision and Order which tentatively established special refund procedures to be used in adjudicating claims to the consent order funds and solicited comments from interested parties concerning the proper disposition of the funds. 46 FR 26681 (May 14, 1981). In that determination we tentatively established a two-stage refund procedure. We stated that in the first stage of the process we would consider Applications for Refund made by parties who believed they could show a demonstrable injury arising from the violations alleged in the consent orders. In addition, we proposed a second-stage procedure which would apply in the event that the consent order funds were not exhausted by claims paid in the first stage of the refund process. For the second stage we proposed a scheme through which the funds could be distributed to ultimate consumers of petroleum products through state governments on the basis of average use of petroleum products within a state during the period 1973 through 1978.

The focus of this decision is the establishment of the procedures to be employed for filing claims in the first stage of the refund process. This decision will discuss the special circumstances involved in these proceedings, and then outline in general terms which parties may be able to establish that they are entitled to a portion of the consent order funds, and what types of information they should submit in connection with their Applications for Refund. In establishing these requirements we will address comments filed in response to the first stage proposal in the May 8 Proposed Decision. This Decision will also briefly address the second stage of our refund proposal and the comments filed in response to that proposal.

I. Background

We described the background surrounding the consent order funds involved here in detail in the May 8 Proposed Decision and Order. *Office of Enforcement,* No. DFF–0002, slip op. at 2–3 (proposed decision) (May 8, 1981) (hereinafter cited as Proposed Decision), 46 FR 26681, 26682. As we stated in that determination, the consent orders in this proceeding resulted from audits or investigations conducted by the DOE and its predecessor agencies. As a result of these audits, the DOE enforcement authorities alleged that the parties in these cases were involved in sales of crude oil at prices in excess of the ceiling prices permitted by the DOE Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212. Each party except one against whom enforcement action was taken has settled the outstanding compliance proceeding by executing a consent order. *See* 10 CFR 205.199J.

The types of violations allegedly committed by the parties that entered into the consent orders involved in this proceeding fall into three broad categories. Most of the violations alleged concern firms that were "producers" of crude oil as defined in 10 CFR 212.31. These firms were alleged to have sold domestic, price-controlled oil at uncontrolled prices. Specifically, they were alleged to have incorrectly certified "old" price-controlled crude oil as "new" or "stripper well" oil subject to less stringent price controls. The firms were therefore alleged to have overcharged purchasers by the amount per barrel which represents the difference between "new" or "stripper well" prices and the ceiling price permitted for "old" oil.(*3*)

The second type of alleged violation concerns four producers that were alleged to have miscertified "old" oil. These producers additionally sold oil for which the "base" or May 15, 1973 price was incorrectly computed. Thus this crude oil, though properly certified, was sold at a price higher than that permitted by the regulations.(*4*) The third type of alleged violation concerns parties which were not producers of crude oil. These parties were alleged either to have been resellers of crude oil that miscertified "old" crude oil and sold it as "new" or imported oil, or to have been parties that received commissions for their participation in schemes in which they arranged for others to miscertify crude oil.(*5*)

In all but one case, these parties have entered into consent orders with the DOE or the Department of Justice.(*6*) In each consent order, the government agreed to terminate the pending investigation and administrative or judicial proceeding, and the parties agreed to remit a stipulated sum of money to the DOE. The terms contained in each consent order, including the amount of the monetary settlement, were arrived at through negotiation. Although the amount of money remitted to the DOE can be viewed as based in part upon the magnitude of the violations alleged by the government, additional factors—such as each party's views as to the probable length, expense, and success of litigation—would normally influence the size of the monetary settlement. In addition, the parties' knowledge of ongoing audits would also be reflected in the negotiated settlements. Because of these factors, each of the consent orders contains a stipulation that the DOE does not find that a violation of the regulations actually occurred. Thus, the consent orders involved in this proceeding cannot be considered to be adjudications on the merits of the violations alleged against the parties that entered them, and the amounts of the violations alleged in charging documents previously issued to the firms involved bear only an attenuated relationship to the funds obtained by the DOE.

As stated above, the May 8 Proposed Decision tentatively established a two-stage refund procedure for the consent order funds. In that decision, we noted that all parties theoretically injured by the violations would not necessarily be entitled to refunds. Instead, only those parties who could demonstrate they were adversely affected by the alleged violations would be appropriate refund recipients. We explained that in prior decisions involving special refund procedures we had defined an injured purchaser to be any purchaser which could show that it purchased petroleum products sold by the party that entered into the consent order and which could demonstrate that it did not pass on all overcharges to subsequent purchasers. *See, e.g., Office of Enforcement,* 8 DOE ¶82,597 (1981) (hereinafter cited as *Vickers*). We pointed out that the entities which appeared to be most directly affected by the alleged crude oil price violations in the consent orders involved in this proceeding are refiners that directly purchased the crude oil which was the subject of the individual consent orders, and the other refiners that participated in the Entitlements Program, 10 CFR 211.67. However, we stated our tentative view that these entities might not be the most appropriae recipients of the total pool of refund money available. We reached this position because the effects of crude oil pricing violations were generally spread by the Entitlements Program through the entire United States and among all domestic refiners. In this regard we pointed out:

> Because of the manner in which the Entitlements Program operated, the effects of the miscertifications were spread among all domestic refiners. Miscertifications caused price-controlled crude oil to disappear. This disappearance caused the volume of old oil to be distributed through the Entitlements Program to decline and caused the DOSR [domestic old oil supply ratio] to be reduced. Thus, refiners who included more than the national average percentage of price-controlled oil in their crude oil receipts and runs to stills had to purchase a *greater* number of entitlements. Similarly, refiners with less than the national average percentage of price-controlled crude oil had *fewer* entitlements to sell. As a result, every refiner's cost of crude oil was increased. Thus, all refiners were affected by the alleged miscertification violations involved in the Consent Orders. To the extent the refiners pass through these increased costs to customers, the customers who purchased refined products were harmed by the miscertifications. *See Getty Oil Co.,* 1 DOE ¶80,102 (1977).

Proposed Decision, slip op. at 5–6, 46 FR at 26683 (emphasis in original).

From this we articulated two preliminary views. First, we explained that because of the operation of the Entitlements Program, refiners that purchased crude oil from the parties that had signed these consent orders were not injured in a manner distinct from all other refiners. This is because the amount the individual refiners paid in excess of the controlled price for the miscertified crude oil was balanced by the extra benefits they received by the operation of the Entitlements Program. Thus, we reasoned that if all refiners as a group were not appropriate refund recipients, individual refiners which directly purchased the crude oil involved also would not be appropriate refund recipients. *Id.,* slip op. at 6, 46 FR at 26683. Secondly, we stated that through the operation of the Entitlements Program, all refiners lost benefits as a result of the miscertifications of crude oil. We noted that to some extent the refiners probably passed on these increased costs to subsequent purchasers. Also, to the extent these costs were not passed on, we stated that because of such factors as the accumulation of refiners' banks of increased costs, changes in supplier/purchaser relationships, and the fluctuation of prevailing crude oil costs and price levels during the relatively lengthy period covered by the consent orders, it would be extremely burdensome to compute with precision the degree to which each refiner absorbed any increases in costs engendered by the miscertifications. We therefore questioned the practicality of channeling the consent order funds to Entitlements Program participants. *Id.* We also noted that the decontrol of crude oil was another factor which weighed against making refunds directly to the refiners that purchased the crude oil or to all refiners that participated in the Entitlements Program. We observed that had the DOE regulatory scheme still been in effect, any refunds which a refiner received would have been reflected as a decrease in the cost of crude oil and may have affected its maximum lawful selling prices of covered products. In this manner, the parties further down the distribution chain that were likely to have been adversely affected by the alleged overcharges would have received some benefit associated with the refunds. However, since decontrol occurred on January 28, 1981, the mechanism of price rollbacks is of doubtful effectiveness. *Id.,* slip op. at 7, 46 FR at 26683.

We did note, however, that certain identifiable parties might be able to show demonstrable injury from the alleged violations. We found that one such class of potentially injured parties was the group of direct purchasers or refiners that obtained crude oil from the parties which entered into consent orders in which an improper computation of the base price for crude oil was alleged. We noted that because this oil appeared to be properly certified, the alleged overcharges were not passed through the mechanism of the Entitlements Program. We stated that these direct purchasers and refiners thus may have borne the effect of such overcharges and may be eligible for refunds to the extent that they could show that the alleged overcharges were not passed through to subsequent purchasers. *Id.*

Refiners were additionally included in the second class of potentially injured parties we identified. This class is composed of refiners that obtained crude oil from parties that entered into consent orders concerning violations alleged to have occurred before the commencement of the Entitlements Program on November 1, 1974. Because the effects of these overcharges had not been passed through the Entitlements Program, we stated that these refiners were directly affected and may have absorbed the effects of the alleged overcharges. Thus we concluded that refiners in this class could be eligible for refunds to the extent they could show that they did not pass these increased costs on to subsequent purchasers. *Id.*

We also stated that, for periods subsequent to November 1, 1974, refiners and subsequent purchasers that obtained crude oil or refined products produced or sold by the parties that entered into the consent orders involved in the proceeding could be eligible for refunds if they could show that the Entitlements Program did not negate the adverse effects caused by the alleged violations and if they could accurately calculate the impact of those effects on them. *Id.,* slip op. at 8 & n. 12, 44 FR at 26683. Finally, we noted that if our tentative conclusion were correct, the effects on the alleged overcharges were spread among all refiners by the Entitlements Program and were largely passed on by them and subsequent purchasers. In this case, the effects of the alleged overcharges would actually have been borne by all ultimate consumers of refined products. Thus, we determined that consumers could also be appropriate refund recipients. *Id.* We stated that instructions for the filing of refunds for all potentially aggrieved parties would be provided in a final decision.

In a separate section of the May 8 Proposed Decision, we considered ways of distributing whatever funds remained after appropriate refunds to first-stage

claimants have been made. We proposed that these funds should be apportioned among state governments to reflect each state's level of petroleum consumption between 1973 and 1978, the years in which the violations were alleged to have occurred. *Id.*, slip op. at 9–10, 46 FR at 26684. We chose to distribute the money to state governments because we believed that they would be able to design a distribution scheme for the refund proceeds which would benefit all injured consumers in each state, and account for the varying energy-related needs of their citizens. We also believe that the states would be able to expend the proceeds in an administratively efficient and cost-effective manner. In order to minimize the difference between the recipients of the refunds and the groups which bore the burden of the allegedly illegal pricing practices, we proposed that each state's portion of refund proceeds would be divided among three categories or "pools" relating to the consumption of different types of petroleum products. We stated that within each of the three pools, the refund proceeds would be allocated to organizations which are best suited to passing through the proceeds to the ultimate consumers of that type of product. *Id.*, slip op. at 10–12, 46 FR at 26684–85. We additionally stated that an alternative distribution scheme, should giving the money to state governments prove impractical, would be to deposit all the refund money into United States Treasury. *Id.*, slip op. at 12–13, 46 FR at 26685.

II. Analysis

A. Initial Refund Procedures

In the Proposed Decision, we described our proposal to refund money to parties directly injured by the violations alleged in the consent orders through the first stage of these refund proceedings. The Proposed Decision stated in very general terms that such parties would be eligible to file Applications for Refund with the Office of Hearings and Appeals. In this Decision, we shall set forth in detail the procedures we will follow in the first stage. We will specify clearly the information a refund applicant should submit to demonstrate that it is entitled to a refund. As we will explain in greater detail below, however, it is not possible for use to articulate with precision how every conceivable applicant in these proceedings should document its refund application. We will therefore describe the issues which an applicant must address and the types of evidence which we believe will tend to support an applicant's claim for a refund. This discussion is not meant to be inclusive, and we will consider *all* evidence which an applicant submits to substantiate its claim. We will also address specific suggestions filed in response to those portions of the Proposed Decision which concern the implementation of the first stage of the refund process.

Since the issuance of the Proposed Decision, we have received numerous comments addressing the proposed first-stage refund mechanism. A number of comments were filed by refiners of crude oil, (*7*) such as Texas City Refining Inc., which objected to the discussion in the Proposed Decision which stated that refiners were generally able to pass on increased costs to their own customers; and that refiners might therefore not be able to qualify for direct refunds. These refiners claim that as a result of market forces, they are actually unable to pass through increased costs to their customers. In support of this contention, the refiners point out that until January 28, 1981, when crude oil and refined petroleum products were exempted from the DOE price and allocation regulations, the firms continuously maintained substantial banks of unrecovered costs. *See, e.g.*, Comments filed by Marathon Oil Company. One refiner, Mount Airy Refining Company, claimed that since it sold only uncontrolled products, it was forced to absorb the effects of any unlawful certifications because it usually sold its product at market prices. According to Mount Airy, it therefore could not have passed on any price increases due to miscertifications. Other refiners, such as Crown Central Petroleum Corporation, suggest that all refunds attributable to miscertified crude oil should be distributed directly to refiners through the Entitlements Program. In this regard, they refer to the mechanism established by the Economic Regulatory Administration for entitlement adjustments for periods prior to the decontrol of crude oil. 46 FR 36902 (July 13, 1981). The refiners point out that that mechanism will liquidate rights and obligations of participants in the Entitlements Program that accrued before decontrol, without regard to whether those participants were actually able to pass through increased costs that may have resulted from the erroneous issuance of entitlements benefits or obligations. Several refiners suggest that we should adopt a similar approach in this proceeding and return all refund moneys directly to them.

We cannont agree with the suggestion that all refunds should automatically be distributed directly to the refiners that purchased crude oil from the producers involved in this proceeding. While we recognize that it may well have been reasonable for the ERA to decide to rectify errors in the apportionment of entitlements benefits and obligations through the Entitlements Progam itself, we are not persuaded that such a policy is appropriate with respect to moneys that the DOE has received as a result of consent orders settling enforcement matters involving alleged violations of the crude oil price regulations. Rather, we believe that the benefits associated with the moneys received as refunds for possible overcharges should be distributed in a manner that will inure to the maximum extent possible to those who were actually injured by the alleged overcharges. Nothing in the Proposed Decision and nothing in this decision is intended to foreclose the right of a refiner or any other party that believes that it can prove it was injured by the alleged violations to file an Application for Refund. Indeed, to the extent a refiner can demonstrate an injury, it will be eligible to receive an appropriate share of the refund pool. We wish to point out, however, that the burden in these proceedings is not on the DOE to demonstrate that a prospective claimant or class of claimants is ineligible for refunds. Rather, a claimant must affirmatively demonstrate that it has been injured by the alleged violation and that it should consequently receive a refund. A claimant that does no more than reiterate an argument which presumes the existence of injury without documenting it will not have met this burden.

We now turn to the question of what documentation a claimant must provide in order to establish eligibility for a portion of the consent order funds. In the Proposed Decision we identified certain classes of potentially injured parties that we believe would be able to demonstrate that they were in fact injured by the alleged violations. We wish to point out that the listing of potentially injured parties we gave in the Proposed decision was intended to be representative rather than exclusive. *Any* party that believes it can prove an injury resulting from the alleged violations may file an Application for Refund. Secondly, while we still believe that many ultimate consumers of refined petroleum products were in all likelihood injured by the violations alleged in these proceedings, consumers cannot in our view show a direct link between the violations alleged in the consent orders and their injuries.

Therefore it is not yet appropriate to determine how funds should be apportioned to such consumers. (8) That determination can be made only after we know how much of the proceeds must be given to first stage claimants who can prove injury from the alleged overcharges. Thus it would be premature for such consumers and consumer groups who would claim they incurred an injury from the alleged violations merely by virtue of being ultimate consumers to file Applications for Refund at this time. *See Vickers.*

We have recently issued three final determinations establishing special refund procedures. *See Office of Enforcement,* 9 DOE ¶———, No. BEF-0033 (December 28, 1981); *Office of Enforcement,* 9 DOE ¶82,508 (1981); *Vickers.* Each of those decisions provided detailed instructions for filing refund applications. For example, in *Vickers* we suggested a format for the submission of claims. *Vickers,* 8 DOE at 85,402–03. This was possible because the *Vickers* consent order involved only one type of product—motor gasoline. Moreover, the effects of the alleged overcharges were limited to a sixteen-state area in which Vickers marketed motor gasoline and also were limited to the parties within Vickers' distribution chain. Because Vickers' motor gasoline sales volume during the period covered by the consent order was known, it was possible to apportion a definite amount of the consent order fund to each gallon of gasoline purchased and consequently to calculate refund amounts on a volumetric basis. *Id.* at 85,396 & n.4.

A markedly different situation exists here. Some of the consent orders involved in this proceeding involve both certification and non-certification violations alleged to have been committed by the same firm. The crude oil involved was then transformed into a multitude of refined products by the time it reached ultimate consumers. Indeed, many refined products were not used in their "raw" form but to manufacture other items produced in the national economy. Because of the Entitlements Program, the effects of the overcharges were not restricted to the distribution chain of the firms which purchased the crude oil involved, but were in fact spread among all refiners of crude oil and all consumers of refined products nationwide. Because the effects of the overcharges were diffused among all refiners it is entirely possible that the market reflected these changes by raising the price levels generally charged by all refiners in the United States.

Under these circumstances, it is not possible for us to specify how every potential applicant for refund should document its claims. Nor do we think such specification is necessary at this time. Rather than establishing general rules for the submission of refund applications in this proceeding, we will give some examples of the kinds of documentation certain classes of applicants should provide to prove entitlement to a refund. Applicants should bear in mind that the following examples are not intended to be comprehensive; applicants may find it appropriate to file additional or substitute information in support of their claims. All applicants must provide sufficient information to prove that the violations alleged in one of the consent orders had a direct, measurable impact on them and that this impact caused an injury that they were unable to minimize or eliminate by passing on to subsequent purchasers. The type of documentation a claimant must submit will vary depending on whether a claimant's injury was caused or affected by the Entitlements Program. (9) A claimant's injury was not caused or affected by the Entitlements Program if it was caused by violations other than certification violations, by violations which occurred prior to the inception of the Entitlements Program on November 1, 1974, or if the claimant is a party that sells crude oil before it has been refined. A claimant of this type should first provide proof establishing it obtained crude oil from one of the parties that entered into one of the consent orders in this proceeding. That proof should include the volume of crude oil obtained, the price for which it was obtained, and the time when it was obtained. The claimant should also present a detailed description of the nature of its alleged injury. In addition, we will require a showing that the claimant did not pass through price increases caused by the alleged violations to its own customers. Thus, a claimant in this group should submit data showing increased product costs (bank) for each calendar quarter for which it claims a refund, and market data and other relevant information which tends to show that the market would not permit it to recover the price increases involved by raising its own sales prices. If a claimant used its banked costs to increase its selling price at a later date, its refund might be appropriately reduced.

A claimant's injury was caused or affected by the Entitlements Program if the injury was caused by a certification violation occurring after November 1, 1974, and if the claimant is a refiner or a subsequent purchaser. We expect that claimants in this category will make two general types of claims. The first type would be made by a refiner or subsequent purchaser which obtained crude oil originally sold by one of the parties that entered into the consent orders involved in this proceeding. Such a claimant must be able to demonstrate that the product was originally produced or sold by one of the parties that entered into the consent orders. Barring a showing that a refiner obtained all its crude oil from a single reseller or producer, we are uncertain at this time how this showing can be made by a party in the distribution chain other than a refiner. An applicant with this type of claim must also provide the same information about time of purchase, quantity of purchase, and existence of banks that a claimant whose injury was not caused or affected by the Entitlements Program must provide. Moreover, this type of claimant must satisfactorily demonstrate why and to what extent the Entitlements Program did not operate to negate the effect of the violations.

As we stated in the proposed decision in this proceeding and repeated in our discussion here, the violations alleged in the consent orders could conceivably have directly caused all refiners to incur injury through the operation of the Entitlements Program. Thus, a refiner in this category which is able to quantify its individual injury and can show, through the existence of banks and the submission of market data or other relevant information, that it did not pass on those increased costs to subsequent purchasers may be eligible for a refund. Again, we are unable to specify what type of factual information could be used to document such an injury. We must reiterate, however, that the burden of proving eligibility for a refund is on the refiner, not the DOE. Thus it is the refiner that must provide information showing how and to what extent it was injured by the violations alleged in the consent orders. This cannot be done through the use of generalized, unsupported allegations, and the submission of material establishing simply that sizable product cost banks were maintained during the relevant periods is not sufficient. *See, e.g., Vickers,* 8 DOE at 85,396–97.

Accordingly, this Decision announces that OHA will accept Applications for Refund from the consent order amounts pursuant to 10 CFR 205.283 beginning immediately. Applications must be filed no later than July 15, 1982. It should be noted that in establishing these

procedures, we intend to avoid excessive processing costs that would be out of proportion to the amount of the consent order funds available for distribution. *See* 10 CFR 205.286(b). Consequently, because the cost of considering claims for small refund amounts may render such a process administratively inefficient, we may decide at some point in the future to establish a minimum amount for which an Application for Refund may be filed. That minimum amount could be based upon the administrative cost of processing a claim, issuing a check, and transmitting the check, which we are informed amounts to approximately $15.00. However, we will not impose a lower limit at this time, but will consider all Applications for Refund that are timely filed.

B. Distribution of the Remainder of the Consent Order Funds

Several comments addressed our proposed distribution of whatever consent order funds may remain after the first stage of the refunds process is completed. In this Decision, we are not implementing the second-stage refund procedue. This would be difficult to do before the analysis and processing of Applications for Refund, because the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme. *See Vickers,* 8 DOE at 85,397. However, we continue to believe that distribution of refunds to all consumers of petroleum products through state governments may well be appropriate if sufficiently large amounts remain after the claims process has been completed. In order for the public to be made aware of outstanding issues and be able to comment on them, we will summarize and address briefly the comments received concerning the proposed second-stage procedure. We continue to seek comments on those issues.

The comments received from nineteen States and the National Governors Association address in particular the portion of the Proposed Decision where we proposed that the refund proceeds be divided among product pools, and suggested several uses to which the refunds assigned to each pool might be put.(*10*) Many of the States pointed out that reductions in fees and utility charges made to individual citizens, such as those proposed, would provide an insignificant per capita benefit and involve disproportionately high administrative costs. Nearly all of the States filing comments contend that they should be allowed to disregard the pool plan, and that each State be permitted to develop its *own* plans for the disbursement of refund moneys. In this regard, many of the States have suggested numerous alternative uses to the proposals which we set forth in the Proposed Decision. For example, the States of Washington, Maine, Mississippi, and Idaho proposed that refunds be used generally to increase funding for or to implement energy conservation programs. The States of Minnesota, Arkansas, Oregon, and Kentucky proposed that the refunds could be directed to specific energy conservation programs, such as home weatherization, ride-sharing and mass transit. The States of Texas, Oregon, and Arkansas also suggest that the refunds be used to augment energy planning and development programs.

We believe that the States' suggestions for additional uses for the refunds have considerable merit. As noted above, the purpose of the "pools" in the Proposed Decision was to establish mechanisms which would funnel refunds to the class of persons who were likely to have been injured by the allegedly illegal pricing practices. Otherwise, the restitutionary goal of the second-stage proceeding would not be furthered. Nevertheless, the suggested distribution of refunds among the pools was not intended to preclude other appropriate restitutionary schemes, and other types of State plans for the use of the refunds could also be approved, provided a showing is made that the plan will not disproportionately benefit one class of consumers over another. *See* Proposed Decision, slip op. at 19 n.18, 46 FR at 26686 n.18.

Several States and individuals who submitted comments in this proceeding also suggested that refund moneys be used exclusively to assist the elderly and the poor in the payment of utility bills. Some States have also suggested that refund moneys be utilized to train new automobile drivers. While we have no doubt that these are useful and even commendable programs, we must reiterate that our authority to approve any State plan depends in part upon a showing that benefits from the plan will be equitably derived by citizens who are likely to have been overcharged. Refunding money to persons who were injured by overcharges is the focus of Subpart V. We therefore are not inclined to approve a plan whose benefits were unduly weighted in favor of one particular sector of the population, however needy that segment may be. (*11*) We also would not be inclined to approve a plan, such as a new driver training program, whose primary beneficiaries were individuals who clearly would have made no gasoline purchases during the period in which the alleged violations occurred.

Finally, the funds remaining after the first-stage distribution is completed may be so small as to render a second-stage distribution impractical, or the schemes proposed not sufficiently cost-effective. As we stated on the Proposed Decision, we may then simply direct the deposit of the remainder of the funds into the miscellaneous receipts account of the United States Treasury. *See* 10 CFR 205.287(c); Proposed Decision, slip op. at 12–13, 46 FR at 26,688. We will consider this question after all claims are paid. That determination will be made in the form of a Supplemental Order, notice of which will be provided through the **Federal Register.**

III. Conclusion

The refund mechanisms and procedures outlined above for claims filed with the DOE will be adopted. In addition, with respect to the second stage of the refund process, although we continue to believe that the plan for distribution of the remainder of the consent order funds outlined in the Proposed Decision is authorized by the DOE's statutory and regulatory provisions, and represents an equitable and efficient method of distributing the settlement funds, we have concluded that it would be premature at this time to authorize the implementation of that second-stage procedure.

We will therefore accept Applications for Refund of a portion of the consent order funds filed on or before July 15, 1982. *See* 10 CFR 205.283. We will consider all applications, altough we may later impose a lower dollar limit on claims. *See* 10 CFR 205.286(b). Applications made on behalf of a class of claimants will be considered on a case-by-case basis. An application must be in writing, signed by the applicant, and specify that it pertains to the Matters of Alfred B. Alkek *et al.,* Case No. DFF–002. Any application for a refund must be filed in duplicate, and a copy of that application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W., Washington, D.C. Any applicant who believes that his application contains confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information that the applicant claims is confidential has been deleted, together with a statement specifying why any such information is previleged or confidential. Each application shall

indicate whether the applicant or any person acting on his instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in this proceeding or the underlying enforcement proceedings. Each application shall also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and believe. *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

It Is Therefore Ordered That:

The refund amounts provided in conjunction with the consent orders listed in Appendix A of this Decision and Order will be distributed in the manner set forth in the foregoing Decision.

Dated: January 6, 1982.

George B. Breziar,

Director, Office of Hearings and Appeals.

Footnotes

(*1*) The Economic Regulatory Administration has recently been reorganized. Under that reorganization, the Office of Enforcement has been integrated into the Office of Special Counsel. However, throughout this decision we will continue to refer to the Office of Enforcement.

(*2*) For purposes of convenience, the term "Consent Order" will be used below to encompass the Remedial Order issued to James Forgotson.

(*3*) This type of violation was alleged in the following cases: Beta Development Co., PGP Gas Products, Inc., J. R. Parten, Vaughn Petroleum, Inc., Lundell's Inc., Graner Oil Co., Hixon Development Co., Newmont Oil Co., Tipperary Oil and Gas Corp., Crystal Oil Co., Frank W. Michaux, McFarland Energy, Inc., Quintin Little Co., Union Texas Petroleum Corp., McCulloch Oil and Gas Corp., Gladys O'Donnell Co., Natomas North America, Inc., Shawnee Oil and Gas Corp., John H. Hendrix Corp., Delta Drilling Company, Enserch Exploration, Inc., and James M. Forgotson. These violations were alleged to have resulted from the producers' miscalculation of the "base production control level," misapplication of the definition of "property," or incorrect certification of a well as a "stripper well," as these are defined in the DOE regulations.

(*4*) This type of violation was alleged in the Crystal Oil Co., Vaughn Petroleum, Inc., Hixon Development Co., and McFarland Energy, Inc. cases.

(*5*) This type of violation was alleged in the Albert B. Alkek, Jack Guenther, and Coral Petroleum, Inc. cases.

(*6*) In the one case not involving a consent order, James M. Forgotson, a crude oil producer, paid DOE $76,201 pursuant to a Remedial Order which found that Forgotson charged prices for crude oil in excess of those permitted by the DOE regulations. *See* James M. Forgotson, Case No. DRW-0031 (August 9, 1979) (unpublished decision).

(*7*) Comments were filed by the following refiners: Crystal Petroleum Company, Inc., Golden Eagle Refining Company, Inc., Mount Airy Refining Company, Ergon Refining, Inc., Crown Central Petroleum Corporation, Marathon Oil Company, Sun Petroleum Production Company, Amoco Oil Company, Texas City Refining, Inc., Cities Service Company, Mobil Oil Corporation, and Atlantic Richfield Company.

(*8*) It would be appropriate for an ultimate consumer (or group of consumers) which believes that it can trace back an injury to the violations alleged in the consent orders to file an Application for Refund, however. To do this, of course, the ultimate consumer must be able to show that the product it purchased contained crude oil produced by one of the parties that entered into the consent orders.

(*9*) Information concerning which consent orders involve violations other than certification violations or violations alleged to have occurred before the inception of the Entitlements Program on November 1, 1974 is provided in the table in Appendix B.

(*10*) Comments were received from energy offices or other offices of the following states: Indiana, Minnesota, Wisconsin, Florida, Michigan, Texas, California, Idaho, Maine, New York, Tennessee, Arkansas, New Jersey, Kentucky, Vermont, Washington, Mississippi, Nebraska, and Colorado.

(*11*) The parties that receive benefits from the refunds will be current consumers of refined products. These parties may in some instances not be identical to the injured class, because the overcharges allegedly occurred during the period 1973 through 1978. We have found no administratively feasible technique for ensuring that proceeds go only to those parties who consumed refined products in the 1973 through 1978 period, as opposed to present consumers.

APPENDIX A

Name of petitioner	Date of filing	Case No.
Office of Enforcement, Economic Regulatory Administration: In the Matters of		
Alfred B. Alkek	Apr. 19, 1979	DFF-0002.
Jack Guenther	May 14, 1979	DFF-0004.
Beta Development Co.	Nov. 17, 1980	BEF-0009.
PGP Gas Products, Inc.	Dec. 3, 1980	BEF-0010.
J. R. Parten	Dec. 3, 1980	BEF-0011.
Vaughn Petroleum, Inc.	Dec. 5, 1980	BEF-0012.
Lundell's Inc	Dec. 5, 1980	BEF-0013.
Graner Oil Co	Dec. 5, 1980	BEF-0015.
Hixon Development Co.	Dec. 5, 1980	BEF-0016.
Newmont Oil Co	Dec. 5, 1980	BEF-0017.
Tipperary Oil and Gas Corp.	Dec. 5, 1980	BEF-0018.
Crystal Oil Co	Dec. 8, 1980	BEF-0019.
Frank W. Michaux	Dec. 11, 1980	BEF-0020.
McFarland Energy, Inc.	Dec. 19, 1980	BEF-0023.
Quintin Little Co	Dec. 23, 1980	BEF-0024.
Union Texas Petroleum Corp.	Dec. 23, 1980	BEF-0025.
McCulloch Oil and Gas Corp., McCulloch Oil Corp. of Texas.	Jan. 29, 1981	BEF-0028.
Coral Petroleum Inc	Feb. 3, 1981	BEF-0031.
Gladys O'Donnell d/b/a Gladys O'Donnell Co.	Feb 24, 1981	BEF-0035.
Natomas North America Inc.	Mar. 16, 1981	BEF-0037.
Shawnee Oil and Gas Corp.	Mar. 20, 1981	BEF-0039.
John H. Hendrix Corp.	Mar. 20, 1981	BEF-0040.
James M. Forgotson	Apr. 9, 1981	BEF-0043.
Delta Drilling Company.	Apr. 9, 1981	BEF-0044.
Enserch Exploration, Inc.	Apr. 9, 1981	BEF-0045.

APPENDIX B

Case	Period of alleged violation	Existence of noncertification violations	Refund amount
Alfred B. Alkek	12/1/75-7/1/77	No	$3,240,000
Jack Guenther	12/1/75-7/1/77	No	841,528
Beta Development Company	9/1/73-12/31/75	No	[1] 128,000
PGP Gas Products, Inc	5/1/74-5/1/75	No	[1] 25,484
J. R. Parten	11/1/73-8/31/76	No	275,000
Vaughn Petroleum, Inc	9/1/74-8/31/76	Yes	1,250,000
Lundell's Inc	9/1/73-12/31/76	No	71,083
Graner Oil Co	6/3/75-5/31/79	No	[1] 77,536
Hixon Development Co	7/1/73-12/31/77	Yes	45,000
Newmont Oil Co	9/1/73-12/31/77	No	60,000
Tipperary Oil and Gas Corp	9/1/73-9/1/76	No	213,533
Crystal Oil Co	9/1/73-12/31/76	Yes	203,596
Frank W. Michaux	11/16/73-8/31/76	No	147,482
McFarland Energy, Inc	9/1/73-6/31/79	Yes	353,132
Quintin Little Co	9/1/73-4/30/77	No	1,700,000
Union Texas Petroleum Corp	9/1/73-12/31/79	No	2,100,000
McCulloch Oil & Gas Crop	9/1/73-9/30/77	No	437,806
Coral Petroleum Inc	11/1/74-1/11/80	No	[1] 9,000,000
Gladys O'Donnell	3/1/76-5/31/79	No	81,580
Natomas North America, Inc	1/1/75-12/31/78	No	53,000
Shawnee Oil and Gas Corp	9/1/73-1/31/77	No	680,000
John H. Hendrix Corp	9/1/73-8/31/77	No	[1] 42,000
Delta Drilling Company	9/1/73-6/30/77	No	275,000
Enserch Exploration, Inc	9/1/73-12/31/77	No	495,000
James M. Forgotson	9/1/73-1/1/77	No	76,201

[1] Plus interest.

[FR Doc. 82-10424 Filed 4-15-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $4,064,635 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Office of Enforcement. The firms involved are Northeast Petroleum Industries, Inc. ($459,635), Nordstrom Oil Company ($65,000), Ada Resources, Inc. ($100,000), Arcone Oil Company, Inc. ($200,000), Lyon County Co-operative Oil Company ($40,000) and the Charter Company ($3,200,000).

DATE AND ADDRESS: Comments must be filed on or before May 17, 1982, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20461. All comments should conspicuously display a reference to case number BEF–0065.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20461, (202) 633–8377.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order relates to six consent orders entered into by Northeast Petroleum Industries, Inc., 44 FR 42313 (1979); Nordstrom Oil Company, 44 FR 66655 (1979); Ada Resources, Inc., 44 FR 66653 (1979); Arcone Oil Company, Inc., 45 FR 61657 (1980); Lyon County Co-operative Oil Company, 44 FR 34632 (1979); and the Charter Company, 46 FR 42741 (1981).

The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of escrow accounts funded by Northeast, Nordstrom, Ada Resources, Arcone, Lyon and Charter. The DOE has tentatively decided that Applications for Refund should be accepted from firms and individuals who purchased motor gasoline, fuel oil or other covered products from these firms during the relevant audit periods. The Proposed Decision and Order provides that in order to be entitled to receive a portion of the settlement funds, a purchaser must furnish the DOE with evidence which demonstrates that it was injured by the alleged unlawful prices for motor gasoline or fuel oil charged by Northeast, Nordstrom, Ada Resources, Arcone, Lyon or Charter, including specific documentation concerning the date, place, price, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered.

The refund process suggested in the Proposed Decision and Order would take place in two separate stages. In the first stage, all meritorious claims for refunds by persons such as the initial purchasers would be paid. For the second stage, which would take place after the claims procedure is completed, the Proposed Decision and Order suggests that the remainder of the consent order funds might be distributed through rate regulated utilities or other regulated industries to persons who are likely to have been injured by the alleged overcharges. The determination also proposes alternatively to distribute the settlement funds to the governments of the cities or states in which products sold by the six firms were marketed.

As an alternative, the DOE proposes to deposit all remaining funds directly into the United States Treasury. The Proposed Decision emphasizes that no procedure for the second stage will be adopted until the claims process is completed.

It should be pointed out that until final procedures are adopted for the first stage, no claims for refund can be accepted. Applications for Refund therefore should not be filed at this time. Appropriate public notice, including notice published in the **Federal Register**, will be given when the submission of claims is authorized. No less than 90 days from publication of such notice in the **Federal Register** will be provided for the filing of claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted on or before May 17, 1982, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1111, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Issued in Washington, D.C., on April 9, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 9, 1982.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Petitioner: Office of Enforcement, Economic Regulatory Administration: In the Matters of Northeast Petroleum Industries, Inc., Nordstrom Oil Company, Ada Resources, Inc., Arcone Oil Company, Inc., Lyon County Co-operative Oil Company, and The Charter Company.

Dates of Filing: June 11, 1981, September 4, 1981, September 11, 1981, October 9, 1981, October 16, 1981.

Case Numbers: BEF–0065, BEF–0081, BEF–0086, BEF–0089, HEF–0002, HEF–0005.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration's Office of Enforcement (OE) (now the Office of Special Counsel) may request the Office of Hearings and Appeals to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V.

In accordance with these regulatory provisions, the OE recently filed Petitions for the Implementation of Special Refund Proceedings in connection with consent orders entered into with Northeast Petroleum Industries, Inc. (Northeast), Nordstrom Oil Company (Nordstrom), Ada Resources, Inc. (Ada Resources), Arcone Oil Company (Arcone), Lyon County Co-operative Oil Company (Lyon) and The Charter Company (Charter). Under the terms of these consent orders, the firms agreed to make refunds for their alleged violations of the DOE price regulations in the following amounts: $459,635 (Northeast), $65,000 (Nordstrom), $100,000 (Ada Resources), $200,000 (Arcone), $40,000 (Lyon), and $3,200,000 (Charter). The funds have been paid to the DOE and are now being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions

from the Office of Hearings and Appeals regarding their final distribution.

I. Background

Ada Resources and Arcone are "resellers" and Northeast, Nordstrom and Lyon are "reseller-retailers" of petroleum products as those terms were defined in 10 CFR 212.31. Charter is a "refiner" as that term was defined in 10 CFR 212.31. During the relevant time periods, these firms were subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subparts E or F. Those Subparts governed the maximum prices that could lawfully be charged by refiners or resellers in the sale of fuel oil, motor gasoline, and other covered products. As a part of its enforcement activities, the OE audited the six firms specified above. The funds involved in this proceeding were obtained as a result of consent orders agreed to in settlement of enforcement actions alleging overcharges in the sale of fuel oil, motor gasoline, or other covered products by Northeast, Nordstrom, Ada Resources, Arcone, Lyon, and Charter.

An audit of Northeast's records revealed possible pricing violations with respect to the firm's sales of motor gasoline during the period November 1, 1973 through April 30, 1974. In order to settle all claims and disputes between Northeast and the DOE regarding Northeast's prices of motor gasoline, the DOE and Northeast entered into a consent order on June 19, 1979, in which Northeast agreed to remit $459,635 to the DOE. Notice of the consent order was published in the **Federal Register** on July 19, 1979. *See* 44 FR 42313 (1979). Interested parties were invited to submit written notice to the DOE of potential claims against the settement fund. No notices were received by the DOE.

The DOE's audit of Nordstrom revealed possible pricing violations with respect to the firm's sales of motor gasoline and heating oil during the November 1, 1973 through April 30, 1974 audit period. In order to settle all claims and disputes between the parties regarding the sale of motor gasoline and fuel oil, Nordstrom and the DOE entered into a consent order on September 24, 1979, in which Nordstrom agreed to pay $65,000 to the DOE. Notice of the consent order was published in the **Federal Register** on November 20, 1979. *See* 44 FR 66655 (1979). Interested parties were invited to comment on the terms of the consent order and to submit notice of claims against the settlement fund. A notice of claim was received from the Defense Logistics Agency.

In its audit of Ada Resources the OE found possible regulatory violations with respect to the firm's sales of motor gasoline, kerosene, No. 2 diesel fuel and aviation fuel during the period November 1, 1973 through August 31, 1974, and the sales of natural gasoline, butane and residual fuel oil during the November 1, 1973 through June 30, 1974 audit period. The DOE and Ada Resources entered into a consent order under which the firm agreed to remit $100,000 to the DOE in settlement of all claims and disputes between the parties arising from the audit. The terms of the final consent order were published in the **Federal Register** on November 20, 1979. *See* 44 FR 66653 (1979). Interested parties were given an opportunity to comment on the terms of the consent order and to submit written notice of potential claims against the refund amount. The DOE received comments from Rapid Transit Lines, Inc. and the Metropolitan Transit Authority of Harris County, Texas.

The OE's audit of Arcone revealed possible pricing violations with respect to the firm's sales of No. 2 fuel oil during the period November 1, 1973 through May 31, 1974. In order to settle all claims and disputes between the parties regarding the sale of No. 2 fuel oil, Arcone and the DOE entered into a consent order on March 27, 1980, in which Arcone agreed to pay $200,000 to the DOE. Notice of the consent order was published in the **Federal Register** on September 17, 1980. *See* 45 FR 61657 (1980). Interested parties were invited to submit notice of claims against the settlement fund and comment on the terms of the consent order. No claim was received in response to the notice.

An audit of Lyon revealed possible pricing violations with respect to the sale of motor gasoline, diesel fuel, and Nos. 1 and 2 fuel oil during the period November 1, 1973 through December 31, 1974. In order to settle the claims and disputes between Lyon and DOE regarding Lyon's sale of these products, Lyon and the DOE entered into a consent order on June 6, 1979, in which Lyon agreed to remit $40,000 to the DOE. Notice of the consent order was published in the **Federal Register** on June 15, 1979. *See* 44 FR 34632 (1979). The DOE also gave notice of the consent order through a press release which was published on the same day. No claim was received by the DOE in response to the **Federal Register** notice or the press release.

In a January 16, 1981 Proposed Consent Order, Charter and the Office of Enforcement agreed to the following actions to remedy any violations of the DOE price and allocation regulations that may have occurred during the August 19, 1973 through November 30, 1980 audit period. First, the parties agreed that Charter would reduce to $40,880,000 the amount of its unrecovered "banked" costs for motor gasoline. Secondly, the parties agreed that Charter would make refunds of $15,000,000 to certain residual fuel oil customers. In addition, the parties agreed that Charter would issue credit memoranda totalling $9,999,999 to its U.S. utility customers (and nonutility customers that agree in writing to pass such credit through on a dollar-for-dollar basis to their utility customers) that were purchasers of residual fuel oil during the relevant period. Finally, Charter and the Office of Enforcement agreed that with respect to Charter's No. 2 diesel fuel sales during the period December 1, 1973, through June 20, 1975, Charter would pay a total amount of $3,200,000 in settlement funds to the DOE to be held in an escrow account at the First National Bank of Boston. This Proposed Decision and Order will suggest a procedure for distribution of the $3,200,000 in Charter settlement funds. A copy of the January 16 Consent Order was published in the **Federal Register** for comment on January 26, 1981. *See* 46 FR 8094 (1981). Comments were received from the Transportation Group, the National Consumer Law Center, Martin Oil Service, Inc., U.S. Oil Company, Sumrall Services, Inc., and a Charter shareholder. (*1*) The Office of Special Counsel addressed these comments in a notice which was published in the **Federal Register** on August 24, 1981. *See* 46 FR 42741 (1981). That notice also announced the adoption of the January 16, 1981 Proposed Consent Order as a Final Order. No comments or claims were received by the DOE in response to the August 24 **Federal Register** notice.

II. Jurisdiction and Authority To Fashion Refund Procedures

The OE filed Petitions for the Implementation of Special Refund Procedures under Subpart V in connection with the consent orders involving Northeast, Nordstrom, Ada Resources, Arcone, Lyon and Charter on June 11, September 4, September 11, October 9, and October 16, 1981, respectively.

Subpart V authorizes the Office of Hearings and Appeals, upon request by the appropriate enforcement official, to fashion special procedures to distribute moneys obtained as part of settlement agreements. 10 CFR 205.281, 205.282. The special refund procedures are part of an overall regulatory program which is intended to implement several different statutes. Congress provided for the

mandatory allocation and pricing of crude oil, residual fuel oil, and refined petroleum products in the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 *et seq.* (1976). The authority to enforce regulations issued under the EPAA was granted by section 5 of the EPAA, which incorporated enforcement authorities established in the Economic Stabilization Act (ESA), 12 U.S.C. 1904 note (1970). EPAA, section 5(a), 15 U.S.C. 754(a). The statutory authority to enforce the regulations governing the allocation and pricing of petroleum products was delegated to the Administrator of the Federal Energy Administration, and subsequently to the Secretary of Energy. Federal Energy Administration Act (FEAA), section 5, 15 U.S.C. 765 (1974); Department of Energy Organization Act (DOE Act), section 201(a), 42 U.S.C. 7151(a) (1979). To carry out these statutory mandates, the regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, and the DOE have provided throughout the existence of the price control program for the issuance of remedial orders requiring a person to cease a violation or to compensate for the effects of a violation, or both. *See* 6 CFR 155.81(b) (1973); 10 CFR 205.2 (1974) (defining "remedial order").

In order to implement these statutory and regulatory goals, the DOE's enforcement process is designed to accomplish two independent ends: disgorgement of the fruits of a regulatory violation from the wrongdoer, and refunds to persons injured by the regulatory violation. *See generally Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (hereinafter referred to as *Vickers); Sauder v. DOE,* 648 F.2d 1341 (Temp. Emer. Ct. App. 1981). The latter objective—refunds to overcharged persons—furthers the specific EPAA goal of providing for the "equitable distribution of * * * refined petroleum products at equitable prices * * * among all users." 15 U.S.C. 753(b)(1)(F).

In the past the Subpart V process has been used in situations where the Department of Energy is unable to readily identify persons who are entitled to refunds or to readily ascertain the amounts that such persons are entitled to receive as a result of enforcement proceedings. 10 CFR 205.280. In several recent decisions we accepted jurisdiction over funds received by the DOE in settlement of enforcement proceedings underlying Petitions for Implementation of Special Refund Procedures. *See, e.g., Office of Enforcement,* 8 DOE ¶ 82,515 (1981); *Office of Enforcement,* 8 DOE ¶ 82,516 (1981). In these decisions we determined that there was a significant degree of difficulty involved in identifying the persons who were injured by the alleged overcharges and that a Subpart V proceeding would be an effective and cost efficient means of making restitution to overcharged persons. After reviewing the records developed with respect to Nordstrom, Ada Resources, Arcone, Lyon and Charter, we have concluded that the implementation of Subpart V proceedings is also appropriate in these cases. In each of these cases there is a significant degree of difficulty inherent in identifying the persons who were injured by the alleged overcharges and ascertaining the level of refunds that such persons should receive. Until recently, crude oil and refined petroleum products were subject to a comprehensive price regulation scheme which could be utilized to facilitate the channeling of refunds to adversely affected purchasers through price rollbacks. However, on January 28, 1981, the President exempted crude oil and all refined petroleum products from the DOE regulatory program. Exec. Order No. 12287, 46 FR 9909 (1981). As a result of decontrol, price rollbacks can no longer be used to refund moneys to purchasers who were overcharged in the past. Therefore, to refund money to the parties affected by the alleged overcharges, a determination must be made regarding the extent to which the first purchasers of the products involved absorbed the overcharges or passed the higher costs through to their customers by raising their own sales prices. In these cases, therefore, the persons entitled to refunds are not readily identifiable, and the amount of the refunds that any particular person should receive is not readily ascertainable. Under these circumstances, we believe that Subpart V provides the most useful mechanism to effect restitution to persons who were likely to have been injured by alleged pricing violations. The Office of Hearings and Appeals therefore has decided to exercise jurisdiction over distribution of the funds received by the DOE in settlement of the enforcement proceedings underlying the Petitions for Implementation of Special Refund procedures in the cases of Nordstrom, Ada Resources, Arcone, Lyon and Charter.

On September 10, 1981, Northeast submitted comments in which it contends that the Office of Hearings and Appeals should not assert jurisdiction over the settlement funds obtained as a result of the Northeast consent order. In particular, Northeast contends that the Petition for the Implementation of Special Refund Procedures should be rejected and the settlement funds placed in the United States Treasury because (i) it will be impossible for OHA or Northeast to identify the persons or firms which might be eligible for refunds; (ii) OHA and Northeast will be unable to determine what refund amount should go to each purchaser since Northeast does not have records concerning the transactions which took place during the audit period, and it is unlikely that purchasers will have receipts or other proof of purchase; and (iii) Subpart V proceedings would be adminstratively inefficient in this case because processing costs to DOE will far exceed the value of the funds that could be distributed to purchasers eligible for refunds. On November 10, 1981, we held a hearing at Northeast's request so that the firm could present oral argument in support of the contentions made in its September 10, 1981 comments.

After reviewing the submissions filed by Northeast and the transcript of the November 10, 1981 hearing, we have concluded that Northeast's contentions are without merit. With respect to the firm's claim that it cannot identify its wholesale and retail purchasers during the audit period, we note that counsel for Northeast indicated during the hearing that the firm currently has a partial list of the names and addresses of the approximately 200 wholesalers who purchased product from Northeast during the audit period. Transcript of November 10, 1981 Hearing at 17, *Northeast Petroleum Industries, Inc.,* (hereinafter cited as *Transcript).* In addition, counsel for Northeast has also indicated that the firm is a small family-run operation which works closely with its wholesale purchasers, and that the firm currently supplies many of the same wholesale purchasers that purchased product from it during the audit period. *Transcript* at 14, 18. In view of these facts it is difficult to believe that we will be unable to provide adequate notice of the present special refund proceeding to Northeast's wholesale customers.

With respect to Northeast's retail operations, we note that the firm sold motor gasoline through 114 retail outlets located in the States of connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine. Our records confirm Northeast's claims that product was sold through these outlets on a cash-only basis, that these outlets did not maintain records of individual purchases and that it would be virtually impossible for Northeast to identify the

firms or individuals who purchased motor gasoline from these outlets during the audit period. We find, however, that Northeast's inability to identify its retail purchasers does not necessarily preclude the implementation of special refund procedures designed to make restitution to these purchasers. In previous determinations involving special refund procedures, we have stated that when alleged overcharges are confined to an identifiable geographic area, it may well be possible to distribute settlement funds, in a manner which would provide restitution to purchasers who were harmed by the alleged violation but who could not for some reason file individual claims. *See Vickers; Office of Enforcement,* No DFF-0002 (May 8, 1981) (proposed decision), 46 FR 16681 (1981), *issued in final form,* 9 DOE ¶ 82,521 (1982). In the Northeast case, the towns and states in which the alleged overcharges took place can be easily identified, and, as will be discussed later in this decision, it should therefore be possible to design an efficient process to channel portions of the settlement money to these areas in a manner which would benefit the same purchasers who were injured by the alleged overcharges.

We must also reject Northeast's contention that the Office of Hearings and Appeals will be precluded from implementing special refund procedures in this case because of its inability to determine what portion of the settlement funds should be distributed to each of Northeast's aggrieved wholesale and retail purchasers. The special refund process works in two stages: the first stage entails giving notice to members of the public who might have been injured by the alleged overcharges of the firm that entered into the consent order, and providing an opportunity for claimants to apply for refunds. OHA does not have to identify each and every purchaser of Northeast gasoline during the consent order period in order for this claims procedure to function. As we indicated above, in situations where there is a substantial amount of money unclaimed after the first stage of the refund process it still might be possible to have a second stage for distribution of refunds through other entities to effectuate restitution in the regions where the alleged overcharges took place. Although both Northeast and the Office of Hearings and Appeals might be unable to identify the individuals who purchased Northeast product from retail outlets during the audit period, it should be possible to determine the volume of Northeast product marketed during this period in each of the six previously identified states. Northeast contends that it does not maintain records regarding individual retail purchases; however, the firm does not claim that it would be unable to provide this Office with information concerning the volumes of motor gasoline marketed through each of the 114 company-operated retail outlets during the relevant period. Once the OHA is able to ascertain what amount of Northeast product was marketed through each of the retail outlets, it might well be possible to distribute refunds in affected towns or states according to the volume of Northeast product marketed in each region. With respect to the approximately 200 wholesale purchasers who purchased motor gasoline from Northeast during the audit period, we note that it is probable that these firms have records of their purchases from Northeast. In addition, it is likely that most of these firms purchased a relatively large volume of motor gasoline from Northeast during the audit period and that Northeast has therefore maintained records for that period concerning the volume of product purchased by each wholesale purchaser. We are therefore unable to conclude at this time that the Office of Hearings and Appeals will be unable to acquire the information, or provide the type of notice to injured parties which is needed to distribute the settlement funds obtained from Northeast.

Finally, we must reject Northeast's contention concerning the administrative costs involved in processing claims for refunds in this case. In *Vickers* we indicated that the administrative cost of processing a claim, issuing a check and transmitting a check is approximately $15.00. We note that during the audit period, Northeast sold 11,776,196 gallons of motor gasoline to approximately 200 wholesale purchasers and marketed 10,026,471 gallons of motor gasoline through 114 retail outlets. In some of the previous special refund proceedings involving allegations of "localized" price violations, we have held that the settlement funds should be distributed on a volumetric basis so that an applicant receives a refund amount that is based upon the proportion of the product purchased by the applicant to the total amount of that product sold by its supplier during the relevant period. *See Vickers; Office of Enforcement,* No. BEF-0041 (November 4, 1981) (proposed decision) (hereinafter referred to as *Panhandle*). (2) If the $459,635 in Northeast settlement funds is allocated on a "pure" volumetric basis, approximately $248,203 will be available for distribution to the 200 wholesale purchasers who purchased motor gasoline from Northeast during the audit period. Assuming, *arguendo,* that this amount were equally divided among the 200 wholesale purchasers, each firm would receive a refund of $1,241. It is therefore apparent that the amount of refund money allocated to each eligible wholesale purchaser will in most cases greatly exceed the administrative costs of processing the claim. Moreover, in the event that the funds are not exhausted by claims in the first stage of the refund process, it may be possible to have a second-stage distribution for restitution of the unclaimed funds to persons in the six-state area who were injured by the alleged overcharges through Northeast's retail outlets. The second-stage distribution could be structured by the OHA in a way that would obviate any problem with excessive administrative costs.

After reviewing the record in the Northeast case, we have concluded that the implementation of Subpart V proceedings is appropriate for distributing the settlement funds obtained from this firm. We wish to emphasize that the Subpart V process is specifically designed to be used in situations where the Department of Energy is unable to readily identify persons who are entitled to refunds under a consent order, or to readily ascertain the amounts that such persons are entitled to receive. As explained above it will be possible to make restitution to the firms and individuals that purchased fuel from Northeast during the consent order period. We have therefore decided to exercise jurisdiction over the funds received by the DOE from Northeast in settlement of the enforcement proceedings underlying the Petition for Implementation of Special Refund Procedures.

III. Proposed Refund Procedures

In view of the objectives expressed in the statutes and regulations discussed previously, and the consent orders themselves, the procedures to be implemented in these six cases should, to the maximum extent practicable, provide for the distribution of the refund amounts to parties who were adversely affected by the alleged violations.

As we have stated before, refunding moneys obtained through DOE enforcement proceedings is the primary focus of Subpart V. 10 CFR 205.280; *see Vickers; Office of Enforcement,* No. BEF-0021 (March 13, 1981) (proposed decision), *issued in final form,* 9 DOE ¶82,508 (1981) (hereinafter referred to as

Alcoa). Subpart V offers a means of compensating many individuals who, because they either lack the resources or do not have a sufficient financial stake in the outcome to institute private lawsuits under section 210 of the ESA, have suffered injuries which would otherwise go unredressed. The Subpart V process is also an efficient administrative mechanism for returning alleged overcharges to injured parties because it eliminates the need for long and costly court actions.

A. Refunds to Identifiable Purchasers

During the first stage in the refund process, the consent order funds should be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by the alleged overcharges in sales of covered products by Northeast, Nordstrom, Ada Resources, Arcone, Lyon and Charter. We note that the first purchasers of the relevant products from these six firms are likely to be claimants in this proceeding. First purchasers can generally be categorized as follows: (1) Resellers of petroleum products, (2) firms or individuals who used the product in question for the production or distribution of goods and services which were purchased by the public, or (3) entities which were the ultimate consumers of the product they purchased from their suppliers. To the extent that first purchasers who are resellers or who are involved in the production or distribution of goods and services can establish that they absorbed the over charges rather than passed them on to their customers, they will be entitled to receive a portion of the consent order funds. In order to qualify for a refund, these first purchasers will be required to demonstrate that during the period covered by the relevant consent order they would have kept their prices for petroleum products or goods and services at the same level had the alleged overcharges not occurred. While there are a variety of means by which a claimant could make this showing, a reseller or firm engaged in the production or distribution of goods and services generally should demonstrate that at the time it purchased covered products from its supplier, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, a reseller of petroleum products must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.

With respect to first purchasers who are ultimate consumers, we believe that the above showing should not be necessary in order for a firm to qualify for a refund. The types of organizations and individuals that would be included in this group include home owners, schools, religious institutions, federal, state, and local government entities, research foundations, and any other individual or organization which is not engaged in the direct sale of goods or services to other consumers. For example, in the *Panhandle* decision, which involved Panhandle Eastern Pipeline Company and five other firms which had entered into consent orders, we noted that one of the first purchasers included the Bureau of Indian Affairs, which is an agency of the Federal Government. Our records indicate that the No. 2 fuel oil purchased by the Bureau of Indian Affairs was used to operate publicly-owned buildings, vehicles, and machinery and that any over charges associated with its purchase of the No. 2 fuel oil would have been absorbed by the Bureau. In order to establish a claim, this type of first purchaser need demonstrate only that it purchased a specific quantity of product which was sold by Northeast, Nordstrom, Ada Resources, Arcone, Lyon or Charter during the relevant time period.

In the event that the first purchasers are unable to make the showings described above, firms and individuals who purchased products from the first purchasers may be eligible to receive a portion of the funds. In order to establish an entitlement to a refund, a person claiming to be an injured party must satisfactorily demonstrate that it purchased, during the relevant time period, a specific quantity of products which were sold by Northeast, Nordstrom, Ada Resources, Arcone, Lyon or Charter. Privity with either the reseller or one of its first purchasers need not be established; evidence need only be presented that the products purchased by the claimant flowed through a chain of distribution leading back to one of the six firms involved in this proceeding. In addition, unless the purchaser is an ultimate consumer, it should generally be able to demonstrate that it did not pass through the cost increases resulting from the alleged overcharges to its own customers. For example, a purchaser who resold the identified product should be in a position to show that market conditions did not permit it to raise prices charged to downstream customers, and that consequently it was forced to absorb the cost increases that are represented by the alleged overcharges. In the absence of that showing, we could conclude that the claimant was not injured in a monetary sense by the alleged overcharge. However, in the *Vickers* decision, we noted that the nature of the showing required could be too complicated for those individuals and firms who might otherwise be entitled to apply for refunds and who purchased relatively small amounts of products. We also observed that many of those purchasers might lack the type of records required to support such a showing. We therefore established in that case a 50,000 gallons per month (or 600,000 gallons per year) threshold level of purchases under which applicants, primarily smaller firms and individuals, were not required to make a detailed showing of actual injury. For those applicants who were claiming less than that level of purchases, we required only proof of the amount of product purchased by the applicant during the consent order period. However, the *Vickers* decision did require applicants whose purchases exceeded the threshold level to provide detailed information which would establish that they did not pass through the price increases to their customers. We will consider using the same type of treatment for smaller claimants in this proceeding, and we specifically request comments from the public on this issue. *See Vickers; Office of Special Counsel for Compliance*, 4 DOE ¶ 82,511 at 85,043–4 (1979).

In *Vickers* we utilized a "pure" volumetric method of allocating refunds to claimants, *i.e.* refunds were based on the proportion of product purchased by the applicant to the total amount of product sold by the supplier during the relevant audit period. When the *Vickers* decision was issued in July 1981, we believed that this method of distribution was appropriate for allocating the Vickers settlement funds because: (i) It is an administratively efficient method for determining what proportion of the settlement fund should go to each successful claimant; (ii) it serves as a useful approximation of injury in the treatment of overcharged claimants who are unable to quantify their alleged injury; and (iii) it allows applicants to recover a significant refund for each gallon of product they purchased.

Based on our experience in Subpart V cases since that time, however, we now believe that the adoption of the "pure" volumetric plan of distribution used in *Vickers* would not be the best mechanism for allocating the Northeast, Nordstrom, Ada Resources, Arcone, Lyon and Charter consent order funds.

There are a number of factors leading to this conclusion. First, we note that the size of the monetary settlements which are involved in Subpart V proceedings are arrived at through negotiations involving the DOE and the firms charged with the alleged regulatory violations. In the most recent decision that addressed this issue, *Office of Special Counsel*, 9 DOE ¶ Case No. BEF-0072 (March 10, 1982) (hereinafter referred to as *Pennzoil*), we noted that the size of a settlement fund is based upon both the magnitude of the violations alleged by the government and other factors such as each party's views as to the probable length, expense and success of litigation. In *Vickers*, the settlement fund happened to be relatively large in proportion to the volume of product covered by the consent order and would therefore yield a significant per gallon refund. In *Pennzoil*, however, the settlement fund was small in relation to the total volume of products involved, and successful claimants would recover a refund of only $.000375 per gallon if the settlement fund were distributed on a "pure" volumetric basis. Moreover, we believe that as a general proposition many claimants in these cases will be unable to provide the type of evidence necessary to support the approval of a refund application. For example, it may be difficult and costly for potential claimants to demonstrate that the effects of a alleged regulatory violations were not passed through to their downstream customers. As a result, the total amount for which meritorious claims are submitted may be far less than the amount of the settlement funds available for distribution. *See Pennzoil*, slip op. at 13.

In this proceeding, we will follow *Pennzoil* and adopt an alternative mechanism of distribution based on a modified version of the "pure" volumetric distribution scheme used in *Vickers*. As noted above, the size of the fund available for distribution is likely to be less than the amount needed to make full restitution to the injured claimants involved in this proceeding. The use of a "pure" volumetric mechanism would have the undesirable effect of placing a further artificial limitation on the amount of the refunds that are eventually received by successful claimants. We therefore believe that it is fully consistent with the restitutionary objectives of the present proceeding to distribute more than a pure volumetric share of the available Northeast, Nordstrom, Ada Resources, Arcone, Lyon and Charter funds to successful claimants. First we will establish a "floor" or minimum amount a successful claimant could receive which will assist a potential applicant in deciding whether or not to apply for a refund. In this proceeding the minimum amount that a successful claimant will recover can be determined by multiplying its total product purchases (in gallons) by a factor computed using the total amount of money available for distribution (*i.e.* the relevant consent order amount) divided by the total sales (in gallons) by the relevant firm of all products covered by the relevant Consent Order. However, after the minimum refund amount has been determined for each successful claimant, the OHA will also give consideration to the following factors in determining individual refunds: (i) The amount of interest accumulated in the escrow account since the DOE received settlement funds from Northeast, Nordstrom, Ada Resources, Arcone, Lyon and Charter; (ii) the number of qualified claimants, and the aggregate volume of their purchases from the six firms involved compared to the amount of products sold by these firms during the consent order period; (iii) the impact of the alleged violations on the claimant's business; (iv) market conditions prevalent during the consent order period; (v) the claimant's position in the distribution chain, *i.e.* whether it is a refiner, reseller or ultimate consumer; and (vi) the manner in which the claimant's business is governed by federal, state or local regulatory agencies, or other relevant private contractual agreements such as those affecting agricultural cooperatives. A weighing and balancing of these factors will enable us to further the restitutionary goals of Subpart V and the underlying statutory objectives.

Any purchaser claiming a portion of the refund amount should file an Application for Refund pursuant to 10 CFR § 205.283. Applications should provide all relevant information necessary to establish a claim, including specific documentation concerning the date, place, price, and volume of product purchased, the retention of increased costs, and the extent of any injury alleged. Detailed procedures for filing applications will be provided in a final Decision and Order. *See Vickers*. Before disposing of any of the funds received as a result of the consent orders involved in this proceeding, we intend to widely publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register**, notice will be provided in publications in the areas in which Northeast, Nordstrom, Ada Resources, Arcone, Lyon and Charter marketed their products during the period covered by the consent orders, and an effort will be made to get a list of the names and addresses of affected first purchasers from these six firms. As a final matter, we note that refund applications filed on behalf of groups of claimants identifying themselves as adversely affected purchasers also will be considered. Such applications will be evaluated on a case-by-case basis.

B. Distribution of the Remainder of the Refund Amount

After all meritorious claimants have received the share of the settlement fund to which they are entitled, the settlement fund provided by each firm pursuant to its consent order, while diminished, may not be exhausted. The remainder of the funds should be distributed during the second stage of the refund process in furtherance of the goals set forth in the DOE's enabling legislation and implementing regulations. In this decision, we are proposing several alternatives for the second-stage refund procedure. However, we wish to emphasize that any consideration of the second-stage procedure at this point in time involves a number of uncertainties. As we noted in *Vickers:*

> [Such] a step would be difficult to justify before the analysis and processing of Applications for Refund filed in the first stage of the distribution of the Consent Order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme.

8 DOE at 85,397. As in that case, we intend to set forth a number of second-stage alternatives in this proposed decision, consider the comments received after publication in the **Federal Register**, and then issue a final Decision and Order establishing procedures for the first stage. In that decision, we will summarize and address briefly the comments received concerning the proposed second-stage procedure, and will solicit another round of comments on the distribution of the funds remaining after payment of claims in the first stage. In this way, we will have several opportunities to consider the outstanding issues before reaching a final decision on the second stage.

Since refunding money to injured persons is the primary concern of Subpart V proceedings, we believe that the remaining funds should, if administratively and economically feasible, be distributed to groups of ultimate consumers who were likely to have borne a portion of the higher prices

charged by Northeast, Nordstrom, Ada Resources, Arcone, Lyon and Charter. In view of the relatively small sums of money likely to be involved in claims by many ultimate consumers, and the improbability that members of this class will possess records sufficient to establish their claims, we anticipate that only a limited number of ultimate consumers who were actually injured by the alleged overcharges will be able to provide during the first stage of the refund process that they are entitled to refunds. *See Vickers.* The fact that claims to specific refunds may not have been proved, however, does not mean that injuries to ultimate consumers have not occurred. Rather, the absence of claims for the full amount of the settlements would tend to reflect the diffciulty such parties encounter in establishing a valid claim for a portion of the consent order funds.

If a second stage should prove necessary in any of the six cases, refunds might be made in the form of lowered energy or energy related costs in areas also where the products associated with the alleged overcharges by Northeast, Nordstorm, Ada Resources, Arcone, Lyon and Charter were marketed. For example, in *Office of Special Counsel for Compliance,* No. DFF-0002 (March 13, 1981) (proposed decision), we proposed that the second-stage refund to consumers who were likely to have been overcharged be effected by using rate-regulated utilities to pass through the remaining funds to consumers through fuel adjustment clauses or other appropriate mechanisms. We observed that it is likely that the persons who purchased motor gasoline or heating oil in a particular area would reside there as well and would ultimately be consumers of electricity. They would therefore benefit from the proposed rate reduction. We further suggested that state governments in the affected areas may be designated as refund recipients for the purpose of reducing energy-related expenses subject to their direct control. County and local governments are also candidates for distributing the refund amounts to affected citizens. Although we cannot yet determine what actions we will take in the second stage, we will consider these types of restiutionary schemes as possible alternatives.

In the event that the distribution schemes discussed above prove to be inappropriate because of administrative costs or the lack of accurate information, we propose that the portion of the settlement fund which would go undistributed be deposited in the United States Treasury. We also propose as an alternative to the distribution scheme outlined above that any funds remaining after the first stage claims procedure be deposited directly into the United States Treasury. Subpart V regulations specifically sanction this course of action, *see* 10 CFR 205.287(c), and direct payments to the Treasury may well be appropriate in those cases where other remedies would be ineffectual or administratively burdensome. *See Golden Eagle Oil Co.,* 6 DOE ¶ 83,005 at 86,065 (1980); *cf. Chana's Auto Service Center,* 8 DOE ¶ 83,002 (1981). However, as noted above, we will not be in a position to decide what should be done with any remaining funds until after the first-stage refund procedure is completed. Only then will we know the amount of money available for the second stage of the refund process. This factor, as noted above, will strongly influence the ultimate disposition of those funds.

It Is Therefore Ordered That:

The $459,635 refund amount supplied by Northeast, the $65,000 Nordstrom settlement, the $200,000 Arcone settlement fund, the $40,000 Lyon refund amount, the $100,000 Ada Resource settlement fund and the $3,200,000 refund amount provided by Charter will be distributed in accordance with the foregoing Decision.

Footnotes

(1) The Transportation Group is an organization representing four trade associations—the Air Transport Association of America, Inc., the American Trucking Association, Inc., the American Bus Association and the Association of American Railroads—whose members are major consumers of refined petroleum products. The Transportation Group expressed the following concerns regarding the Charter Consent Order: The DOE should try to identify overcharged purchasers or categories of purchasers in order to provide for direct refunds or payments based volumetrically on the amount of petroleum products purchased; transportation firms should receive a larger share of the refunds than they have in the past; and the Office of Special Counsel should provide additional information concerning refund amounts and methods of refund computation.

The National Consumer Law Center, a non-profit legal organization representing low-income individuals and groups, also expressed the concern that more information should be provided in the consent order regarding the settlement funds. In addition, this group complained that it is not appropriate to use bank reductions to remedy some of the disputes resulting from the audit of Charter's records.

The three independent marketers submitted virtually identical comments with respect to the consent order, asserting that OSC should have included more information about the settlement in the consent order.

Finally, the Charter shareholder commented that Charter cannot afford the remedies provided by the consent order.

(2) A different approach has been followed in the two most recent decisions involving so-called "global" consent orders that settled alleged violations of many different aspects of the Mandatory Petroleum Price and Allocation regulations. *See* Office of Special Counsel, 9 DOE ¶ , No. BEF-0072 (March 10, 1982) (Pennzoil); and Office of Special Counsel, 9 DOE ¶ , No. BEF-0073 (February 18, 1982) (Tenneco). In those cases, we declined to use the "pure" volumetric distribution scheme as in Vickers because of the other important equitable considerations involved. Prominent among these factors was the likelihood that parties would be filing claims based on alleged allocation violations. Another important consideration was the fact that the dollar value of the "pure" volumetric refund share was so small in proportion to the economic injury that was probably experienced by purchasers of Pennzoil and Tenneco products. We believe that many of the equitable considerations recognized in those decisions are present in these cases as well. As the text of this decision indicates, we are therefore following the same modified volumetric distribution scheme that was used in Pennzoil and Tenneco.

[FR Doc. 82-10423 Filed 4-15-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2103-5]

Availability of Environmental Impact Statements Filed April 5 Through April 9, 1982 Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, Ms. Kathi Wilson, (202) 245-3006.

Corps of Engineers:
- EIS No. 820186, Draft, COE, IL, South Quincy Drainage and Levee District, Flood Control Plan, Due: May 31, 1982
- EIS No. 820194, Final, COE, SEV, CA, NV, AZ, Lower Colorado River, General Project Permit, Due: May 17, 1982
- EIS No. 820190, Final COE, LA, Red River Parish Water Supply/Grand Bayou Reservoir Construction, Due: May 17, 1982

Department of Commerce:
- EIS No. 820202, Draft, NOA SEV, ATL, REG, Bluefin Tuna Fishery, Regulatory Revision Due: May 19, 1982

Department of Energy:
- EIS No. 820199, Draft, DOE, NY, Arthur Kill Generating Station, Conversion to Coal, Richmond County, Due: June 15, 1982
- EIS No. 820201, Draft, DOE, NY, Ravenwood Generating Station, Conversion to Coal, Queens County, Due: June 15, 1982

Department of Interior:
EIS No. 820197, Draft, NPS, PA, US 209, Management/Delaware Water Gap National Recreation Area, Due: June 9, 1982
EIS No. 820198, Final, SFW, MO Reeves Bottom Bottomland Hardwood Habitat Preservation, Dunklin Co., Due: May 17, 1982
Department of Transportation:
EIS No. 820187, Draft, FAA, NH, Lebanon Airport Runway Extension/Industrial Park Development, Due: May 31, 1982
EIS No. 820175, Final, FAA, VA, Washington National Airport Safety Overrun Area Modification, Due: May 17, 1982
EIS No. 820196, Final FHW, CA, CA-85, Right-of-Way Purchase for Protection, Santa Clara County, Due: May 17, 1982
EIS No. 820189, Final, FHW, CO, Belleview Avenue/CO-88 Inprovment, University Boulevard to I-25, Due: May 17, 1982
EIS No. 820191, Final, FHW, MD, US 50/301 Improvement, I-95 to Vicinity South River Bridge, Due: May 17, 1982
Environmental Protectioin Agency:
EIS No. 820195, Final, EPD, LA, Dolet Hills Power Plant Construction and Operation, NPDES Permit, Due: May 17, 1982
Federal Energy Regulatory Commission:
EIS No. 820200, Draft, FRC, WA, Cowlitz Falls Hydroelectric Project No. 2833, Licenses, Lewis County, Due: May 31, 1982
Department of Housing and Urban Development:
EIS No. 820192, Final, HUD, WA, Tacoma Center/Broadway Plaza Development, UDAG, Pierce County, Due: May 17, 1982
EIS No. 820188, FSuppl, HUD, MD, St. Charles New Communities, Title VII Termination, Charles County, Due: May 17, 1982
Department of the Army:
EIS No. 820193, Final, USA, NY, West Point Military Academy, Ongoing Operation, Monroe County, Due: May 17, 1982
Amended Notices:
EIS No. 8200024, Final, COE, HI, Waimea River Flood Control, Island and County of Kauai, Due: May 10, 1982[1]
EIS No. 820169, Draft, AFS, AR, Dry Creek Wilderness Study Area, Quachita National Forest Due: June 3, 1982[2]
EIS No. 820171, Draft, AFS, AR, Belle Starr Cave Wilderness Area, Quachita National Forest, Due: June 3, 1982[3]
Dated: April 13, 1982

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82-10468 Filed 4-15-82; 8:45 am]

BILLING CODE 6560-50-M

[TSH-FRL-2104-2; OPTS-51409]

Certain Chemicals; Premanufacture Notices

AGENCY: Evironmental 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 twenty nine PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 82-244—June 30, 1982.
PMN 82-245, 82-246, 82-247, 82-248, 82-249, 82-250 and 82-251—July 1, 1982.
PMN 82-252, 82-253 and 82-254—July 4, 1982.
PMN 82-256, 82-257, 82-258, 82-259, 82-260, 82-261, 82-262, 82-263, 82-267, 82-268, 82-269, 82-270 and 82-271—July 5, 1982.
PMN 82-264—July 6, 1982.
PMN 82-265 and 82-266—July 7, 1982.
PMN 82-272 and 82-273—July 8, 1982.

Written comments by:

PMN 82-244—May 31, 1982.
PMN 82-245, 82-246, 82-247, 82-248, 82-249, 82-250 and 82-251—June 1, 1982.
PMN 82-252, 82-253 and 82-254—June 4, 1982.
PMN 82-256, 82-257, 82-258, 82-259, 82-260, 82-261, 82-262, 82-263, 82-267, 82-268, 82-269, 82-270 and 82-271—June 5, 1982.
PMN 82-264—June 6, 1982.
PMN 82-265 and 82-266—June 7, 1982.
PMN 82-272 and 82-273—June 8, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51409]" 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 (202-382-3532).

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, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 82-244

Manufacturer. Minnesota Mining and Manufacturing Company.

Chemical. (G) Antimony pentafluoride-substituted amine complex.

Use/Production. (S) Catalyst of a polymer system for coating an internal component of a finished article. Prod. range: Confidential.

Toxicity Data. Acute oral: 0.5-1.25 ml/kg, Acute inhalation: no effect at 15.1 mg/l, Skin: 5.6, Eye: Extremely irritating.

Exposure. Manufacture, processing, use and disposal: Dermal and inhalation, a total of 6 workers, up to 8 hrs/da, up to 300 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to land.

PMN 82-245

Manufacturer. Confidential.

Chemical. (G) Modified polyurethane.

Use/Production. (S) Primer for adhesives. Prod. range: 1,000-10,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Negligible.

Enviromental Release/Disposal. No release. Disposal by Resource Conservation Recovery Act (RCRA) licensed waste hauler.

PMN 82-246

Manufacturer. Confidential.

Chemical. (G) Barium sulfonated red.

Use/Production. (S) Industrial pigment. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, 2 workers, 4 hrs/da, 160 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to water 4 hrs/da, 160 da/yr. Disposal by publicly owned treatment works (POTW).

PMN 82-247

Manufacturer. American Color and Chemical Corporation.

Chemical. (G) 2-anthracenesulfonic acid, 1-amino-4-substituted phenylamino-9,10-dihydo-9,10-dioxo-sodium salt.

Use/Production. (S) Commercial and consumer nylon carpet and upholstery. Prod. range: 2,000-10,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg, Acute dermal: >2,000 mg/kg, Skin: Non-irritant, Eye: Non-irritant.

Exposure. Manufacture and use: dermal and inhalation, a total of 4 workers, up to 6 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to water and land 1 hr/da, 20 da/yr. Disposal by POTW.

PMN 82-248

Manufacturer. Confidential.

Chemical. (G) Polymer of alkanediols and a carbomonocyclic anhydride.

---

[1] Retracted FR 3-5-82—Notice of Refiling should have appeared in FR 4-9-82.
[2] Published FR 4-9-82—Review Extended.
[3] Published FR 4-9-82—Review Extended.

Use/Production. (G) Open use. Prod. range: 0–250,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and eye, a total of 157 workers, up to 17 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water with more than 10,000 kg/yr to land. Disposal by incineration and landfill.

PMN 82–249

Manufacturer. Confidential.

Chemical. (G) modified hydroxy functional acrylic copolymer.

Use/Production. (S) Industrial baking enamel coating. Prod. range: 10,000–320,000 ky/yr.

Toxicity Data. No data submitted.

Exposure. Manufacturer, processing, use and disposal: Dermal and inhalation, a total of 10 workers, up to 8 hrs/da, up to 252 da/yr.

Evironmental Release/Disposal. Release to air and water up to 16 hrs/da, up to 252 da/yr.

PMN 82–250

Manufacturer. Confidential.

Chemical. (G) Mixture of Naphthalenedisulfonic acid,[azoxybis[(substituted-phenyl)azo]]bis[substituted-, and its sodium salts.

Use/Production. (S) Intermediate for a colorant. Prod. range: Confidential.

Toxicity Data. Acute oral: 1,569 mg/kg, Skin: Non-irritant, Eye: Substantial irritant.

Exposure. Negligible.

Environmental Release/Disposal. 10–100 kg/yr released to land. Disposal by biological treatment system.

PMN 82–251

Manufacturer. Velsicol Chemical Corporation.

Chemical. (S) 3,4-dichlorophenol.

Use/Production. (S) Paint stripper component. Prod. range: Confidential.

Toxicity Data. Acute oral: 3,846 mg/kg, Acute dermal: 2,000 mg/kg, Skin: Not an irritant, Eye: Extreme irritant, Ames Test: Non-mutagenic, Acute inhalation: 200 mg/l.

Exposure. Manufacture, processing and use: Dermal and inhalation, eye, a total of 3 workers, up to 8 hrs/da, up to 52 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air 1 hr/da, 5 da/yr. Disposal by approved Texas Deep Well System and incineration.

PMN 82–252

Manufacturer. Uniroyal Chemical Company.

Chemical. (G) Isocyanate terminated polyester polyurethane prepolymer.

Use/Production. (S) Heavy duty molded goods applications. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, 4 workers.

Environmental Release/Disposal. No release. Disposal by approved landfill.

PMN 82–253

Manufacturer. Confidential.

Chemical. (G) Urethane polyether.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral: 4.3 mg/kg, Skin: Non-irritant, Eye: Non-irritant, BOD_{20}: 175,000 mg/l.

Exposure. Manufacture and use: Derman, a total of 8 workers, up to 1 hr/da, up to 250 da/yr.

Environmental Release/Disposal. More than 10,000 kg/yr released to land. Disposal by POTW and approved landfill.

PMN 82–254

Manufacturer. Confidential.

Chemical. (G) Modified polymer of styrene, alkenoic acid, alkenoic esters and substituted alkenoic esters.

Use/Production. (G) Open use. Prod. range: 0–400,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: Dermal, inhalation and eye, a total of 157 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water with more than 10,000 kg/yr to land. Disposal by incineration.

PMN 82–256

Manufacturer. Confidential.

Chemical. (G) Poly[(aminoalkylamino) alkylene oxide], aqueous solution.

Use/Production. (G) Used to manufacture a component of water processing equipment. Prod. range: Confidential.

Toxicity Data. Acute oral: >2 gm/kg, Skin: Moderate irritation, Eye: Slight irritation, Inhalation: No Effect.

Exposure. Manufacture and use: 5 workers, 2 hrs/mo.

Environmental Release/Disposal. No release. Disposal by permitted disposal facilities.

PMN 82–257

Manufacturer. Monsanto Company.

Chemical. (S) m-chlorophenylphenylether.

Use/Production. (S) Captive intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: 2,500 mg/kg, Acute dermal: >2,000 mg/kg, Skin: Non-irritant, Eye: Non-irritant.

Exposure. Manufacture: dermal and inhalation, a total of 4 workers, up to 8 hrs/da, up to 60 da/yr.

Environmental Release/Disposal. Disposal by deep well and approved landfill.

PMN 82–258

Importer. Confidential.

Chemical. (G) Heterocyclic-methoxyphenylazo substance.

Use/Import. (S) Site-limited chemical intermediate. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, 12 workers, 3 hrs/da, 6 da/yr.

Environmental Release/Disposal. 50 kg max. released to land 2 hrs/da, 6 da/yr. Disposal by Plant Waste Treatment Works.

PMN 82–259

Manufacturer. Confidential.

Chemical. (G) Aliphatic oligometric carbonate diol.

Use/Production. (S) Industrial and commercial polyurethane intermediate. Prod. range: 450–450,000 kg/yr.

Toxicity Data. Acute oral: Slightly toxic, Acute dermal: Moderately toxic, Skin: Non-irritant, Eye: Non-irritant, Inhalation: Non-hazardous.

Exposure. Manufacture, processing and use: Dermal, inhalation and ingestion, a total of 27 workers, up to 24 hrs/da, up to 260 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land. Disposal by incineration, approved landfill and hazardous waste management facility.

PMN 82–260

Manufacturer. Confidential.

Chemical. (G) Disubstituted benzene.

Use/Production. (S) Company-limited intermediate. Prod. range: 4,000–6,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and inhalation, up to 40 workers, 1 hr/da, up to 10 da/yr.

Environmental Release/Disposal. No release to air and land with minimal to water. Disposal by biological treatment system, and incineration.

PMN 82–261

Manufacturer. Confidential.

Chemical. (G) Substituted naphthalene.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: 300–500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal and inhalation, up to 10 workers, 1 hr/da, up to 10 da/yr.
Environmental Release/Disposal. No release. Disposal by incineration.

PMN 82–262

Manufacturer. Confidential
Chemical. (G) Substituted naphthalene.
Use/Production. (S) Site-limited intermediate. Prod. range: 400–600 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use. Dermal and inhalation, a total of 10 workers, up to 0.5 hr/da, up to 5 da/yr.
Environmental Release/Disposal. Negligible. Disposal by incineration.

PMN 82–263

Manufacturer. Confidential.
Chemical. (G) A mixture of the sodium salts, lithium salts, and mixed sodium/lithium salts of naphthalene disulfonic acid, [azoxy bis[(substituted-phenyl)azo]]bis[substituted–.
Use/Production. (S) Colorant for paper. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg, Skin: Non-irritant, Eye: Inconsequential irritant.
Exposure. Negligible.
Environmental Release/Disposal. Negligible. Disposal by approved landfill.

PMN 82–264

Manufacturer. Confidential.
Chemical. (G) The reaction products of: Mixed branched 2,5 furandione polyalkylene substituted phenol, condensed with aldehyde and mixed amines. Coco glycerides with mixed acid and alcohol. Sulfur.
Use/Production. (G) Open use. Prod. range: 25,000–100,000 kg/yr.
Toxicity Data. Acute oral: Non-toxic, Skin: Non-irritant, Eye: Non-irritant.
Exposure. Manufacture and processing: Dermal and inhalation, a total of 106 workers, up to 11 hrs/da, up to 60 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air 6 hrs/da, 30 da/yr with 10–100 kg/yr to land.

PMN 82–265

Importer. Confidential.
Chemical. (S) 4,4'=bis (2,5-Dimethylstyryl)-diphenyl.
Use/Import. (S) 100% use as a secondary scintillator for radiometry. Import range: Confidential.
Toxicity Data. Acute oral: 7,500 mg/kg, Skin: None, Eye: None.
Exposure: Import: dermal, 250 workers, 1–2 hrs/da, 4–8 wks/yr.
Environmental Release/Disposal. No release. Disposal by approved radiochemical disposal sites.

PMN 82–266

Importer. Confidential.
Chemical. (G) Alkyl quaternary ammonium hydroxide.
Use/Import. (S) 100% use for dissolving or solubilizing organs, tissues, feces, blood, or plasma prior to radiometry. Import range: Confidential.
Toxicity Data. Acute oral: 1,333 mg/kg, Skin: Moderate, Eye: Moderate.
Exposure. Import: dermal, 250 workers, 1–2 hrs/da, 4–8 wks/yr
Environmental Release/Disposal. No release. Disposal by approved radiochemical disposal sites.

PMN 82–267

Manufacturer. Confidential.
Chemical. (G) Acid blocked amine.
Use/Production. (G) Open use. Prod. range: 0–30,000 kg/yr.
Toxicity Data. Acute oral: 1.08 ml/kg, Skin: Severely irritating, Eye: Severely irritating, Inhalation: Irritating, Ames Test: Non-mutagenic.
Exposure. Manufacture, use and disposal: Dermal, inhalation and eye, a total of 210 workers, up to 24 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air 24 hrs/da, 50 da/yr with 0–1,000 kg/yr to water and 10–1,000 kg/yr to land. Disposal by incineration and on site evaporative lagoon.

PMN 82–268

Manufacturer. Confidential.
Chemical. (G) Acid blocked amine.
Use/Production. (G) Open use. Prod. range: 0–30,000 kg/yr.
Toxicity Data. Acute oral: 2.13 ml/kg, Skin: Severely irritating, Eye: Moderately irritating, Inhalation: Irritating, Ames Test: Non-mutagenic.
Exposure. Manufacture, use and disposal: Dermal, inhalation and eye, a total of 210 workers, up to 24 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air 24 hrs/da, 50 da/yr with 0–1,000 kg/yr to water and 10–1,000 kg/yr to land. Disposal by incineration and on site evaporative lagoon.

PMN 82–269

Manufacturer. Confidential.
Chemical. (G) Acid blocked amine.
Use/Production. (G) Open use. Prod. range: 0–30,000 kg/yr.
Toxicity Data. Acute oral: Not determined, Skin: Severely irritating, Eye: Severely irritating, Inhalation: Irritating, Ames Test: Non-mutagenic.
Exposure. Manufacture, use and disposal: dermal, inhalation and eye, a total of 210 workers, up to 24 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air 24 hrs/da, 50 da/yr with 0–1,000 kg/yr to water and 10–1,000 kg/yr to land. Disposal by incineration and on site evaporative lagoon.

PMN 82–270

Manufacturer. Confidential.
Chemical. (G) Acid blocked amine.
Use/Production. (G) Open use. Prod. range: 0–30,000 kg/yr.
Toxicity Data. Acute oral: 11.7 ml/kg, Skin: Moderately irritating, Eye: Moderately irritating, Inhalation: Irritating, Ames Test: Non-mutagenic.
Exposure. Manufacture, use and disposal: dermal, inhalation and eye, a total of 210 workers, up to 24 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air 24 hrs/da, 50 da/yr with 0–1,000 kg/yr to water and 10–1,000 kg/yr to land. Disposal by incineration and on site evaporative lagoon.

PMN 82–271

Manufacturer. Confidential.
Chemical. (G) Acid blocked amine.
Use/Production. (G) Open use. Prod. range: 0–30,000 kg/yr.
Toxicity Data. Acute oral: 2.82 ml/kg, Skin: non-irritating, Eye: no-irritating, Inhalation: Non-irritating, Ames Test: Non-mutagenic.
Exposure. Manufacture, use and disposal: dermal, inhalation and eye, a total of 210 workers, up to 24 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air 24 hrs/da, 50 da/yr with 0–1,000 kg/yr to water and 10–1,000 kg/yr to land. Disposal by incineration and on site evaporative lagoon.

PMN 82–272

Manufacturer. Confidential.
Chemical. (G) Heterocyclic-alkylphenyl azo substance.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, 12 workers, 3 hrs/da, 6 da/yr.
Environmental Release/Disposal. 50 lbs. max. release to water 2 hrs/da, 6 da/yr. Disposal by Plant Treatment Works.

PMN 82–273

Manufacturer. Monsanto Company.
Chemical. (S) *m*-chlorophenylphenylsulfide.

Use/Production. (S) Chemical intermediate captive use. Prod. range: Confidential.

Toxicity Data. Acute oral: slightly toxic, Acute dermal: Slightly toxic, Skin: Non-irritating, Eye: Non-irritating.

Exposure. Dermal and inhalation, 4 workers, 8 hrs/da, or less, 30–60 da/yr.

Environmental Release/Disposal. Disposal by landfill.

Dated: April 12, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-10507 Filed 4-14-82; 8:45 am]

BILLING CODE 6560-31-M

[TSH-FRL 2093-7; OPTS-59084A]

Disubstituted Glycine Complex; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM–82–9) under section 5 of the Toxic Substances Control Act (TSCA) on March 8, 1982. Notice of receipt of the application was published in the **Federal Register** of March 19, 1982 (47 FR 11959). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on April 5, 1982.

FOR FURTHER INFORMATION CONTACT: Rachel S. Diamond, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–206, 401 M St., SW., Washington, D.C. 20460, (202)–382–3745).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the **Federal Register.** If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On March 8, 1982, EPA received an application for an exemption from the requirements of section 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM–82–9. The manufacturer has claimed its identity, the specific chemical identity, and the specific use of the new substance as confidential business information. The generic identity of the new substance is disubstituted glycine complex, and it will be used as a component of a formulation to be test marketed by the submitter and up to 20 commercial customers. Up to 4,000 kilograms (kg) of the new substance will be manufactured over a period of 15 months. During manufacture and processing of this substance, 10 workers could have dermal exposure for 2 hours/day, for a total of 16 days during packaging operations. During use of the formulation which will contain the new substance, employees of the submitter and of commercial customers could have dermal exposure for 0.5 hour/day for up to 60 days, during dilution of the formulation. A notice published in the **Federal Register** of March 19, 1982 (47 FR 11959) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency has not received any comments concerning the application.

EPA has established that the test marketing of the substance described in TM–82–9, under the conditions set out in the application, will not present any unreasonable risk of injury to health or the environment for the reasons explained below. Test data submitted indicate that the only significant health concern is skin irritation, but industrial workers will be wearing gloves, safety glasses, and protective clothing. During use, the formulation containing the new substance will be used in automated equipment. No significant environmental concerns were identified, and environmental release of the substance will be low.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this manufacturer, and only for the use specified in the test marketing exemption application.

2. The applicant must maintain records of the date(s) and amounts of manufacture of the new chemical, and must make these records available to EPA upon request.

3. Each bill of lading that accompanies a shipment of the formulation containing the new substance during the test marketing period must state that the use of the formulation is restricted to automated equipment only, as described to EPA in the test marketing exemption application.

4. Total production volume of the new substance may not exceed 4,000 kg, and no more than 20 customers may be supplied with the formulation containing the new substance, as described in the test marketing exemption application.

5. The test marketing activity approved in this notice is limited to a period of 15 months commencing on the date of signature of this notice by the Administrator.

6. The number of workers exposed to the new chemical should not exceed that specified in the application, and the duration of exposure should not exceed that specified.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: April 5, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-10327 Filed 4-15-82; 8:45 am]

BILLING CODE 6560-50-M

[TSH-FRL-2087-7; OPTS-59083A]

Disubstituted Glycine; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM–82–6) under section 5 of the Toxic

Substances Control Act (TSCA) on February 26, 1982. Notice of receipt of the application was published in the Notice Section of the **Federal Register** of March 12, 1982. EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on April 5, 1982.

FOR FURTHER INFORMATION CONTACT: Rachel S. Diamond, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–206, 401 M St., SW., Washington, D.C. 20460, (202–382–3745).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the **Federal Register**. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On February 26, 1982, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM–82–6. The manufacturer has claimed its identity, the specific chemical identity, and the specific use of the new substance as confidential business information. The generic identity of the new substance is disubstituted glycine, and it will be used as a site-limited intermediate and as a component of a formulation. The formulation will be test marketed for use by the submitter and up to 20 commercial customers. Up to 5,000 kilograms (kg) of the new substance will be test marketed for a period of 15 months. During manufacture, processing, and industrial use of this substance, 30 workers could have dermal and/or inhalation exposure for up to 2 hour/day, for a total of 19 days, during transfer and packaging operations. Average concentrations of the new substance to which workers may be exposed are not expected to exceed 5 mg/m^3 during manufacture, and 3 mg/m^3 during processing and use. During use of the formulation which will contain the new substance, employees of the submitter and of commercial customers could have dermal exposure for 0.5 hour/day for up to 60 days, during dilution of the formulation. A notice published in the Notice Section of the **Federal Register** of March 12,1982 announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency did not receive any comments concerning the application.

EPA has established that the test marketing of the substance described in TM–82–6, under the conditions set out in the application will not present any unreasonable risk of injury to health or the environment for the reasons explained below. Test data submitted indicate that the only significant health concern is eye irritation, but industrial workers will be wearing safety glasses in addition to gloves and protective clothing. During use, the formulation containing the new substance will be used in automated equipment. No significant environmental concerns were identified, and environmental release of the substance will be low.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this manufacturer, and only for the two uses specified in the test marketing exemption application.

2. The applicant must maintain records of the date(s) and amounts of manufacture of the new chemical, and must make these records available to EPA upon request.

3. Each bill of lading that accompanies a shipment of the formulation containing the new substance during the test marketing period must state that use of the formulation is restricted to automated equipment only, as described to EPA in the test marketing exemption application.

4. Total production volume of the new substance may not exceed 5,000 kg., and no more than 20 customers may be supplied with the formulation containing the new substance, as described in the test marketing exemption application.

5. The test marketing activity approved in this notice is limited to a period of 15 months commencing on the date of signature of this notice by the Administrator.

6. The number of workers exposed to the new chemical should not exceed that specified in the application, and the duration and levels of exposure should not exceed that specified.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: April 5, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82–10328 Filed 4–15–82; 8:45 am]

BILLING CODE 6560–50–M

[TSH–FRL–2094–1; OPTS–59082A]

Modified Polyester Polyurethane From Substituted Alkanediols, Alkanedioic Acid, and a Diisocyanate; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM–82–5) under section 5 of the Toxic Substances Control Act (TSCA) on February 23, 1982. Notice of receipt of the application was published in the **Federal Register** of March 4, 1982 (47 FR 9277). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on April 9, 1982.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–206, 401 M St., SW., Washington, DC 20460, (202–382–3733).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or

import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the **Federal Register**. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On February 23, 1982, EPA received an application for an exemption from the requirements of section 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM–82–5. The manufacturer claimed its identity, the specific chemical identity, and the specific use of the new substance as confidential business information. The generic name of the new substance is modified polyester polyurethane from substituted alkanediols, alkanedioic acid, and a diisocyanate. A maximum of 2,000 kilograms (kg) will be manufactured for test market purposes, during a test marketing period not to exceed 2 months. During manufacturing, a maximum of 27 workers in all shifts may be exposed for 6 hours/day for 1 day. During processing, a maximum of eight workers at each of three sites may have exposure for 6 hours/day for 5 days. A notice published in the **Federal Register** of March 4, 1982 (47 FR 9277) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency has not received any comments concerning the application.

EPA has established that the test marketing of the substance described in TM–82–5, under the conditions set out in the application, will not present any unreasonable risk of injury to health or the environment. No significant health or environmental concerns were identified for the PMN substance *per se*. Health concerns for impurities in the PMN substance were identified. Worker exposure during manufacturing and processing should be low for the PMN substance and its impurities if the labeling and worker protection specified are followed. Consumer use will involve an infrequent potential for skin contact with an article containing the new substance in a solid state. Consumers will not be exposed to the new substance.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this manufacturer.

2. The applicant must maintain records of the date(s) of shipment(s) to the customers specified in the application, and the quantities shipped in each shipment, and must make these records available to EPA upon request.

3. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

4. The production volume of the new substance may not exceed the quantity of 2,000 kg described in the test marketing exemption application.

5. The test marketing activity approved in this notice is limited to a period of 2 months commencing on the date of signature of this notice by the Administrator.

6. The number of workers exposed to the new chemical should not exceed that specified in the application, and the exposure levels and duration of exposure should not exceed those specified.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusions that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: April 9, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-10325 Filed 4-15-82; 8:45 am]

BILLING CODE 6560-50-M

[TSH-FRL-2093-8 OPTS-59083B]

4,4' Thio Diether Dianhydride; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM–82–7) under section 5 of the Toxic Substances Control Act (TSCA) on March 3, 1982. Notice of receipt of the application was published in the Federal Register of March 12, 1982 (47 FR 10899). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on April 5, 1982.

FOR FURTHER INFORMATION CONTACT: Anna Coutlakis, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–221, 401 M St., SW., Washington, DC 20460, (202–382–3742).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice

of this disposition in the Federal Register. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On March 3, 1982, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to import a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM–82–7. The importer claimed his identity, the specific chemical identity, and the specific use of the new substance as confidential business information. The generic name of the new substance is 4,4' thio diether dianhydride, and it will be used in specialty adhesives. A maximum of 500 pounds will be imported for test market purposes, during a test marketing period not to exceed 18 months. During processing, four workers will be dermally exposed 1 hour a day for a total of 72 hours. A notice published in the Federal Register of March 12, 1982 (47 FR 10899) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency has not received any comments concerning the application.

EPA has established that the test marketing of the substance described in TM–82–7, under the conditions set out in the application, will not present any unreasonable risk of injury to health or the environment. Although there were some human health and environmental concerns for this substance, they were mitigated by low worker exposure and environmental release. The TME substance will be processed in a closed system. There will be no consumer exposure.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this importer.

2. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

3. The production volume of the new substance may not exceed the quantity of 500 pounds described in the test marketing exemption application.

4. The test marketing activity approved in this notice is limited to a period of 18 months commencing on the date of signature of this notice by the Administrator.

5. The number of workers exposed to the new chemical should not exceed that specified in the application and the duration of exposure should not exceed that specified.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: April 5, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82–10326 Filed 4–15–82; 8:45 am]

BILLING CODE 6560–50–M

[A–2–FRL–2103–1]

Standards of Performance For New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of New York

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegation of authority.

SUMMARY: This notice announces the delegation of authority by the Environmental Protection Agency to the State of New York, per the New York State Department of Environmental Conservation, to implement and enforce portions of the Standards of Performance for New Stationary Sources codified at 40 CFR Part 60, and portions of the National Emission Standards for Hazardous Air Pollutants codified at 40 CFR Part 61.

This delegation is implemented pursuant to sections 111(e) and 112(d) of the Clean Air Act and a request made by the State. After a thorough review of the request and information submitted by the State of New York, the Regional Administrator has determined that such delegation is appropriate for the source categories requested and with the conditions set forth in the delegation agreement.

EFFECTIVE DATE: This action is effective April 16, 1982.

FOR FURTHER INFORMATION CONTACT: Francis W. Giaccone, Chief, Air Facilities Branch, Air and Waste Management Division, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264–9627.

SUPPLEMENTARY INFORMATION: On July 15, 1981, Commissioner Robert F. Flacke of the New York State Department of Environmental Conservation (DEC) requested that the Environmental Protection Agency (EPA) delegate to that Department the authority to implement and enforce certain portions of the federally established Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) as follows:

NSPS (40 CFR 60 Subpart)

E Incinerators
F Portland Cement Plants
G Nitric Acid Plants
G Sulfuric Acid Plants
I Asphalt Concrete Plants
J Petroleum Refineries
K Storage Vessels for Petroleum Liquids
Ka Storage Vessels for Petroleum Liqids constructed after 5/16/78
L Secondary Lead Smelters
M Secondary Brass & Bronze Ingot Production
N Iron & Steel Plants
O Sewage Treatment Plants
P Primary Copper Smelters
Q Primary Zinc Smelters
R Primary Lead Smelters
S Primary Aluminum Reduction Plants
T Wet Process Phosphoric Acid Plants
U Superphosphoric Acid Plants
V Di-Ammonium Phosphate Plants
W Triple Superphosphate Plants
X Granular Triple Superphosphate Plants
Y Coal Preparation Plants
Z Ferroalloy Production Facilities
AA Electric Arc Furnaces in the Steel Industry
BB Kraft Pulp Mills
CC Glass Manufacturing Plants
DD Grain Elevators
HH Lime Manufacturing Plants
MM Automobile & Light-Duty Truck Surface Coating Operations
PP Ammonium Sulfate Manufacture

NESHAPS (40 CFR 61 Subpart)

B Asbestos [excepting Sections 61.22(b) (Surfacing of Roadway with Asbestos-Containing Materials), 61.22(d) (Demolitions and Renovations), 61.22(i) (Insulating), and 61.22(j)(2), 61.22(k)(2), and 61.25 (all relating to waste disposal)].
C Beryllium
D Beryllium Rocket Motor Firing
E Mercury
F Vinyl Chloride

EPA is also, pursuant to the State's July 15, 1981 request, withdrawing its delegation of authority to implement and enforce 40 CFR 61.22(b), Surfacing of Roadways with Asbestos.

In previous correspondence with the Commissioner and with the General Counsel of the DEC, the authority and procedural mechanisms whereby the Department can accomplish such implementation and enforcement have been outlined. Copies of this correspondence and EPA's delegation

letter are available for public inspection in the Office of the Air Facilities Branch at the Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Section 111(c) of the Clean Air Act directs the Administrator to delegate EPA's authority to implement and enforce NSPS to any state which has submitted adequate procedures. Section 112(d) of the Clean Air Act provides similar direction with respect to NESHAPS. In both instances, the Administrator retains concurrent authority to enforce the standards following delegation of authority to a state.

EPA's determination that the delegation request should be approved is based upon the Agency's review of the New York State Environmental Conservation Law, Article 19, (Air Pollution Control), and Article 71, Title 21, (Enforcement of Article 19), and Parts 201, 202, and 212 of Title, 6, Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), as presently enacted. Specifically 6 NYCRR Section 201.2 provides that no one shall construct or operate a source of air contamination (as defined at 6 NYCRR section 200.1(d)) without having a valid permit to construct or certificate to operate issued by the DEC. Section 201.4(b) authorizes the Commissioner of the DEC, in issuing such permits or certificates, to "impose such conditions as are necessary to insure compliance with applicable federal source standards and reporting requirements," such as the NSPS and NESHAPS for which the DEC has requested delegation. EPA has therefore determined that such delegation is appropriate and has so notified the State by a letter dated December 30, 1981. This letter identifies the conditions under which delegation is made.

Effective immediately, all correspondence, reports and notifications required by NSPS and NESHAPS covered by this delegation should be submitted to the appropriate regional office of the New York State Department of Environmental Conservation or the central office at 50 Wolf Road, Albany, New York 12233, (Attention: Division of Air, Bureau of Source Control).

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

(Secs. 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412))

Dated: March 31, 1982.

Jacqueline E. Schafer,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 82-10473 Filed 4-15-82; 8:45 am]

BILLING CODE 6560-50-M

[TSH-FRL-2104-1; OPTS-59085]

Alkylbenzenesulfonic Acid Compound With Dialkyl Fatty Amine Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by May 3, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-59085]" and the specific TME number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-401, 401 M Street, SW., Washington, DC 20460.

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 Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following is a summary of information provided by the manufacturer on the TME received by the EPA.

TME 82-13

Close of Review Period. May 21, 1982.

Manufacturer. Confidential.

Chemical. (G) Alkylbenzenesulfonic acid compound with dialkyl fatty amine.

Use/Production. (S) Pigment modifier. Prod. range: Six months: 1,000-5,000 kg.

Toxicity Data. No data submitted.

Exposure. Manufacture: inhalation, 6 workers, 8 hrs/da, 30 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, between 10-100 kg/yr to water (discharge to publicly owned treatment works after pH adjustment).

Dated: April 2, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-10508 Filed 4-15-82; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, May 6, 1982
Thursday, May 13, 1982
Thursday, May 27, 1982

These meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its

business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Committee Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, D.C. 20415 (202–632–9710).

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

April 12, 1982.

[FR Doc. 82-10491 Filed 4-15-82; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of the Premerger Notification Rules; Interstate-Federal Corp.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Interstate-Federal Corporation is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain voting securities of Scioto Savings & Loan Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: March 31, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-10462 Filed 4-15-82; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; Sir James Goldsmith.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Sir James Goldsmith is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain voting securities of CDI Holdings. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: March 26, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-10461 Filed 4-15-82; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; Sir James Goldsmith

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Sir James Goldsmith is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain voting securities of Diamond International Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: March 26, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action by published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-10460 Filed 4-15-82; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

[F-82-13]

Delegation of Authority to the Secretary of the Treasury

1. *Purpose.* This delegation authorizes the Secretary of the Treasury to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the West Virginia Public Service Commission and the Federal Communications Commission (FCC) involving telecommunications service and rates.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority contained in the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly Sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of the Treasury to represent the consumer interests of the Federal executive agencies before the West Virginia Public Service Commission and the FCC by filing complaints against the Chesapeake and Potomac Telephone Company of West Virginia and the American Telephone and Telegraph Company for gross negligence in providing service to the Internal Revenue Service.

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

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

d. The Department of the Treasury shall add the General Services Administration to its service list in this case so that GSA will receive copies of testimony, briefs, and other Department of the Treasury filings.

Dated: April 8, 1982.

Frank J. Carr,

Commissioner, Automated Data and Telecommunications Service.

[FR Doc. 82-10381 Filed 4-15-82; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee
Dates: May 20-21, 1982
Place: Room 207, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333
Time: 8:15 a.m.
Type of Meeting: Open
Contact Person: J. Michael Lane, M.D., Acting Executive Secretary of Committee, Building 1, Room 3007, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, Telephones: FTS: 236-3771, Commercial: 404/329-3771.
Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents.
Agenda: The Committee will consider the draft of the recommendations for use of hepatitis B vaccine, and will address the issues of screening techniques for hepatitis B susceptibility, measures to handle carriers, cost-benefit of vaccination in groups with varying prevalences of hepatitis B, and description of the groups at highest risk to benefit from the vaccine.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: April 8, 1982.

Donald R. Hopkins

Acting Director, Centers for Disease Control.

[FR Doc. 82-10379 Filed 4-15-82; 8:45 am]

BILLING CODE 4160-18-M

Mine Health Research Advisory Committee Pulmonary Function Testing Subcommittee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following National Institute for occupational Safety and Health (NIOSH) Committee meeting:

Name: Pulmonary Function Testing Subcommittee of the Mine Health Research Advisory Committee
Date—Time: May 4, 1982—1:30 p.m. to 3:30 p.m.
Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857
Type of Meeting: Open
Contact Person: John L. Hankinson, Ph.D., Chief, Clinical Investigations Branch, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health Centers for Disease Control, 944 Chestnut Ridge Road, Room 254, Morgantown, WV 26505, Telephone: (304) 291-4755
Purpose: To discuss criteria for evaluating pulmonary function tests and options for possibly incorporating such tests in the medical surveillance program for coal miners.

The Mine Health Research Advisory Committee (MHRAC) was established by the Federal Mine Safety and Health Act of 1977. This legislation also provides the basis for periodic chest roentgenograms for underground coal miners. Examinations are made available by mine operators, and NIOSH administers the program using the procedures under 42 CFR 37. Consideration is being given to expanding the medical examinations to include pulmonary function or other tests.

Interested parties wishing to participate in the meeting are requested to contact Dr. John Hankinson at the address above in order to be assured appropriate time for presentation. Four copies of the text of the presentation must be provided to the subcommittee chairperson, Dr. Donald L. Rasmussen, 306½ Stanaford Road, Beckley, WV 25801, prior to or at the subcommittee meeting.

The subcommittee will present its report on this subject to the MHRAC at their next meeting in October 1982. The final subcommittee report, as approved by the MHRAC, will be available subsequent to this October meeting.

Dated: April 8, 1982.

Donald R. Hopkins,

Acting Director, Centers for Disease Control.

[FR Doc. 82-10378 Filed 4-15-82; 8:45 am]

BILLING CODE 4160-19-M

Work Group on Treatment Recommendations for Sexually Transmitted Diseases; Meeting

On May 18-20, 1982, the Centers for Disease Control (CDC) will convene a work group consisting of investigators and practitioners from several medical disciplines to assist CDC in formulating recommendations for treating sexually transmitted diseases.

On May 18 the work group will meet at 1:00 p.m., and at 8:00 a.m. on May 19 and 20. Meetings will be open to the

public, limited only by space available, and will be held at the Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia.

For additional information, please contact: A. Eugene Washington, M.D., Assistant to the Director, Venereal Disease Control Division, Center for Prevention Services, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone: FTS: 236-3343, Commercial: 404/329-3343.

Dated: April 8, 1982.

Donald R. Hopkins,

Acting Director, Centers for Disease Control.

[FR Doc. 82-10360 Filed 4-15-82; 8:45 am]

BILLING CODE 4160-18-M

Public Health Service

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a New System of Records: 09-30-0038, "Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse," HHS/ADAMHA/NIDA.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records entitled "Subject-Participants in Phamacokinetic Studies on Drugs of Abuse," HHS/ADAMHA/NIDA, in the Alcohol, Drug Abuse, and Mental Health Administration, National Institute on Drug Abuse (NIDA). We are also proposing routine uses for this system of records.

The primary purpose of the system is to support research on pharmacokinetics of drugs of abuse. The pharmacokinetics of a drug refers to the manner in which the human body processes a drug. A contractor who is conducting the research uses data of a medical nature that is contained in the system to protect the health of the human subject-participants. The data also serve as base-line data in studying drug effects. The Food and Drug Administration (FDA) may also use the records in routine inspections FDA conducts in accordance with its responsibilities to develop standards on the composition, quality, safety, and efficacy of drugs administered to humans, and to monitor experimental usage of drugs. PHS invites interested persons to submit comments on the proposed routine uses on or before May 17, 1982.

DATES: PHS has sent a Report of New System to the Congress and to the Office of Management and Budget (OMB) on March 26, 1982. PHS has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and the Congress. If this waiver is granted, PHS will publish a notice to that effect in the Federal Register.

ADDRESS: Please address comments to: Privacy Act Officer, Office of Extramural Policy and Project Review, National Institute on Drug Abuse, Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 10-42, Rockville, MD 20857.

Comments received will be available for inspection at the same address from 8:00 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Project Officer, Pharmacokinetic Studies on Drugs of Abuse (Contract No. 271-80-3705), Division of Research, National Institute on Drug Abuse, Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 9-42, Rockville, MD 20857, Telephone 301-443-5280.

SUPPLEMENTARY INFORMATION: In accordance with an opinion of the OMB General Counsel, we are treating the records in this system as a Privacy Act system. The Department of Health and Human Services is reexamining the applicability of the Privacy Act to records maintained by organizations under contract with the Department, and may find that the proposal to apply the provisions of the Privacy Act to these records provides broader coverage than is required by the Act.

The system of records contains data on the pharmacokinetics of drugs of abuse. The Pharmacokinetic Studies are longitudinal studies, following over a period of time each individual's responses and reactions to the particular drug which is administered. These studies follow standard experimental research procedures which include: Interviews, predose examinations, administration of a substance, repeated collection of biological fluid samples, and medical followup examinations. The specific details of the experimental research protocol vary with the medical and chemical nature of the drug being studies. Before administering a drug, the clinical investigator must make determinations regarding dosages and/or radiochemical exposures appropriate to individual subject-participants, in order to preserve and protect the health of each. Data of a medical nature are maintained in the system on each subject-participant to facilitate making these decisions. The data also serve as a base-line in studying the drug effects. These data include physical examination reports, medical history information, and laboratory tests results.

The contractor's Institutional Review Board has reviewed and approved the safeguards established for this human-subject research project, in accordance with 45 CFR Part 46 on the protection of human subjects. Since the system's purposes are to protect the health of the subject-participants, and to increase knowledge on drug abuse, its treatment and prevention, the importance of maintaining the records for outweighs and perceived or potential threat to the privacy of the subject-participants.

The contractor has established physical safeguards, as described in the system notice, to protect the security, confidentiality, and integrity of the records. Only authorized contract personnel can see or use the records containing individually identifiable information. The contractor will provide no individually identified information to NIDA. Normally, the contractor will provide only aggregate data but will provide unidentified individual data for special analyses when aggregate data is not adequate. The data in the final reports will also be aggregated.

NIDA proposes routine uses. One routine use provides for disclosure to a congressional office at the written request of the subject-participant, which is in accordance with the Privacy Act. Another routine use provides for disclosure to the Department of Justice under certain conditions in the event of litigation. This routine use is compatible with the purpose of the system because it reserves the right of the Government to use the records to defend itself or its employees in cases that may arise in connection with the pharmacokinetic studies which this system of records supports. A third routine use provides for contractor use of the records in the direct support of the purpose of the system; i.e., a contractor conducting the pharmacokinetic studies.

Few, if any, disclosures of the types permitted by section 3(b) of the Act, other than disclosures made pursuant to routine uses, are anticipated. Any disclosure from these records other than those which section 3(b) permits would be only at the written request of the subject-participant of a record. Therefore, we anticipate minimal, if any, adverse effect to the privacy and other personal and property rights of any individual caused by record disclosure.

Dated: March 31, 1982.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

New System of Records 09-30-0038

SYSTEM NAME:

Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse, HHS/ADAMHA/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Department of Psychiatry, School of Medicine, University of North Carolina, Chapel Hill, North Carolina 27514.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Normal, healthy adults who voluntarily participate in studies on the pharmacokinetics of drugs of abuse, at the University of North Carolina, during the period November 1979 through approximately October 1982.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research recores on each subject-participant contain the following information: Name; clinician's records includig medical history, laboratory test results, physical examinatios, psychological profile, and drug use profile; drug study data including records of drugs administered, exposure to radioactivity, and drug reactions; and date of study in which the subject participated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Drug Abuse Prevention, Treatment, and Rehabilitation Act, section 503 (21 U.S.C. 1193) and Public Health Service Act, section 301(a) (42 U.S.C. 241(a)).

PURPOSE(S):

The primary purpose of this system is to support research on the pharmacokinetics of drugs of abuse. The term "pharmacokinetics" refers to the manner in which the human body processes a drug.

The clinical investigator use data of a medical nature that is contained in the system to make determinations regarding drug dosages and/or radiochemical exposures appropriate to the individual human subject-participants, in order to preserve and protect the health of each. The system also provides base-line data for studying the drug effects.

The Food and Drug Administration (FDA) also may use the records in routine inspections FDA conducts in accordance with its responsibilities to develop standards on the composition, quality, safety, and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. We may disclose to a congressional office the record of an individual in response to a written inquiry from the congressional office made at the written request of the individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity, (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components, or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected. For example, records may be disclosed to the Department of Justice in defending claims against the U.S. when the claims is based upon an individual's mental or physical condition and is alleged to have arisen because of the activities of PHS and its contractors in regard to such individual.

3. The School of Medicine of the University of North Carolina, and ADAMHA contractor, uses the records in this system to accomplish the research purpose for which the records are collected. The contractor is required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The contractor maintains the records on paper in file folders.

RETRIEVABILITY:

The contractor indexes and retrieves the records by the subject-participant's name.

SAFEGUARDS:

The contractor keeps all records in a locked metal file cabinet in premises with limited accessibiliity. Only the clinical investigator has the key to the locked files. Only authorized contract personnel can see or use the records. Persons other than subject-participants, who request individually identifiable data from a record, must provide written consent from the subject-participant permitting the requested disclosure. The only exception would be for disclosure to persons or organizations permitted by the Privacy Act, section 3(b) to obtain personally identifiable date. These safeguards are in accordance with the HHS General Administration Manual, Chapter 45–13 and Chapter PHS.hf:45–13. In addition, the contract staff complies with the contractor's (School of Medicine of the University of North Carolina) standard procedures for safeguarding data.

RETENTION AND DISPOSAL:

The records will be kept no later than October 1987 (five years after the anticipated completion of the studies). At that time, the clinical investigator will authorize the shredding or burning of the records.

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer, Pharmacokinetic Studies on Drugs of Abuse (Contract No. 271–80–3705), Division of Research, National Institute on Drug Abuse, Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 9–42, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Research Physician for NIDA's Contract No. 271–80–3705, Pharmacokinetic Studies on Drugs of Abuse, School of Medicine, University, of North Carolina, Chapel Hill, North Carolina 27514.

Provide the following information: Subject-participant's full name and a letter of request (or permission, if the requester is not the subject-participant) with notarized signature of the individual who is the subject of the record, approximate date(s) of experiment(s) in which the individual participated, and drug name (if known). In addition, an individual who requests notification of, or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its content at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address above and reasonably identify the record, specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

The subject-participants and the contractor personnel conducting the research studies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 82-10419 Filed 4-15-82; 8:45 am]
BILLING CODE 4160-20-M

Office of the Secretary

Privacy Act of 1974; Report of New System of Records

AGENCY: Department of Health and Human Services (HHS) Region IX.

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4), (11)), we are issuing this public notice of our intent to establish a new system of records, the Optional Form 55 Cards Issuance Log, HHS/OS/RIX/ORD/DAS, 09-90-1101. The new system of records will cover a log being created as U.S. Government Identification cards (Optional Form 55) are issued to employees of the Department's offices in Region IX and to certain other individuals who work in the federal office building located at 50 United Nations Plaza, San Francisco, California. We invite public comments on the routine use disclosures in this proposal.

DATES: We sent a report of the new system of records to the OMB and to the Congress on April 7, 1982, and we have requested waiver of the sixty day advance notice requirement to begin using the system. The system will go into use when we receive that waiver or on June 7, 1982, whichever comes first. Unless we receive comments on the proposed routine uses that lead to a contrary determination, those uses will take effect when the system takes effect, but not before May 17, 1982.

ADDRESS: Send or deliver written comments to: Acting Chief, Logistics Branch, Division of Administrative Services, Department of Health and Human Services, 50 United Nations Plaza, Room 30, San Francisco, California 94102.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiesnoski at the above address or by telephone at (415) 556-7134.

SUPPLEMENTARY INFORMATION: Under authority granted by the Federal Property and Administrative Services Act of 1949, as amended, the General Services Administration has issued an official United States Government Identification card (Optional Form 55), for use by Federal Departments and agencies located outside the Washington, D.C., area. We are issuing such Optional Form 55 cards to all of our employees located in Region IX (which includes Arizona, California, Hawaii, Nevada, Guam, American Samoa, the Northern Marianas, and the Trust Territories), who wish to have an official identification card.

Pursuant to the same statutory authority, the General Services Administration (GSA) has discretion to close any federal office building to the public during normal work hours in order to ensure the orderly conduct of Government business. (*See* 41 CFR 101-20.302.) GSA has determined for security reasons that the federal office building located at 50 United Nations Plaza, San Francisco, California, should be closed to the public. As part of the security plan for this building, the Optional Form 55 card will serve as a pass for building access purposes. Our Regional Division of Administrative Services (DAS) is responsible for preparing and issuing Optional Form 55 cards for this purpose. Only such cards issued by DAS will be accepted for building access. DAS will issue the cards to all federal employees located at the 50 United Nations Plaza building, to all other employees of the Department working in San Francisco, and to a limited number of private individuals who routinely perform services under Government contracts or agreements at that building.

As the cards are issued, a log will be created by DAS. The log will contain the serial number of the Optional Form 55 card, the date of issuance, a void date for the card, and the name and agency designation of the individual to whom the card is issued. In addition, for San Francisco regional office employees and those other frequent users of the 50 United Nations Plaza building who are issued cards, DAS will take and retain with the log a small photograph of the individual (similar to the photograph taken by DAS and placed on the card itself). This log (including the photographs) will constitute a system of records subject to the Privacy Act. The log's primary use will be to check whether cards presented to enter the building are valid, whether they have been altered, and whether the persons presenting them are the ones to whom the cards were issued.

The various routine uses are compatible with the purpose for which the records were collected. Because the basic purpose of the system is to ensure building security and aid law enforcement, the various disclosures connected with law enforcement and verifying individuals' identities (numbers 1, 2, 7, 8) are compatible. Because most of the covered individuals are federal employees, the personnel-related disclosures (numbers 3 and 4) are compatible. The Department of Justice (number 6) would act as the attorney for the Department of Health and Human Services in defending lawsuits that might be related to the records themselves or the building security program. A member of Congress may inquire on behalf of a constituent or other individual concerning the records themselves or the building security program (number 5).

Dated: April 7, 1982.

George E. Miller,

Regional Director, Region IX.

09-90-1101

SYSTEM NAME:

Optional Form 55 Cards Issuance Log, HHS/OS/RIX/ORD/DAS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

DHHS, Region IX, Office of the Regional Director, Division of Administrative Services, 50 United Nations Plaza, Room 30, San Francisco, California 94102

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have been issued United States Government Identification Cards (Optional Form 55, or OF-55) by the DHHS Region IX Division of Administrative Services. This includes (1) federal employees working in the federal office building at 50 United Nations Plaza, San Francisco, California; (2) certain private individuals ("contractors") providing services at that location; (3) DHHS employees working elsewhere in San Francisco; and (4) DHHS employees working in Region IX and requesting an official identification card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Serial number of OF-55 card, date of issuance, name of individual to whom issued, individual's agency designation (for federal employees, the employing agency; for other individuals, indication

of non-federal status and/or the employer), and void date for the card. In addition, for individuals in the first three categories above, the system will contain a small photograph of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 499, 701; 40 U.S.C. 318a–318c, 486(c), 490; 41 CFR 101–20.302, 101–20.501 to .503.

PURPOSE(S):

The system is used with the identification cards in a building security plan for the federal office building at 50 United Nations Plaza, San Francisco. Agency staff may refer to the system when an individual presents a card for admission to the building, to determine whether the card is valid and whether the individual presenting it is the one to whom it was issued.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) In the event that the system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system may be referred to the appropriate federal, state, or local agency charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute or rule, regulation, or order issued pursuant thereto.

(2) A record from this system of records may be disclosed to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention or an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

(3) Where a contract between a component of the Department and a labor organization recognized under E.O. 11491 provides that the agency will disclose personal records relevant to the organization's mission, records in this system of records may be disclosed to such organization.

(4) Disclosures may be made to persons participating in employee discipline or competence determination proceedings for the purposes of such proceedings.

(5) Disclosure from the record of an individual may be made to a congressional office in response to an inquiry from the congressional office made at the request of that individual.

(6) In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, the Department may disclose to the Department of Justice such records as it deems desirable or necessary to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

(7) Upon request of any member of the unit(s) responsible for building security at the federal office building located at 50 United Nations Plaza, San Francisco, California, the Department may disclose such records as are needed to ensure the integrity and proper functioning of the building access security system in effect in that building.

(8) In the event that an individual to whom we issued an OF–55 card is the subject of an investigation for a violation or potential violation of law, whether criminal, civil, or regulatory in nature, and whether arising by general or particular program statute, or by regulation, rule, or order issued pursuant thereto, relevant records in the system may be released to the appropriate federal, state, or local law enforcement agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation, or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The printed information is recorded in log format and kept in a binder. The photographs (only of HHS San Francisco employees and Federal employees and contractors needing access cards to the 50 United Nations Plaza building) are also stored in the binder, but on separate pages from the printed information. (Only the individual's OF–55 serial number accompanies the photograph.)

RETRIEVABILITY:

The records are retrieved by serial numbers of the OF–55 cards. (Retrieval of the printed information by manual search of employees' and contractors' names would also be possible under exigent circumstances.)

If abuse of the building access security system or unauthorized use of a card is suspected, the Division of Administrative Services may provide the individual's name and component/office to the Regional Director and/or the employee's supervisor for investigation.

SAFEGUARDS:

Direct access is restricted to the System Manager (see below). The log binder is kept in a locked file cabinet. The System Manager's office is locked during non-work hours.

RETENTION AND DISPOSAL:

When an employee resigns, retires, or otherwise terminates employment, or a contractor no longer needs access to the 50 United Nations Plaza building, his/her OF–55 card must be surrendered. When it is returned to the System Manager, the employee's or contractor's log entry will be removed and his/her photograph and card will be destroyed. If a new card is issued to an employee or contractor when his/her old card expires, the log entry will be updated to reflect the new card's serial number and void date.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Logistics Branch, Division of Administrative Services, DHHS, 50 United Nations Plaza, Room 30, San Francisco, California 94102.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the System Manager; the serial number on the OF–55 card should be provided.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above; resaonably identify the record and specify the information to be contested. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Name and agency designation are supplied by the employee or contractor. The photograph is taken when the OF–55 card is issued. Serial number, date of issuance, and void date are assigned or supplied by the Division of Administrative Services when the OF–55 card is issued.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82–10412 Filed 4–15–82; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare an Environmental Assessment on the San Bruno Mountain Habitat Conservation Plan and Endangered Species Act Section 10(a) Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Service intends to gather information necessary for the preparation of an Environmental Assessment (EA) for the San Bruno Mountain Habitat Conservation Plan and Endangered Species Section 10(a) Permit, San Mateo County, California. This Assessment is being prepared in conjuction with environmental reports required pursuant to California state law. The Fish and Wildlife Service is working closely with officials of San Mateo county in conducting this environmental review. A public meeting regarding this proposal and preparation of the EA will also be held. This notice is being furnished as recommended by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EA. Comments and participation in this scoping process are solicited.

DATES: Written comments on the San Bruno Mountain Habitat Conservation Plan and our intent to issue a Section 10(a) permit should be received by June 12, 1982. A public Scoping Meeting will be held in Redwood City, California, on May 12, 1982.

ADDRESSES: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 500 NE Multnomah Street, Portland, Oregon 97232.

The public Scoping Meeting on May 12, 1982, will be held at 7:30 p.m. in Board of Supervisors Chambers, Hall of Justice and Records, 401 Marshall, Redwood City, California. This meeting will be jointly sponsored by San Mateo County and the Fish and Wildlife Service.

FURTHER INFORMATION CONTACT: Ralph Swanson, Sacramento Endangered Species Office, 1230 "N" Street, 14th Floor, Sacramento, California 95814 (916) 440–2791.

SUPPLEMENTAL INFORMATION:

Description of the Proposed Action

The Fish and Wildlife Service proposed to issue a Federal permit, pursuant to Section 10(a) of the Endangered Species Act of 1973, as amended, to take endangered mission blue butterflies (*Plebejus icaridoes missionensis*) incidental to the construction of residential housing on San Bruno Mountain, San Mateo County, California. The housing construction is an element of a more broadly based Habitat Conservation Plan (HCP) for the mission blue butterfly and other species of concern on San Bruno Mountain. The HCP is designed to conserve and enhance as much of the remaining natural habitat on the mountain as possible and thereby provide for the indefinite perpetuation of the mission blue. Development of the HCP is based on field studies that have examined the ecology of the mission blue butterly and other wildlife and plant species. The Fish and Wildlife Service believes that conservation efforts can accommodate a limited amout of land to be developed on the mountain for urban uses without significant adverse effects on the mission blue.

Key elements of the HCP, proposed to be sanctioned by Federal permit, will: 1) Set aside habitat areas on San Bruno Mountain favored by the butterfly that are presently in private ownership. The land so protected will contain a diversity of habitat conditions and constitute maximum contiguous open space so that natural mechanisms will provide for perpetuation of the species; 2) foster growth and propagation of the butterfly's host plants. Possible strategies include seeding the host plants into new areas and artifical propagation of the host plants; 3) reverse the invasion of brush species that presently precludes the natural spread of butterfly host plants; 4) alter proposed construction plants to reduce adverse impacts. Local regulations will enforce restrictions, as developed in the HCP, on use of public and private lands; and 5) establish research and monitoring programs to assess the effectiveness of enhancement techniques.

Under the terms of the HCP, permanent, legal responsibility for habitat maintenance will be vested with the County of San Mateo and perhaps other local governments. A permanent and adequate funding base will be established through a trust fund contributed by present landowners and assessments on proposed developments.

Section 10(a) of the Act authorizes the Secretary to permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by Section 9 of the Act for scientific purposes, or to enhance the propagation or survival of the affected species (16 U.S.C. 1539). Section 9 of the Act, in turn, prohibits the "taking" of any endangered species.

If the Secretary is to grant a permit under Section 10(a) of the Act, he is required to find that (1) the exception was applied for in good faith; (2) the exercise of the exception will not operate to the disadvantage of the endangered species; (3) the exception is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act (16 U.S.C. 1539(d)). The Secretary may impose on such a permit terms and conditions to further the purposes of the Act.

Service approval, on behalf of the Secretary, of a Federal permit to sanction the loss of habitat and individuals of the species is the subject of this environmental review. The HCP, and the plans, agreements, stipulations, and commitments therein would constitute the conditions on the permit that will further the purposes of the Act.

Copies of the HCP and supporting biological studies will be available at the Scoping Meeting or at the San Mateo County Office Building, 590 Hamilton, Redwood City, California, during normal business hours. Copies are also available upon written request to Mr. Paul M. Koenig, Director of Environmental Management, San Mateo County, 590 Hamilton, Redwood City, California 94063.

Purpose and Need

The primary purpose of the HCP is to reverse long-term, ongoing threats to the mission blue and its habitat: 1) Urban development on the San Francisco peninsula and elsewhere has destroyed most of the mission blue butterfly's historic habitat restricting its range to San Bruno Mountain; 2) invasion of exotic brush species threatens the butterfly's host plants on San Bruno Mountain; 3) at present about half of the butterfly's habitat is in private ownership and large parcels of private

land on the mountain are proposed for conversion to residential housing.

The HCP, incorporating various commitments from private landowners, local government entities, and the Federal government, is needed to protect and maintain the remaining habitat.

Major Impacts if the Proposed Action Is Implemented

(1) Loss of individuals of the endangered mission blue butterfly as a direct result of housing construction. Grading and paving for streets, utilities, and houses will destroy adult butterflies, eggs, larvae, and food plant resources.

(2) An initial loss of approximately 13 percent of the presently known habitat (as measured by 1981 biological studies conducted in support of the HCP) for the mission blue. After reclamation of graded land, there would be a permanent loss of approximately 9 percent of the mission blue butterfly's habitat and productivity resulting from housing construction on San Bruno Mountain.

(3) Long-term degradation of remaining habitat for the mission blue butterfly resulting from general reduction of its range.

(4) Secondary impacts that may affect long-term productivity of remaining habitat include: a) the increased presence of people living on San Bruno Mountain that can lead to vandalism, fire hazards, and ORV damage to remaining butterfly habitat, b) increased vehicular traffic, c) air and water quality impacts.

(5) Socio economic impacts on surrounding communities. The increased need for fire, police, and general public health and safety services will be born by local communities.

(6) Establishment of an ecological reserve to include the remaining open space on San Bruno Mountain. This will include: a) additional privately owned mission blue habitat on San Bruno Mountain will be acquired and made part of existing publicly owned parklands; b) redirection of the present park management to recognize habitat protection for the mission blue and other species of concern; c) habitat enhancement measures for the mission blue and other species of concern on remaining open space habitat; and d) establishment of legal and monetary mechanisms to insure perpetuation of the ecological reserve concept under the terms of the HCP.

Significant Issues To Be Considered in the Scoping Process

The foregoing major environmental impacts represent the significant issues to be evaluated during the scoping process. The public is invited to participate in the scoping process and identify other issues of concern that should also be considered.

Alternatives to the Proposed Action

(1) No action. This represents no development of a HCP and no application for a Federal permit pursuant to Section 10(a) of the Endangered Species Act. With this alternative, housing construction on San Bruno Mountain would proceed in accordance with the General Plan approved by San Mateo County in 1976. This would result in significant loss of endangered mission blue butterflies and destruction of the habitat on which they depend for survival, and could lead to conflict with Section 9 of the Endangered Species Act which prohibits the taking of any endangered species. Land previously acquired for parks on San Bruno Mountain would remain in public ownership and be preserved largely as open space in a manner that could contribute to the preservation of the mission blue.

(2) Development of a HCP that incorporates housing construction plans modified from those proposed in the selected alternative. This could include a variety of development scenerios starting with that proposed in the 1976 General Plan adopted by San Mateo County. The objective of the proposed action is to sanction housing that will have minimal or no effects on endangered species.

(3) Other patterns of housing development on San Bruno Mountain absent the development of a HCP. This alternative includes housing development at reduced densities, or an exchange of endangered species habitat land presently proposed as housing for publicly owned parklands on the mountain that are not prime mission blue habitat.

(4) Change in the endangered classification of the mission blue butterfly. This alternative includes reclassification of the species to threatened status under the Endangered Species Act or removal from the Interior Department endangered species list.

(5) Acquisition, in public ownership, of privately held endangered species habitat. This alternative represents the purchase, at fair market value, of the majority of private lands presently proposed for residential housing.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

We estimate the Draft Environmental Assessment will be made available to the public by June 15, 1982.

Dated: April 12, 1982.

Richard Myshak,

Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 82-10488 Filed 4-15-82; 8:45 am]

BILLING CODE 4310-55-M

Newton Corner, Mass.; Intent To Prepare an Environmental Impact Statement Restoration of Atlantic Salmon and American Shad in New England

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Service intends to prepare an Environmental Impact Statement (EIS) on the Restoration of Atlantic Salmon and American Shad in New England. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CRF 1510.7) to obtain suggestions and information from other agencies and the public on the scope of the issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

SUPPLEMENTARY INFORMATION: The purpose of the restoration program is to restore and maintain Atlantic salmon and shad in suitable habitats in New England during the next 25 years. The restoration program for Atlantic salmon and shad is a cooperative effort between the U.S. Fish and Wildlife Service and various state fishery agencies. The Service's role has been to provide technical assistance in planning and gathering field data for management, in the design of fish passage facilities, finanacial assistance through the Anadromous Fish Conservation Act, and to provide an Atlantic salmon hatchery production program. The responsibility for managing salmon and shad lies with the state fishery agencies. The Service has input into management decisions through various interagency committees

that have been established to direct the restoration programs.

Five basic fishery management methods are currently used for restoring salmon and shad populations. These methods can be used singularly or in various combinations on a particular river system. The five methods are as follows: culture; passage; transplants; habitat enhancement; and natural expansion. Inherent with any preferred combination of methods relating to the restoration of salmon and shad is the use of regulations to control harvest.

At the present time, 26 rivers have been identified for federal involvement in the restoration of salmon and/or shad over the next 25 years.

Rivers With Federal Involvement

Connecticut River, (CT, MA, NH, VT)
Merrimach River, (MA, NH)
Sheepscot River, ME
Penobscot River, ME
Union River, ME
Narraquagus River, ME
Pleasant River, ME
Machias River, ME
East Machias River, ME
Dennys River, ME
St. Croix River, ME/NB
St. John River, ME/NB/QUE

Rivers With Federal Aid Involvement

Thames River, CT
Pawcatuck River, RI
Taunton River, MA
Nemasket River, MA
Indianhead River, MA
Charles River, MA
Palmer River, MA
Exeter River, MA
Lamprey River, MA
Cocheco River, MA
Royal River, ME
Androscoggin River, ME
Kennebec River, ME
St. George River, ME
Sheepscot River, ME
Penobscot River, ME
St. Croix River, ME/NB

The EIS to be prepared on the salmon and shad restoration program will examine alternative methods of restoration over the next 25 years on the river systems listed above.

Public scoping meetings are being held at various sites in New England to obtain public input on the formulation of alternatives for restoration and the impacts of these alternatives. At this time, three scoping meetings have been scheduled. The time and location of subsequent meetings will be announced at least one month in advance.

Meeting Location

May 4, 1982, 7:00 P.M., The Ramada Inn, 161 Bridge Street, East Windsor, CT 06088
May 5, 1982, 7:00 P.M. Springfield Civic Center, 1277 Main Street, Springfield, MA 01003 (A.I.C. Room—Dwight Street Entrance)
May 6, 1982, 7:00 P.M., Sheraton Hotel, Airport Road, West Lebanon, NH.

In order to obtain public input as early as possible in the EIS process, a mailing to solicit public comments will be made in early April 1982. Persons, representatives of organizations, and agency representatives also having suggestions regarding issues that should be considered in the EIS process and/or wish to be on the mailing list are invited to contact the Service. Written comments should be addressed to: Regional Director (Attention: David Allen, Assistant Regional Director, Hatcheries and Fisheries), U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT:

David Allen, Assistant Regional Dirctor, Hatcheries and Fisheries Resources, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, Telephone No.: 617–965–5100, Extension 208, FTS. No.: 829–9208
or
Elliott "Bill" Whalen, Public Affairs Officer, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts, 02158, Telephone No.: 617–965–5100, Extension 206, FTS No.: 829–9206.

William C. Ashe,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 82–10441 Filed 4–15–82; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[Serial No. I–12556]

Idaho; Exchange of Public and Private Lands, Minidoka and Lincoln Counties; Issuance of Land Exchange Conveyance Document

April 9, 1982.

The United States has issued an exchange document to Flat Top Sheep Company for the following-described lands under Section 206 of the Federal Land Policy and Management Act of 1976.

Boise Meridian Idaho

T. 6 S., R. 23 E.
Sec. 25, W½;
Sec. 26, E½NE¼;
Sec. 27, NW¼NW¼, SW¼SW¼;
Sec. 28, E½NE¼NE¼.

Comprising 500.00 acres of public land.

In exchange for these lands, the United States acquired the following lands:

Boise Meridian Idaho

T. 2 S., R. 24 E.
Sec. 2, lots 1, 2, 3, 4, S½NE¼, S½NW¼, S½.

Comprising 663.20 acres of private land.

The purpose of this exchange was to acquire the non-Federal land which has high public value for wildlife habitat and livestock grazing. The public interest was well served through completion of this exchange.

Louis B. Bellesi,

Chief, Division of Technical Services.

[FR Doc. 82–10372 Filed 4–15–82; 8:45 am]

BILLING CODE 4310–84–M

Nevada; Land Reconveyed to United States

April 8, 1982.

By quitclaim deed executed May 23, 1977, Douglas County reconveyed the following described land to the United States:

Mount Diablo Meridian, Nevada

T. 14 N., R. 20 E.
Sec. 6, Lots 7, 14, 15.

The area described comprises 7.53 acres.

The purpose of this notice is to inform the public that the Bureau of Land Management has accepted title to the above-described land on behalf of the United States. The land regained open public land status on October 19, 1977.

Wm. J. Malencik,

Chief, Division of Operations.

[FR Doc. 82–10370 Filed 4–15–82; 8:45 am]

BILLING CODE 4310–84–M

Office Hours for Filing Applications and Documents and for Inspecting Land Status Records; Arizona State Office

April 9, 1982.

Notice is hereby given in accordance with FR Doc. 82–7614 appearing on pages 12292 and 12293 of the issue for March 22, 1982, the following will become effective on April 21, 1982.

1. The office hours for the filing of applications and other documents, including recordation of mining claims, in the Arizona State Office will be 7:45 a.m. to 4:15 p.m.

2. The office hours for the inspection of the official land status records in the Arizona State Office will be 9:00 a.m. to 4:00 p.m.

3. Exception to items 1 and 2 above will be Saturday and Sunday and those days when the office is closed because

of a national holiday or by Presidential or other administrative order.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-10376 Filed 4-15-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 11304]

Oregon; Partial Termination of Proposed Withdrawal and Reservation of Lands

On October 1, 1973, the Forest Service, U.S. Department of Agriculture, filed application OR 11304 for withdrawal and reservation of certain lands adjacent to the Illinois River for protection of wild and scenic values. The applicant agency has cancelled its application insofar as it affects the following described public lands which were temporaily segregated by such application from location and entry under the mining laws (30 U.S.C. Ch 2):

Willamette Meridian

Those portions of the following described subdivisions that lie within one-quarter mile of the Illinois River, including the West and East Forks of said river:

T. 39 S., R. 8 W.,
- Sec. 9, Lots 5 and 6;
- Sec. 17, N½NE¼, SE¼NE¼, E½NW¼, and NE¼SW¼;
- Sec. 21, N½SW¼;
- Sec. 27, NE¼NW¼;
- Sec. 29, NW¼NE¼ and E½W½;
- Sec. 35, Lot 8.

T. 40 S., R. 8 W.,
- Sec. 5, Fractional NE¼NE¼, S¼NE¼, and NE¼SE¼;
- Sec. 9, N½NE¼, NW¼, E½SW¼, and SW¼SE¼;
- Sec. 15, NE¼, E½NW¼, E½W¼NW¼, and E½SE¼;
- Sec. 17, W½NE¼, SE¼NE¼, W½, and NW¼SE¼;
- Sec. 18, NE¼, Fractional W½, and W½SE¼;
- Sec. 19, NW¼NE¼;
- Sec. 20, NW¼NW¼ and SW¼SE¼;
- Sec. 23, Lots 1, 3, and 7, E½NE¼, and W½W½;
- Sec. 24, Lots 1, 2, and 3, and SE¼.

The areas described aggregate approximately 1,400 acres in Josephine County, Oregon.

Pursuant to the regulations contained in 43 CFR 2310.2-1(c) and subject to the provisions of other existing withdrawals, the above described lands will be relieved of the above-mentioned segregative effect at 7:30 a.m., on May 21, 1982.

Dated: April 6, 1982.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-10371 Filed 4-15-82; 8:45 am]

BILLING CODE 4310-84-M

Redelegation of Authority; Chief, Branch of Lands and Minerals Operations, Division of Operations, Nevada State Office

April 7, 1982.

Pursuant to the authority contained in section 1.1 of BLM Order No. 701 dated July 23, 1964, as amended, authority is hereby redelegated to the Chief, Division of Operations, and the Chief, Branch of Lands and Minerals Operations to take action on the matters listed in sections 2.2(c), 2.3(c), 2.4(a)(4), of the above cited order and 2.6(k) as to mining claim instruments filed for recordation with BLM under 43 CFR 3833, as follows: (1) Accept and record instruments meeting requirements; (2) Notify owners to take curative actions to complete defective filings; (3) Reject instruments and void claims not filed within the prescribed time periods; and (4) Reject filings and void claims located on lands not available for mineral location on dates of location.

EFFECTIVE DATE: This redelegation will become effective April 16, 1982.

FOR FURTHER INFORMATION CONTACT: Richard G. Morrison, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, Nevada, 89520.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 82-10374 Filed 4-15-82; 8:45 am]

BILLING CODE 4310-84-M

[W-79566]

Wyoming; Invitation for Coal Exploration License; Ark Land Co.

April 8, 1982.

Ark Land Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning Federally owned coal underlying the following-described land in Sweetwater County, Wyoming:

Sixth Principal Meridian, Wyoming

T. 15 N., R. 102 W.,
- Sec. 8, SW¼NE¼, S½SW¼, SE¼;
- Sec. 9, SW¼NE¼, N½N½, S½NW¼, N½SW¼, SW¼SW¼;
- Sec. 14, S½NE¼, NW¼NE¼;
- Sec. 15, E½SE¼;
- Sec. 17, N½, N½SW¼, NE¼SE¼;
- Sec. 20, E½E½;
- Sec. 21, NW¼NE¼, S½NE¼, W½, SE¼;
- Sec. 22, NE¼NE¼, W½NE¼, S½NW¼, SW¼, W½SE¼;
- Sec. 27, SE¼NE¼, NW¼, N½SW¼;
- Sec. 28, NE¼NE¼, W½NE¼, W½, W½SE¼;
- Sec. 31, Lot 4, SE¼SW¼, S½SE¼;
- Sec. 32, S½S½, N½SE¼;
- Sec. 33, N½, SW¼, NW¼SE¼.

T. 15 N., R. 103 W.,
- Sec. 36, S½SE¼.

T. 14 N., R. 102 W.,
- Sec. 4, Lot 8, SW¼SW¼;
- Sec. 5, Lots 5, 6, 7, 8, SW¼NE¼, S½NW¼, SW¼, S½SW¼;
- Sec. 6, All;
- Sec. 7, Lots 5, 6, NE¼, E½NW¼;
- Sec. 8, NE¼, W½;
- Sec. 10, W½NE¼, NW¼, N½SW¼, NW¼SE¼.

T. 14 N., R. 103 W.,
- Sec. 1, Lots 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼.

Containing 7,118.02 acres.

All of the coal in the above lands is unleased Federal coal within the Rock Springs Known Recoverable Coal Resource Area. The purpose of the exploration program is to determine the quantity of coal available as well as other coal resource data.

A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under Serial Number W-79566): Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001, and the Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

This notice of invitation will be published in this newspaper once each week for two (2) consecutive weeks beginning the week of April 5, 1982, and in the **Federal Register.** Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Ark Land Company no later than May 17, 1982. The written notices should be sent to the following addresses: Mr. Jack Cully, Manager Western Exploration Division, Ark Land Company, P.O. Box 340, Hanna, Wyoming 82327, and the Bureau of Land Management, Wyoming State Office, Attention: Lands and Mining Section P.O. Box 1828, Cheyenne, Wyoming 82001.

The foregoing notice is published in the **Federal Register** pursuant to Title 43 of the Code of Federal Regulations, § 3410.2-1(d)(1).

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations

[FR Doc. 82-10369 Filed 4-15-82; 8:45 am]

BILLING CODE 4310-84-M

[W-022567, etc.]

Wyoming; Order Providing for Opening of Public Lands

1. In exchanges of lands made under the provisions of Section 8 of the Act of June 28, 1934, as amended, 48 Stat. 1269, 49 Stat. 1976, (formerly 43 U.S.C. 315g), and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (1976), the following lands have been reconveyed to the United States under the serial numbers listed below:

Sixth Principal Meridian, Wyoming

W-022567

T. 47 N., R. 88 W.,
Sec. 16, NW¼NW¼.
T. 50 N., R. 92 W.,
That part of the SE¼NE¼ sec. 31, north of State Highway right-of-way and south of the center thread of the NoWood River; and that part of SW¼NW¼ sec. 32, south of the center thread of the NoWood River excepting a 2½ acre cemetary plot in the SW¼SW¼NW¼.

W-030823

T. 35 N., R. 81 W.,
Sec. 35, SE¼SE¼.

W-0325968

T. 21 N., R. 88 W.,
Sec. 11, NW¼NE¼NE¼, N½NW¼NE¼, N½NE¼NW¼, and W½W½.

W-30013

T. 38 N., R. 81 W.,
Sec. 12, NW¼NW¼.
T. 42 N., R. 85 W.,
Sec. 30, lot 2.
T. 41 N., R. 86 W.,
Tracts 41, 43, and 45; Tract 58, excluding that portion originally described as the E½NE¼ of sec. 15, and excluding that portion in conflict with Tract 60; Tract 62, excluding that portion in conflict with Tract 60.
T. 42 N., R. 86 W.,
Sec. 25, S½N½, and N½SW¼.

W-31229

T. 19 N., R. 116 W.,
Sec. 7, Lots 1, 2, and 3.
T. 20 N., R. 116 W.,
Sec. 19, Lots 1 to 4, inclusive, NE¼NW¼, and SE¼SW¼.

W-32008

T. 35 N., R. 82 W.,
Sec. 7, NE¼NE¼, and E½SE¼;
Sec. 8, N½NE¼, SE¼NE¼, NE¼SE¼, W½SW¼, and SE¼SW¼;
Sec. 18, NE¼NE¼.

W-39423

T. 25 N., R. 81 W.,
Sec. 13, All;
Sec. 23, All.

W-44415

T. 23 N., R. 104 W.,
Sec. 16, All.

W-47625

T. 31 N., R. 105 W.,
Sec. 6, Lot 7, SE¼SW¼, and SW¼SE¼;
Sec. 7, Lots 1, 2, W½NE¼, and E½NW¼.
T. 31 N., R. 106 W.,
Sec. 1, S½SE¼;
Sec. 12, NE¼.

W-49109

T. 47 N., R. 88 W.,
Sec. 1, Lot 9;
Sec. 12, Lots 1, and 3.

W-54575

T. 22 N., R. 118 W.,
Sec. 16, SE¼NE¼, and E½SE¼;
Sec. 36, All.

The area described aggregates 5,614.39 acres in Big Horn, Washakie, Natrona, Johnson, Lincoln, Sweetwater, Sublette and Carbon Counties, Wyoming.

2. The United States did not acquire the mineral rights to any of the lands described in paragraph 1 with the exemption of the land described under Serial No. W-54575. Therefore, the mineral status of the balance of the lands is not affected by this order.

3. At 10:00 a.m. on May 25, 1982, all of the lands described in paragraph 1 with the exemption of the lands described under Serial No.'s W-0325968 and W-54575, shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to May 25, 1982, shall be considered as simultaneously filed. Those received thereafter shall be considered in the order of filing.

4. The lands described under Serial No. W-54575 are within the Fossil Butte National Monument withdrawal and will therefore, not be restored to the operation of the public land laws generally, including the mining and mineral leasing laws. The lands described under Serial No. W-0325968 are within the Multiple Use Management Classification W-6227, and will not be restored to the operation of the public land laws generally. These lands were patented, prior to the exchange, without a mineral reservation to the United States.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, P.O. Box 1828, Cheyenne, Wyoming 82003.

William S. Gilmer,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-10375 Filed 4-15-82; 8:45 am]

BILLING CODE 4318-84-M

New York Outer Continental Shelf; Intent To Prepare an Environmental Impact Statement for Proposed Outer Continental Shelf Lease Sale No. 78

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management's New York Outer Continental Shelf Office intends to prepare an environmental impact statement (EIS) on the offshore oil and gas leasing proposal known as OCS Sale No. 78. This proposed sale, which would be the third in the South Atlantic region, is tentatively scheduled for July 1983.

Approximately 33.1 million acres (13.4 million hectares) are being proposed for leasing consideration and further environemental study. This area ranges from 12 to 225 statute miles off the coasts of five Atlantic States from Virginia to Florida. Water depths vary from 66 to 8,202 feet (20 to 2500 meters). Alternatives to be considered in the environmental impact statement will include options to modify, delay, or withdraw the proposed offering. The draft environmental impact statement is scheduled for publication in October 1982.

The New York OCS Office will conduct a mailing to solicit public comment concerning the proposed action. Federal, State, local agencies, as well as private groups and individuals which have expressed an interest in past OCS sales, will be contacted. In addition, the Intergovernmental Planning Program will provide a medium through which issues of concern may be entertained.

Written comments should be sent no later than May 3, 1982, to the New York OCS Office, Bureau of Land Management, Federal Building, Suite 32-120, 26 Federal Plaza, New York, New York 10278. For further information regarding the Sale No. 78 EIS, contact Mr. Anthony Ladino, New York OCS Office or phone (212) 264-5580.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

April 8, 1982.

[FR Doc. 82-10483 Filed 4-15-82; 8:45 am]

BILLING CODE 4310-84-M

Worland District, Wyoming; Availability of Draft Environmental Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy

Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior, has prepared a draft environmental impact statement on grazing management in the Grass Creek Resource Area of the Bighorn Basin of Wyoming, and has made copies of the document available for public review and comment.

DATES: Written comments on the proposed action and alternatives contained in the draft environmental impact statement will be accepted up to and including June 11, 1982, at Bureau of Land Management, Box 119, Worland, Wyoming 82401.

ADDRESSES: Written comments on the proposal in the document are to be addressed to John Moorhouse, Bureau of Land Management, Box 119, Worland, Wyoming, 82401.

The draft environmental impact statement is available for inspection at the following locations: Worland District Office, 1700 Robertson, Worland, Wyoming 82401; and the Cody Area Office, BLM, 1131—13th Street, Cody, Wyoming 82414.

The draft environmental impact statement can be obtained from John Moorhouse, Team Leader, Bureau of Land Management, Box 119, Worland, Wyoming 82401; telephone (307) 347–6151.

SUPPLEMENTARY INFORMATION: The draft statement analyzes environmental impacts that would result from grazing management. The statement further analyzes the environmental impacts that would result from the implementation of each of four alternatives to that proposal. The alternatives are the no change in existing livestock management alternatives, no livestock grazing, optimize livestock grazing, and manage for other grazing uses.

All comments will be considered. Those which raise questions or issues concerning the effects of the proposed action, present new data, or question facts or analyses will be responded to in the final EIS.

Maxwell T. Lieurance,

State Director.

[FR Doc. 82-10486 Filed 4-15-82; 8:45 am]

BILLING CODE 4310-84-M

Colorado; Green River/Hams Fork Coal Region; Call For Expression of Leasing Interest

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for expression of leasing interest in Federal coal, Williams Fork Planning Unit, Craig District, Colorado.

SUMMARY: This call for expressions of coal leasing interest, Phase V (Williams Fork Planning Area, Craig, Colorado), is to integrate potential lessees' data and needs into the coal activity planning phase of the Federal coal management program in the Green River/Hams Fork Coal Production Region. The data received from this call will be used along with existing data to delineate tracts which would be considered for possible competitive leasing. This call for expressions includes expressions from small businesses and public bodies to be used to help identify tracts for the special set aside programs.

DATE: Responses to this notice will be received until May 17, 1982.

ADDRESS: Responses should be sent to State Director (932), Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202, and District Conservation Manager for Resource Evaluation, Minerals Management Service, P.O. Box 580, Grand Junction, Colorado 81502, and District Manager, Bureau of Land Management, P.O. Box 248, Craig, Colorado 81626

FOR FURTHER INFORMATION CONTACT:

David Bray, Coal Coordinator, Craig District, BLM, P.O. Box 248, Craig, Colorado 81626; telephone (303) 824–8261

Duane Johnson, Planning Coordinator, Little Snake Resource Area, P.O. Box 1136, Craig, Colorado 81626; telephone (303) 824–4441

Ken Smith, Coal Program Specialist, Colorado State Office, BLM, 1037 20th Street, Denver, Colorado 80202; telephone (303) 837–3008.

SUPPLEMENTARY INFORMATION: This is to advise all interested parties that the official call for expressions of interest in Federal coal leasing, Phase V (Williams Fork Planning Area, Craig District, Colorado) is now in effect for the second round of coal leasing activity in the Green River/Hams Fork Coal Region. The second round of possible coal leasing is scheduled to begin in March 1984. The responses to this call must be submitted on or before May 17, 1982.

This call for expressions of interest is the first step in activity planning under the Federal coal management program. The results of this call will provide significant information that will be employed in delineating tracts that might be offered for lease sale after they have been through the tract ranking, selection, scheduling and analysis processes that are integral parts of the Federal coal management program defined in 43 CFR Subpart 3420.

Expressions of interest from small business and public bodies are invited in accordance with the provisions of 43 CFR 3420.1–4 which states that a reasonable number of lease tracts will be reserved and offered through competitive lease sales to those qualifying under the definitions of public bodies and small coal mining businesses. Entities desiring special leasing opportunities as a public body should state their intentions in their expressions of leasing interest for possible public body set asides. Proof of public body status and evidence of qualifications as required by 43 CFR 3420.1–4(b)(1)(ii) shall be submitted with the expression of interest.

A major purpose of this call for expressions of interest is to integrate potential lessees' data and needs with the process of delineating the logical mining units which will be considered prior to a lease sale. The BLM hopes to gain sufficient information from this call, as well as from its own site specific analyses, to identify areas in which data are of sufficient detail to ultimately make a fair market value determination on specific tracts.

An expression of interest is not an application. The size, number and/or location of proposed tracts as indicated by expressions of interest may be modified or changed. Examples of the types of concerns that may make such action necessary include: the competitive nature of the tract, access needs, mining efficiency, future coal development potential, resource conservation and State preferences and priorities.

These expressions of leasing interest should include the following data where applicable:

1. Quantity needs (total tonnage, average tons per year, and year during which production should commence) for both coal producers and users.

2. Quality needs (types and grade of coal) for both producers and users.

3. Location:

a. Tracts desired by mining companies (narrative description with delineation on a surface minerals management quad map, available for purchase from the BLM Colorado State Office).

b. Public and private industry user facilities in region.

c. If no location is indicated, but other specified data are provided, the expression will be considered. In such cases the joint BLM/GS delineation team will locate the tract.

4. Type of Mine:

a. Surface or underground.

b. Technique of mining (i.e. longwall, room and pillar, strip mining, etc.).

5. Proposed Uses of Coal:

a. By mining companies.

b. By public and private industries.

6. Where Coal is Consumed (include extra-regional markets).

7. Transportation Needs (i.e., railroad, pipelines, etc.):

a. Existing facilities.

b. Proposed facilities and development timing.

8. Available Sources of Coal:

a. Presently operative.

b. Contingency or other sources.

9. Information Relating to Mineral Ownership:

a. Information on surface owner consents previously granted; e.g., a description of the location of the property, whether consents are transferable, etc.

b. Commitments from fee coal owners or for associated non-Federal coal.

10. Special qualifications for public bodies requesting special leasing opportunities. These specific requirements are listed in 43 CFR 3472.2–5.

Data which are considered proprietary should not be submitted as part of this expression of leasing interest.

An individual, business entity, governmental entity, or public body may participate and submit expressions of leasing interest under this call.

Management framework planning information for the Williams Fork Planning Area and maps which clearly indicate the areas open for expression of interest and acceptable for further consideration for coal leasing may be obtained by contacting any of the above listed names.

Bishop T. Buckle,

State Director, Colorado.

[FR Doc. 82-10467 Filed 4-15-82; 8:45 am]

BILLING CODE 4310-84-M

Issuance of Disclaimers of Interest to Lands in Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of disclaimers of interest in lands in Idaho.

SUMMARY: Notice is hereby given that the United States of America, pursuant to the provisions of section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), does hereby give notice of its intention to disclaim and release all interest to the owners of record for the following described properties, to-wit: Lots 39, 40, 43, 44, 47, and 48, Block 39; all of Block 40; Lots 12 through 19, 21 through 37, 39 through 48, Block 42; Lots 5 and 6, Block 65; Lots 5 through 21, 31 through 37, 43 and 44, Block 66; and Lots 1 through 8, Block 70 of Section 13, Township 2 North, Range 37 East, Boise Meridian, Idaho. Together with all streets and alleys interconnected with said described properties.

After review of the official records and the original public land survey, it is the position of the Bureau of Land Management that all of the land mentioned above is found to lie between the meander line appearing on the official plat and the mean high water line of the east bank of the Snake River.

Any person wishing to submit a protest or comments on the above disclaimers should do so in writing before the expiration of 90 days from the date of publication of this notice. If no protest(s) is received, the disclaimers will be effective on the date set out below.

EFFECTIVE DATE: Disclaimers of title and release of all interest of the United States shall issue on July 15, 1982.

ADDRESS: Information concerning these lands and the proposed disclaimers may be obtained from and protest filed with: Director (320) Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Henry Beauchamp, (202) 343–8693.

D. Dean Bibles,

Assistant Director.

[FR Doc. 82-10440 Filed 4-15-82; 8:45 am]

BILLING CODE 4310-84-M

National Public Lands Advisory Council: Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: First Meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet May 17 and 18, 1982. The meeting will be held in Room 7000 A&B of the Main Interior Building, 18th and C Streets, N.W., Washington, D.C. The meeting hours will be 9:00 a.m. to 5:00 p.m. on Monday, the 17th, and 8:00 a.m. to 4:00 p.m. on Tuesday, the 18th. The proposed agenda for the two-day meeting is:

Monday, May 17: (1) Opening remarks by Bureau of Land Management (BLM) Director, Robert Burford, and Department of the Interior Assistant Secretary for Land and Water Resources, Garrey Carruthers; (2) Discussion of Advisory Council organization and procedures; (3) Address by Department of the Interior Secretary, James Watt; and (4) Presentations on BLM's programs, organization, and budget.

Tuesday, May 18: (1) Continued discussion of BLM's programs, organization, and budget; (2) Public statement period; (3) Conclusion of Council organization and other Council business, including setting a date and location for the Council's next meeting.

All meetings of the Council will be open to the public. Opportunity will be provided for members of the public to make oral statements to the Council, from 1:00 p.m. to 2:30 p.m., Tuesday, May 18, regarding topics on the meeting agenda. Summaries of oral presentations should be submitted to the Council in written form. Depending on the number of people who wish to speak, it may be necessary to limit the length of oral presentations. Written statements alone may also be filed with the Council.

DATES: May 17 and 18, 1982—Council meeting. May 18, 1982—Public Statements.

ADDRESS: Copies of public statements may be mailed in advance of the meeting to: National Public Lands Advisory Council, c/o Director (150), Bureau of Land Management, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Karen Slater, BLM's Washington Office (150), telephone (202) 343–2054.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior, through the Director, Bureau of Land Management, regarding implementation of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1701 et seq.) as well as on policies and programs of a national scope related to public lands and resources under the jurisdiction of the Bureau.

Arnold E. Petty

Acting Associate Director.

April 13, 1982.

[FR Doc. 82-10463 Filed 4-15-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Hearing on Fair Market Value of OCS Gas for Royalty Purposes

AGENCY: Minerals Management Service, Interior.

ACTION: Notice to outer continental shelf lessees of opportunity for hearing.

SUMMARY: The Minerals Management Service will determine the fair market value of natural gas produced from the Outer Continental Shelf after October 31, 1981. Each lessee is invited to be heard on the Service's proposed findings. Each lessee is also invited to be heard on the Service's proposed reasonable unit value for OCS natural gas.

FOR FURTHER INFORMATION CONTACT:

Raymond A. Hicks, Chief, Branch of Rules and Procedures for Royalty Management, Minerals Management Service, MS 660, 12203 Sunrise Valley Drive, Reston, VA 22091, (703) 860–7511.

SUPPLEMENTARY INFORMATION:

Under 30 CFR 250.64:

The value of production shall never be less than the fair market value. The value used in the computation of royalty shall be determined by the Director. In establishing the value, the Director shall consider: (a) The highest price paid for a part or for a majority of like-quality products produced from the field or area; (b) the price received by the lessee; (c) posted prices; (d) regulated prices; and (e) other relevant matters. Under no circumstances shall the value of production be less than the gross proceeds accruing to the lessee from the disposition of the produced substances or less than the value computed on the reasonable unit value established by the Secretary.

Having considered these factors, the Director has made a preliminary finding on the value of gas produced from the Outer Continental Shelf after October 31, 1981. This finding is that the value of the gas is the maximum lawful price in each category created by regulationss of the Federal Energy Regulatory Commission (FER⅛C). 18 CFR Part 271. For gas not subject to a maximum price, the fair market value will be determined as explained below in Part B.

A. Factors Considered

1. The Highest Price Paid

The Service has reviewed prices paid for OCS gas in September 1981 in the Gulf of Mexico. Our review shows that significant volumes of gas were sold at the maximum FERC price in each of the following categories: Flowing Gas, 1973–74 Biennium Gas, Post-1974 Gas, Interstate Rollover Gas and gas from recompletions, and New Natural Gas. The data are contained in Exhibits A and B, available from Mr. Ray Hicks. As a convenience, the data are listed by leasing areas created by the Bureau of Land Management, instead of by market area. The Service preliminarily finds the whole Gulf of Mexico OCS to be one market area.

We have also reviewed price data for the months of April 1981 through September 1981 in 11 leasing areas: Main Pass, Vermilion, Ship Shoal, Eugene Island, South Marsh Island, West Cameron, Grand Isle, South Timbalier, West Delta, South Pass, and East Cameron. These data also confirm that significant quantities of gas were sold at the maximum FERC price in each category. These data are contained in Exhibit C, available from Mr. Ray Hicks.

2. Price Received by the Lessee

If a lessee is receiving less than the maximum FERC price, the Service wants to know if special reasons make the contract price the fair market value of the gas. The price paid under a given contract is not automatically the fair market value of the gas.

3. Regulated Prices

The maximum regulated prices are the benchmarks of the Director's preliminary finding. According to our data, these prices are being paid for gas produced in the Gulf of Mecico. Normally, we should expect the maximum regulated price to represent the market value of the gas. So said the former Federal Power Commission:

[W]e do not believe the royalty owner must be held to the producer's filed rate [i.e., the contract price] if his [lease] with the producer calls for royalties based upon a different rate which the producer could have secured * * *. Where he has [a lease with a royalty] for the market price or value it would appear that he had contracterd for a payment equal to the maximum rate for such gas which could have been received as fixed under the law by this Commission. 42 FPC at 173–74, *rev'd on other grounds*, 463 F.2d 256 (D.C. Cir. 1972).

Recognizing that sales of natural gas are subject to extensive price regulation, we acknowledge the various price categories set by 18 CFR Part 271. When comparing sales of like-quality gas, we have looked to sales only within the same price category. For example, whenever a lessee is delivering gas from wells subject to "flowing gas" prices, we compared the sale with other sales from "flowing gas" wells. We did not compare it with sales of gas from "new" wells. In so doing, we have followed (and to a degree have anticipated) the emerging trend in State common law decisions in Gulf Coast States. *Exxon Corp. v. Middleton*, 613 S.W.2d 240 (Tex. 1981); *Kingery v. Continental Oil Co.*, 626 F.2d 1261 (5th Cir. 1980).

4. Other Relevant Matters

Generally speaking, the royialty clause in an OCS oil and gas lease is a "market value" clause, not a "proceeds" clause. As the Department's regulations have said since 1954, the value is determined by prices in the field or area, not by the price in a given contract. (Of course, the value is never less than the gross proceeds the lessee receives from the sale of the gas.) However, the Department used to have a procedure through which a lessee could ask the Secretary to approve the contract price as the fair market value. Former 30 CFR 250.46(c). The Service is reviewing its files to find Secretarial approvals. We suggest the lessee check his files to inform us of the terms of any Secretarial approval of his long-term gas contracts. Our files contain the following Secretarial approvals:

Lessee	Pipeline	Date of contract	Secretarial approval date
Atlantic Refining Co.	Tennessee Gas Transmission Co.	01/31/56	10/30/58
Newmont Oil Co.	Tennessee Gas Transmission Co.	12/30/58	03/28/60
Pan American Petrol Corp.	Transcontinental Gas Pipe Line Co.	06/26/58	03/10/61
Pan American Petrol Corp.	Transcontinental Gas Pipe Line Co.	11/14/58	08/21/64
Shell Oil Co.	Tennessee Gas Transmission Co.	04/17/56	03/28/60
Shell Oil Co.	Tennessee Gas Transmission Co.	05/08/58	11/24/59
Superior Oil Co.	Transcontinental Gas Pipeline Corp. Vermilion 71 & 76	09/17/58	03/28/60 11/07/62
Tennessee Gas Transmission Co.	Transcontinental Gas Pipeline Corp.	12/22/59	02/13/61
Union Oil Company of California	Trunkline Gas Co.	06/17/58	03/10/61
Union Oil Company of California	Transcontinental Gas Pipeline Corp.	12/27/57	03/28/60
Zapata Off-Shore Co.	Transcontinental Gas Pipeline Corp.	04/07/59	02/13/61

B. Gas Not Subject to Ceiling Price Regulations

Around the Nation, prices for deregulated gas vary from $1.91/mcf to $9.77/mcf. 47 FR 6253 (February 11, 1982). The prices for deregulated gas produced from the Gulf of Mexico OCS vary from $2.86/mcf to $8.40/mcf. Our preliminary finding is that the value of gas not subject to price regulation is the higher of:

(1) The gross proceeds received by the lessee under the sales contract, or

(2) $7.48896 per thousand cubic feet.

The value of $7.48896/mcf was derived in the following way. We reviewed the available data from all sales of deregulated gas produced from the OCS in the Gulf of Mexico during September 1981. See Exhibit B. When data were not available from a given lease for that month, we took the average volume and average price per mcf for production during the 2 preceding months in the lease. We then computed the total revenue from September 1981 sales. Then we divided the revenue by the total volume of gas sold that month. The figures were $17,991,617 divided by 2,402,416 mcf.

C. Adjustments to Price for Btu (British thermal unit) Content and Pressure

The unit value of gas will be standardized and quality adjustments made as necessary. The unit value of gas will be based on a temperature of 60° F, a pressure base of 15.025 psia, and a heating value of 1,000 Btu's per cubic foot. This unit value will be adjusted upward or downward in proportion to the actual heating value of the gas. Unit value will be further adjusted to account for the value of entrained liquids, if any, where the established value of the gas, adjusted for its Btu content, does not properly reflect the value of its entrained liquids. See 30 CFR 250.67.

The heating value of the gas will be the weighted average Btu content of all gas produced from, or for the benefit of, the lease, unitized area, or unit participating area during the month. Where multiple purchasers are involved, the weighted average Btu content may be reported separately for the gas sold to each purchaser, provided, however, that slight difference (±1 percent) between Btu measurements of a lessee or operator and its purchaser or between different purchasers shall not require adjustment.

The heating value of natural gas shall be determined as the number of Btu's produced by the combustion, at constant pressure, of the amount of gas which would occupy a volume of 1 cubic foot at a temperature of 60° F and standard gravitational force (980.665 centimeters per second squared) with air of the same temperature and pressure, when the products of combustion are cooled to the initial temperature of the gas and air, and the water formed by the combustion is condensed to the liquid area.

The Btu content will be determined at least semiannually, unless otherwise required, by means of (1) a recording calorimeter, (2) calculating based on a complete compositional analysis of the gas and the heating value of each constituent, or (3) such other methods as may be approved. The method used for each such determination and such analytical data or other documentation will be provided. The Btu content most recently determined and used by the lessee or operator for royalty computation purposes will be reported monthly. When approved, mass measurement, based on dekatherms per pound, may be used for quality adjustments in lieu of volumetric measurements based on the Btu content per cubic foot.

D. The Proposed Order

The text of the Director's proposed order follows:

1. I revoke any finding by the Director, Geological Survey, or his subordinates that the lessee is paying royalty on gas produced from the Outer Continental Shelf at the fair market value. This revocation applies to natural gas produced after October 31, 1981.

2. For the purpose of paying royalty in value, the fair market value of the gas is the highest price allowed by FERC for gas in the same price category in the month the gas is produced. Price categories are established by 18 CFR, Part 271. The lessee shall adjust the value, expressed in dollars per million Btu's, upward or downward to reflect the Btu content of the gas, as explained in Part C of the Notice.

3. If any natural gas could qualify under more than one category, the lessee shall use the category which allows the highest price in determining the fair market value.

4. The fair market value of gas qualifying as deep, high-cost gas under section 107(c)(1) of the Natural Gas Policy Act (NGPA) is $7.48896/mcf for production beginning in November 1981 until the date this order is published. However, if the lessee received more than this value for the sale of the gas, the fair market value of the gas is the gross proceeds he received from the sale.

5. The value of other gas not subject to FERC ceiling prices is the same as set in paragraph 4.

6. The lessee shall adjust the volume of the gas for pressure, as explained in Part C of this Notice.

7. The lessee (or operator if the operator files the Form 9–153 for the co-lessees) shall file amended Forms 9–153 with the 250.67 worksheets. The amended filing will show the amount of gas produced in each of the months covered by this order, the correct price category for the gas, the fair market value, and adjustments for pressure and Btu content. It will state the correct amount of royalty owed, the amount already paid, interest owed under 30 CFR 250.49, and the balance due the United States. The amended filing will be accompanied by a check for the balance due. The amended filing and payment are due 25 workdays from the date this order is published in the **Federal Register.**

E. Illustration of How the Proposed Order Would Work

Each lessee must determine the correct FERC category for each well or completion within a well. Royalty on gas from each completion must be based on the fair market value for its category.

For example, suppose a lessee's 250.67 worksheet showed the following production from the lease for November 1981:

Category	Price ($/MMBtu)	Volume (mcf)	Revenue
Flowing Gas	.427	10,000	4,270
73–74 Gas	1.358	20,000	27,160
Post-74 Gas	2.096	30,000	62,880
§ 102 Gas	2.940	40,000	117,600
Old Contract	.210	17,000	3,570

Here the lessee drew the "old contract" gas from all its wells on the lease. So the "old contract" gas would be apportioned among the four NGPA categories for that month. The total volume of gas sold at maximum prices was 100,000 mcf. Of that volume, 10 percent was sold as flowing gas, 20 percent as 73–74 gas, 30 percent as post-74 gas, and 40 percent as § 102 gas. So, for the purpose of computing royalty, the lessee would value 10 percent of the "old contract" gas at flowing-gas prices, 20 percent at 73–74 gas prices, 30 percent at post-74 gas prices, and 40 percent at § 102 gas prices.

For December, the lessee would again compute the total volume sold at maximum prices, then compute what percentage of that total came from each category. Then the lessee would apply the percentages for December to the volume sold under the old contract in December, as explained in the preceding paragraph.

Returning to November's production, we will compute the royalty due from the lease. The royalty rate is one-sixth. We will assume the gas contains exactly 1 million Btu/mcf and that the pressure needs no adjustment.

The lessee's total revenue was $215,480. Royalty due would be as follows:

On 10,000 mcf of flowing gas [(.427×10,000)÷6]	$711.67
On 20,000 mcf of 73–74 gas [(1.358×20,000)÷6]	4,526.67
On 30,000 mcf of post-74 gas [(2.096×30,000)÷6]	10,480.00
On 40,000 mcf of § 102 gas [(2.94×40,000)÷6]	19,600.00
Subtotal	35,318.34

For the 17,000 mcf sold at 21 cents, royalty would be

On 1700 mcf at flowing gas price	$120.98
On 3400 mcf at 73–74 gas price	769.53
On 5100 mcf at post-74 gas price	1,781.60
On 6800 mcf at § 102 gas price	3,332.00
Subtotal	6,004.11

The total royalty due for November 1981 would be $41,322.45 for the lease.

F. Related Proceeding on Reasonable Unit Value

In addition to his authority to determine the fair market value of production, the Secretary may set a reasonable unit value for production. 30 CFR § 250.64; *California Co.* v. *Udall*, 296 F.2d 384, 388 (D.C. Cir. 1961). This power he may exercise prospectively. *Continental Oil Co.* v. *United States*, 184 F.2d 802, 821 (9th Cir. 1950); *United States* v. *Ohio Oil Co.*, 163 F.2d 633, 640 (10th Cir. 1947), *cert. denied* 333 U.S. 833 (1948).

To help the lessee plan his finances, the Service proposes to set a minimum reasonable unit value for the purpose of computing royalty on future production of natural gas from OCS leases. Based on our review of the factors explained in Parts A, B, and C of this Notice, we propose the following values:

1. For gas subject to maximum ceiling prices under 18 CFR Part 271, the value is the highest price allowed for gas of the same price category.

2. For gas not subject to price ceilings, the value will be $7.48896/mcf, as explained in Part B.

In either case, the value of production will never be less than the gross proceeds the lessee receives per thousand cubic feet.

Once the reasonable unit value is in effect, it will be changed prospectively only.

G. Procedures for Both Hearings

Copies of the Service's price data are available from Mr. Ray Hicks.

The lessee has 50 workdays from the date this Notice is published to file comments, evidence, and legal arguments with the Director. Please send your comments to the attention of Mr. Robert E. Boldt, Associate Deputy Chief for Royalty Management, Minerals Management Service, MS 660, USGS National Center, 12201 Sunrise Valley Drive, Reston, VA 22092.

The Director's proposed order is based upon documentary evidence and legal interpretation. We therefore believe that the opportunity to file written comments will give the lessee a fair hearing. If a lessee wishes to have the chance to present his views orally, he must request an oral hearing within 25 workdays of the date this Notice is published. The request must be in writing and must explain why the lessee cannot adequately present his case through written comments.

Because the issues in both hearings are substantially the same, we encourage each lessee to file one set of comments.

Dated: April 7, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary of the Interior.

[FR Doc. 82-10442 Filed 4-15-82; 8:45 am]

BILLING CODE 4310-MR-M

[NTL-6]

Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases; Approval of Operations

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Intent to revise NTL-6 and request for public comment.

SUMMARY: The Mineral Management Service (MMS) intends to revise NTL-6 to supplement and clarify requirements of regulations, 30 CFR Part 221, with which lessees and operators of Federal and Indian (except Osage) oil and gas leases must comply to obtain approval to drill wells and conduct other surface disturbing operations on the leaseholds. Comments and recommendations are hereby invited to assist in the development and extent of the revision. Although the MMS is already aware of certain recommendations by the petroleum industry and some Government Agencies, additional participation is desired from the petroleum industry, State Governments, and other interested individuals, and other Federal Government Agencies.

DATES: Comments and recommendations must be received no later than May 31, 1982.

ADDRESS: Comments and recommendations should be submitted to the Chief, Onshore Minerals Management Division, Minerals Management Service, Mail Stop 650, 12203 Sunrise Valley Drive, Reston, Virginia, 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Daniels, (703) 860-7535, (FTS) 928-7535, or Mr. Stephen H. Spector, (703) 860-6259, (FTS) 928-6259.

SUPPLEMENTARY INFORMATION: It is the intent of the MMS to more clearly describe requirements for filing applications for permit to drill, including the content of a complete application, as well as to eliminate any unneeded portions of the current NTL-6 (41 FR 18116, April 30, 1976). The overall objectives are to minimize costs and application processing delays for both Government and industry while ensuring that the objectives of the National Environmental Policy Act of 1969 and other applicable laws and regulations are met.

Revised regulations in 30 CFR Part 221 were published as proposed rulemaking on November 17, 1981, (46 FR 56564). In that proposal, a procedure was implemented to provide for the issuance of Onshore Oil and Gas Orders to supplement regulations. If that rulemaking becomes effective before the final revision of NTL-6 is published, NTL-6 will be issued as an Order.

Copies of NTL-6 are available at all MMS field offices.

Dated: April 8, 1982.

Andrew V. Bailey,

Acting Deputy Director for Minerals Management.

[FR Doc. 82-10303 Filed 4-15-82; 9:53 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers: Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

(1) Parent Corporation and address of principal office: W. G. Block Co., 317 East 4th St., Davenport, Iowa 52808.

(2) Wholly-owned subsidiaries and State of incorporation: (i) Acme Fuel & Material Co.—Iowa; (ii) L & M Ready Mix Concrete Co.—Iowa; (iii) Iowa Fly Ash Co.—Iowa.

(1) Parent corporation and address of principal office: The Ceco Corporation, a Delaware Corporation, 1400 Kensington Road, Oak Brook, Illinois 60521.

(2) Wholly-owned subsidiaries which will participate in the operations and states of incorporation: Delta Steel Buildings Co., a Texas Corporation; N.C. Products Corporation, A North Carolina Corporation; Tyee Lumber and Manufacturing Co., a Delaware Corporation and Ceco Transport, Inc. a Delaware Corporation.

(1) Parent corporation and address of principal office: The Commodore Corporation, 400 West Brooklyn, P.O. Box 295, Syracuse, Indiana 46567.

(2) Wholly-owned subsidiaries which would participate in the operations and the address of their respective principal office: (a) The Commodore Corporation, State Road 729, Danville, VA 24541; (b) The Commodore Corporation, Old Del Mar Road, Haleyville, AL 35565; (c) Commodore Properties, Inc., 400 West Brooklyn, P.O. Box 295, Syracuse, IN 46567; (d) Commodore Home Systems, Inc., P.O. Box 578, Lebanon, Oregon

97355; (e) Commodore Home Systems, Inc., 9430 Ulmerton Road, Largo, FL 33541; (f) Commodore Contract Carriers, Inc., 400 West Brooklyn, P.O. Box 295, Syracuse, IN 46567; (g) Commodore Home Systems, Inc., P.O. Box 349, Clarion, PA 16214; (h) Commodore Home Systems, Inc., 2415 Griffin Road, Leesburg, FL 32748; (i) Commodore Home Systems, Inc., 2800 Orchard Avenue, McMinnville, OR 97128; (j) Commodore Home Systems, Inc., Route #1, Box 11, Middleburg, PA 17842; (k) Commodore Home Systems, Inc., 1550 Davis Street, Ottawa, KS 60067; (l) Commodore Home Systems, Inc., 13588 Excelsior Drive, Santa Fe Springs, CA 90607; (m) Commodore Home Systems, Inc., P.O. Box 176, Syracuse, IN 46567; (n) Commodore Home Systems, Inc., 2nd & Wake Village Road, Texarkana, TX 75501; (o) Commodore Home Systems, Inc., 11 North County Road 101, Woodland, CA 95695; (p) Commodore Home Systems, Inc., Northeast Industrial Park, Worthington, MN 56178; (q) CC Housing Corporation, Domingo Rt. 60–A, Algodones, New Mexico 87001; (r) Commodore Home Systems, Inc., 475 West First North, Ephraim, UT 84627; (s) Commodore Building Corporation, 400 West Brooklyn, P.O. Box 295, Syracuse, IN 46567; (t) Classic Formed Products, a Division of Commodore Home Systems, Inc., 400 West Brooklyn, P.O. Box 295, Syracuse, IN 46567.

(1) Parent Corporation: Ireco Chemicals, 7th Floor Kennecott Bldg., Salt Lake City, Utah 84133.

(2) Wholly-owned subsidiaries: (i) Ireco Aluminum, incorporated in the State of Utah; (ii) Ireco Canada, Canadian Corporation Inc. in Quebec.

(1) Parent corporation, address of principal executive office, and state of incorporation: Laco Corp., 2052 N. 27th Avenue, Phoenix, Arizona 85009, Incorporated in Arizona.

(2) Wholly-owned subsidiaries which will participate in the operations, and States of incorporation: Deer Valley Enterprises, Incorporated in Arizona; Laco Leasing Corp., Incorporated in Arizona.

(1) Parent corporation and address of principal office: M/A–COM, Inc, South Avenue, Burlington, Massachusetts. M/A–COM, Inc. also does business under the names of Microwave Associates, Inc., MACOMNET, Inc., M/A–COM Labs, Inc., M/A–COM Video Satellite, Inc., and M/A–COM Video Systems, Inc.

(2) Wholly-owned subsidiaries which will participate in the operations and States of incorporation: Alanthus Data Communications Corporation, Delaware; Comm/Scope Corporation, North Carolina; Comm/Scope International Sales, Ltd., North Carolina; Coval Corporation, North Carolina; Currier-Smith Corporation, Massachusetts; Data Communications International, Inc., Delaware; Digital Communications Corporation, Delaware; DCC (International) Inc., Delaware; Lasser Diode Laboratories, Inc., New Jersey; Lawrence Laboratory, Inc., California; Lawrence Laboratory Microwave, Inc., California; M/A–COM LINKABIT, Inc., California; M/A–COM Transportation, Inc., North Carolina (Provider of Compensated intercorporate hauling operations); MACONN, Inc., Connecticut; Microwave Associates International, Inc., Massachusetts; Microwave Power Devices, Inc., New York; MPD Telecommunications, Inc., New York; Ohio Scientific, Inc., Massachusetts; Omni Spectra, Inc., Delaware; Omni Spectra International, Inc., Massachusetts; Power Hybrids, Inc., California; Prodelin, Inc., New Jersey; Sigma Data Computing Corp., Maryland; Sigma Data Services Corporation, Maryland; Trade Services—International, Inc., Massachusetts; Valcom Fiberoptics Incorporated, Delaware.

(1) Parent corporation and address of principal office: Mobile Corporation, 150 E. 42nd Street, New York, New York 10017.

(2) Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation: Container Corporation of America—Delaware; Montgomery Ward & Co., Inc.—Illinois; American Delivery Service Company—Delaware; Jefferson Stores, Inc.—Delaware; Jefferson Ward Stores, Inc.—Delaware; Standard T Chemical Company, Inc.—Delaware; Mobile Oil Corporation—New York; Muehlstein Holding Corporation—Delaware; H. Muehlstein and Co., Inc.—New York; Pasadena Chemical Corporation—Delaware; W. F. Hall Printing Company—Delaware; Chicago Rotoprint Company—Illinois; Hall of Mississippi, Inc.—Delaware; Hall of Tennessee, Inc.—Delaware; W. F. Hall Printing Company of Georgia, Inc.—Delaware.

(1) Parent corporation and address of principal office: The Timken Company, 1835 Dueber Avenue, S.W., Canton, OH 44706.

(2) Wholly-owned subsidiaries which will participate in the operations, and state or province of incorporation: (a) Latrobe Steel Company, Pennsylvania; (b) Canadian Timken, Limited, Ontario, Canada.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–10415 Filed 4–15–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. MC–43]

Motor Carriers; Lease and Interchange of Vehicles by Motor Carriers

Decided: March 31, 1982.

Builders Transport, Inc. (Certificate No. MC–145219) (Permit No. MC–124839) and J&M Transportation Co., Inc. (Certificate No. 115311) petition for waiver of Subpart B (§§ 1057.11 and 1057.12) of the *Lease and Interchange of Vehicles Regulations* (49 CFR Part 1057), with respect to equipment augmented between them.

Findings

1. Petitioners are commonly controlled and jointly administer a common safety program.

2. Petitioners have acceptable fitness records.

3. Greater economy and efficiency would result if the requirements of Subpart B were waived in part.

It is Ordered

1. The petiton of Builders Transport, Inc., and J&M Transportation Co., Inc. for waiver of Subpart B (§§ 1057.11 and 1057.12) is granted, except for paragraph (b) and (c) of § 1057.11, with respect to equipment augmented between them, provided petitioners or their authorized representatives agree in writing that the lessee shall have control and responsibility for the operation of the equipment from the time possession is taken by the lessee and the receipt required under paragraph (b) of § 1057.11 is given to the lessor until the equipment is returned to the lessor and the receipt required under paragraph (b) of § 1057.11 is received by the lessee or the equipment is returned to the lessor or given to another authorized carrier in an interchange of equipment. A copy of the agreement must be carried in the equipment while it is is in the possession of the lessee.

2. The waiver granted in this decision does not affect the application of the leasing regulations to a lease between an owner-operator and the lessor carrier.

By the Motor Carrier Leasing Board, Board Members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-10416 Filed 4-15-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions Restriction Removals; Decision-Notice

Decided: April 9, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian Carrier Applicants

In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC-157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers for Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer.

Agatha L. Mergenovich,

Secretary.

MC 109376 (Sub-25)X, filed April 2, 1982. Applicant: SKINNER TRANSFER CORP., P.O. BOX 284, Reedsburg, WI 53959. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, P.O. Box 5086, Madison, WI 53705-0086. Lead and Sub Nos. 12F, 14F, 18F and 21F: (1) Expand one-way to radial authority; (2) authorize service to all intermediate points in regular route authority in the lead; (3) broaden commodity descriptions: (a) "Food and related products; lumber and wood products; metal products; and machinery" (Poultry, eggs, butter, canned goods, agricultural commodities, lumber, empty cans and containers, sugar, salt and farm machinery) (Lead, Part (1)); (b) "metal products" (cans and can ends) (Lead, Part (2)); (c) "petroleum, natural gas and their products" (petroleum products, in containers; empty petroleum product containers) (Lead, Part (3)); (d) "feed and chemical's and related products" (mill feed and commercial fertilizer) (Lead, Part (4)); (e) "machinery" (farm machinery and farm implements) (Lead, Part (5)); (f) "food and related products" (canned goods, fruits, vegetables and beer) (Lead, Part (6)); (g) "food and related products and machinery" (eggs, poultry, egg cases, feeds, machinery and machine parts) (Lead, Part (7)); (h) "metal products and foundry materials" (ferrous gates, risers, and scrap castings) (Sub 12F) (rough iron and steel castings and foundry materials and supplies) (Sub 14F); (i) "rubber and plastic products" (plastic articles) (Sub 18F); (j) "ores and minerals" (agricultural limestone) (Sub 21F); (4) change city to county-wide authority: (a) Winnebago County, IL and Sauk County, WI (Loves Park, IL and Reedsburg and Sauk City, WI) (Lead, Part (2)), (b) Sauk and Richland Counties, WI (Baraboo, Reedsburg and Richland Center, WI); Lake County, IN and Cook County, IL (East Chicago, IN) (Lead, Part (3)); (c) Cook, DuPage, Kane, Kendall, Lake and Will Counties, IL and Lake, LaPorte and Porter Counties, IN (Chicago, IL) (Lead, Part (4)); (d) Rock Island County, IL and Scott County, IA (Rock Island, IL); Floyd and Blackhawk Counties, IA (Charles City and Waterloo, IA); Anoka, Carver, Dakota, Hennepin, Ramsey and Scott Counties, MN (Minneapolis and St. Paul, MN); Sauk County, WI (Reedsburg, WI) (Lead, Part (5)); (e) Rock Island County, IL and Scott County, IA (Rock Island, IL); Clinton County, IA and Whiteside County, IL (Clinton, IA); Linn, Marshall and Wapello Counties, IA (Cedar Rapids, Marshalltown and Ottamwa, IA) (Lead, Part (6)); (f) Cook, DuPage, Kane, Kendall, Lake and Will Counties, IL and Lake, LaPorte and Porter Counties, IN; Sauk County, WI (Chicago, IL and Reedsburg, WI) (Lead, Part (7)); (g) Sauk County, WI and Dickinson County, MI (Reedsburg, WI and Kingsford, MI) (Sub 12F); (h) Sauk, Milwaukee, Ozaukee, Racine, Waukesha and Washington Counties, WI and Reno and Sedgwick Counties, KS (Reedsburg, Waukesha and Milwaukee, WI and Hutchinson and Wichita, KS) (Sub 14F); (i) Sauk County, WI; Sedgwick County, KS; Walton County, GA; and Geauga County, OH (Baraboo, WI, Wichita, KS; Monroe, GA; and Middlefield, OH and the town of Sumpter, Sauk County, WI) (Sub 18F); (j) Waukesha County, WI (Sussex, WI) (Sub 21F); (5) broaden territories to full-county areas in lieu of radius descriptions: Adams, Columbia, Dane, Iowa, Juneau, Marquette, Monroe, Sauk, Richland and Vernon Counties, WI (points within 25 miles of Reedsburg, WI); (6) eliminate facilities limitations (Lead and Subs 12F, 14F, and 18F); and (7) remove the restriction originating at or destined to (Sub 18F).

MC 123279 (Sub-11)X, filed September 14, 1981, published October 9, 1981, republished as follows: Applicant: CHARTER EXPRESS, INC., 8418 Tallmadge Road, R.D. #6, Ravenna, OH 44266. Representative: William P. Jackson, P.O. Box 1240, Arlington, VA 22210. Applicant seeks to broaden cities to county-wide authority in its lead and Sub-No. 10 certificate as follows: Lead, (1) Wilmington, DE, to New Castle County, DE, Salem and Gloucester Counties, NJ, and Chester and Delaware Counties, PA; (2) Garwood, Hamburg, Hoboken, Mountain View, New Brunswick, and Paterson, NJ, to Union, Hudson, Middlesex, Passaic, Sussex, Bergen, Essex, Mercer, Somerset, Morris, and Monmouth Counties, NJ; (3) Philadelphia, PA to Philadelphia, Bucks, Montgomery, Delaware and Chester Counties, PA, Camden, Hunterdon, Burlington, Mercer, Monmouth, Gloucester and Salem Counties, NJ, and New Castle County, DE; (4) Naugatuck, CT, to New Haven County and Litchfield County, CT; (5) Boston, Fall River, Lawrence and Springfield, MA to Suffolk, Norfolk, Essex, Middlesex, Plymouth, Bristol, Hampden and Hampshire Counties, MA, Bristol and Newport Counties, RI, Hillsborough and Rockingham Counties, NH, and Tolland and Hartford Counties, CT; (6) Elizabeth, Garwood, Newark, and Trenton, NJ, to Union, Middlesex,

Hudson, Essex, Bergen, Passaic, Morris, Somerset, Mercer and Monmouth Counties, NJ, and Bucks County, PA; (7) Buffalo, Chester and Middleport, NY, to Erie, Orange, Niagara, and Orleans Counties, NY; Sub-No. 10, (1) Blissfield, Detroit, Marine City, and Monroe, MI, to Lenawee, Wayne, Oakland, Macomb, Monroe, Washtenaw, St. Clair, Monroe and Essex Counties, MI; (2) Akron, Amherst, Ashtabula, Avon, Birmingham, Bowling Green, Brilliant, Bucyrus, Calcutta, Canton, Cleveland, Columbiana, Conneaut, Costonia, East Liverpool, East Palestine, Elyria, Emprie, Fremont, Fostoria, Knoxville, Lodi, Lorain, Lowellville, McDonald, Mansfield, Martins Ferry, Massillon, Mingo Junction, Newton Falls, New Washington, Niles, North Jackson, Painesville, Port Clinton, Port Homer, Ravenna, Salem, Sandusky, Steubenville, Stratton, Struthers, Toledo, Toronto, Vermilion, Warren, Wellsville, Willard, Wooster, Yorkville and Youngstown, Ohio, to Summit, Medina, Portage, Stark, Wayne, Lorain, Ashtabula, Erie, Wood, Jefferson, Crawford, Columbiana, Cuyahoga, Lake, Seneca, Sandusky, Mahoning, Trumbull, Richland, Belmont, Ottawa, Lucas, Huron and Geauga Counties, OH, Lenawee and Monroe Counties, MI, Beaver, Erie, Lawrence, Mercer and Washington Counties, PA, and Brooke, Hancock and Ohio Counties, WV; (3) Beech Bottom, Benwood, Bethany, Chester, Follansbee, Hancock, Newell, New Cumberland, Wheeling, Weirton, Wellsburg, and West Liberty, WV, to Brooke, Marshall, Hancock, Morgan and Ohio Counties, WY, Jefferson and Belmont Counties, OH, and Beaver and Washington Counties, PA; (4) Ellwood City, Erie, New Castle and Pittsburgh, PA, to Lawrence, Erie, Allegheny, Westmoreland, Beaver, Butler, Armstrong, Fayette, Green and Indiana Counties, PA, Brooke and Hancock Counties, WV, and Jefferson County, OH; (5) Flint, Jackson, Lansing, Pontiac and Saginaw, MI, to Genesee, Jackson, Ingham, Oakland, Saginaw, Shiawassee, Clinton, Easton, Bay and Midland Counties, MI. The purpose of this republication is to correct county omissions in the original notice.

MC 140219 (Sub-1)X, filed March 5, 1982. Applicant: MERRILL TRANSPORT OF VERMONT, INC., 356 Dorset Street, P.O. Box 2146, So. Burlington, VT 05403. Representative: Francis E. Barrett, Jr., Esq., 10 Industrial Park Road, Hingham, MA 02043. Lead, broaden: gasoline, fuel oil, kerosene and petroleum products, in bulk, in tank vehicles, to "commodities in bulk"; to serve all intermediate points on regular route operations; Dracut to Middlesex and Hillsborough Counties, MA, and West Boyleston to Worcester County, MA; and to two-way and radial authority.

MC 141382 (Sub-7)X, filed March 9, 1982. Applicant: DON'S MOVING & DELIVERY SYSTEM, INC., 527 South Fremont, Janesville, WI 53545. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Rd., Madison, WI 53719. Sub 7 certificate: broaden (1) from farm implements and parts to "machinery and related products"; (2) to radial authority; and (3) authorize countywide authority in Rock, Walworth, Green, and Dane Counties, WI, by removing excepted cities.

MC 142350 (Sub-4)X, filed March 29, 1982. Applicant: BEVERAGE TRUCKING, INC., 129 Dudleytown Road, Bloomfield, CT 06002. Representative: Gerald A. Joseloff, 410 Asylum Street, Hartford, CT 06103. Sub 2 certificate, and MC-150186 (Sub 1F) permit: Broaden (1) Sub 2 certificate to "food and related products and containers," from malt beverages and returned empty containers; (2) Sub 1 permit to "such commodities as are dealt in or used by manufacturers, wholesalers and retailers of malt beverages," from malt beverages; (3) to radial authority and countywide authority: Oswego County, NY (South Volney); and (4) Sub 1 permit to "between points in the U.S. (except AK and HI)," under continuing contract(s) with the named shipper.

MC 144209 (Sub-14)X, filed March 29, 1982. Applicant: ERWIN TRUCKING, INC., 4515 North 24th Street, Omaha, NE 68110. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. MC-144209 Subs 3F, 7F and 10F certificates and MC-143462 Sub 3F permit: (1) broaden (a) meats, meat products, meat by-products, and articles distributed by meat packinghouses (except commodities in bulk) to "food and related products (except commodities in bulk)" in Sub 3F certificate; and (b) hydraulic cylinders, hydraulic pumps, hydraulic motors, hydrostatic transmissions, and valves, parts, accessories, and materials, equipment, and supplies used in the manufacture of the commodities above (except in bulk) to "such commodities as are dealt in or used by manufacturers and distributors of hydraulic cylinders, hydraulic pumps, hydraulic motors, hydrostatic transmissions, and valves" in MC-143462 Sub 3F permit; (2) broaden territorial description to between points in the U.S. (except AK and HI) under continuing contract(s) with a named shipper in MC-143462 Sub 3F permit; (3) eliminate the facilities limitations in Subs 3F and 7F certificates; (4) expand Omaha, NE and Council Bluffs, IA to Douglas, Washington and Sarpy Counties, NE and Pottawattamie County, IA in Subs 3F and 7F; and Andover to Essex County, MA; Santa Monica and La Mirado to Los Angeles County, CA; and La Grange Park to Cook County, IL in Sub-No. 10F; (5) change one-way to radial authority in each certificate and (6) remove the following restrictions: originating at and destined to in subs 3F and 7F; except hides in Sub 3F; and except foodstuffs in Sub 10F.

[FR Doc. 82-10417 Filed 4-15-82; 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** 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 exeption 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, Subtitile 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 becomes unopposed) appropriate authorizing documents will be isssued 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 requiements 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 rebutttal 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. OP1-61

Decided: April 6, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 88300 (Sub-39), filed March 29, 1982. Applicant: DIXIE AUTO TRANSPORT COMPANY, 1600 Tallyrand Ave., Jacksonville, FL 32206. Representative: Richard A. Kerwin, 180 North La Salle St. Chicago, IL 60601-2897, (312) 332-5106. Transporting *transportation equipment*, between points in the U.S., under continuing contract(s) with Mazda Motors of America (Central), Inc., of Rancho Dominguez, CA, and Nissan Motor Corporation in U.S.A., of Carson, CA.

MC 119700 (Sub-82), filed March 30, 1982. Applicant: STEEL HAULERS, INC., 306 Ewing, Kansas City, MO 64125. Representative: Lloyd Schottel, (same address as applicant), (816) 241-3965. Transporting *metal products*, between points in AR, on the one hand, and, on the other, points in IL, IN, IA, KS, KY, LA, MI, MN, MO, NE, ND, OH, OK, SD, TX, and WI.

MC 125561 (Sub-6), filed March 31, 1982. Applicant: SUNNYSIDE TRANSFER, INC., P.O. Box 526, 7th & Railroad, Sunnyside, WA 98944. Representative: James M. Peterson, 520 Franklin, Richland, WA 99352, (509) 375-1683. Transporting *furniture*, between Kennewick and Pasco, WA, on the one hand, and, on the other, points in ID, OR, and WA.

MC 125561 (Sub-7), filed March 30, 1982. Applicant: SUNNYSIDE TRANSFER, INC., PO Box 526, 7th & Railroad, Sunnyside, WA 98944. Representative: James M. Peterson, 520 Franklin, Richland, WA 99352, (509) 375-1683. Transporting *general commodities* (except commodities in bulk,, classes A and B explosives, and household goods as defined by the Commission), between points in Benton and Franklin Counties, WA, and Morrow and Umatilla Counties, OR.

MC 128521 (Sub-17), filed March 29, 1982. Applicant: BIRMINGHAM-NASHVILLE EXPRESS, INC., P.O. Box 100417, Nashville, TN 37210. Representative: Stephen L. Edwards, 806 Nashville Bank & Trust Bldg., 315 Union St., Nashville, TN 37201, (615) 244-2926. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Davidson County, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 1, Room 6358.

Note.—Applicant intends to tack this authority with its existing regular-route authority in MC-128521 and Subs.

MC 146360 (Sub-13), filed March 29, 1982. Applicant: GREAT WEST TRANSPORTATION, INC., 110 N. Curtis Road, Boise, ID 83706. Representative: David E. Wishney, PO Box 837, Boise, ID 83701. Transporting *pulp, paper and related products*, between points in Clackamas and Yamhill Counties, OR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146421 (Sub-3), filed March 31, 1982. Applicant: WYATT TRANSFER, INC., P.O. Box 2-N, Richmond, VA 23204. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, DC 20001, (202) 628-9243. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in MD and VA.

MC 146890 (Sub-44), filed March 30, 1982. Applicant: C & E TRANSPORT, INC., d.b.a. C. E. ZUMSTEIN CO., P.O. Box 27, Lewisburg, OH 45338. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, DC 20001, (202) 628-9243. Transporting *General commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Scott Paper Company, of Philadelphia, PA.

MC 147441 (Sub-3), filed March 26, 1982. Applicant: SCENIC MINNESOTA LINES, COMPANY, RR 1, Box 310, Hibbing, MN 55746. Representative: Dennis L., Sears (same address as applicant), (218) 263-4696. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter and special operations, beginning and ending at points in St. Louis, Itasca, Aitken, and Kanabec Counties, MN, and extending to points in the U.S.

MC 148130 (Sub-2), filed March 30, 1982. Applicant: SHARP TRANSPORT, INC., Route 1, Box 20, Ethridge, TN 38456. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004, (202) 347-8862. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S. under continuing contract(s) with Tennessee Fan Co., of Fayetteville, TN.

MC 148650 (Sub-3), filed March 29, 1982. Applicant: NORTHEAST TRANSPORT CO., INC., 630 New County Road, Secaucus, NJ 07094. Representative: Rick A. Rude, Suite 611, 1730 Rhode Island Ave., N.W., Washington, DC 20036, (202) 223-5900. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Storm Printing Company, Division of American Standard Corp., of Menphis, TN.

MC 149500 (Sub-9), filed March 30, 1982. Applicant: INTERMODAL SERVICES, INC., 11650 Courthouse Boulevard, Inver Grove Heights, MN 55075. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542-1121. Transporting (1) *industrial heating, cooling, and heat exchange and transfer machinery, ice making equipment and radiator cores*, and (2) *parts* for the commodities in (1) above, between points in Green Lake County, WI, and Staunton, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151890 (Sub-3), filed March 30, 1982. Applicant: D&T EXPRESS, INC., 4230 Elvis Presley Blvd., Suite 400B, Memphis, TN 38116. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004, (202) 347–8862. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (a) between Nashville, TN, and Los Angeles, CA, from Nashville, TN, over Interstate Hwy 40 to junction Interstate Hwy 17 at or near Flagstaff, AZ, then over Interstate Hwy 17 to junction Interstate Hwy 10, at or near Phoenix, AZ, then over Interstate Hwy 10 to Los Angeles, CA, and return over the same route, and (b) between Memphis, TN, and San Francisco, CA, from Memphis, TN, over U.S. Hwy 63 to junction U.S. Hwy 40, then over U.S. Hwy 40 to San Francisco, CA, and return over the same route, serving all intermediate points in routes (a) and (b) above.

MC 158880 (Sub-2), filed March 29, 1982. Applicant: J & P CORPORATION, d.b.a., J & P TRUCK SERVICE, 802 1st Street South, Nampa, ID 83651. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701, (208) 336–5955. Transporting *food and related products*, (1) between points in ID, on the one hand, and, on the other, points in CA, Multnomah and Washington Counties, OR, and King County, WA; and (2) between points in Multnomah and Washington Counties, OR, on the one hand, and, on the other, points in CA.

MC 160261 (Sub-1), filed March 23, 1982. Applicant: KENTUCKY CONTAINER SERVICE, INC., P.O. Box 4097, Louisville, KY 40204. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, (202) 785–0024. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with KYFI, Incorporated, of Louisville, KY. Condition: Issuance of a permit in this proceeding is conditioned upon the filing by applicant and those in control of applicant of an affidavit to the Secretary's office, explaining what action they have taken to insure that the holding of a permit by applicant would not be proscribed by 49 U.S.C. § 11323, which limits the ownership and control of other carriers by freight forwarders. In order to expedite the processing of this application, please submit a copy of the affidavit to team 1, Room 6358.

MC 160421 (Sub-13), filed March 29, 1982. Applicant: TIGER EXPRESS, INC., 1479 Ripley Street, Lake Station, IN 46405. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. 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).

MC 161241, filed March 29, 1982. Applicant: RONALD E. SPOFFORD AND RONALD DOUGLAS, d.b.a. NORTHSTAR TOURS, Rt. 27, Boothbay, ME 04537. Representative: Ronald E. Spofford (same address as applicant), (207) 633–4237. As a broker, in arranging for the transportation of *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, beginning and ending at points in ME, NH, and MA, and extending to points in the U.S. (except AK and HI).

Volume No. OP2–72

Decided: April 7, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 108473 (Sub-59), filed March 23, 1982. Applicant: ST. JOHNSBURY TRUCKING COMPANY, INC., 87 Jeffrey Ave., Holliston, MA 01746. Representative: Harry J. Jordon, Suite 502, Solar Bldg., 1000 16th St. NW, Washington, DC 20036, 703–783–8131. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with J. C. Penney Company, Incorporated, of New York, NY.

MC 110393 (Sub-39), filed March 16, 1982. Applicant: GEM TRANSPORT, INC., 930 Wall St., Jeffersonville, IN 47130. Representative: Rudy Yessin, 314 Wilkinson St., Frankfort, KY 40601, 502–227–7326. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Armor and Company, of Phoenix, AZ, and Monroe Cheese Corporation, of Monroe, WI.

MC 121293 (Sub-4), filed March 16, 1982. Applicant: PHILIP E. REEDY, d.b.a. VALLEY TRANSFER, Elkhorn, NE 68022. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, 402–397–9900. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of (a) irrigation systems, (b) light poles, (c) heating and cooling systems, (d) sewage and waste treatment systems, (e) steel pipe or tubing, and (f) iron and steel articles, between points in Douglas County, NE, on the one hand, and, on the other, points in MI, IN, WI, IL, MN, IA, MO, SD, KS, OK, WY, and CO.

MC 133843 (Sub-3), filed March 23, 1982. Applicant: ZENITH TRANSPORTATION CORPORATION, 5321 West State St., Milwaukee, WI 53208. Representative: Richard A. Westley, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705–0086, (608) 238–3119. Transporting *petroleum and petroleum products*, between points in the U.S., under continuing contract(s) with United Petroleum Corporation, of Milwaukee, WI.

MC 141652 (Sub-50), filed March 19, 1982. Applicant: ZIP TRUCKING, INC., P.O. Box 6126, Jackson, MS 39208. Representative: K. Edward Wolcott, 1200 Atlanta Gas Light Tower, 235 Peachtree St. NE, Atlanta, GA 30303, 404–522–2322. Transporting *food and related products* (1) between points in CA, ID, WA, and OR, on the one hand, and, on the other, points in AL, CO, FL, GA, LA, MS, NC, OK, SC, TN, and TX, and (2) between points in FL, on the one hand, and, on the other, points in AZ, CA, CO, LA, MS, OK, OR, TN, TX, and WA.

MC 142772 (Sub-11), filed March 23, 1982. Applicant: HRDLICKA ENTERPRISES, INC., Route 7, Box 142, Chippewa Falls, WI 54729. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Link Bros., Inc., of Minong, WI.

MC 151552 (Sub-2), filed March 18, 1982. Applicant: B & B TRANSPORT, INC., P.O. Box 163, Bremen, IN 46506. Representative: Marvin L. Szymkowicz, 1725 I Street, NW., Suite 310, Washington, D.C. 20006, (202) 466–3225. Transporting *coal and coal products, and petroleum, natural gas and their products*, between points in the U.S., under continuing contract(s) with Drake Fuel Service, of Schoolcraft, MI; Miller Fuel Supply, of White Pigeon, MI; Hickmott Oil, Inc., of Decatur, MI; Keister Oil Co., Inc., of Plymouth, IN; Denny Newcomer d/b/a Denny's 66, of Milford, IN; John Bowman d/b/a Zingo Service, of Knox, IN; Fair Oil, Inc. of North Liberty, IN; and Baber Oil Co., of Rochester, IN.

MC 152672 (Sub-8), filed March 19, 1982. Applicant: A. ROGER LEASING, LTD., P. O. Box 268, Coraopolis, PA 15108. Representative: Barry Weintraub, Suite 510, 8133 Leesburg Pike, Vienna, VA 22180, (703) 442–8330. Transporting *metal products* between points in the U.S., under continuing contract(s) with

Copperweld Corporation of Pittsburgh, PA, and its affiliates and subsidiaries.

MC 152763 (Sub-5), filed March 19, 1982. Applicant: EXPRESSCO, INC., 105 Rhine Street, Madison, TN 37115. Representative: Roland M. Lowell, 501 Union Street, 5th Floor, Nashville, TN 37219, (615) 255–0540. Transporting (1) *Metal articles,* and *such commodities* as are dealt in or used by manufacturers and distributors of heating and air conditioning equipment, between points in Davidson, Rutherford, and Warren Counties, TN, on the one hand, and, on the other, those points in and west of ND, SD, NE, KS, OK and TX. (2) *Concrete accessories, shoring and scaffolding,* between Nashville, TN on the one hand, and, on the other, points in the U.S., (except AK and HI).

MC 156403 (Sub-1), filed March 19, 1982. Applicant: J. J. CAMALICK & SONS, INC., 18657 Henry St., Lansing, IL 60438. Representative: Robert C. Collins, Jr., 850 Burnham Ave., Calumet City, IL 60409, 312–862–5800. Transporting *salt, excavated materials, and road building materials,* between points in IL, IN, MI, OH, and WI.

MC 157013 (Sub-1), filed March 12, 1982. Applicant: JAMES ROGERS TRUCKING CO., 4540 East 49th St., Los Angeles, CA 90058. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, 213–945–2745. Transporting *machinery,* between Los Angeles and San Francisco, CA, and Reno, NV, on the one hand, and, on the other, points in AZ, CA, and NV.

MC 157312, filed March 19, 1982. Applicant: ARROW ILLINOIS COMPANY, 8801 S. South Chicago Ave., Chicago, IL 60617. Representative: Donald S. Mullins, 1033 Graceland Ave., Des Plaines, IL 60016, 312–298–1094. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Du Quoin Packing Co., of Du Quoin, IL.

MC 158103, filed March 16, 1982. Applicant: WILLIS TRANSPORTATION, INC., 102 12th St. SE, Ft. Payne, AL 35967. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210, 703–525–4050. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of business machines, between points in the U.S., under continuing contract(s) with NCR Corporation, of Miamisburg, OH.

MC 161043, filed March 16, 1982. Applicant: DISTRON TRANSPORTATION SYSTEMS, INC., 7360 North Kendall Dr., Miami, FL 33156. Representative: Michael F. Morrone, 1150 17th St. NW., Suite 1000, Washington, D.C. 20036, 202–457–1124. Transporting (1) *food and related products,* between points in the U.S., under continuing contract(s) with (a) Vlasic Foods, Inc., of West Bloomfield, MI, (b) Lamb-Weston, Inc., of Portland, OR, (c) Vons Grocery Co., of Los Angeles, CA, (d) Heinz USA, Division of H. J. Heinz Co., of Pittsburgh, PA, (e) McCormick & Co., Inc., of Hunt Valley, MD, (f) Dean Foods Co., and its subsidiaries, of Franklin Park, IL, and (g) Hudson Industries, Inc., of Troy, AL, (2) *paper and related products,* between points in the U.S., under continuing contract(s) with Dopaco, Inc., of Downingtown, PA, (3)(a) *paper and related products,* and (b) *plastic products,* between points in the U.S., under continuing contract(s) with Solo Cup Company, of Urbana, IL, (4) *animal and vegetable shortening,* between points in the U.S., under continuing contract(s) with South Chicago Packaging Co.-Ed Miniat, Inc., of Chicago, IL, and (5) *such commodities* as are dealt in by wholesale and retail stores, between points in the U.S., under continuing contract(s) with Proficient Food Co., of Irvine, CA.

MC 161162, filed March 23, 1982. Applicant: SEITZ TRANSPORTATION, INC., Lake Road and Packers Avenue, St. Joseph, MO 64502. Representative: Philip G. Denver (same as applicant), (816) 238–1771. Transporting *food and related products and textile mill products,* between St. Louis, and St. Joseph, MO; (2) *food and related products and chemicals and related products,* between Des Moines, IA, on the one hand, and, on the other, St. Joseph, MO.

Volume No. OP3–057

Decided: April 9, 1982.

By the Commission Review Board No. 2, members Carleton, Fisher, and Williams, (Member Fisher not participating.)

MC 1515 (Sub-307), filed April 1, 1982. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: R. L. Wilson (same address as applicant), (602) 248–5016. Over regular routes, transporting *passengers and their baggage and express and newspapers,* in the same vehicle with passengers, between the junction of Interstate Hwy 10 and AZ Hwy 90 and the junction of AZ Hwy 90 and U.S. Hwy 80: from the junction of Interstate Hwy 10 and AZ Hwy 90, over AZ Hwy 90 to the junction of U.S. Hwy 80, and return over the same route, serving all intermediate points.

Note.—Applicant intends to tack this authority with its existing authority in MC–1515.

MC 9644 (Sub-18), filed April 1, 1982. Applicant: HAYES TRUCK LINE, INC., 1410 Intercity Trafficway, P.O. Box 4060, Kansas City, MO 64101. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *food and related products,* between the facilities of Swift & Company, at points in Douglas County, NE, on the one hand, and, on the other, points in MO, IL, KY, and TN.

MC 15735 (Sub-42), filed April 1, 1982. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Richard V. Merrill, P.O. Box 4403, Chicago, IL 60680, (312) 681–8378. Transporting *computer equipment,* between points in the U.S. (except AK and HI), under continuing contract(s) with the Triad System Corporation, of Sunnyvale, CA.

MC 19105 (Sub-68), filed March 29, 1982. Applicant: FORBES TRANSFER COMPANY, INC., Post Office Box 3547, Wilson, NC 27893. Representative: Vance T. Forbes, Jr. (same address as applicant), (919) 237–3151. Transporting *general commodities* (except classes A and B explosives, household goods, and liquid commodities in bulk) between the facilities of the United States Gypsum Company, its subsidiaries and affiliates at points in the U.S. on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 22484 (Sub-9), filed April 1, 1982. Applicant: BROWN FROM WABASH, INC., 403 Cass St., Wabash, IN 46992. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *metal products,* between points in Wabash County, IN, on the one hand, and, on the other, points in Cook and Kane Counties, IL and Cuyahoga County, OH.

MC 44605 (Sub-61), filed April 1, 1982. Applicant: MILNE TRUCK LINES, INC., 2500 W. California Ave., Salt Lake City, UT 84104. Representative: Harry J. Jordan, Suite 502, Solar Bldg., 1000 16th St., NW., Washington, DC 20036, (202) 783–8131. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AZ, CA, CO, ID, NV, OR, UT, WA, and WY, on the one hand, and, on the other, points in the U.S.

MC 76074 (Sub-5), filed April 1, 1982. Applicant: DEEHAN'S EXPRESS, INC., 32 O'Brien Ave., Whitman, MA 02382. Representative: Wesley S. Chused, 15 Court Sq., Boston, MA 02108, (617) 742–3530. Transporting (1) *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in

MA, on the one hand, and, on the other, points in CT, DE, ME, MD, NJ, NY, PA and VT and (2) *metal products,* between points in CT, MD, NJ, NY, PA and RI.

MC 124245 (Sub-16), filed March 30, 1982. Applicant: ACE REFRIGERATED TRUCKING SERVICE, INC., 219 East Tutt St., South Bend, IN 46618. Representative: Bernice A. Carney, 3231 Cottonwood Lane, Bremen, IN 46506, (219) 546–3693. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, IN, KY, MI, OH, and WI.

MC 140545 (Sub-1), filed March 31, 1982. Applicant: MIDWEST VAN & STORAGE, INC., 6400 Central Ave., N.E., Minneapolis, MN 55432. Representative: David Earl Tinker, 1000 Connecticut Ave. NW., Suite 1112, Washington, D.C. 20036, (202) 887–5868. Transporting *household goods, furniture and fixtures,* between points in MN, WI, IL, OK, IA, MO, KS, TX, ND, SD and NE.

MC 141614 (Sub-5), filed April 1, 1982. Applicant: J. D. AND BILLY HINES TRUCKING, INC., 1110½ W. First St., Prescott, AR 71857. Representative: J. D. Hines (same address as applicant), (501) 887–6841. Transporting *lumber, wooden pallets and cross ties,* between points in AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148084 (Sub-4), filed March 29, 1982. Applicant: BRYAN MOVING & STORAGE, P.O. Box 95, Beltsville, MD 20705. Representative: David Earl Tinker, 1000 Connecticut Ave. NW., Suite 1112, Washington, D.C. 20036, (202) 887–5868. Transporting *household goods,* beweeen points in MD, VA and DC, on the one hand, and, on the other, points in the U.S.

MC 148175 (Sub-6), filed April 1, 1982. Applicant: ROBERT W. DENTON d.b.a. SPIRIT TRUCKING, 8700 So. Wolf Rd., Hinsdale, IL 60521. Representative: Mary Jo Staben, 9100 W. 47th St., Brookfield, IL 60513, (312) 387–9339. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between Chicago, IL, on the one hand, and, on the other, points in MO, IA, KY and MN.

MC 151374 (Sub-3), filed April 1, 1982. Applicant: CAL-CLEVE, LIMITED d.b.a. DOT-LINE TRANSPORTATION, 8023 E. Slauson Blvd., Montebello, CA 90640. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633, (714) 738–3889. Transporting (1) *paints and paint materials, coatings, wall coverings,* and *chemicals,* between points in the U.S. (except AK and HI), (2) *rubber products,* between points in the U.S. (except AK and HI), (3) *metal products,* between Los Angeles, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI), (4) *paper and paper products,* and *stationery products,* between points in CA, IL, and NY, on the one hand, and, on the other, points in the U.S. (except AK and HI), (5) *food and related products,* between Los Angeles, CA, on the one hand, and, on the other, points in the U.S. (Except AK, HI, ND, SD, and MT), (6) *plastic products,* between points in CA, on the one hand, and, on the other, points in the U.S. (except AK and HI), (7) *such commodities* as are dealt in or used by retail stores and wholesale distributors, between points in the U.S. (except AK and HI), (8) *such commodities* as are dealt in or used by hospitals, medical clinics, and Doctor's offices, between Los Angeles, CA, and points in Washington County, TN, El Paso County, TX, and Pima County, AZ, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (9) *medical supplies,* between points in the U.S. (except AK and HI).

MC 153674 (Sub-2), filed April 1, 1982. Applicant: L. U. CARRIERS, INC., P.O. Box 575, Wilmington, NC 28402. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602, (919) 828–0731. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Wilmington, NC, Charleston, SC, and Norfolk, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 155514 (Sub-1), filed March 29, 1982. Applicant: WAYNE CAUDELL, 305 Fourteenth St., Woodward, OK 73801. Representative: G. Timothy Armstrong, 200 No. Choctaw, P.O. Box 1124, El Reno, OK 73036, (405) 262–1322. Transporting *Mercer commodities,* between points in OK and TX, on the one hand, and, on the other, points in CA, KS, ND, NM, UT and WA.

MC 155594 (Sub-1), filed April 1, 1982. Applicant: SATAN TRUCKING, INC., Route 2, Box 119, Stonewall, OK 74871. Representative: G. Timothy Armstrong, 200 North Choctaw, P.O. Box 1124, El Reno, OK 73036, (405) 262–1322. Transporting *malt beverages and related materials,* between St. Louis, MO, on the one hand, and, on the other, points in OK.

MC 157215, filed April 1, 1982. Applicant: CROSBY & OVERTON, INC., P.O. Box 1085, Kent, WA 98031. Representative: Jim Pitzer, 15 S. Grady Way—Suite 321, Renton, WA 98055, (206) 235–1111. Transporting *hazardous waste materials,* between points in WA, OR, CA, NV, AZ, ID, UT, and MT.

MC 159575, filed April 1, 1982. Applicant: N.R.F. DISTRIBUTORS, INC., P.O. Box 2467, Old Belgrade Rd., Augusta, ME 04330. Representative: Paul J. Lachance (same address as applicant), (207) 622–4744. Transporting (1) *paper articles,* (2) *food containers,* (3) *packing partitions,* and (4) *trays,* between points in the U.S., under continuing contract(s) with Keyes Fibre Co., of Waterville, ME.

MC 160564 (Sub-1), filed April 1, 1982. Applicant: J.R. SPECIAL DELIVERY, INC., P.O. Box 375, Versailles, KY 40383. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602, (502) 227–2254. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Anderson, Bourbon, Boyle, Clark, Fayette, Franklin, Garrard, Jessamine, Madison, Mercer, Scott and Woodford Counties, KY, on the one hand, and, on the other, points in AL, AR, DE, GA, IL, IN, IA, KY, LA, MD, MI, MS, MO, NY, NC, OH, PA, SC, TN, VA, WV and WI.

MC 161245, filed March 30, 1982. Applicant: AMERICAN WAREHOUSE CO., INC., 5150 Colorado Blvd., Denver, CO 80216. Representative: Dale E. Isley, 330 Steele Park Bldg., 50 South Steele St., Denver, CO 80209 (303) 320–6100. Transporting *general commodities* (except classes A and B explosives, hazardous materials, household goods, and commodities in bulk), between points in CO.

MC 161284, filed March 30, 1982. Applicant: MORRIS ROD-WEEDER, LTD., 85 York Rd., Yorkton, Saskatchewan, Canada S3N 2X2. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402 (612) 333–1341. Transporting (1) *machinery,* between ports of entry on the international boundary line between the United States and Canada, at MN, ND, MT, ID, and WA, on the one hand, and, on the other, points in WA, OR, ID, MT, WY, CO, ND, SD, NE, KS, OK, MN, IA, MO, IL, WI, and the Upper Peninsula of MI, and (2) *lumber and wood products,* between points in WA, OR ID, MT, and WY, on the one hand, and, on the other, ports of entry on the international boundary line between the United States and Canada, at MT, ID, WA, and ND.

MC 161295, filed March 30, 1982. Applicant: LIESEL HINGST, d.b.a. BITTERROOT AUTO RETRIEVAL, NW 122 Chief Looking Glass, Florence, MT 59833. Representative: John M. Hingst (same address as applicant) (406) 273–6409. Transporting *used motor vehicles* and *used motor homes,* in driveaway service, between points in ID and MT,

on the one hand, and, on the other, points in the U.S.

MC 161305, filed March 31, 1982. Applicant: R & R TRUCKING, INC., 823 Menominee, Lake In The Hills, IL 60102. Representative: Ronnie E. Darnell (same address as applicant) (312) 496–5254. Transporting *scientific vans* and *industrial chemicals*, between points in the U.S., under continuing contract(s) with NALCO CHEMICAL COMPANY, of Oak Brook, IL.

MC 161314, filed April 1, 1982. Applicant: DONALD DEJNO, d.b.a. DEJNO'S TRUCKING, a Corporation, 11121–63rd Ave., Kenosha, WI 53142. Representative: Daniel R. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203 (414) 273–7410. Transporting (1) *such commodities* as are dealt in or used by manufacturers of wood products, between points in the U.S., under continuing contract(s) with Rodman Industries, Inc., of Marinette, WI, and (2) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Koos, Inc., of Kenosha, WI.

MC 161315, filed April 1, 1982. Applicant: GREEN STREAK SERVICES, INC., 101 North 2nd St., Suite 201, Mankato, MN 55001. Representative: Jerry E. Hess, P.O. Box 43640, St. Paul, MN 55164 (612) 633–7911. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 161324, filed April 1, 1982. Applicant: P & S OILFIELD TRUCKING, INC., 3225 S.W. 19th St., Oklahoma City, OK 73109. Representative: Greg E. Summy, 208 Century Center Plaza, 100 W. Main St., Oklahoma City, OK 73102 (405) 235–3661. Transporting *Mercer commodities*, between points in OK, on the one hand, and, on the other, points in AL, AR, CA, CO, IL, IN, KS, KY, LA, MI, MS, MT, NE, NM, ND, OH, PA, SD, TN, TX, UT, WV, and WY.

MC 161325, filed April 1, 1982. Applicant: LARRY GREEN, d.b.a. LARRY GREEN TRUCKING, 3312 Mobile Highway, Montgomery, AL 36108. Representative: Robert S. Richard, 57 Adams Avenue, Montgomery, AL 36104, (205) 262–1671. Transporting *pre-fabricated metal buildings and components thereof, steel coils, and steel flat bars*, between points in the U.S., under continuing contract(s) with OSI, Inc., of Montgomery, AL.

MC 161334, filed April 2, 1982. Applicant: MONTCLIFF TRUCKING CO., a Corporation, 7109 S. Alameda St., Los Angeles, CA 90001. Representative: Monte A. Alexander (same address as applicant) (213) 581–8244. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CA and AZ.

MC 161335, filed April 2, 1982. Applicant: INDEPENDENT TRUCKING COMPANY, INC., 15730 Beaumont Hwy., Houston, TX 77049. Representative: Jeff W. Autrey, P.O. Drawer 1963, Austin, TX 78701, (512) 473–8600. Transporting *metal products* between points in the U.S. (except AK and HI), on the one hand, and, on the other, points in AR, NM, OK, LA, TX, WY, KS, MS, and CO.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-10418 Filed 4-15-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-341N)]

Conrail Abandonment Between Minerva and Hopedale, OH; Correction

The above captioned proceeding published at 47 FR 15668 on April 12, 1982, should be disregarded. This document was prematurely published, as an independent appraisal of the line is being done in accordance with the decision served March 11, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-10536 Filed 4-15-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-7258]

Dana Corp., Marion, Indiana; Determination of Further Reconsideration

Some of the workers who were denied certification in the above-cited case have appealed to the U.S. Court of International Trade (Abbott v. Secretary of Labor, USCIT No. 81–1–00028). By order dated February 11, 1982, the Court remanded the case to the Secretary of Labor "for administrative reconsideration in light of plaintiffs' offer to new evidence."

Plaintiffs' alleged new evidence consists of three Indiana Employment Security Division Appellate Section Decisions concerning which workers are covered by the Sectretary of Labor's certification in this case.

The Department of Labor has carefully considered the Indiana decisions as well as the following evidence: (1) Answers by the Dana Corporation to the Department's requests for information on such topics as articles produced, amount of production, sales, inventory, numbers of employees and hours worked, labor turnover and labor costs; (2) information supplied by the petitioners including plant layout and functions by department; (3) industry data from the Department of Commerce and elsewhere; and (4) the Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance, Dana Corporation, Marion, Indiana, TA–W–7258, issued on May 30, 1980; the Notice of Affirmative Determination Regarding Application for Reconsideration issued on August 4, 1980; the memorandum on the Clarification of the Certification for Certain Workers of Dana Corporation, Marion, Indiana, TA–W–7258, from the Director of the Department's Office of Trade Adjustment Assistance to the Director of the Department's Office of Program Management, Unemployment Insurance Service, dated August 28, 1980; and the Negative Determination on reconsideration, published in the **Federal Register** on September 19, 1980 (45 FR 62584).

The Department finds that there is no new evidence in the Indiana Decisions which is relevant to the determination of this case pursuant to section 223 of the Trade Act of 1974.

The Department finds that the relevant facts are as follows:

The Marion, Indiana Plant of Dana Corporation produced a variety of auto components including universal joints, drive shafts, journal crosses, bearing races, sleeves, mid-ship stubs, end yokes, stub shafts, bolts, and lock straps.

Workers in Department 225 of the Marion Plant produced bearing races and workers in Department 230 produced journal crosses. Dana Corporation imported identical articles and, during the relevant time period, the company increased such imports. In proportion to the numbers of bearing races and journal crosses produced at the Marion Plant, company imports of these articles were significant. Increases in company imports of these articles were also significant. The increased company imports were associated with decreased Marion production of bearing races and journal crosses. These imports displaced their Marion counterparts.

Therefore, the Department finds that, within the meaning of the Trade Act of 1974, increased company imports of bearing races and journal crosses "contributed importantly" to the layoffs of Marion Plant workers who produced those articles.

Workers in the service departments of the Marion Plant performed, "ancillary and support services," in the words of the Indiana Decisions, "not directly involved with the actual production of the [import-impacted articles]" *(C. 1 Antrim 81 TRA–837 Dana Corporation).* "But for the performance of [these] ancillary function[s] no journal crosses or bearing races could be produced" *[Id].* The Department of Labor agrees. However, in order to certify the service workers, the Department must also find that they devoted a substantial amount of their activity to servicing Departments 225 and 230, i.e., that there was an important causal nexus between increased imports and the layoff of service workers. The Department has for five years used a 25 percent standard to define the expression, "substantial amount of their activity", namely that at least that proportion of the supporting workers' activity was directly related to the production of the import-affected article(s). At the Dana Corporation, Marion Plant, direct labor costs attributable to journal cross and bearing race production were significantly less than 25 percent of direct labor costs for total component production. In other words, the contribution of the service departments to Departments 225 and 230 accounts for significantly less than 25 percent of their contribution to all products in the Marion Plant. The Department finds that these support activities are not substantially integrated into the production of the two import-impacted articles and that, therefore, increased imports did not "contribute importantly" to the layoffs among workers in the service departments.

Finally, the Department finds that there is no basis for certifying workers producing the other components, or any other workers at the Marion Plant.

Conclusion

After careful consideration of the evidence, I conclude that increases of imports of articles like or directly competitive with journal crosses and bearing races produced at the Marion, Indiana Plant of the Dana Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

"All workers in Department 225 (bearing races) and Department 230 (journal crosses) of the Marion, Indiana Plant of the Dana Corporation who became totally or partially separated from employment on or after June 1, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 9th day of April 1982.

Robert A. Schaerfl,

Director, Office of Program Management, Unemployment Insurance Service, Employment and Training Administration, Department of Labor.

[FR Doc. 82–10433 Filed 4–15–82; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

[V–82–1]

Occupational Exposure to Lead, New Trigger Levels for Medical Removal Protection

AGENCY: Occupational Safety and Health Administration Labor.

ACTION: (1) Notice of applications for temporary variance and interim order.

(2) Grants of interim order.

SUMMARY: This notice announces the applications of 7 companies for temporary variance and interim order from the standards prescribed in 29 CFR 1910.1025(k)(1)(i)(C) and 29 CFR 1910.1025(k)(1)(iii)(A)(3), Medical Removal Protection, of the Occupational Standard for Exposure to Lead. It also announces the granting of the interim orders until a decision is rendered on the applications for temporary variance.

DATES: The interim orders shall become effective for the 7 companies on April 16, 1982. The last date for interested persons to submit comments on the variance applications is May 17, 1982. The date for affected employers and employees to request a hearing is May 17, 1982.

ADDRESSES: Send written comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3662, Third Street and Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, at the above address, telephone (202) 523–7183, or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036

U.S. Department of Labor—OSHA, 185 Montague Street, 2nd Floor, Brooklyn, New York 11201

U.S. Department of Labor—OSHA, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104

U.S. Department of Labor—OSHA, Room 242, U.S. Customs House, Second & Chestnut Streets, Philadelphia, Pennsylvania 19106

U.S. Department of Labor—OSHA, 1375 Peachtree Street, N.E., Suite 587, Atlanta, Georgia 30367

U.S. Department of Labor—OSHA, Todd Mall, 2047 Canyon Road, Birmingham, Alabama 35216

U.S. Department of Labor—OSHA, 700 Twiggs Street, Room 624, Tampa, Florida 33602

U.S. Department of Labor—OSHA, 32nd Floor, Room 3244, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Department of Labor—OSHA, 1400 Torrence Avenue, 2nd Floor, Calumet City, Illinois 60409

U.S. Department of Labor—OSHA, Federal Office Building, Room 899, 1240 East 9th Street, Cleveland, Ohio 44199

SUPPLEMENTARY INFORMATION: On July 23, 1981, 46 FR 37891, the Occupational Safety and Health Administration (OSHA) denied petitions for stay of the new trigger levels for medical removal protection (MRP) under the lead standard for primary and secondary smelters and battery manufacturers. The petitions were based upon an assertion that the companies would be unable to fully comply with the MRP provisions because of the anticipated removal and resulting unavailability of certain employees under the 60/40 triggers of MRP. The petitions were denied because the data submitted by the industries involved did not support a conclusion that there was a general industry-wide inability to comply with the MRP provisions of the lead standard. Thus, the available evidence did not demonstrate a need for any industry-wide stays of the MRP triggers. However, OSHA did find that on a plant-by-plant basis, there were some feasibility problems. Thus, OSHA announced that the temporary variance and interim order mechanism, set forth in section 6(b)(6)(A) of the OSHA Act and covered by regulations in 29 CFR Part 1905, would be used to afford relief to lead smelting and battery companies on a plant-by-plant basis, if warranted. Therefore, in the July 23, 1981 **Federal Register** notice, OSHA granted conditional interim orders to certain primary and secondary lead smelting and battery manufacturing companies

who had already submitted data indicating severe problems in coming into compliance with the new triggers. The notice incorporated the criteria for determining who would be eligible for the final grant of interim order. Nineteen companies listed in the July 23, 1981 **Federal Register** notice were granted final interim orders on October 2, 1981 (46 FR 48654).

OSHA also invited other primary and secondary lead smelting and battery manufacturing companies whose plants met the following criteria, as set forth in the July 23, 1981 **Federal Register** notice, to apply for a temporary variance and an interim order:

(1) Plants where 10% or more of the total supervisory/maintenance/skilled employees have to be removed from lead exposure because of blood-lead levels between 60–70 μg/100g, and plants below the 10% figure that show by compelling evidence that this relief is needed.

(2) Eligible companies who submitted to OSHA by September 1, 1981, the following:

(a) An application for a temporary variance and an interim order;

(b) Written acceptance of the conditions and requirements of the interim order;

(c) Certification that affected employees had been notified of the variance application and of their right to petition the Assistant Secretary for a hearing; and,

(d) Certain data to support their application for temporary variance.

Twenty-one companies that met the above criteria were granted interim orders on February 26, 1982 (47 FR 8431).

Where granted, the interim orders temporarily relieve those facilities from complying with the 60 μg/100g removal and 40 μg/100g return trigger levels, but obligate them to comply with the 70/50 μg/100g triggers, all other provisions of the lead standard, and the conditions and requirements of the order.

Notice of Applications

Notice is hereby given that 7 companies have made application pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.10 for a temporary variance, and an interim order pending a decision on the variance, from the following medical removal protection (MRP) provisions of the lead standard:

29 CFR 1910.1025(k)(1)(i)(C) which states that an employer shall remove an employee from work having an exposure to lead at or above the 30 $\mu g/m^3$ action level on each occasion that a periodic and a follow-up blood sample test indicate that the employees blood-lead is at or above 60 μg/100g of whole blood; and,

29 CFR 1910.1025(k)(1)(iii)(A)(3) which states that an employer shall return the employee to his or her former job status when two consecutive blood sampling tests indicate that the employee's blood-lead is at or below 40 μg/100g of whole blood.

The purpose of the standards is to provide temporary medical removal for a worker with substantially elevated blood-lead levels.

The name and address of each plant that will be affected by the applications are as follows:

Secondary Smelters

Franklin Smelting and Refining Company, Castor Avenue East of Richmond Street, Philadelphia, Pennsylvania 19134

ILCO, Incorporated, P.O. Box 276, Leeds, Alabama 35094

Inland Metals Refining Company, 651 East 119th Street, Chicago, Illinois 60628

Master Metals, Incorporated, 2850 West Third Street, Cleveland, Ohio 4413

Non Ferrous Processing Corporation, 551 Stewart Avenue Brooklyn, New York 11222

Taracorp Industries, 7753 West 47th Street, McCook, Illinois 60525

Battery Manufacturer

Chloride Batteries, 200 South Faulkenburg Road, Brandon, Florida 33610

The applicants certify that employees who would be affected by the variance have been notified of the applicants by providing copies to their authorized employee representatives, and by posting copies at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing. The applicants further certify that they accept the conditions and requirements of the interim order published in the **Federal Register** of July 23, 1981, which obligates them to continue to comply with 70/50 μg/100g triggers in §§ 1910.1025(k)(1)(i)(B) and (k)(1)(iii)(A)(2) and all other provisions of the lead standards, in lieu of complying with the present 60/40 μg/100g triggers. In addition, each applicant has submitted all of the data requested in support of each application for temporary variance.

Regarding the merits of the applications, the applicants contend that the implementation of the new 60 μg/100g removal and 40 μg/100g return triggers of the lead standard is infeasible because of the following reasons:

(1) The 60/40 triggers will require for the first time, the removal of many "supervisory" and "highly skilled" employees whose blood-lead levels allegedly tend to fall in the 60–70 μg/100g range;

(2) Their removal will be prolonged beyond OSHA's original expectations in order for their blood-leads to drop to the 40 μg/100g return level;

(3) Since these employees are highly paid, crucially positioned, and extremely difficult to replace, putting them on MRP not only will be costly, but also can result in reduced production and a less safe and healthful workplace; and,

(4) The 60/40 triggers will require the removal of many production workers as well, thus adding to the cost of MRP. In combination, these factors assertedly will make implementation of the new triggers infeasible.

Copies of the applications for variance will be made available for inspection and copying upon request at the location listed above. All interested persons, including employers and employees, who believe they would be affected by the grant or denial of the application for variance are invited to submit written data, views, and arguments relating to the application no later than May 17, 1982. In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application no later than May 17, 1982, in conformity with the requirements of 29 CFR 1905.15. Submission of written comments and request for a hearing should be in quadruplicate, and must be addressed to the Officer of Variance Determination at the above address.

Grants of Interim Order

It appears from the applications and supporting data that interim orders are necessary to prevent undue hardship on the applicants and their employees pending decisions on the variance. Therefore, it is ordered, pursuant to the authority in section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970, in the Secretary of Labor's Order No. 8–76 (41 FR 25059), and in 29 CFR Part 1905, that the plants listed above are hereby authorized to comply with the requirements of the interim order set forth below, with respect to their supervisory, skilled, and maintenance employees, in lieu of complying with the requirements of 29 CFR 1910.1025(k)(l)(i)(C) and 29 CFR 1910.1025(k)(l)(iii)(A)(3). All other provisions of the lead standard are unaffected by this order and therefore must be complied with in conjunction with the terms of this order.

The terms of the interim order are as follows:

(1) As presently required by 29 CFR 1910.1025(j)(2) of the lead standard, employers shall perform blood-lead and zinc protoporphyrin (ZPP) tests every two months on each employee whose last blood test indicated a blood-lead level at or above 40 μg/100g and who is exposed to lead above the action level of 30 $\mu g/m^3$

(2) Employers shall remove and return all employees with blood-lead levels at or above 70 μg/100g in accordance with the provisions of Section 1910.1025(k)(l)(i)(B) and 1910.1025(k)(l)(iii)(A)(2) of the lead standard, except that removal shall be to areas where lead exposure is below 30 $\mu g/m^3$.

(3) For employees with blood-lead levels between 60–70 μg/100g, who work in jobs having airborne lead exposure at or above 30 $\mu g/m^3$, the employer shall provide:

(a) A personal consultation with a licensed physician every two months; and,

(b) A comprehensive medical examination by a licensed physician every six months.

(4) After both the personal consultation and the comprehensive medical examination, the physican shall make a written determination as to whether the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead. If the employee is determined to have such a condition, he or she shall be removed from work having an exposure to lead at or above 30 $\mu g/m^3$.

(5) For employees with blood-lead levels at or above 60 μg/100g who are working in areas with air-lead levels at or above 30 $\mu g/m^3$, respirator usage shall be mandatory during the entire workshift.

(6) For all employees with blood-lead levels at or above 60 μg/100g who need not be removed under the terms of this order, the employer shall make an immediate inspection and evaluation of:

(a) The lead-related work practices affecting the employee;

(b) The employee's respirator usage; and,

(c) The use and availability of hygiene facilities, and the employee's relevant personal hygiene habits.

Based on that inspection and evaluation, the employer shall take all reasonable and appropriate corrective steps in these regards to reduce the employee's absorption of lead.

(7) The employer shall agree to allow OSHA to inspect its premises in connection with this variance application and this interim order.

Effective date: This order shall become effective on April 16, 1982.

As soon as possible, the following companies shall give notice of this grant of interim order to all affected employees by the same means required to be used to inform them of the applicatin for variance:

Chloride Batteries
Franklin Smelting and Refining Company
ILCO, Incorporated
Inland Metals Refining Company
Master Metals, Incorporated
Non Ferrous Processing Corporation
Taracorp Industries

The Assistant Secretary may revoke this order at any time if the applicant does not comply with any requirement of the order or the relevant standards, or if other information indicates that revocation of the interim order is warranted. Unless revoked, the interim order will remain in effect until a decision is made on the applications for variance.

Signed at Washington, D.C., this 13th day of April 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 82-10434 Filed 4-15-82; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 82-63; (Exemption Application No. D-2488)]

Class Exemption To Permit Payment of Compensation To Plan Fiduciaries for the Provision of Securities Lending Services

Correction

In FR Doc. 82-9168, published at page 14804, on Tuesday, April 6, 1982, make the following corrections:

1. On page 14806, in the third column, in the first paragraph under *"F' Indemnification Agreements", in the ninth line "that Final" should be corrected to read "that the final".*

2. On page 14807, in the second column, in the first and third lines "4075" should be corrected to read "4975".

BILLING CODE 1505-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel: Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, NW, Washington, D.C. 20506;

Date: May 13–14, 1982
Time: 9 a.m. to 5:30 p.m.
Room: 1134
Program: This meeting will review applications submitted for General Research Conferences Panel, Division of Research Programs, for projects beginning after October 1, 1982
Date: May 20–21, 1982
Time 9 a.m. to 5:30 p.m.
Room 1134
Program: This meeting will review applications submitted for General Research: State, Local, and Regional Panel, Division of Research Programs, for projects beginning after October 1, 1982.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation of applications for financial assistance under the National Foundation of the Arts and the Humanities Act of 1965, as amended including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that it likely to disclose:

(1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(3) Information the disclosure of which would significantly frustrate implementation of proposed agency action;

Pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724-0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 82-10484 Filed 4-15-82; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 30-6931-SP; 50-170-OL]

Armed Forces Radiobiology Research Institute (AFRRI Cobalt 60 Storage Facility) and (AFRRI Triga Mark Nuclear Reactor); Reconstitution of the Board

Pursuant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for Armed Forces Radiobiology Research Institute (AFRRI Cobalt 60 Storage Facility), docket No. 30-6931-SP and (AFRRI Triga Mark Nuclear Reactor), Docket No. 50-170-OL, is hereby reconstituted by appointing the following Administrative Judge to the Board: Mrs. Helen Hoyt. Mr. Louis J. Carter, former chairman of this Board, because of schedule conflicts is unable to continue to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

Mrs. Helen Hoyt, Chairman
Mr. Ernest E. Hill
Dr. David R. Schink

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Judge Helen Hoyt, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Md., this 8th day of April 1982.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 82-10443 Filed 4-15-82; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270, and 50-287]

Duke Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 110, 110 and 107 to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, issued to Duke Power Company, which revised the Technical Specifications (TSs) for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina. The amendments are effective as of the date of issuance.

These amendments revise the TSs to include the Emergency Feedwater System (EFWS) automatic initiation circuitry testing requirements, clarify the testing requirements for the Anticipatory Reactor Trip from Loss of Main Feedwater, and require an EFWS flow test.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated December 7, 1981, (2) Amendments Nos. 110, 110, and 107 to Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director of Licensing.

Dated at Bethesda, Md., this 8th day of April 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-10444 Filed 4-15-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power & Light Co.; Issuance of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 83 to Facility Operating License No. DPR-31, and Amendment No. 77 to Facility Operating License No. DPR-41 issued to Florida Power and Light Company (the licensee), which revised Technical Specifications for operation of Turkey Point Plant, Unit Nos. 3 and 4 (the facilities) located in Dade County, Florida. The amendments are effective as of the date of issuance.

The amendments update the Technical Specifications for the containment and control room filter systems which are part of the engineered safety features of the plant.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commissions's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For futher details with respect to this action, see (1) the application for amendments dated January 18, 1982, (2) Amendment Nos. 83 and 77 to License Nos. DPR-31 and DPR-41, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 9th day of April 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-10445 Filed 4-15-82; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

Notice of Visit

April 12, 1982.

Notice is hereby given that Chairman Steiger, Commissioners Bright, Crutcher,

Duffy, and Folsom, and a number of Commission staff members will receive an orientation by United Parcel Service staff on UPS operations followed by a tour of the UPS facility in Baltimore, MD, on Thursday, April 22, 1982.

A report will be on file in the Commission's Docket Room.

David F. Harris,

Secretary.

[FR Doc. 82-10377 Filed 4-15-82; 8:45 am]

BILLING CODE 7715-01-M

SMALL BUSINESS ADMINISTRATION

Region III Advisory Council; Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, Virginia, will hold a public meeting at 1:00 p.m., Tuesday, May 4, 1982 through noon on Wednesday, May 5, 1982 at The John Marshall Hotel, Richmond, Virginia, by members and the staff of the Small Business Administration or others attending.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, P.O. Box 10126, Richmond, Virginia 23240, (804) 771-2741.

Dated: April 8, 1982.

Edna E. Powers,

Director, Office of Advisory Councils.

[FR Doc. 82-10447 Filed 4-15-82; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Philadelphia will hold a public meeting at 8:00 a.m., on Tuesday, May 4, 1982 at the Center City Holiday Inn in Harrisburg, Pennsylvania to discuss such matters as may be presented by members and staff of the Small Business Administration, or others attending.

For further information, write or call William T. Gennetti, District Director, U.S. Small Business Administration, One Bala Cynwyd Plaza, Suite 400—East Lobby, 231 St. Asaphs Road, Bala Cynwyd, Pennsylvania 19004, (215) 596-5801.

Dated: April 9, 1982.

Edna E. Powers,

Director, Office of Advisory Councils.

[FR Doc. 82-10448 Filed 4-15-82; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Pittsburgh, will hold a public meeting at 8:00 a.m., on Tuesday, May 4, 1982 at the Center City Holiday Inn in Harrisburg, Pennsylvania to discuss such matters as may be presented by members and staff of the Small Business Administration, or others attending.

For further information, write or call David P. Malone, Acting District Director, U.S. Small Business Administration, Convention Tower Building, 5th Floor, 960 Pennsylvania Avenue, Pittsburgh, Pennsylvania 15222, (412) 644-2784.

Dated: April 9, 1982.

Edna E. Powers,

Director, Office of Advisory Councils.

[FR Doc. 82-10449 Filed 4-15-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0419]

Risa Capital Associates; Issuance of a License To Operate as a Small Business Investment Company

On February 2, 1981, a Notice was published in the **Federal Register** (46 FR 10264) stating that Risa Capital Associates, 1233 Walt Whitman Road, Melville, New York 11743, had filed an application with the Small Business Administration pursuant to § 107.102 of the SBA Rules and Regulations governing small business investment companies (13 CFR 107.102 (1981)), for a license to operate as a small business investment company.

Interested parties were given until the close of business February 17, 1981, to submit their comments. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA on March 26, 1982, issued License No. 02/02-0419 to Risa Capital Associates, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 9, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-10446 Filed 4-15-82; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 74
Friday, April 16, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Commodity Futures Trading Commission	1
Equal Employment Opportunity Commission	2
Federal Communications Commission	3
Federal Reserve System (Board of Governors)	4
National Credit Union Administration	5-6
Securities and Exchange Commission	7
Tennessee Valley Authority	8

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:30 p.m., Tuesday, April 20, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., fifth floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

* * * * *

TIME AND DATE: 2 p.m., Tuesday, April 20, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Commission Consideration of the Chicago Mercantile Exchange Proposed Contract Market Designation of the Standard and Poors Stock Index.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-555-82 Filed 4-14-82; 1:11 pm]

BILLING CODE 6351-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time), Tuesday, April 20, 1982.

PLACE: Commission Conference Room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open:

1. Ratification of Notation Votes: Extension of contracts in connection with court cases.
2. Freedom of Information Act Appeal No. 81-1-FOIA-003-IN, concerning a request for documents from a Closed ADEA Complaint file.
3. Proposed Section 40 of Compliance Manual: Review for Litigation Worthiness and Issuance of Cause Determination.
4. A Report on Commission Operations by the Executive Director.

Closed:

1. Litigation Authorization; General Counsel Recommendations.
2. Proposed DOL Affirmative Action Regulations.

Note.— Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Officer, Executive Secretariat; (202) 634-6748.

This Notice Issued April 13, 1982.

[S-553-82 Filed 4-14-82; 10:40 am]

BILLING CODE 6570-06-M

3

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From April 14th Open Meeting

The following item has been deleted at the request of the Cable Television Bureau from the list of agenda items scheduled for consideration at the April 14, 1982, Open Meeting and previously listed in the Commission's Notice of April 7, 1982.

Agenda, Item No., and Subject

Cable Television—1—*Title:* "Application for review" (CSR-1860, 1873) filed December 4, 1981, by King Broadcasting Company, licensee of Station KGW-TV (NBC, Channel 8), Portland, Oregon. *Summary:* King Broadcasting Company, licensee of station KGW-TV (NBC, Channel 8), Portland, Oregon, seeks Commission review of the action taken by the Chief of the Cable Television Bureau in *KOIN-TV, Inc.* (Portland, Oregon), Mineo No. 299, 50 RR 2d 715 (1981).

Issued: April 13, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-559-82 Filed 4-14-82; 3:32 pm]

BILLING CODE 6712-01-M

4

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 2:30 p.m., Wednesday, April 21, 1982.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Request by the General Accounting Office for Board comment on a draft report concerning ancillary activities of depository institutions.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: April 13, 1982.

James McAfee,

Associate Secretary of the Board.

[S-552-82 Filed 4-13-82; 4:34 pm]

BILLING CODE 6210-01-M

5

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, April 21, 1982.

PLACE: Seventh floor board room, 1776 G Street N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility Lending Rate.
2. Final Rule to Deregulate Part 70135, NCUA Rules and Regulations, Share, Share Draft and Share Certificate Accounts.
3. Memorandum of Understanding Between the National Association of State Credit Union Supervisors and the National Credit Union Administration.
4. Revised Policy on Liquidation Payout Priorities.
5. Final Rule to Eliminate Section 701.32 NCUA Rules and Regulations, Payment on Shares by Public Units.
6. Final Rule Revising Part 748, NCUA Rules and Regulations, Minimum Security Devices and Procedures.
7. Clarification of Merger Delegation Previously Granted Regional Directors.
8. Charter Application of Proposed Kentucky Corporate Federal Credit Union.
9. Applications for Charters, Amendments to Charters, Bylaw Amendments, Mergers that may be pending at that time.

RECESS: 10:30 a.m.

TIME AND DATE: 10:45 a.m., Wednesday, April 21, 1982.

PLACE: Seventh floor board room, 1776 G Street N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Adjudications. Closed pursuant to exemptions (8), (9)(A)(ii), and (10).
2. Requests from Federally insured Credit Unions for Special Assistance Under Section 208(a)(1) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Requests for Mergers with Special Assistance under Section 208(a)(2) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Requests for Purchase and Assumption with Special Assistance under Section 208(a)(2) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

[S-558-82 Filed 4-14-82; 3:32 pm]

BILLING CODE 7535-01-M

6

NATIONAL CREDIT UNION ADMINISTRATION

Changes in Subject of Meeting

The National Credit Union Administration Board determined that its business required that the previously announced open meeting on April 1, 1982 include additional items, which were open to public observation:

Added: Policy permitting a Federal Credit Union to purchase the loans of a liquidating credit union and offer membership to those whose loans were purchased.

Added: Proposed chartering policy for community charters and mergers and delegations of authority.

Added: Proposed chartering policy for occupational charters and delegation of authority.

Earlier announcement of these changes was not possible.

The previously announced items were:

1. Review of Central Liquidity Facility lending rate.
2. Central Liquidity Facility FY 1982 Second Quarter Dividend.
3. Federal Financial Institutions Examination Council (FFEIC) Policy for Classification of Consumer Installment Credit Based on Delinquency Status.
4. Applications for charters, amendments to charters, bylaw amendments, mergers that may be pending at that time.

The meeting was held at 9:30 a.m., in the seventh floor board room, 1776 G Street, N.W., Washington, D.C.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

[S-557-82 Filed 4-14-82; 3:32 pm]

BILLING CODE 7535-01-M

7

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

SECURITIES AND EXCHANGE COMMISSION

To be published.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, April 5, 1982.

CHANGES IN THE MEETING: Additional items. The following additional item was considered at a closed meeting on Tuesday, April 6, 1982, at 10:00 a.m.:

Regulatory matter bearing enforcement implications.

The subject matter of the open meeting (item #2) scheduled for Thursday, April 15, 1982, at 9:30 a.m., will also include:

Consideration of whether to publish a topical index to its Accounting Series Releases involving enforcement matters and institution of a series of Accounting and Auditing Enforcement Releases. For further information, please contact George Diacont at (202) 272-2130.

Chairman Shad and Commissioners Loomis, Thomas and Longstreth determined by vote that Commission business required consideration of these matters and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jerry Marlatt at (202) 272-2092.

April 13, 1982.

[S-554-82 Filed 4-14-82; 1:07 pm]

BILLING CODE 8010-01-M

8

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1287]

TIME AND DATE: 10:15 a.m. (e.s.t.), Wednesday, April 21, 1982.

PLACE: Conference room B-32, West Tower; 400 West Summit Hill Drive; Knoxville, Tennessee.

STATUS: Open.

Action Items

B—Purchase Awards
1. Amendment to Contract 69P-87-T1 providing for acquisition of Peabody's assets in the Camp Breckinridge Project in west Kentucky and for retention of Peabody as operator of the Camp Breckinridge Complex.

C—Power Items
1. Renewal power contract with Mayfield, Kentucky.
2. Supplement to agreement between TVA and Electric Power Research Institute (EPRI) providing for continuation of the Electric Vehicle Demonstration Program.

D—Personnel Items
1. Contract with Coopers & Lybrand, New York, New York, for audit of TVA's financial statements for fiscal year 1982, requested by the Division of Finance.

E—Real Property Transactions
1. Filing of condemnation suits.
2. Land exchange affecting approximately 65 acres of land on Chatuge Reservoir previously transferred by TVA to the United States Department of Agriculture for the use and benefit of the Forest Service, 143.55 acres of United States Forest Service Land, and 220.55 acres of privately owned land in Union County, Georgia.
3. Sale of permanent easement to the State of Tennessee for construction, operation, and maintenance of a highway, affecting 0.1 acre of Ocoee No. 1 Reservoir land in Polk County, Tennessee—Tract No. XOCR-4H.
4. Resolution designating 5.13 acres of Muscle Shoals reservation land, in Colbert County, Alabama, as surplus and for sale at public auction—Tract No. X2NPT-10.

F—Unclassified
1. Request from Charles C. Wallace for permission to file for patents on inventions conceived by him by virtue of his employment by TVA.
2. Changes in designation of certifying officers authorized to approve payments made by TVA.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: April 14, 1982.

S-556-82 Filed 4-14-82; 2:33 pm]

BILLING CODE 8120-01-M

federal register

Friday
April 16, 1982

Part II

Reader Aids

List of Libraries That Have Announced Availability of Federal Register and Code of Federal Regulations

LIST OF LIBRARIES THAT HAVE ANNOUNCED AVAILABILITY OF FEDERAL REGISTER AND CODE OF FEDERAL REGULATIONS

In order to direct the public to facilities where the *Federal Register* and *Code of Federal Regulations* are available for examination free of charge, the Office of the Federal Register is publishing a list of libraries which have requested inclusion. A complete listing of *Government Depository Libraries* is available without charge from The Library, U.S. Government Printing Office, 5236 Eisenhower Avenue, Alexandria, VA 22304.

The Office of the Federal Register's list will be updated annually unless public interest requires more frequent publication. Any library that maintains these publications, makes them available to the public, and wishes to be included on future lists should write to the Director of the Federal Register, National Archives and Records Service, GSA, Washington, DC 20408, or phone (202) 523–5227 giving the name and address of the library. (*FR only. †CFR only.)

ALABAMA

Birmingham:
Government Documents Department
Birmingham Public Library
2020 Park Place
Birmingham, AL 35203
(205) 254–2551

Gadsden:
Gadsden Public Library
254 College Street
Gadsden, AL 35901
(205) 547–1611

Mobile:
Governmental Information Division
Mobile Public Library
564 Davis Avenue
Mobile, AL 36603
(205) 438–7092

Montgomery:
Alabama Public Library Service
6030 Monticello Drive
Montgomery, AL 36130
(205) 277–7330

Tuscaloosa:
University of Alabama Library
Reference Department
Box S
University, AL 35486
(205) 348–6046

ALASKA

Anchorage:
Alaska Resources Library
U.S. Department of the Interior
701 C Street, Box 36
Anchorage, AK 85513

Office of the Solicitor, Law Library
U.S. Department of the Interior
510 L Street, Suite 408
Anchorage, AK 99501

Fairbanks:
Bureau of Land Management
Library
Fairbanks District Office
P.O. Box 1150
North Post of Ft. Waynewright
Fairbanks, AK 99707

Rasmuson Library
Government Documents Section
University of Alaska
Fairbanks, AK 99701

Juneau:
Alaska State Library
8th Floor, New State Office Bldg.
Pouch G
Juneau, AK 99811
(907) 465–2920

ARIZONA

Glendale:
Velma Teague Library
7010 N. 58th Avenue
Glendale, AZ 85301
(602) 931–5576

Phoenix:
Office of the Field Solicitor, Law Library
U.S. Department of the Interior
Valley Bank Center, Suite 2080
201 North Central Avenue
Phoenix, AZ 85073

Phoenix Public Library
Business, Science & Technology—Documents
12 E. McDowell Road
Phoenix, AZ 85004
(602) 262–6451

Tempe:
Arizona State University
College of Law Library
Government Documents
Tempe, AZ 85281

Government Documents Department
Arizona State University Library
Tempe, AZ 85281

Window Rock:
Field Solicitor, Law Library
U.S. Department of the Interior
Window Rock, AZ 86515

ARKANSAS

Little Rock
Government Documents Department
UALR Library
University of Arkansas at Little Rock
33rd and University Avenue
Little Rock, AR 72204
(501) 569–3120

Searcy:
Beaumont Memorial Library
Harding University
P.O. Box 928
Searcy, AR 72143
(501) 268–6161

CALIFORNIA

Arcata:
Documents Department
The Library
Humboldt State University
Arcata, CA 95521

Burlingame:
The San Mateo Foundation*
1204 Burlingame Avenue
P.O. Box 627
Burlingame, CA 94010
(415) 342–2477

Glendale:
City of Glendale
Glendale Public Library
222 East Harvard Street
Glendale, CA 91205

La Jolla:
Government Documents, Maps, Microforms Department
Central University Library C–075–P
University of California, San Diego
La Jolla, CA 92093
(714) 452–3338

Lakewood:
Angelo M. Iacoboni Library
5020 Clark Avenue
Lakewood, CA 90712
(213) 866–1777

Long Beach:
Government Publications
Long Beach Public Library and Information Center
101 Pacific Avenue
Long Beach, CA 90802
(213) 437–2949, ext. 40

Long Beach Safety Council Library
121 Linden Avenue
Long Beach, CA 90802

Menlo Park:
U.S. Geological Survey Library
345 Middlefield Road
Menlo Park, CA 94025

Oakland:
Holy Names College Library
3500 Mountain Blvd.
Oakland, CA 94619

Orange:
Thurmond Clarke Memorial Library
Chapman College
333 North Glassell Street
Orange, CA 92666

Pasadena:
City of Pasadena
Pasadena Public Library
285 E. Walnut Street
Pasadena, CA 91101
(213) 577–4054

CALIFORNIA—Continued

Redwood City:
Redwood City Public Library
881 Jefferson Avenue
Redwood City, CA 94063
(415) 369–6251, ext. 288

San Mateo County Superintendent of Schools Office
Educational Resources Center
333 Main Street
Redwood City, CA 94063
(415) 364–5600

Richmond:
Richmond Public Library
Civic Center Plaza
Richmond, CA 94804

Riverside:
Field Solicitor, Law Library
U.S. Department of the Interior
3610 Center Avenue, Suite 104
Riverside, CA 92506

Riverside City and County Public Library
(Current CFR only)
3581 Seventh Street
P.O. Box 468
Riverside, CA 92502
(714) 787–7203

Sacramento:
Regional Solicitor, Law Library
U.S. Department of the Interior
Room E–2753
2800 Cottage Way
Sacramento, CA 95825

San Diego:
Western State University
College of Law
1333 Front Street
San Diego, CA 92101
(714) 231–0300

San Francisco:
Field Solicitor, Law Library
U.S. Department of the Interior
450 Golden Gate Avenue
Box 36064
San Francisco, CA 94102

University of California
Hastings College of the Law
Library
198 McAllister Street
San Francisco, CA 94102

San Rafael:
Marin County Free Library
Civic Center Administration Building
San Rafael, CA 94903
(415) 499–6051

Vallejo:
California Maritime Academy*
P.O. Box 1392
Vallejo, CA 94590
(707) 644–5601

COLORADO

Denver:
Bureau of Land Management
Denver Service Center Library
Building 50
Denver Federal Center
Denver, CO 80225

Bureau of Reclaimation Library
Engineering and Research Center
P.O. Box 25007, Denver Federal Center
Denver, CO 80225

Colorado State Library
1362 Lincoln Street
Denver, CO 80203

Regional Solicitor, Law Library
U.S. Department of the Interior
Room 1400, Bldg. 67, Denver Federal Center
P.O. Box 25007
Denver, CO 80225

Rocky Mountain Regional Office Library
National Park Service
655 Parfect Street
P.O. Box 25287
Denver, CO 80225

Fort Collins:
Documents Department
The Libraries
Colorado State University
Fort Collins, CO 80523

Greeley:
James A. Michener Library
Government Publications Service
University of Northern Colorado
Greeley, CO 80639

Lakewood:
Villa Library*
455 South Pierce Street
Lakewood, CO 80226
(303) 936–7407

CONNECTICUT

Bloomfield:
Prosser Public Library
1 Tunxis Avenue
Bloomfield, CT 06002

Danielson:
Quinebaug Valley Community College
P.O. Box 59
Danielson, CT 06239
774–1130

East Haven:
Hagaman Memorial Library*
227 Main Street
East Haven, CT 06512
(203) 468–3223

Fairfield:
Nyselius Library
Fairfield University
North Benson Road
Fairfield, CT 06430
(203) 255–5411, Ext. 2451

Hartford:
The Stanley Osborne Library*
Third Floor
The Connecticut State Department of Health Services
79 Elm Street
Hartford, CT 06115
(203) 566–2198

Middletown:
Olin Library
Wesleyan University
Middletown, CT 06457

Stamford:
Ferguson Library
96 Broad Street
Stamford, CT 06901

Waterbury:
Silas Bronson Public Library
Business, Industry & Technology Department
267 Grand Street
Waterbury, CT 06702

Wethersfield:
Wethersfield Public Library
515 Silas Deane Highway
Wethersfield, CT 06109

DISTRICT OF COLUMBIA

Natural Resources Library
U.S. Department of the Interior
Washington, DC 20240

Office of the Federal Register
1100 L Street, N.W.
Room 8301
Washington, DC 20408
202–523–4986

FLORIDA

Sarasota:
The University of Sarasota
2080 Ringling Blvd.
Sarasota, FL 33577
(813) 955–4228

Tallahasse:
Documents Section
State Library of Florida
R. A. Gray Building
Tallahassee, FL 32301
(904) 487–2651

Tampa:
Tampa–Hillsborough County Public Library
900 North Ashley Street
Tamba, FL 33602
(813) 223–8969

GEORGIA

Athens:
University of Georgia Libraries
Government Reference Department
Athens, GA 30602

Atlanta:
Office of the Regional Solicitor, Law Library
U.S. Department of the Interior
148 Cain Street, N.E., Suite 405
Atlanta, GA 30303

Dublin:
Laurens County Library
801 Bellevue Ave.
Dublin, GA 31021

GEORGIA—Continued

Elberton:
Southeastern Power Administration
Law Library
U.S. Department of Energy
Samuel Elbert Building
Elberton, GA 30635

Savannah:
Chatham–Effingham–Liberty Regional Library
2002 Bull Street
Savannah, GA 31499
(912) 234–5127

IDAHO

Boise:
Field Solicitor, Law Library
U.S. Department of the Interior
Federal Building, U.S. Courthouse
Box 20
Boise, ID 83724

Pocatello:
The Library
Idaho State University
Pocatello, ID 83209

ILLINOIS

Bloomington:
Illinois Wesleyan University
Library
Bloomington, IL 61701

Chicago:
Government Publications Department
Chicago Public Library
425 N. Michigan Avenue
Chicago, IL 60611
(312) 269–3002

University of Chicago Law Library
1121 East 60th Street
Chicago, IL 60637

Documents Department
University of Illinois at Chicago Circle
The Library, P.O. Box 8198
Chicago, IL 60680
(312) 996–2716/996–2738

Lockport:
Lewis University
Route 53
Lockport, IL 60441
(815) 838–0500

Macomb:
Government Publications and Legal Reference Library
Western Illinois University
Macomb, IL 61455
(309) 298–2411

Niles:
Niles Public Library District
6960 Oakton Street
Niles, IL 60648
(312) 967–8554

Normal:
Milner Library
Illinois State University
Normal, IL 61761

Oak Park:
Oak Park Public Library
834 Lake Street
Oak Park, IL 60301
(312) 383–8200

Rockford:
Rockford Public Library
215 North Wyman Street
Rockford, IL 61101
(815) 965–6731

Springfield:
Energy Information Library*
Illinois Institute of Natural Resources, Room 300
325 W. Adams Street
Springfield, IL 62706

Waukegan:
County of Lake
Law Library
18 North County Street
Waukegan, IL 60085
(312) 689–6654

INDIANA

Fort Wayne:
The Public Library of
Fort Wayne and Allen County
900 Webster Street
Fort Wayne, IN 46802
(219) 424–7241

Muncie:
Ball State University Library
Government Publications Service
Muncie, IN 47305
(317) 285–6195

South Bend:
Indiana University at South Bend
1700 Mishawaka Avenue
South Bend, IN 46615
(219) 237–4440

IOWA

Ames:
Library—Government Publications Department
Iowa State University
Ames, IA 50010
(515) 294–2834

Des Moines:
State Library Commission of Iowa
Law Library
Capitol Building
Des Moines, IA 50319
(515) 281–5125

State Library Commission of Iowa
Historical Building
East 12th & Grand
Des Moines, IA 50319

Dubuque:
Carnegie–Stout Public Library
Eleventh and Bluff Streets
Dubuque, IA 52001
(319) 583–9197

Wahlert Memorial Library
Loras College
1450 Alta Vista
Dubuque, IA 52001

KANSAS

Colby:
H. F. Davis Memorial Library
Colby Community College
1255 South Range
Colby, KS 67701
(913) 462–3984

Lawrence:
University of Kansas Law Library
Green Hall
Lawrence, KS 66045
(913) 864–3025

Pittsburg:
Library
Pittsburg State University
Pittsburg, KS 66762

Topeka:
Washburn University of Topeka
School of Law Library
Topeka, KS 66621
(913) 295–6660

KENTUCKY

Bowling Green:
Western Kentucky University
Helm–Cravens Library
Bowling Green, KY 42101

Frankfort:
Government Document Section
State Library Division
Kentucky Department of Library & Archives
Berry Hill
Frankfort, KY 40602
(502) 564–2480

Lexington:
University of Kentucky Libraries
Government Publications Department
Lexington, KY 40506

Law Library
University of Kentucky
Lexington, KY 40506

Louisville:
University of Louisville
The Library
Louisville, KY 40208

Pikeville:
CITAC Library
Pikeville College
Armington Science Center
Pikeville, KY 41501
(606) 432–9396

LOUISIANA

Baton Rouge:
Library, Department of Urban & Community Affairs
5790 Florida Boulevard
Baton Rouge, LA 70806

Louisiana State Library
P.O. Box 131
760 N. Riverside Mall
Baton Rouge, LA 70821
(504) 389–6651

LOUISIANA—Continued

Lafayette:
University of Southwestern Louisiana
University Libraries
Lafayette, LA 70501

New Orleans:
U.S. Court of Appeals Library
5th Circuit
600 Camp Street
Room 106
New Orleans, LA 70130
(504) 589–6510

MAINE

Lewiston:
George and Helen Ladd Library
Bates College
Lewiston, ME 04240

Portland:
Donald L. Garbrecht Law Library
246 Deering Avenue
Portland, ME 04102
(207) 780–4350

MARYLAND

Aberdeen:
Department of the Army
U.S. Army Environmental Hygiene Agency
ATTN: Librarian, Bldg. E–2100
Aberdeen Proving Ground, MD 21010

Annapolis:
Maryland State Law Library
Courts of Appeal Building
361 Rowe Boulevard
Annapolis, MD 21401

Baltimore:
Enoch Pratt Free Library
400 Cathedral Street
Baltimore, MD 21201

Cumberland:
Allegany Community College Library
Willow Brook Road
P.O. Box 1695
Cumberland, MD 21502
(301) 724–7700, ext. 36

Oakland:
Garrett County Planning Office*
323 East Oak Street
Oakland, MD 21550
(301) 334–4200

Rockville:
Medical Library
Food & Drug Administration
5600 Fishers Lane
Room 11B40
Rockville, MD 20857

Department of Public Libraries
Montgomery County
99 Maryland Avenue
Rockville, MD 20850
(301) 279–1966

MASSACHUSETTS

Boston:
Government Documents Department
Boston Public Library
Copley Square
Boston, MA 02117

Gloucester:
Gloucester Lyceum and Sawyer Free Library*
General Reference Section
2 Dale Avenue
Gloucester, MA 01930
(617) 283–0376

Newton Corner:
Office of the Regional Solicitor, Law Library
Suite 306
1 Gateway Center
Newton Corner, MA 02156

Springfield:
The City Library
Central Library
220 State Street
Springfield, MA 01103

Woburn:
Commonwealth of Massachusetts
Trial Court of the Commonwealth
District Court Department
Fourth Eastern Middlesex Division
Woburn, MA 01801
(617) 935–4000

MICHIGAN

Ann Arbor:
Washtenaw Community College
4800 East Huron River Drive
Ann Arbor, MI 48106
(313) 973–3300

Detroit:
Downtown Library*
Detroit Public Library
121 Gratiot
Detroit, MI 48226

Detroit Public Library
5201 Woodward Avenue
Detroit, MI 48202

Municipal Reference Library
Detroit Public Library
1004 City–County Building
Detroit, MI 48226

Arthur Neef Law Library
Wayne State University
468 W. Ferry Mall
Detroit, MI 48202
(313) 577–3925

East Lansing:
Documents Department
Michigan State University Library
East Lansing, MI 48824

Flint:
Flint Public Library
General Reference Department
1026 E. Kearsley Street
Flint, MI 48502
(313) 232–7111

Lansing:
Thomas M. Cooley Law School Library
U.S. Documents Collection
217 South Capitol Avenue
Lansing, MI 48901
(517) 371–5140

Marquette:
Government Documents Department
Olson Library
Northern Michigan University
Marquette, MI 49855
(906) 227–2112

Mount Clemens:
Macomb County Library
16480 Hall Road
Mount Clemens, MI 48044
469–5300

Mt. Pleasant:
Library – Documents Department
Central Michigan University
Mt. Pleasant, MI 48859
(517) 774–3414

Pontiac:
Adams–Pratt Oakland County Law Library
1200 N. Telegraph Road
Pontiac, MI 48053

Oakland Schools Library*
2100 Pontiac Lake Road
Pontiac, MI 48054

Rochester:
Kresge Library
Documents Department
Oakland University
Squirrel/Walton
Rochester, MI 48063
(313) 377–2476

Saginaw:
Public Libraries of Saginaw
505 Janes
Saginaw, MI 48605
(517) 755–0904

Traverse City:
Mark Osterlin Library
Documents Department
Northwestern Michigan College
1701 East Front Street
Traverse City, MI 49684
(616) 946–5650, ext. 540

University Center:
Learning Resources Center
Delta College
University Center, MI 48710

MINNESOTA

Bemidji:
Documents Section
A. C. Clark Library
Bemidji State University
Bemidji, MN 56601
(218) 755–2958

Blaine:
Anoka County Library
707 Highway ℄10
Blaine, MN 55434

Cambridge:
East Central Regional Library*
Cambridge, MN 55008

Duluth:
Duluth Public Library
520 W. Superior Street
Duluth, MN 55802
(218) 723–3804

MINNESOTA—Continued

Edina:
Southdale–Hennepin Area Library
7001 York Avenue South
Edina, MN 55435
(612) 830–4900

Minneapolis:
Minnesota Hospital Association Library
2333 University Ave. S.E.
Minneapolis, MN 55414
(612) 331–5571

Government Publications Division
409 Wilson Library
University of Minnesota
Minneapolis, MN 55455
(612) 373–7813

St. Paul:
Minnesota State Law Library
117 University Avenue
St. Paul, MN 55155
(612) 296–2775

Government Publications Office
St. Paul Public Library
90 West Fourth Street
St. Paul, MN 55102
292–6178

Stillwater:
Stillwater Public Library
223 North Fourth Street
Stillwater, MN 55082
439–1675

Twin Cities:
Field Solicitor, Law Library
U.S. Department of the Interior
686 Federal Building, Fort Snelling
Twin Cities, MN 55111

Winona:
Winona State University
Maxwell Library
Winona, MN 55987
(507) 457–2924

MISSISSIPPI

Gulfport:
Harrison County Law Library
1st Judicial Courthouse
1801 23rd Avenue
Gulfport, MS 39501
(601) 864–5161 ext. 336

MISSOURI

Jefferson City:
Missouri State Library
308 E. High Street
P.O. Box 387
Jefferson City, MO 65102
(314) 751–4552

St. Louis:
Missouri Botanical Garden*
(back issues held 1 year)
2345 Tower Grove Avenue
St. Louis, MO 63110
(314) 772–7600

Thomas Jefferson Library
University of Missouri–St. Louis
8001 Natural Bridge Road
St. Louis, MO 63144
(314) 453–5954

Sedalia:
State Fair Community College Library
1900 Clarendon Road
Sedalia, MO 65301

Springfield:
Southwest Missouri State University
The Library
Springfield, MO 65802
(417) 831–1561

MONTANA

Billings:
Bureau of Land Management
Library
P.O. Box 30157
Billings, MT 59107

Field Solicitor, Law Library
U.S. Department of the Interior
P.O. Box 1538
Billings, MT 59103

NEBRASKA

Kearney:
Calvin T. Ryan Library
Kearney State College
Kearney, NE 68847

Lincoln:
Nebraska Library Commission
1420 P Street
Lincoln, NE 68508
(402) 471–2045

University of Nebraska–Lincoln Libraries
Lincoln, NE 68588

Norfolk:
Northeast Technical Community College
801 E. Benjamin Avenue
Norfolk, NE 68701
(402) 371–2020

Wayne
U. S. Conn Library
Wayne State College
Wayne, NE 68787
(402) 375–2200, ext. 213

NEVADA

Boulder City:
Field Solicitor, Law Library
U.S. Department of the Interior
P.O. Box 427, Park Street
Boulder City, NV 89005

Reno:
Government Publications Department
University of Nevada Library
Reno, NV 89557
(702) 784–6579

NEW HAMPSHIRE

Concord:
Law Division, State Library
Supreme Court Building
Loudon Road
Concord, NH 03301
(603) 271–3777

New London:
Fernald Library
Colby–Sawyer College
New London, NH 03257

NEW JERSEY

Bloomfield:
Bloomfield Public Library
90 Broad Street
Bloomfield, NJ 07003
(201) 429–9292

Elmer:
Arthur P. Schalick High School
Elmer–Centerton Road
R.D. 1
Elmer, NJ 08318

Hackensack:
Johnson Free Public Library
Hackensack Area Reference Library
275 Moore Street
Hackensack, NJ 07601

Jersey City:
Hudson Health Systems Agency Library
871 Berger Avenue
Jersey City, NJ 07306

Lawrenceville:
Franklin F. Moore Library
Rider College
Lawrenceville, NJ 08648
(609) 896–5115

Mahwah:
Ramapo College Library
505 Ramapo Valley Road
Mahwah, NJ 07430

Newark:
Newark Public Library
5 Washington Street
P.O. Box 630
Newark, NJ 07101
(201) 733–7782

Paterson:
Paterson Free Public Library
250 Broadway
Paterson, NJ 07501
(201) 881–3750

Pomona:
Stockton State College
Pomona, NJ 08240
(609) 652–1776, ext. 266

Toms River:
Ocean County College
Learning Resources Center
College Drive
Toms River, NJ 08753
(201) 255–4000 ext. 385

Trenton:
New Jersey State Law Library
185 West State Street
P.O. Box 1898
Trenton, NJ 08625
(609) 292–6230

Voorhees:
Camden County Library
Echelon Urban Center
Laurel Road
Voorhees, NJ 08043
(609) 772–1636

NEW MEXICO

Albuquerque:
Field Solicitor, Law Library
U.S. Department of the Interior
P.O. Box 1696
Albuquerque, NM 87103

The University of New Mexico
General Library
Albuquerque, NM 87131
(505) 277–4241 and 277–5441

The University of New Mexico
School of Law Library
1117 Stanford NE
Albuquerque, NM 87131
(505) 277–6236

Las Vegas:
New Mexico Highlands University
Donnelly Library
Las Vegas, NM 87701

Portales:
Golden Library
Documents Department
Eastern New Mexico University
Portales, NM 88130

Santa Fe:
New Mexico State Library
300 Don Gaspar
Santa Fe, NM 87503
(505) 827–2033

Office of the Solicitor, Law Library
U.S. Department of the Interior
U.S. Courthouse, Room 224
P.O. Box 1042
Santa Fe, NM 87501

Silver City:
Miller Library
Western New Mexico University
Silver City, NM 88061

NEW YORK

Albany:
The New York State Library
The State Education Department
Cultural Education Center
Empire State Plaza
Albany, NY 12230

Brooklyn:
Brooklyn Public Library
Business Library
280 Cadman Plaza West
Brooklyn, NY 11201
(212) 780–7800

Corning:
The Arthur A. Houghton, Jr. Library
Corning Community College
Corning, NY 14830
(607) 962–9251

Garden City:
Adelphi University
Swirbul Library
South Avenue
Garden City, NY 11530
(516) 294–8700 ext. 7345

Geneseo:
State University of New York at Geneseo
Milne Library
Government Documents
Geneseo, NY 14454

Greenvale:
C. W. Post Center—Long Island University
B. Davis Schwartz Memorial Library
Greenvale, NY 11548

Niagara Falls:
Niagara Falls Public Library
1425 Main Street
Niagara Falls, NY 14305
(716) 278–8113

Oswego:
State University of New York at Oswego
Oswego, NY 13126
(315) 341–4267

Rochester:
Rochester Public Library
Business and Social Science Division
115 South Avenue
Rochester, NY 14604
(716) 428–7342

Schenectady:
Schenectady County Public Library
Liberty and Clinton Streets
Schenectady, NY 12305

Syracuse:
Reference Department
Onondaga County Public Library
335 Montgomery Street
Syracuse, NY 13202
475–8458

Uniondale:
Nassau Library System
900 Jerusalem Avenue
Uniondale, NY 11553
(516) 292–8920

NORTH CAROLINA

Asheboro:
Asheboro Public Library
201 Worth Street
Asheboro, NC 27203
(919) 629–3329

Boone:
Regional Information Center
Region D Council of Governments
P.O. Box 1820
Boone, NC 28607

Charlotte:
Public Librarty of Charlotte and Mecklenburg County
310 N. Tryon Street
Charlotte, NC 28202
(704) 374–2540

Durham:
William Perkins Library
Public Documents Department
Duke University
Durham, NC 27706
(919) 684–2380

Gastonia:
Gaston County Public Library*
Headquarters: Gaston–Lincoln Regional Library
1555 East Garrison Boulevard
Gastonia, NC 28052
(704) 865–3418

Raleigh:
Documents Department
The D. H. Hill Library
North Carolina State University
Box 5007
Raleigh, NC 27650

Winston–Salem:
Forsyth County Public Library
660 West Fifth Street
Winston–Salem, NC 27101
(919) 727–2220

NORTH DAKOTA

Bismarck:
Bismarck Junior College*
Schafer Heights
Bismarck, ND 58501

North Dakota State Library
Highway 83 North
Bismarck, ND 58505
224–2490

Office of Program Planning*
All Nations Circle – Bldg. 35
United Tribes Educational Technical Center
3315 South Airport Road
Bismarck, ND 58501

OHIO

Athens:
Government Documents Department
Ohio University Library
Athens, OH 45701
(614) 594–5604

Cincinnati:
Municipal Reference Library
224 City Hall
Cincinnati, OH 45202

National Institute for Occupational Safety and Health
Division of Technical Services
Robert A. Taft Laboratories
4676 Columbia Parkway
Cincinnati, OH 45226

Ohio River Basin Commission Library
Suite 208–20, 36 East 4th Street
Cincinnati, OH 45206
(513) 684–3831

Cleveland:
Cleveland Public Library
325 Superior Avenue
Cleveland, OH 44114

Cleveland Regional Sewer District*
Library
Administrative Offices
801 Rockwell Avenue
Cleveland, OH 44114
(216) 781–6600 ext. 219

OHIO—Continued

Cleveland Heights:
Cleveland Heights—University Heights Public Library
2345 Lee Road
Cleveland Heights, OH 44118
(216) 932–3600

Columbus
The State Library of Ohio
65 South Front Street
Columbus, OH 43215
(614) 466–2694

Dayton:
University Library
Wright State University
Dayton, OH 45435

Findlay:
Marathon Oil Company
Law Library, Room 854–M
539 South Main Street
Findlay, OH 45840
(419) 422–2121 ext. 3376

Shafer Library
Findlay College
1000 N. Main Street
Findlay, OH 45840
(419) 422–8313

Marion:
Marion Public Library*
445 E. Church Street
Marion, OH 43302
(614) 387–0992

Toledo:
Toledo–Lucas County Public Library
Social Science Department
325 Michigan Street
Toledo, OH 43624
(419) 242–7361 ext. 241

Wooster:
Andrews Library
The College of Wooster
Wooster, OH 44691

OKLAHOMA

Aradarko:
Field Solicitor, Law Library
U.S. Department of the Interior
P.O. Box 397
Aradarko, OK 73005

Muskogee:
Office of the Field Solicitor, Law Library
U.S. Department of the Interior
P.O. Box 1508
Muskogee, OK 74401

Norman:
Law Library
University of Oklahoma
300 Timberdell
Norman, OK 73019

Oklahoma City:
Oklahoma Department of Libraries
U.S. Documents Regional Depository
200 N.E. 18th Street
Oklahoma City, OK 73105
(405) 521–2502

Pawhuska:
Field Solicitor, Law Library
U.S. Department of the Interior
c/o Osage Agency
Pawhuska, OK 74056

Stillwater:
Documents Department
Edmon Low Library
Oklahoma State University
Stillwater, OK 74074
(405) 624–6546

Tulsa:
Office of the Regional Solicitor, Law Library
U.S. Department of the Interior
P.O. Box 3156
Tulsa, OK 74101

OREGON

Salem:
Oregon State Library
State Library Building
Salem, OR 97310
(503) 378–4276

PENNSYLVANIA

Aliquippa:
B.F. Jones Memorial Library*
Aliquippa District Center
663 Franklin Avenue
Aliquippa, PA 15001
(412) 375–7174

Allentown:
The John A. W. Haas Library
Muhlenberg College
Allentown, PA 18104

Dallas:
Library
College Misericordia
Dallas, PA 18612

Harmony:
Library
Seneca Valley Senior High School*
Southwest Butler County School District
R.D. 2
Harmony, PA 16037

Harrisburg:
State Library of Pennsylvania
Box 1601
Harrisburg, PA 17126
(717) 787–7343

Hazleton:
Hazleton Area Public Library
Church and Maple Streets
Hazleton, PA 18201
454–2961/454–0244

Lancaster:
Fackenthal Library
Franklin and Marshall College
P.O. Box 3003
Lancaster, PA 17604
(717) 291–4210

Loretto:
Pius XII Memorial Library
Saint Francis College
Loretto, PA 15940

Millersville:
Millersville State College
Millersville, PA 17551

Vein
Stayer R & L Center
Millersville State College
Millersville, PA 17551
(717) 872–5411 ext. 552, 542

Newtown:
The Library
Bucks County Community College
Newtown, PA 18940

Philadelphia:
Government Publications Department
Free Library of Philadelphia
Logan Square
Philadelphia, PA 19103

Pittsburgh:
Baldwin Borough Public Library
3344 Churchview Avenue
Pittsburgh, PA 15227

U.S. Bureau of Mines
Library
4800 Forbes Avenue
Pittsburgh, PA 15213

Shippensburg:
Ezra Lehman Memorial Library
Shippensburg State College
Shippensburg, PA 17257

Somerset:
Somerset State Hospital Library
Box 631
Somerset, PA 15501
(814) 445–6501, ext. 216

Swarthmore:
The Swarthmore College Library
The McCabe Library
Swarthmore, PA 19081
(215) KI 4–7900

Washington:
Washington County Law Library
Courthouse
Washington, PA 15301
(412) 228–6747

West Chester:
Francis Harvey Green Library*
West Chester State College
West Chester, PA 19380
(215) 436–2869

Wilkes–Barre:
Institute of Regional Affairs*
Wilkes College
Wilkes–Barre, PA 18703

RHODE ISLAND

Kingston:
Government Publications Office
University of Rhode Island
Library
Kingston, RI 02881
(401) 792–2602

RHODE ISLAND—Continued

Providence:
Brown University Library
Documents Department
Providence, RI 02912
(401) 863–2522

Providence Public Library
150 Empire Street
Providence, RI 02903
(401) 521–7722

Rhode Island College
James P. Adams Library
Documents Department
600 Mt. Pleasant Avenue
Providence, RI 02908
(401) 274–4900 ext. 331

Warwick:
Warwick Public Library
600 Sandy Lane
Warwick, RI 02886
(401) 739–5440

SOUTH CAROLINA

Charleston:
Baptist College of Charleston
P. O. Box 10087
Charleston, SC 29411

Charleston County Library
404 King Street
Charleston, SC 29403

Citadel
Charleston, SC 29409

College of Charleston
66 George Street
Charleston, SC 29401

Clemson:
Clemson University
Clemson, SC 29631

Columbia:
Benedict College
Blanding & Harden Streets
Columbia, SC 29204

Richland County Public Library
1400 Sumter Street
Columbia, SC 29201

South Carolina State Library
1500 Senate Street
Columbia, SC 29201

University of South Carolina
Columbia, SC 29208

Conway:
Coastal Carolina (of University of SC)
Route 6
Conway, SC 29526

Due West:
Erskine College*
Due West, SC 29639

Florence:
Florence County Library
319 S. Irby Street
Florence, SC 29501

Francis Marion College
Florence, SC 29501

Greenville:
Furman University
Greenville, SC 29613

Greenville County Library
300 College Street
Greenville, SC 29601

Greenwood:
Larry A. Jackson Library
Lander College
Greenwood, SC 29646

Orangeburg:
South Carolina State College
College Avenue
Orangeburg, SC 29117

Rock Hill:
Winthrop College
Rock Hill, SC 29733

Spartanburg:
Spartanburg County Library
P. O. Box 2409
333 S. Pine Street
Spartanburg, SC 29304

SOUTH DAKOTA

Aberdeen:
Field Solicitor, Law Library
U.S. Department of the Interior
P.O. Box 549
Aberdeen, SD 57401

Brookings:
H. M. Briggs Library
South Dakota State University
Brookings, SD 57007
(605) 688–5106

Rapid City:
Devereaux Library
South Dakota School of Mines & Technology
Rapid City, SD 57701
(605) 394–2418

TENNESSEE

Chattanooga:
Hamilton County Bicentennial Library
Business, Science and Technology Department
1001 Broad Street
Chattanooga, TN 37402
(615) 757–5312

Clarksville:
Woodward Library
Austin Peay State University
Clarksville, TN 37040
(615) 648–7346

Nashville:
Documents Unit
Joint University Libraries
Nashville, TN 37203

Tennessee State Library
Tennessee State Library and Archives
403 Seventh Avenue North
Nashville, TN 37219
(615) 741–2451

TEXAS

Amarillo:
Amarillo Public Library*
City of Amarillo
P.O. Box 2171
413 E. 4th
Amarillo, TX 79189

Field Solicitor
U.S. Department of the Interior
P.O. Box H–4393, Herring Plaza
Amarillo, TX 79101

College Station:
Documents Division
University Libraries
Texas A & M University
College Station, TX 77843

Dallas:
U.S. Environmental Protection Agency
Region VI
1201 Elm Street
Dallas, TX 75270

Denton:
Texas Woman's University Library
Box 23715, TWU Station
Denton, TX 76204
(817) 566–6415

El Paso:
El Paso Public Library
Documents Section
501 North Oregon Street
El Paso, TX 79901
(915) 543–3808

Hurst:
Hurst Public Library
901 Precinct Line Road
Hurst, TX 76053
(817) 485–5320

Lubbock:
School of Law Library
Texas Tech University
Lubbock, TX 79409

Victoria:
Documents Department
VC/UHVC Library
2602 N. Ben Jordan
Victoria, TX 77901
(512) 576–3151, ext. 201
(512) 573–3291

UTAH

Cedar City:
Southern Utah State College Library
Cedar City, UT 84720

Ephraim:
Lucy A. Phillips Library
Snow College
Ephraim, UT 84627

Logan:
Documents Department
Merrill Library, UMC 30
Utah State University
Logan, UT 84322

UTAH—Continued

Ogden:
Weber State College Library
Ogden, UT 84403

Provo:
Harold B. Lee Library
Documents and Maps Section
Brigham Young University
Provo, UT 84602

Law Library
Brigham Young University
Provo, UT 84602

Salt Lake City:
Regional Solicitor
U.S. Department of the Interior
Suite 6201, Federal Building
125 South State Street
Salt Lake City, UT 84138

Supreme Court Library
State Capitol
Salt Lake City, UT 84114

College of Law Library
University of Utah
Salt Lake City, UT 84112

Government Documents
Eccles Health Sciences Library
University of Utah, Bldg. 89
Salt Lake City, UT 84112

Government Documents Division
Marriott Library
University of Utah
Salt Lake City, UT 84112

Utah State Library Commission
2150 South 300 West, Suite 16
Salt Lake City, UT 84115

VERMONT

Burlington:
Bailey/Howe Library
Documents Department
University of Vermont
Burlington, VT 05405

Middlebury:
Egbert Starr Library
Government Documents Department
Middlebury College
Middlebury, VT 05753

South Royalton:
Law Library
Vermont Law School
South Royalton, VT 05068
(802) 763–8303

VIRGINIA

Alexandria:
Alexandria Library*
717 Queen Street
Alexandria, Va. 22314
(703) 750–6351

Arlington:
Office of Hearings and Appeals
Library
U.S. Department of the Interior
4015 Wilson Boulevard
Arlington, VA 22203

Danville:
Danville Community College Library
1009 Bonner Avenue
Danville, VA 24541
(804) 797–3553

Fairfax:
Fairfax City Central Library
3915 Chain Bridge Road
Fairfax, VA 22030
(703) 691–2741

Lynchburg
The Library
Lynchburg College
Lynchburg, VA 24501

Norfolk:
Norfolk Public Library System
301 East City Hall Avenue
Norfolk, VA 23510

Reston:
U.S. Geological Survey
Library
National Center, Mail Stop 950
Reston, VA 22092

Richmond:
Learning Resources Center
Parham Road Campus
J. Sargeant Reynolds Community
College
P.O. Box 12084
Richmond, VA 23241
(804) 264–3220

Municipal Library
County of Henrico
Hungary Springs & Parham Roads
Richmond, VA 23228

Virginia State Library
11th & Capitol Streets
Richmond, VA 23219

Roanoke:
Roanoke Law Library
210 Campbell Avenue, SW
Roanoke, VA 24011

Virginia Beach:
Public Law Library
Municipal Center
City of Virginia Beach
Virginia Beach, VA 23456

Williamsburg:
Documents Department
Earl Gregg Swem Library
College of William and Mary
Williamsburg, VA 23185

WASHINGTON

Bellingham:
Documents Division, Wilson Library
Western Washington University
516 High Street
Bellingham, WA 98225
(206) 676–3075

Cheney:
Eastern Washington University
The Library
Cheney, WA 99004
(509) 359–2475

Everett:
Everett Public Library
2702 Hoyt Avenue
Everett, WA 98201
(206) 259–8857

Snohomish County Law Library
County Courthouse
Everett, WA 98201
(206) 259–5326

Olympia:
Washington State Law Library
Temple of Justice
Olympia, WA 98504

Port Angeles:
North Olympic Library System
207 So. Lincoln
Port Angeles, WA 98362

Seattle:
NW Federal Regional Council Library
Room 1023 Arcade Plaza Building
1321 Second Avenue
Seattle, WA 98101
(206) 442–5554

Spokane:
Gonzaga University Law Library
E. 600 Sharp Avenue
P.O. Box 3528
Spokane, WA 99220

WEST VIRGINIA

Beckley:
National Mine Health and Safety
Academy
Learning Resources Center
P.O. Box 1166
Beckley, WV 25801

Charleston:
Kanawha County Public Library
123 Capitol Street
Charleston, WV 25301
(304) 343–4646

Montgomery:
Vining Library
West Virginia Institute of Technology
Montgomery, WV 25136

Weirton:
Mary H. Weir Public Library
3442 Main Street
Weirton, WV 26062
(304) 748–7070

WISCONSIN

Appleton:
Appleton Public Library
121 South Oneida Street
Appleton, WI 54911
734–7171

Green Bay:
University of Wisconsin—Green Bay
Library Learning Center
Government Publications
Green Bay, WI 54302

WISCONSIN—Continued

Kenosha:
Library/Learning Center
University of Wisconsin–Parkside
Wood Road
Kenosha, WI 53141
Ladysmith:
Mount Senario College Library
Ladysmith, WI 54848

WYOMING

Gillette:
George Amos Memorial Library
412 S. Gillette Avenue
Gillette, WY 82716
(307) 682–3223
Laramie:
Coe Library—Documents Division
University of Wyoming
Box 3334, University Station
Laramie, WY 82071
(307) 766–2174

federal register

Friday
April 16, 1982

Part III

Office of Personnel Management

Privacy Act of 1974; Annual Publication of Notices of Systems of Records

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Annual Publication of Notices of Systems of Records

AGENCY: Office of Personnel Management.

ACTION: Notice; annual publication of notices of systems of records.

SUMMARY: The purpose of this notice is to meet the requirement of the Privacy Act of 1974 regarding the annual publication of an agency's notices of systems of records.

EFFECTIVE DATE: Except for the new routine use being added to the OPM/CENTRAL–13 system of records, all other changes are effective April 16, 1982. The new routine use will become effective, without further notice, on June 1, 1982, unless comments necessitate otherwise.

ADDRESS: Written comments may be sent or delivered to: Assistant Director for Work Force Information, Room 6429, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415. Comments received will be available for public inspection from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William H. Lynch, Work Force Information (202) 254–9790/9793.

SUPPLEMENTARY INFORMATION:

Note.—These notices describe OPM's Privacy Act systems of records as of December 31, 1981. Since January 1, 1982, several changes to these systems have been made and a notice was given for each of the changes on the following dates:

January 22, 1982 (47 FR 3231), changes to OPM/GOVT–1, General Personnel Records, and a proposed new system of records identified as OPM/GOVT–2, Employee Performance File System Records;

February 22, 1982 (47 FR 8436), proposed new routine uses for OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, and OPM/GOVT–1, General Personnel Records; and

March 4, 1982 (47 FR 9306), administrative changes and proposal of four new routine uses to OPM/CENTRAL–1, Civil Service Retirement and Insurance Records.

The Office of Personnel Management last published its notices of systems of records on November 25, 1980 (45 FR 78378). Since that time, changes have occurred with regard to several systems that necessitate changes in their notices. In thirteen of the systems, no changes have occurred. Where no changes have occurred, the notice is referenced by identification symbol, title, and citation within the **Federal Register** where the full text of the notice appeared in the November 1980 publication. Where changes occurred, besides being discussed below, the complete text of the notice is reprinted with the changed sections in italics.

None of the changes to the system notices being identified in this notice are considered substantial alterations of the systems. Rather, they result from omissions in the text of the notice when last published, a more accurate description of retention schedules, changes in designation of system managers and location of records, changes in the procedure whereby a requester identifies himself/herself to the system manager, addition of clarifying language to specific sections of some notices to provide a better understanding of what is to be conveyed by that particular section, elimination of some records from the categories of records section, and identification of two routine uses added since the November 1980 publication of notices. One of these routine uses was inadvertently omitted from that publication and the other was revised to more accurately reflect the use intended. In both instances (i.e., when the omitted routine use was originally added to the OPM/GOVT–1 system and the other routine use was revised) the routine uses were the subject of separate **Federal Register** notices (cited after the routine use) and the required 30-day public comment period. Additionally, one new routine use, as discussed below, is being proposed for the OPM/CENTRAL–13, Executive Personnel Records, formerly Senior Executive Service Records, system. The changes in the notices are non-substantial and, therefore, require no "Report on New Systems"; and since only the proposed new routine use is subject to a public comment period, the other changes are effective immediately.

A brief description of changes (including the new routine use) follows:

OPM/INTERNAL–1, Defense Mobilization Emergency Cadre Records. The system location has been changed to reflect maintenance of the records only in OPM's central office; the category of records section is changed to drop some data elements; the name of the identification card discussed in the purpose section has been changed; and the means of identifying oneself to the system manager has been changed.

OPM/INTERNAL–2, Negotiated Grievance Procedure Records. The retention schedule has been changed to indicate that disposal occurs once each fiscal year and the method of disposal is identified.

OPM/INTERNAL–3, Security Office Control Files. The name has been changed slightly, and the categories of records and record sources sections have been changed to give example of the types and sources of investigative records referred to.

OPM/INTERNAL–8, Employee Counseling Services Program Records. The name has been changed slightly, an additional protective procedure has been added to the safeguard section, and the retention schedule has been changed to indicate that disposal occurs once each fiscal year.,

OPM/INTERNAL–12, Speaker Resume Records. The system name has been changed. This along with all other changes to this notice reflects the fact that the Office no longer requires a security clearance on covered individuals and that all records related to clearances that were previously part of this system have been destroyed.

OPM/INTERNAL–14, Administrative Grievance Records. The system name has been changed to better distinguish these records from negotiated grievance procedure records, and the retention schedule has been changed to indicate that disposal occurs once each fiscal year.

OPM/CENTRAL–1, Civil Service Retirement and Insurance Records. All changes to this notice result from the elimination of Office Regional Medical Officers. All medical suitability determinations are now made at the Office's central office. Records formerly retained by the regional medical office have been forwarded to the central office or destroyed.

OPM/CENTRAL–2, Complaints and Inquiries Records. The category of individuals covered section has been completed (i.e., material omitted in the last publication has been added), and the retention schedule has been changed for greater accuracy.

OPM/CENTRAL–3, Federal Executive and SES Candidate Development Programs Records. Changes are made to indicate that executives now fall into two categories, (i.e., SES and non-SES), and that SES candidates are not already classified as executives in all cases.

OPM/CENTRAL–5, Intergovernmental Personnel Act Assignment Records. The organizational location of the records has been changed; a new system manager has been designated; and language concerning the monitoring of the IPA Grant Program (which is being discontinued) has been removed from the purpose section.

OPM/CENTRAL–7, Litigation and Claims Records. The safeguards section has been changed to show that other officials of the agency, outside the Office of General Counsel, may have

need for these records in the performance of official duties.

OPM/CENTRAL–8, Privacy Act/Freedom of Information Act (PA/FOIA) Case Records. The system manager has been changed to specifically include the General Counsel.

OPM/CENTRAL–9, Personnel Investigations Records. The retention schedule has been reworded for clarity.

OPM/CENTRAL–11, Presidential Management Intern Program Records. The system location and system manager have been changed to reflect reorganization.

OPM/CENTRAL–13, Senior Executive Service Records. The name has been changed to Executive Personnel Records and a new routine use o. is being added to this system regarding disclosure of information on certain individuals to the White House. Historically, the Office and its predecessor, the Civil Service Commission, provided data to the White House Office on certain noncareer executives as a regular part of their oversight responsibilities in this area. These disclosures were made since the appointees, in agreeing to accept such an appointment or assignment, understood that information about them would necessarily be maintained by the White House Office. Under the circumstances, consent for disclosure of this data could be implied. However, authorizing such disclosures under a Privacy Act "routine use" would entail an accounting of the disclosures that would be available to the subject of the information consistent with the spirit of the Privacy Act. Therefore, the Office is now adding such a routine use to this system of records.

OPM/GOVT–1, General Personnel Records. The system location section and the "Note" after the categories of records section contain language changes to emphasize that this system covers (and has always done so) a multitude of records and files in addition to the Official Personnel Folder (OPF), and that records are often located in more than one office. Routine uses m. (revised) and ff. (omitted) where the subject of previous **Federal Register** notices as indicated. The term "long-term record" is used throughout to more accurately describe records which are retained for a long time but not permanently. The system manager's title has been changed and certain clarifying language has been inserted in the "Notes" following the records access and contesting records sections.

OPM/GOVT–2, This identifying symbol continues to be held in reserve for possible future use.

OPM/GOVT–3, Records of Adverse Action and Actions Based on Unacceptable Performance. The language changes throughout this system are designed to distinguish between adverse actions taken under the Office's procedures in 5 CFR 752 or 754, from performance based removal or demotion actions taken under the Office's procedures in 5 CFR 432. The system manager has been changed to reflect reorganization within OPM and to add a new system manager for those records of action taken against Senior Executive Service Appointees.

OPM/GOVT–4, Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records. This notice's title has been changed to better describe the contents of the system. Additional language has been added to the categories of individuals covered to indicate that information may be retained on officers or employee, not specified in the Ethics in Government Act, in the records of this system.

OPM/GOVT–5, Recruiting, Examining, and Placement Records. The categories of records section has been changed to include those records, already part of this system, which are used in assisting certain employees, who will lose or have lost their jobs, in finding other employment. Additionally, one item has been added to the list of examples of exempt records.

OPM/GOVT–6, Personnel Research and Test Validation Records. The examples of the types of records that may be exempt has been changed by the addition of another item (g). These records were already part of this system, but not previously listed as an example of an exempt record.

OPM/GOVT–7, Applicant Race, Sex, National Origin, and Disability Status Records. The purpose section has been changed to include a purpose not previously stated. The note after categories of records in the system section has been reworded for clarity.

OPM/GOVT–8, Confidential Statements of Employment and Financial Interests. The language changes are designed to clarify where records are located. Changes were also necessary to clarify who are covered by this system and to specify a single system manager.

A complete list of all Office systems of records is published below. For those systems where no changes occurred, the **Federal Register** cite for the last publication of the complete text of the notice is given. This listing is followed by the complete text of all notices where changes have occurred.

Office of Personnel Management.

Donald J. Devine,

Director.

OPM Systems of Records:

OPM/Internal–1 Defense Mobilization Emergency Cadre Records.
OPM/Internal–2 Negotiated Grievance Procedure Records.
OPM/Internal–3 Security Office Control Files.
OPM/Internal–4 Employee Occupational, Health Program Records (45 FR 78381).
OPM/Internal–5 Pay, Leave, and Travel Records (45 FR 78382).
OPM/Internal–6 Appeal and Administrative Review Records (45 FR 78384).
OPM/Internal–7 Complaints and Inquiries Records (45 FR 78385).
OPM/Internal–8 Employee Counseling Services Program Records.
OPM/Internal–9 Employee Locator Card Files (45 FR 78387).
OPM/Internal–10 Employee Production Records (45 FR 78388).
OPM/Internal–11 Investigator Performance Records (45 FR 78389).
OPM/Internal–12 Speaker Resume Records.
OPM/Internal–13 Motor Vehicle Operator and Accident Report Records (45 FR 78392).
OPM/Internal–14 Administrative Grievance Records.
OPM/Central–1 Civil Service Retirement and Insurance Records
OPM/Central–2 Complaints and Inquiries Records.
OPM/Central–3 Federal Executive and SES Candidate Development Programs Records.
OPM/Central–4 Executive Assignment System and Executive Inventory Records (45 FR 78398).
OPM/Central–5 Intergovernmental Personnel Act Assignment Records.
OPM/Central–6 Administrative Law Judge Application Records (45 FR 78402).
OPM/Central–7 Litigation and Claims Records.
OPM/Central–8 Privacy Act/Freedom of Information Act (PA/FOIA) Case Records.
OPM/Central–9 Personnel Investigations Records.
OPM/Central–10 Directory of Federal Executive Institute Alumni (45 FR 78410).
OPM/Central–11 Presidential Management Intern Program Records.
OPM/Central–12 Survey Information Records (45 FR 78412).
OPM/Central–13 Senior Executive Service Records.
OPM/GOVT–1 General Personnel Records.
OPM/GOVT–2 Reserved.
OPM/GOVT–3 Records of Adverse Actions and Actions Based on Unacceptable Performance.
OPM/GOVT–4 Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records.
OPM/GOVT–5 Recruiting, Examining, and Placement Records.
OPM/GOVT–6 Personnel Reserach and Test Validation Records.
OPM/GOVT–7 Applicant Race, Sex, National Origin, and Disability Status Records.
OPM/GOVT–8 Confidential Statements of Employment and Financial Interests.

OPM/GOVT-9 Files on Position Classification Review Requests (Appeals) and Grade and Pay Retention Appeals (45 FR 78428).

OPM/INTERNAL—1

SYSTEM NAME:

Defense Mobilization Emergency Cadre Record.

SYSTEM LOCATION:

Office of Management, Administration Group, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Office of Personnel Management employees who are members of the Defense Mobilization Cadre.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain the name, address, telephone number, and private automobile information on each member of the Defense Mobilization Cadre.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Civil Defense Act of 1950 and Executive Order 11490.

PURPOSE:

These records serve to identify and register members of the two emergency cadres. The originals and one copy of the records are maintained in the OPM's Mobilization Office files (alphabetically and by cadre) for administrative purposes. The third copy is sent to the OPM Relocation Site for use in granting access to the site in the event cadre members must relocate under emergency conditions. The records are a source of personal data for preparation of *Federal Employee Emergency Identification Cards*, carried by cadre members to facilitate necessary travel under emergency conditions and formation of carpools as might be practical in the event of an emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To diclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on cards.

RETRIEVABILITY:

Records are retrived by individual name and emergency cadre.

SAFEGUARDS:

Records are maintained in a secured area and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an emergency cadre member. Expired records are burned.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Management, Administration Group, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Office employees wishing to inquire whether this system of records contains information about them should contact the system manager indicated above. Individuals must furnish their full names for their records to be located and identified.

RECORD ACCESS PROCEDURE:

Office employees wishing to request access to records about them should contact the system manager indicated above. Individuals must furnish their full names for their records to be located and identified.

An individual requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURES:

Since all record information is provided by the individual employee who is the subject of the record, most record corrections can be handled through established administrative procedures for updating the records. However, Office employees wishing to contest records about them under provisions of the Privacy Act should contact the system manager indicated above. Individuals must furnish their full names for the records to be located and identified.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information is provided by the individual Office employee who is the subject of the record.

OPM/INTERNAL—2

SYSTEM NAME:

Negotiated Grievance Procedure Records.

SYSTEM LOCATION:

Office of Personnel, Administration Group, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, and OPM regional administrative offices. (See list of OPM regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former OPM employees who file grievances under a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a variety of records relating to an employee's grievance filed under procedures established by labor-management negotiations. The Records may include information such as: employee's name, social security number, grade, job title, employment history, arbitrator's decision or report, record of appeal to Federal Labor Relations Authority, and a variety of employment and personnel records associated with the grievance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7121, title 5, U.S. Code.

PURPOSE:

These records are used to process an employee's grievance filed under a negotiated grievance procedure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. By the Department of Labor in carrying out its functions regarding labor management relations in the Federal service.

b. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested in the course of resolving a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

e. To provide information to a congressional office from the record of an individual in response to a request from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose in response to a request for discovery or for appearance of a witness information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appears, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

k. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

l. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of three years after the close of the fiscal year in which a final decision was issued. Disposal is by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Personnel, Administration Group, Office of Personnel Management, 1900 E. Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals who file a grievance under a negotiated procedure are aware of that fact and have been provided access to the record. They may, however, contact the system manager indicated above, or the OPM regional office where the grievance was processed (see list of OPM regional office addresses in the Appendix), regarding the existence of such records about them. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Approximate date of closing of the grievance.

d. Organizational component involved.

RECORD ACCESS PROCEDURE:

Individuals who file a grievance under a negotiated grievance procedure are aware of that fact and have been provided access to the record. However, after the grievance has been closed, an individual may request access to the official copy of the grievance record by writing the appropriate system manager or OPM regional office, as indicated in the Notification procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Approximate date of closing of the grievance.

d. Organizational component involved.

Individuals requestaing access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the appropriate system manager or OPM regional office indicated in the Notification procedure section. Individuals must furnish the following information for their records to be located and in dentified:

a. Full name.

b. Date of birth.

c. Approximate date of closing of the grievance.

d. Organizational component involved.

Individuals requesting amendments must also follow the Office's Privacy Act regulations regarding verification of

identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained;

b. Testimony of witnesses;

c. Union officials;

d. Office of Personnel Management officials; or

e. Department of Labor, Federal Labor Relations Authority, or arbitration officials involved in the grievance.

OPM/INTERNAL-3

SYSTEM NAME:

Security Officer Control File.

SYSTEM LOCATION:

Office of the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415 and OPM Regional Offices. (See list of OPM regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Central office and regional employees of the Office of Personnel Management and individuals being considered for possible employment by the Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of disks, cards, and file folders of active, inactive, and pending employees filed alphabetically, and containing date of birth, Social Security Number, classification as to position sensitivity, types and dates of investigations, investigative reports including those from Federal Law Enforcement agencies, Department of Defense, and internal inquiries, dates and levels of clearances, and names of agencies and the reasons why they were provided clearance information on Office employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450 and Executive Order 12065.

PURPOSE:

These records are used exclusively by OPM Security Officers and the employees of Security Offices for administrative reference in connection with controlling position sensitivity and personnel clearances.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES FOR SUCH USES:

a. To disclose information to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to the security office of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request for verification of security clearance, to enable Office employees to have access to classified data or areas where their official duties require such access.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on disks, cards, and in file folders.

RETRIEVABILITY:

Records are retrieved by the name and date of birth of the individuals on whom they are maintained.

SAFEGUARDS:

The disks, cards, and file folders are stored in fire-resistant safes contained within a secured area, in lockable metal file cabinets, or in secured rooms. The disks, cards, and file folders do not leave the security office.

RETENTION AND DISPOSAL:

Most records are retained for five years after the individual leaves the Office and then are disposed of by erasing the disks or burning the cards. Folders containing investigative reports are transferred with the employee when reassigned in OPM or returned to the Office's Division of Personnel Investigations when the individual leaves OPM.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415 for Central office employees. Regional Directors (see list of OPM regional office addresses in the Appendix) for regional office employees.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate system manager as indicated. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the appropriate system manager as indicated. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate system manager as indicated. Individuals must furnish the following information for their record to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

a. The individual to whom the information applies.

b. The Office's investigative files maintained by the Division of Personnel Investigations.

c. Employment information maintained by the Office's Director of Personnel or regional personnel offices.

d. Officials of the Office of Personnel Management.

3. *Federal law enforcement agencies, Department of Defense, and through internal inquiries.*

OPM/INTERNAL—8

SYSTEM NAME:

Employee Counseling Services Program Records.

SYSTEM LOCATION:

Office of Personnel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, and OPM Regional Offices.

Note.—In order to meet the statuory requirement that agencies provide appropriate prevention, treatment, and rehabilitation programs and services for employees with alcohol or drug problems, and to better accomodate establishment of a health service program to promote employees' physical and mental fitness, it may be necessary for an agency to negotiate for use of the counseling staff of another Federal, State, or local govenrment, or private sector agency or institution. This system also covers records on OPM employees that are maintained by another Federal, State, or local government, or private sector agency or institution under such a negotiated agreement.

When one or more Federal agencies wish to jointly make similar arrangements for employees, in order to ensure compliance with the law and to promote the agency health service program, the Office may, on behalf of the participating agencies, negotiate an agreement that provides such services through another Federal, State, or local government, or private sector agency or institution. However, when such is the case, this system will not cover records pertaining to employees of other participating agencies. Such records are considered by the Office as being part of the employing agency's internal system of records covering agency employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Office employees who have been counseled or otherwise treated regarding alcohol or drug abuse or for personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include documentation of visits to employee counselors (Federal, State, local government, or private) and the diagnosis, recommended treatment, results of treatment, and other notes or records of disucssions helds with the employee made by the counselor. Addtionally, records in this system may include documentation of treatment by a private therapist or a therapist at a Federal, State, local government, or private institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301 and 7901, 21 U.S.C. 1101 and 1108, 42 U.S.C. 4541 and 4561, and 44 U.S.C. 3101.

PURPOSE:

These records are used to document the nature of the individual's problem and progress made and to record an individual's participation in and the results of community or private sector treatment or rehabilitation programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to the Department of Justice or other appropriate Federal agencies in defending claims against the United States, when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Office in connection with the individual.

b. To disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by OPM, all patient identifying information shall be removed).

Note.—Disclosure of these records beyond officials of the Ofice having a bona fide need for them or to the person to whom they pertain, is rarely made as disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited in compliance with the restriction of the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR Part 2. Records pertaining to the physical and mental fitness of employees are, as a matter of Office policy, afforded the same degree of confidentiality and are generally not disclosed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained

SAFEGUARDS:

These records are maintained in locked file cabinets labeled confidential with access strictly limited to employees directly involved in the Office's alcohol and drug abuse prevention function (as that term is defined in 42 CFR Part 2).

RETENTION AND DISPOSAL:

Records are maintained for three to five years after the employee's last contact with the Office's prevention function or, if the employee leaves the agency, until the Employee Counseling Service Program Annual Report for the fiscal year in which separation occurred is prepared. Records are destroyed by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Office employees wishing to inquire whether this system of records contains information about them should contact the OPM Employee Counseling Services Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of Birth.

RECORD ACCESS PROCEDURES:

Office employees wishing to request access to records pertaining to them should contact the OPM Employee Counseling Services Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of Birth.

An individual must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORDS PROCEDURES:

Office employees wishing to request amendment to these records should contact the OPM Employee Counseling Services Program coordinator who arranged for counseling or treatment.

Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of Birth.

An individual must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by a supervisor, the Employee Counseling

Services Program staff member who records the counseling session, and therapists or institutions providing treatment.

OPM/INTERNAL—12

SYSTEM NAME:

Speaker Resume Records.

SYSTEM LOCATION:

Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415, and OPM Regional Training Managers. (See list of OPM regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subject matter experts, consultants, and teachers with whom the Office may contract to deliver training courses or portions thereof.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include resumes, names and address(es) of the individual, courses taught, with date, location, and amount paid in chronological order.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4107.

PURPOSE:

These records are used to identify and contact potential speakers and instructors of Office of Personnel Management training programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To diclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a Federal agency, in response to its requests, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from at congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on index cards, or in file folders and binders.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are located in lockable metal filing cabinets or in secured rooms with access limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained as long as the individual is actively utilized in the training program and for a maximum of 2 more years, then are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

a. For records maintained centrally: Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

b. For records maintained by Regional Training Centers: Manager, Regional Training Center at which individual is being considered for speakership or contract. (See list of OPM regional office addresses in the Appendix.)

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate system manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Place where last employed as a training instructor.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the appropriate system manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Place where last employed as a training instructor.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the appropriate system manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Place where last employed as a training instructor.

Individuals requesting amendment of their records must also comply with the Office's Privacy Act regulations regarding verification of indentity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

The individual to whom the information applies.

OPM/INTERNAL—14

SYSTEM NAME:

Administrative Grievance Records.

SYSTEM LOCATION:

These records are located in the personnel or other designated office, OPM Central and Regional offices (see list of OPM regional office addresses in the Appendix) where the grievance was filed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Office employees who have filed grievances, under OPM's administrative grievance procedures in accordance with Part 771 of the Office's regulations (5 CFR Part 771).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by OPM employees

under administrative procedures and in accordance with Part 771 of the Office's regulations. These case files contain all documents related to the informal and/or formal grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original decision, and related correspondence and exhibits. This system does not include files and records of any grievance filed under negotiated procedures with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR Part 771.

PURPOSE:

These records are used to process grievances submitted by OPM employees, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. By the Office in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

i. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

j. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

k. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of three years after the close of the fiscal year in which a final decision are issued. Disposal is by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Personnel, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the personnel or designated office where the action was processed, regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

RECORDS ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the personnel or designated office where the action was processed. Individuals must provide the following information for their records to be located and identified.

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 or 297.203).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a

judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the personnel or designated office where the grievance was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By agency officials.

d. From related correspondence from organizations or persons.

OPM/CENTRAL—1

SYSTEM NAME:

Civil Service Retirement and Insurance Records.

SYSTEM LOCATION:

Associate Director for Compensation, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Former Federal employees and Members of Congress who performed services subject to the Civil Service Retirement (CSR) system.

b. Current Federal employees who have:

(1) performed Federal service subject to the CSR system other than that with their present agency; or

(2) filed a designation of beneficiary for benefits payable under the CSR system; or

(3) requested the Office to review claims for health benefits made under the Federal Employees Benefits Program; or

(4) filed a service credit application in connection with former Federal service; or

(5) filed an application for disability retirement with the Office and are awaiting final decision, or whose disability retirement application has been disapproved by the Office.

c. Former Federal employees who died subject to or who retired under the CSR system, or their surviving spouses and/or children, who have received or are receiving CSR benefits, Federal Employees Group Life Insurance benefits, or Federal Employees Health Benefits.

d. Former Federal employees who died subject to or who retired under a Federal Government Retirement system other than the CSR system, or their surviving spouses and/or children, who have received or are receiving Federal Employees Group Life Insurance benefits and/or Federal Employees Health Benefits.

e. Applicants for Federal employment found unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of those retirement service history records of employees' service in the Federal government other than that for the agency in which they may presently be employed. It also contains information developed in support of claims for benefits made under the retirement, health benefits, and life insurance programs for Federal employees which the Office of Personnel Management administers. Also included are medical records and supporting evidence on those individuals found medically unsuitable for Federal employment. These records contain the following information:

a. Documentation of Federal service subject to the CSR system.

b. Documentation of service credit and refund claims made under the CSR system.

c. Documentation of voluntary contributions made by eligible individuals.

d. Retirement and death claims files, including documents supporting the retirement application, health benefits and life insurance eligibility, medical records supporting disability claims (after receipt by the Office of Personnel Management), and designations of beneficiary.

e. Claim review files pertaining to request that claims made under the Federal Employees Health Benefits Program be reviewed by the Office.

f. Suitability determination files on applicants for Federal employment found unsuitable for employment on medical grounds.

g. Documentation of continuing coverage for life insurance and health benefits for annuitants and their survivors under a Federal Governmenmt retirement system other than the CSR system, or for compensationers and their survivors under the Office of Workers' Compensation Programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 3301, and chapters 83, 87, and 89 of title 5, United States Code; Public Laws 83–598, 84–356, and 86–724; and Executive Order 9397.

PURPOSE:

These records provide information and verification on which to base entitlement and computation of Civil Service Retirement and survivors benefits, Federal Employees Health Benefits and enrollments, and Federal Employees Group Life Insurance benefits. These records also serve to review rejection of applicants for Federal employment on medical suitability grounds. These records also may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose, to the following recipients, information needed to adjudicate a claim for benefits under the Office's or the recipient's benefits program(s), or information needed to conduct an analytical study of benefits being paid under such programs: Office of Workers' Compensation Programs; Veterans Administration Pension Benefits Program; HHS's Social Security Old Age, Survivor, and Disability Insurance and Medical Programs, Health Care Financing Administration, and Supplemental Security Income Program; military retired pay programs; Federal civilian employee retirement programs (other than the Civil Service Retirement system); or other national, State, county, municipal, or other publicly recognized charitable or social security administrative agency.

b. To disclose to the Federal Employees Group Life Insurance Office information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

c. To disclose to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to

identify the enrollment in a plan to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts.

d. To disclose to any inquirer, if sufficient information is provided to assure positive identification of an individual on whom a department or agency maintains retirement or insurance records, the fact that an individual is or is not on the retirement rolls and, if so, the type of annuity (employer or survivor, but not retirement or disability) being paid, or if not, whether a refund has been paid.

e. When an individual to whom a record pertains dies, to disclose to any person possibly entitled in the order of procedence for lump sum benefits, information in the individual's record which might properly be disclosed to the individual, and the name and relationship of any other person whose claim to benefits takes precedence or who is entitled to share the benefits payable. When a representative of the estate has not been appointed, the individual's next of kin may be recognized as the representative of the estate.

f. To disclose to the Internal Revenue Service, Department of the Treasury, information as required by the Internal Revenue Code of 1954 as amended.

g. To disclose to the Department of the Treasury information necessary to issue benefit checks.

h. To disclose information to any person who is responsible for the care of the individual to whom a record pertains, and who is found by a court or an Office of Personnel Management Medical Officer to be incompetent or under other legal disability, information necessary to assure payment of benefits to which the individual is entitled.

i. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of an annuitant survivor annuitant, or former employee, for the purpose of enforcing child support obligations against such individual.

j. In connection with an examination ordered by the agency under:

(1) Fitness for duty examination procedures; or

(2) Agency-filed disability retirement procedures.

To disclose to the agency-appointed representative of an employee all notices, decisions, other written communications, or any pertinent medical evidence other than medical evidence that a prudent physician would hesitate to inform the individual of; such medical evidence will be disclosed only to a licensed physician, designated in writing for that purpose by the individual or his or her representative.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested relevant to an Office determination concerning an individual's eligibility for or entitlement to coverage under the retirement, life insurance, and health benefit program, to the extent necessary to identify the individual and to identify the type of information requested.

m. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

n. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

o. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

p. To disclose to a Federal agency, in response to its request, information in connection with (1) the hiring, retention, separation, or retirement of an employee, (2) the issuance of a security clearance, (3) the reporting of an investigation of an employee, (4) the letting of a contract, (5) the classification of a job, or (6) the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the Office determines that the information is relevant and necessary to the requesting agency's decision on the matter.

q. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

r. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and making analytical studies in support of the function for which the records were collected and maintained.

s. By the Office of Personnel Management, in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

t. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

u. To disclose to another agency, or to an instrumentality of any governmental jurisdiction within or under the control of the United States, for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Office of Personnel Management specifying the particular portion(s) of the record desired (including an address) and the law enforcement activity for which the record is sought.

v. To disclose to a Federal agency, in response to its request, the address of any annuitant or applicant for refund of retirement deductions, if the agency requires that information in order to provide consideration in connection with the collection of a debt due the United States.

w. To disclose information, in valid emergency situations when consent cannot readily be obtained and instant action is required, to persons who have a need to know, if the particulars of the disclosure then are transmitted to the data subject's last known address.

x. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

y. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

z. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

aa. To disclose to a Federal agency, in response to its request, the present address of a former employee and any other information the agency needs in order to contact the former employee concerning a possible threat to his or her health or safety.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic tapes, discus, and in folders.

RETRIEVABILITY:

These records are retrieved by the name, Social Security Number, date of birth and/or claim number of the individual to whom they pertain.

SAFEGUARDS:

Records are kept in lockable metal file cabinets or in a secured facility with access limited to those whose official duties require access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

All records relating to a claim for retirement, life insurance, and health benefits are maintained permanently. Medical suitability records are maintained for 18 months. Requests for review of health benefits claims are maintained up to 3 years. Disposal of manual records is by shredding or burning, magnetic tapes and discs are erased.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Compensation, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if this system contains information about them should contact the system manager.

Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.

b. Date of birth.

c. Social Security Number.

d. Name and address of office in which currently and/or formerly employed in the Federal Service.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records in this system should contact the system manager.

Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.

b. Date of birth.

c. Social Security Number.

d. Name and address of office in which currently and/or formerly employed in the Federal Service.

e. Annuity, service credit, or voluntary contributions account number, if assigned.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 207.203).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment to their records in this system should contact the system manager.

Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.

b. Date of birth.

c. Social Security Number.

d. Name and address of office in which currently and/or formerly employed in the Federal Service.

e. Annuity, service credit, or voluntary contributions account number, if assigned.

Individuals requesting amendment of their records must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the following sources:

a. The individual to whom the information pertains.

b. Agency pay, leave, and allowance records.

c. GSA National Personnel Records Center.

d. Federal civilian retirement systems other than the Civil Service Retirement System.

e. Military retired pay system records.

f. Office of Workers' Compensation Benefits Programs.

g. Veterans Administration Pension Benefits Program.

h. Social Security Old Age, Survivor and Disability Insurance and Medicare Programs.

i. Health insurance carriers and plans participating in the Federal Employee Health Benefits Programs.

j. The Office of Federal Employees Group Life Insurance.

k. Office of Personnel Management Government-wide system (OPM/GOVT–1) covering Official Personnel Folders.

l. The individual's co-workers and supervisors.

m. Physicians who have examined or treated the individual.

OPM/CENTERAL—2

SYSTEM NAME:

Complaints and Inquiries Records.

SYSTEM LOCATION:

Assistant Director for Agency Compliance and Evaluation, Compliance and Investigations Group, Office of Personnel Management, 1900 E Street N.W., Washington, D.C. 20415, and OPM regional offices. (See list of regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees who have filed complaints or submitted an inquiry about conditions in the agency or agency personnel actions affecting the individual, e.g., allegations or improper promotion actions, reduction-in-force procedures, or Fair Labor Standards Act (FLSA) procedures.

b. *Persons who are not current or former Federal employees who have complained or inquired about an agency decision or action related to the general area of personnel management.*

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to the processing and adjudication of a complaint made to the Office under its regulations. The records may include information and documents regarding the actual personnel action of the agency in question and the decision or determination rendered by an agency regarding the issue raised.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C., Sections 1302, 3502; Executive Orders 9830, 10577, and 11491; and Public Law 93–259.

PURPOSE:

The principal purpose for which these records are established is to retain a record of correspondence with an individual, over a complaint or inquiry, as a reference should that individual again contact the office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose informaiton to any source from which additional information is requested in the course of adjudicating an appeal or complaint, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

e. To disclose information to a Federal agency or to a court when the Government is a party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in executive files, in file folders, binders, or on index cards.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

The records are located in lockable metal filing cabients or in a secured room, with access limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

1. *Records related to most complaints or inquiries about conditions at an agency or an agency's personnel actions affecting an individual, are maintained until the second calendar year following closing action on the complaint.*

2. Records related to Fair Labor Standard Act complaints are maintained indefinitely.

3. All records are destroyed by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Agency Compliance and Evaluation, Compliance and Investigations Group, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager indicated above, with the following exception: Individuals who have filed complaints or inquires with an OPM regional office should contact that regional office at the address listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. If appropriate, the agency in which employed when complaint or inquiry was filed and the approximate date.

c. Kind of response received.

RECORD ACCESS PROCEDURES:

Individuals who have filed a complaint or inquiry about an agency personnel action or about conditions existing in an agency will receive a response and, if necessary, be provided access to any other pertinent record. After a response to a complaint or inquiry has been received, an individual may request access to the official copy of the correspondence record by writing the system manager or OPM regional office indicated in the Notification procedures section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. If appropriate, the agency in which employed when complaint or inquiry was filed and the approximate date.

c. Kind of response received.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to regard (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their correspondence file records will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the nature of the complaint or inquiry, the identity of the individual, and the response furnished. Individuals must furnish the following information for their records to be located and verified:

a. Full name.

b. If appropriate, the agency in which employed when complaint or inquiry was filed and the approximate date.

c. Kind of response received.

Individuals requesting amendment of their records must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

a. Individual to whom the record pertains.

b. Agency and/or Office of Personnel Management.

c. Official documents relating to the complaint.

d. Related correspondence from organizations or persons.

OPM/CENTRAL—3

SYSTEM NAME:

Federal Executive Development Program and SES Candidate Development Program Records.

SYSTEM LOCATION:

Administration Group, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees at the GS–15 or equivalent level, who applied and were nominated by their agency for the Federal Executive Development Program or the SES Candidate Development Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain demographic information and background data on the experience, education, awards, and career interests of nominees, their agency recommendations for the Program, and supervisory evaluations. Also included are records of the evaluation process used by the selection panel in choosing fhe finalists and data on assignments and progress under the Program.

Note.—This system does not include records containing applications and related information on employees who were not nominated by their employing agencies to the

Office for the Federal Executive Development Program or the SES Candidate Development Program. These records which never come to the Office, are agency maintained records, and may be published as an agency system of records subject to the Privacy Act or may be part of OPM's Government-wide system of General Personnel Records (OPM/Govt–1).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 11315, 12027, and 9397.

PURPOSE:

These records are maintained and used by the Office to select final candidates for the Federal Executive Development Program and the SES Candidate Development Program to arrange the work assignments of those selected, and to track their progress on assignments under the Program. The Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to individuals responsible for making the final selection of candidates for the Program.

b. To disclose information to agencies in which the selected employee is or will be performing work assignments under the Program.

c. To disclose information to the individual's employing agency regarding his or her nomination, work assignments, progress under the Program, and for necessary personnel administrative purposes (pay matters, personnel actions, etc.).

d. By the Office of Personnel management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

h. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

i. To diclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

k. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

l. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

When not in use records are kept in locked cabinets. Records are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are retained for 5 years. Disposal is by shredding.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Administration Group, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Program year (Year nominated or selected for program).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Program year (Year nominated or selected for program).

An individual requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Program year (Year nominated or selected for program).

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains, his or her supervisors and other management officials, the selection panel, or is obtained from agency records.

OPM/CENTRAL—5

SYSTEM NAME:

Intergovernmental Personnel Act Assignment Records.

SYSTEM LOCATION:

Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415. Coutesy copies of mobility assignment agreements may be sent to regional offices of the Office of Personnel Management for information purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees who have completed or are presently on an assignment in a State or local government agency, an educational institution, or in Indian tribal government, or other organizations under the provisions of the Intergovernmental Personnel Act (IPA); or

b. Current or former State or local government or educational institution employees, employees of Indian tribal governments, or other organizations who have completed or are presently on an assignment in a Federal agency under the provisions of the Intergovernmental Personnel Act (IPA).

CATEGORIES OF RECORDS IN THE SYSTEM:

These records are comprised of a copy of the individual's IPA assignment agreement between a Federal agency and a State or local government, educational institution, Indian tribal government, or other organization; biographical and background information about the assignees; and records of interviews with assignee(s) which may be conducted after the IPA assignment has been completed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intergovernmental Personnel Act of 1970 (84 Stat. 1909), 5 U.S.C. 3371–3376, and E.O. 11589.

PURPOSE:

These records are maintained to document and track mobility assignments (including extensions, modifications, and terminations thereof) made under the Intergovernmental Personnel Act (IPA). Internally, the Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a Federal agency, in response to its requests, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

f. By the Office of Personnel Management to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. To disclose information to any source from which additional information is requested (to the extent necessary to indentify the individual, inform the source of the purpose(s) of the request, and to indentify the type of information requested), where necessary to obtain information relevant to an Office decision regarding possible termination of an assignment.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such functions, e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

j. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

k. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on cards and in file folders.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are retained for 5 years from the signing of the agreement. Records are destroyed by shredding.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Federal agency involved in the assignment.

c. Non Federal organization involved in the assignment.

d. Date of each assignment.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Federal agency involved in the assignment.

c. Non Federal organization involved in the assignment.

d. Date of each assignment.

An individual requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Federal agency involved in the assignment.

c. Non Federal organization involved in the assignment.

d. Date of each assignment.

Individuals requesting amendment of their records must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information in these records is provided by the individual subject of the records, by officials in the agencies, educational institutions, Indian tribal governments or other organizations where the individual is employed and where the individual is serving on the IPA assignment, or is obtained from agency personnel files and records.

OPM/CENTRAL—7

SYSTEM NAME:

Litigation and Claims Records.

SECURITY CLASSIFICATION:

No security classification is assigned to the system as a whole; however, items of record within the system may bear a national defense/foreign policy classification of Confidential or Secret.

SYSTEM LOCATION:

Office of the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who make claims under the Military Personnel and Civilian Employees Claims Act of 1964.

b. Individuals who file civil actions against the Office, its officials, and employees;

c. Individuals who are parties to actions in which the Government is involved, but in which the Office's role is advisory to another agnecy; and

d. Individuals who file claims with the Office under the Federal Tort Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes the following kinds of records: administrative appeals; investigative reports; retirement records; official personnel records; documentation of litigation including complaints, answers, motions, briefs, orders, and decisions; claims and supporting documentation submitted under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act, together with correspondence and records of settlement; and final administrative determinations.

AUTHORITY FOR MAINTENANCE OF THE RECORDS:

5 U.S.C. 1301–1308; 28 U.S.C. 2672; 31 U.S.C. 241; and EO 10577.

PURPOSES OF THE SYSTEM:

These records are maintained to defend the Office against lawsuits and to settle administrative claims brought against the Office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information:

a. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To any source where necessary to obtain information relevant to an Office decision or action involved in one of the purposes for maintenance of the system.

c. To a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To a Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. To the National Archives and Record Service (General Services Administration) for records management inspections conducted under authority of 44 USC 2904 and 2906.

g. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To the insurance carrier of an employee of, or a claimant against, the Office under the Federal Tort Claims Act or the Military Personnel and Civilian Employees Claims Act in order to determine the proper assignment of any liability.

i. In response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

k. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection

Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

l. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained and, for litigation records, by civil action number.

SAFEGUARDS:

Records are available only to personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Office of the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains a record about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Description of type of record.
d. Court action number if applicable.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a (c)(3) and (d), regarding access to records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them from access.

Individuals who wish to obtain access to their records must contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Description of type of record.
d. Court action number if applicable.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them from amendment.

Review of requests from individuals seeking amendment of their records which have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Description of type of record.
d. Court action number if applicable.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.
b. Agency officials and records.
c. Records of administrative and court proceedings including statements of witnesses and documents.
d. Law enforcement agencies.
e. Witnesses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

When litigation occurs, information from other systems of records may be incorporated into the case file. In certain instances, the incorporated information may be material which the Privacy Act, at 5 U.S.C. 552a(k) (1), (2), (3), (5), and (6), permits an agency to exempt from certain provisions of the Act. To the extent that such exempt material is incorporated into litigation file, the appropriate exemption ((k) (1), (2), (3), (5), and (6)) has also been claimed for the material as it appears in this system. The Office of the General Counsel, pursuant to 5 U.S.C. 552a(d)(5), reserves the right to refuse access to information compiled in reasonable anticipation of a civil action or proceeding.

Collection of information from other Office files may be necessary during litigation. Therefore, it is possible that this system may contain the following types of information:

a. Properly classified information, obtained from another Federal agency during the course of an investigation, which pertains to national defense and foreign policy. The Privacy Act, at 5 U.S.C. 552a(k)(1), permits an agency to exempt such materials from certain provisions of the Act.

b. Investigatory material compiled for law enforcement purposes in connection with the administration of the merit system. The Privacy Act, 5 U.S.C. 552a(k)(2), permits an agency to exempt such material from certain provisions of the act. Materials may be exempted to the extent that release of the material to the individual whom the information is about, would:

1. Impair the effectiveness of the investigative process;

2. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

3. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

c. Investigatory material maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18. The Privacy Act at 5 U.S.C. 552a(k)(3), permits an agency to exempt such material from certain provisions of the Act.

d. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civil service employment. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about, would:

1. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or,

2. Reveal the identity of a source who, prior to September 27, 1975, furnished

information to the Government under an implied promise that the identity of the source would be held in confidence.

e. Testing and examination materials, compiled during the course of a personnel investigation, that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

The Office of Personnel Management has claimed these exemptions from the requirements of 5 U.S.C. 552a(c)(3) and (d). These requirements relate to providing an accounting of disclosures to the individual whom the records are about and access to and amendment of records.

OPM/CENTRAL—8

SYSTEM NAME:

Privacy Act/Freedom of Information Act (PA/FOIA) Case Records.

SYSTEM LOCATION:

a. Offices of the Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415;

b. Regional and area offices of the Office of Personnel Management. (See list of OPM regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records and related correspondence on individuals who have filed with the Office:

a. Requests for information under the provisions of the Freedom of Information Act (5 U.S.C. 552), including requests for review of initial denials of such requests; and

b. Requests under the provisions of the Privacy Act (5 U.S.C. 552a) for records about themselves, including:

(1) Requests for notification of the existence of records about them;

(2) Requests for access to these records;

(3) Requests for amendment of these records;

(4) Requests for review of initial denials of such requests for notification, access, and amendment; and

(5) Requests for an accounting of disclosures of records about them.

Note.—Since these PA/FOIA case records contain inquiries and requests regarding any of the Office's other systems of records subject to the Privacy Act, information about individuals from any of these other systems may become part of this PA/FOIA Case Records system.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence and other documents related to request, made by individuals to the Office for:

a. Information under the provisions of the FOI Act (5 U.S.C. 552), including requests for review of initial denials of such requests; and

b. Information under provisions of the Privacy Act (5 U.S.C. 552a) and requests for review of initial denials of such requests made under the Office's Privacy Act regulations including request for:

(1) Notification of the existence of records about them;

(2) Access to records about them;

(3) Amendment of records about them;

(4) Review of initial denials of such requests for notification, access, or amendment; and

(5) Requests for an accounting of disclosure of records about them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Privacy Act of 1974 (U.S.C. 552a), the Freedom of Information Act, as amended (5 U.S.C. 552), and 5 U.S.C. 301.

PURPOSE:

These records are maintained to process individual's requests made under the provisions of the Freedom of Information and Privacy Acts. The records are also used by the Office to prepare its annual reports to OMB and Congress required by the Privacy and Freedom of Information Acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose information to a Federal agency or to a court when the Government is a party to a judicial proceeding before the court.

d. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

e. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

f. To disclose information to an agency, subject to law, rule, or regulation enforced by the Office, having been found in violation of such law, rule, or regulation, in order to achieve compliance with Office instructions.

g. To disclose information to Federal agencies (e.g., Department of Justice) in order to obtain advice and recommendations concerning matters on which the agency has specialized experience or particular competence, for use by the Office in making required determinations under the Freedom of Information Act or the Privacy Act of 1974.

h. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested), where necessary to obtain information relevant to an Office decision concerning a Privacy or Freedom of Information Act request.

i. To disclose to the Federal agency involved, an Office decision on an appeal from an initial denial of a request involving Office-controlled records.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as prescribed in 5

U.S.C. 1205 and 1206, or as may be authorized by law.

m. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination complaints in the Federal sector, examination of Federal Affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

n. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained as a paper copy of correspondence in file folders, binders, and on index cards.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained and year of the request.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in a secured room, with access limited to personnel whose duties require access.

RENTENTION AND DISPOSAL:

These records will be disposed of 5 years after the date of final Office action on the case. Records are destroyed by shredding, burning, or the equivalent.

SYSTEM MANAGERS AND ADDRESSES:

The appropriate Associate or Assistant Director, the General Counsel, or Regional Directors, Office of Personnel Management, is system manager for Privacy Act/Freedom of Information Case Records maintained in that office. Associate and Assistant Director's offices and the Office of the General Counsel are located at: Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415. For regional offices, see the list of OPM regional office addresses in the Appendix.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager at the appropriate office or region where their original Privacy Act or Freedom of Information Act requests were sent, or from where they received responses to such requests. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate dates of Privacy Act/FOI Act correspondence between OPM and the individual.

RECORD ACCESS PROCEDURE:

Material from other Office systems of records which are exempt from certain Privacy Act requirements may be included in this system as part of a PA/FOIA case record. Such material retains its exemption if it is included in this system of records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, explains the exemptions for this system. Individuals wishing to request access to their records should contact the system manager at the appropriate office or region where their original Privacy Act of Freedom of Information Act request was sent, or from which they received responses to such requests. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate dates of Privacy Act/FOI Act correspondence between OPM and the individual.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 or 297.203).

CONTESTING RECORD PROCEDURES:

Material from other Office systems of records which are exempt from certain Privacy Act requirements may be included in this system as part of a PA/FOIA case record. Such material retains its exemption if it is included in this system of records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, explains the exemptions for this system. Individuals wishing to request amendment to their records should contact the system manager at the appropriate office or region where their original Privacy Act or Freedom of Information Act requests were sent, or from which they received responses to such requests. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate dates of Privacy Act/FOI Act correspondence between OPM and the individual.

Individuals requesting amendment must also comply with Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 or 297.208).

Note.—The amendment provisions for this system are not intended to permit an individual a second opportunity to request amendment of a record which was the subject of the initial Privacy Act amendment request which created the record in this system. That is, after an individual has requested amendment of a specific record in an Office system under provisions of the Privacy Act, that specific record may itself become part of this system of Privacy Act/FOI Act Case Records. An individual may not subsequently request amendment of that specific record again, simply because a copy of the record has become part of this second system of Privacy Act/FOI Act Case Records.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from:

a. The individual who is the subject of the records.

b. Office officials who respond to Privacy Act/FOI Act request.

c. Official personnel documents of the Office, including records from any other Office system of records included in this notice.

d. Other sources whom the Office believes have information pertinent to an Office decision on a Privacy Act or Freedom of Information Act request.

e. Other agencies referring the request to the Office.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Office of Personnel Management has claimed exemptions for several of its other systems of records under 5 U.S.C. 552a(k) (1), (2), (3), (5), and (6). During the course of a PA/FOIA action, exempt materials from those other systems may become part of the case record in this system. To the extent that copies of exempt records from those other systems are entered into these PA/FOIA Case Records, the Office has claimed the same exemptions for the records as they have in the original primary systems of records of which they are a part.

OPM/CENTRAL—9

SYSTEM NAME:

Personnel Investigations Records.

SECURITY CLASSIFICATION:

None for the system. However, items or records within the system may have

national defense/foreign policy classifications up through secret.

SYSTEM LOCATION:

a. Primary system: Assistant Director for Personnel Investigations, Compliance and Investigations Group, Office of Personnel Management, Washington, D.C. 20415, and the Federal Records Center, Suitland, Maryland.

b. Decentralized segments: copies of these records may exist temporarily in agencies on current employees, former employees, or on contractor employees. These copies may be located in the personnel security office or other designated offices responsible for suitability, security clearance, access, or hiring determinations on the individual. ("Agency" as used throughout this system is deemed to include Legislative and Judicial branch establishments as well as those in the Executive Branch).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former employees or applicants for employment in the Federal service, including agency offices or establishments in the executive, legislative, and judicial branches, and in the Government of the District of Columbia.

b. American citizens who are current or former employees or applicants for employment with International Organizations.

c. Individuals considered for access to classified information or restricted areas and/or security determinations as contractors, experts, instructors, and consultants to Federal programs.

d. Individuals considered for assignment as representatives of the Federal Government in volunteer programs.

e. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in Federal programs under a co-operative assignment or under a similar agreement.

f. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in matters related to the administration of the merit system.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for violations against the law; reports of interviews with present and former supervisors, co-workers, associates, educators, etc.; reports about the qualifications of an individual for a specific position and correspondence files and index cards relating to adjudication matters; reports of inquiries with law enforcement agencies, employers, educational institutions attended; reports of action after OPM or FBI Section 8(d) Full Field Investigation; Notices of Security Investigation; and other information developed from the above.

Note.—This system does not include those agency records of a personnel investigative nature that do not come to the Office of Personnel Management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authorities for maintenance of the system are indicated below:

a. Section 2, Civil Service Act of 1883—original authority.

b. Title 5, CFR Part 5.

c. Sections 1303, 1304, and 3301, title 5, U.S.C.

d. Sections 7, 8(b), 8(c), and 14 of Executive Order 10450.

e. Section 7701, title 5, U.S.C.

f. Public Law 92–261 and 5 CFR 713.216 and 713.220.

g. Section 2165, title 42, U.S.C.

h. Section 2585, title 22, U.S.C.

i. Executive Order 10422, as amended.

j. Executive Order 9397.

k. Section 1434, title 22, U.S.C.

l. Section 686, title 31, U.S.C.

m. Section 2455, title 42, U.S.C.

n. P.L. 82–298.

o. Section 1874(c), title 42, U.S.C.

p. Section 2519, title 22, U.S.C.

q. In addition to the provisions cited above, there are various acts of Congress that contain implied authority for the Office to investigate, such as laws prohibiting the purchase and sale of office, holding of two offices, conspiracy and other prohibitory statutes.

PURPOSE:

The purposes of this system are:

a. To provide investigatory information for determination concerning compliance with Federal personnel regulations and for individual personnel determinations including suitability and fitness for Federal employment, access and security clearances, evaluations of qualifications, loyalty to the U.S., and evaluations of qualifications and suitability for performance of contractual services for the U.S. Government;

b. To document such determinations;

c. To provide information necessary for the scheduling and conduct of the required investigations;

d. To otherwise comply with mandates and Executive orders; and

e. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES FOR SUCH USES:

These records and information in these records may be used in disclosing information:

a. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, having an interest in the individual for employment purposes, including a security clearance or access determination, and the need to evaluate qualifications, suitability, and loyalty to the United States Government.

b. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia government, when such agency, office, or establishment conducts an investigation of the individual for the purpose of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.

c. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, having the responsbility to grant clearances make a determination regarding access to classified information or restricted areas, or to evaluate qualifications, suitability, or loyalty to the United States Government, in connection with performance of a service to the Federal Government under a contract or other agreement.

d. To the intelligence agencies of the Department of Defense, the National Security Agency, the Central Intelligence Agency, and the Federal Bureau of Investigation for use in intelligence activities.

e. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

f. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or

implementing a statute, rule, regulation or order where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To an agency, office, or other establishment in the executive, legislative, or judicial branches of the Federal Government, or the District of Columbia Government, in response to its requests, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

h. To Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.

i. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

j. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

k. To the National Archives and Records Service (General Services Administration) for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

l. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

m. To respond to a request for discovery or for appearance of a witness, when relevant to the subject matter involved in a pending judicial or administrative proceeding.

n. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

o. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

p. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on index cards.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Folders are maintained in a room with a manipulation-proof combination lock and an intrusion alarm system; or in metal file cabinets secured by three position combination locks. The index to the system and those records which are maintained on index cards are contained in covered and locked rotary Wheeldex machines. All employees are required to have an appropriate security clearance before they are allowed access to the records.

RETENTION AND DISPOSAL:

a. *Index cards which show the scheduling or completion of an investigation, and investigative files, if any, are retained for 20 years, plus the current year from the date of the most recent investigative activity. Other index cards which show no investigative record other than the completion of a clear National Agency Check or a clear National Agency Check and Inquiry, and where no investigative file folder exists, are retained for two years plus the current year.*

b. *Reports of action after OPM or FBI section 8(d), background investigation are retained for the life of the investigative file.*

c. Notices of Security Investigations are retained for 20 years.

All records are destroyed by burning.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Personnel Investigations, Compliance and Investigations Group, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager in writing.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Signature.

e. Any available information regarding the type of record involved.

f. The category of covered individuals under which the requester believes he or she fits.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552 a(c)(3) and (d), regarding access to records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their records should contact the system manager in writing. Requests should be directed only to the system manager whether the record sought is in the primary system or in an agency's decentralized segment.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Signature.

e. Any available information regarding the type of record involved.

f. The category of covered individuals under which the requester believes he or she fits.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment to records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of material exempted and the reasons for exempting them from amendment. Individuals wishing to request

amendment to their non-exempt records should contact the system manager in writing. Requests should be directed only to the system manager, whether the record sought is in the primary system or in an agency's decentralized segment. Individuals must furnish the following information for their records to be located and identified.

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Signature.

e. Any available information regarding the type of record involved.

f. The category of covered individuals under which the requester believes he or she fits.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

Note.—Where an agency retains the decentralized copy of the investigative report provided by OPM, requests for access to or amendment of such reports will be forwarded to the system manager for processing.

RECORD SOURCE CATEGORIES:

Information contained in the system was obtained from the following categories of sources:

a. Applications and other personnel and security forms furnished by the individual.

b. Investigative and other record material furnished by Federal agencies.

c. Notices of personnel actions furnished by Federal agencies.

d. By personal investigation or written inquiry from sources such as employers, educational institutions, references, neighbors, associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials, newspapers, magazines, periodicals, and other publications.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system may contain the following types of information:

a. Properly classified information, obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy. The Privacy Act, at 5 U.S.C. 552a(k)(1), permits an agency to exempt such materials from certain provisions of the Act.

b. Investigatory material compiled for law enforcement purposes is connection with the administration of the merit system. The Privacy Act, at U.S.C. 552a(k)(2), permits an agency to exempt such material from certain provisions of the Act. Application of exemption (k)(2) may be necessary to preclude the data subject's access to and amendment of the record.

c. Investigatory material maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18 of the U.S. Code. The Privacy Act at 5 U.S.C. 552a(k)(3), permits an agency to exempt such material from certain provisions of the Act.

d. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about would:

1. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be in confidence; or,

2. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

e. Testing and examination materials, compiled during the course of a personnel investigation, that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

The Office of Personnel Management has claimed these exemptions from the requirements of 5 U.S.C. 552a (c)(3) and (d). These requirements relate to providing an accounting of disclosures to the individual whom the records are about and access to and amendment of records.

OPM/CENTRAL—11

SYSTEM NAME:

Presidential Management Intern Program Records.

SYSTEM LOCATION:

Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former interns and students pursuing graduate degrees in public management who have been nominated by their universities for consideration under the Presidential Management Intern Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about the covered individuals relating to name, social security number, date of birth, academic background, home address, home telephone number, employment history, veteran preference, and other personal history information needed during the evaluation and selection process. This system will also contain evaluation statements from the nominating universities and confidential information developed during the regional screening process and final panel evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 12008 and 9397.

PURPOSES OF THE SYSTEM OF RECORDS:

These records are used by Program personnel for the following reasons:

a. To determine basic program eligibility and to evaluate the nominees in a regional screening process conducted by OPM regional officials with the participation of agency managers, and State and local government representatives;

b. To group the nominees into various categories (finalists, alternatives, and non-selectees) and then make a final determination as to those candidates who will be referred to the agencies for employment consideration; and

c. For program evaluation functions to determine the effectiveness of the program and to improve program operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To refer candidates to Federal agencies for employment consideration.

b. To refer candidates to State and local governments, congressional offices, international organizations, and other public offices with permission of the candidates, for the purpose of employment consideration.

c. To refer interns for consideration for reassignment and promotion within the employing agencies.

d. As a data source for management information for production of summary descriptive statistics and analytical

studies in support of the function for which the records are collected and maintained, or for related personnel research functions or manpower studies, or to locate individuals for personnel research.

e. To refer pertinent information to the appropriate Federal, State, or local agency responsible for investigating prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of civil or criminal law or regulation.

f. To request information from a Federal, State, or local agency maintaining civil, criminal, or other information relevant to an agency decision concerning the hiring or retention of a candidate.

g. To provide an educational institution with information on an appointment of a recent graduate to a Federal position at a certain grade level.

h. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

i. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

j. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as pressribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on forms, lists, punched cards, and magnetic tapes.

RETRIEVABILITY:

Records are indexed by name of nominee, school, State of legal residence, Social Security Number, and any combination of the above.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets and in a computerized system accessible to only those program managers whose official duties necessitate such access. Confidential passwords are required for access to these automated records.

RETENTION AND DISPOSAL:

Automated records are retained for up to ten years. Manual records are retained for up to five years. Tapes are erased and manual records are burned or shredded.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Inquiries, including name, address, and nominating university should be addressed to the system manager named above.

RECORD ACCESS PROCEDURES:

Specific material in this system has been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to and amendment of records. The section of the notice titled *Systems exempted from certain provisions of the Act,* which apears below, indicates the kinds of materials exempted and the reasons for exempting them from access. Current or former Presidential Management Interns or nominees who wish to gain access to their non-exempt records should direct such a request in writing to the system manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Address.

c. Academic year of nomination.

d. Nominating University.

Individuals must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Specific material in this system has been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to and amendment of records. The section of the notice titled *Systems exempted from certain provisions of the Act,* which appears belows, indicates the kinds of materials exempted and the reasons for exempting them from amendment. Current or former Presidential Management Interns or nominees wishing to request amendment of their non-exempt records should contact the system manager named above. Individuals must furnish the following information for their records to be located and identified.

a. Full name.

b. Address.

c. Academic year of nomination.

d. Nominating University.

Individuals must also comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information in this system of records originates from the individual to whom its applies, nominating university deans, Federal, State and local officials involved in the screening and selection process, and employing agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office of Personnel Management has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records, for any such testing or examination materials in the system.

OPM/CENTRAL—13

SYSTEM NAME:

Executive Personnel Records.

SYSTEM LOCATION:

Associate Director, Administration Group, Office of Personnel Management,

1900 E Street, N.W., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former appointees in the Senior Executive Service and civil service applicants for such positions whose applications have been submitted to OPM or agencies for a determination of executive (managerial) qualifications, and current and former incumbents of executive level, General Schedule 16–18, and Scientific and Professional positions in research and development.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include:

a. Demographic, appointment, and assignment information (e.g., name, home address, date of birth, Social Security Number, race and ethnic designation, title of position, pay rate, and type of appointment);

b. Background data on work experience, educational experience, publications or awards (includes performance summary ratings and any performance, rank, or incentive awards received), and career interests;

c. Determinations on nominees for Meritorius and Distinguished Executive ranks;

d. Determinations concerning executive (managerial) qualifications (i.e., Qualification Review Board records);

e. *Information on performance of SES members (e.g., performance appraisal summary ratings, performance awards, and incentive awards);*

f. Information relating to participants (current and former) in the sabbatical leave program (e.g., dates of participation and reasons for the leave);

g. Applications from individuals who, within the 90-day period provided for under 5 U.S.C. 3593(b), seek reemployment in the Senior Executive Service;

h. Information concerning the reason(s) why an individual leaves the SES (e.g., to enter private industry, to work for a State government, or removed during probation or after, because of performance); and

i. Information about the recruitment of individuals for SES positions (e.g., recruited from another Federal agency or from outside the Federal service).

Note.—Automated and manual duplicates of records in this system, maintained by agencies for purposes of actual administration of the SES, along with other records agencies have on Federal executives are not considered part of this system. Such records are considered general personnel records and are covered by the OPM/GOVT–1, General Personnel Records system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S. Code, Sections 2101a; 3131 through 3136; 3391 through 3397; 3591 through 3595; 4311 through 4315; 4507; 5381 through 5385; 5752; and 7541 through 7543.

PURPOSE:

The records are used to: (1) Assist the Office in carrying out its responsibilities under title 5 U.S. Code, and Office rules and regulations promulgated thereunder, including the establishment of SES positions by agencies, development of qualification standards for SES positions, establishment and operation of one or more qualifications review boards, establishments of programs to develeop candidates for and incumbents of the SES, and development of performance appraisal systems; (2) pursuant to section 415 of the Civil Service Reform Act, assist the Office in meeting its mandate to evaluate the effectiveness of the Senior Executive Service and manner in which such Service is administered; (3) provide data used in policy formulation, program planning research studies, and required reports regarding the Government-wide SES program; and (4) locate specified groups of individuals for personnel research (while protecting their individual privacy).

Race and ethnic data and performance appraisal summary ratings are collected for statistical use only.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To identify and refer qualified current or former Federal employees to Federal agencies for vacancies in the Senior Executive Service.

b. To refer qualified current or former Federal employees or retirees to State and local governments and international organizations for employment consideration.

c. To provide an employing agency with extracts from the records of that agency's employees in the system.

d. To provide information required in the annual report to Congress mandated by 5 U.S.C. 3135 and elsewhere, regarding positions in the SES and the incumbents of these positions.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

f. By the Office of Personnel Management to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data-individually identifiable by inference.

g. To disclose information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

h. To the National Archives and Records Service (General Services Administration) for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

i. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment program, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978, and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or

matters before the Federal Service Impasses Panel.

n. To disclose information to any member of an agency's Performance Review Board or other board or panel (e.g., one convened to select or review nominees for awards of merit pay increases), when the member is not an official of the employing agency; information would then be used for the purposes of approving or recommending selection of candidates for executive development programs, issuing a performance appraisal rating, issuing performance awards, nominating for Meritorious and Distinguished Executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

o. To provide information to the White House on executives: with noncareer appointments in the Senior Executive Service under 5 U.S.C. 3133(a)(7); in positions in the General Schedule filled by noncareer executive assignments under 5 CFR Part 305, Subpart F; in excepted positions paid at Executive Schedule pay rates under 5 U.S.C. 5311; and in other positions at General Schedule grades 16 to 18, or equivalent, filled by presidential appointment; in positions filled by presidential appointment with the advice and consent of the Senate, or excepted from the competitive service because they are of a confidential or policy-determining character under 5 CFR 213.3301. The information serves as a data base for the purposes of statistical analysis and longitudinal studies.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORD IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, and on magnetic disk and tape, punched cards, and microfiche.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individual to whom they pertain.

SAFEGUARDS:

Manual records are maintained in lockable metal filing cabinets or in secured room with access limited to those whose official duties require access. Access to computerized records is limited to those whose official duties require access. Access to race and ethnic data is restricted to specially designated OPM personnel.

RETENTION AND DISPOSAL:

Records are retained so long as the individual remains in a covered position and for 5 years after they leave Federal service.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Administration Group, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified.

a. Full name.

b. Social Security Number.

c. Address where employed.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about themselves should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

An individual requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information is provided by the individual named in the record, his or her employing agency, and is also obtained from official documents of the Office.

OPM/GOVT—1

SYSTEM NAME:

General Personnel Records.

SYSTEM LOCATION:

Records on current Federal employees are located at the Personnel Office or other designated office of the local installation of the Department or Agency which currently employs the individual. Where agencies determine that duplicates of these records need to be located in a second office, e.g., an administrative office closer to where the employee actually works, such copies are covered by this system. Former Federal employees' Official Personnel Folders (OPF) are located at the National Personnel Records Center, General Services Administration, 111 Winnebago Street, St. Louis, Missouri 63118. Records not considered long term records retained on the right-hand side of the OPF but which are also included in this system for former Federal employees, may be retained by agencies for a period of time after the employee leaves service.*

**The use of the phrase "long term" to describe right-hand side OPF records is used throughout since these records are not actually permanently retained. The term "temporary" is used when referencing left side OPF records and all other records covered by this notice.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees as defined in 5 U.S.C. 2105.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each category of record may include identifying information such as name(s), date of birth, home residence, mailing address, Social Security Number, and home telephone. This system includes, but is not limited to, the contents of the Official Personnel Folder as specified in Federal Personnel Manual Supplement 293–31. Records in this system include:

a. Records reflecting work experience, educational level achieved, and specialized education or training occurring outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education or training received while employed. Such records contain information about: past and present positions held; past and present grades, salaries, and duty station locations; commendations, awards, or other data reflecting special recognition of an employee's performance; and notices of all personnel actions such as: appointments, transfers, reassignments, details, promotions, demotions, reductions in force, resignations, separations, suspensions, Office approval of disability retirement applications, retirement and removals.

c. Records relating to enrollment or declination of enrollment in the Federal Employees Group Life Insurance Program and Federally-sponsored health benefit programs, as well as forms showing designation of beneficiary.

d. Records of a medical nature including records compiled during an agency-initiated fitness for duty examination or request for approval of disability retirement. Such medical records are to be retained in separate envelopes apart from the Official Personnel Folder (OPF) e.g., in the envelope that includes records of medical examinations that are to remain as long term records in the OPF (see "Retention and disposal" section below). (Note: this system does not cover agency dispensary records or records of drug or alcohol abuse counseling or other such counseling records.)

e. Records relating to an Intergovernmental Personnel Act assignment or Federal-private exchange program. (Note: some of these records may also become part of the OPM/CENTRAL–7, Intergovernmental Personnel Act Assignment Records, system.)

f. Records relating to participation in an agency Federal Executive or SES Candidate Development Program. (Note: some of these records may also become part of the OPM/CENTRAL–5, Federal Executive and SES Candidate Development Program Records, or OPM/CENTRAL–13, Senior Executive Service Records, systems.)

g. Records relating to Government-sponsored training or participation in an agency's Upward Mobility Program or other personnel programs designed to broaden an employee's work experiences and for purposes of advancement (e.g., and administrative intern program).

h. Records contained in the Central Personnel Data File (CPDF) maintained by the Office and exact representations thereof in agency manual or automated personnel information systems. These data elements include many of the above records along with handicap and race and national origin codes. A definitive list of CPDF data elements is contained in Federal Personnel Manual Supplement 292–1.

i. Records connected with the Senior Executive Service, maintained by agencies for use in making studies and analyses of the SES, preparing reports, and in making decisions affecting incumbents of these positions, e.g., relating to sabbatical leave programs, training, reassignments, and details, that are perhaps unique to the SES and which may or may not be filed in the employee's Official Personnel Folder. These records may also serve as basis for reports submitted to OPM's Executive Personnel and Management Development Group for purposes of implementing the Office's oversight responsibilities concerning the SES.

j. Records concerning an employee's activities on behalf of the labor organization representing agency employees, including accounting of official time spent and documentation in support of per diem and travel expenses. (Note: alternatively, such records may be retained by an agency payroll office, and thus subject to the agency's internal Privacy Act system of payroll records.)

k. Records that are performance-related, including: appraisal forms and supporting documentation issued under OPM approved employee (including SES employees) appraisal systems; recommendations for personnel actions; Performance Review Board or Executive Resource Board records; forms and supporting documentation issued in connection with removal actions; letters of commendation; and documents certifying satisfactory completion of probationary periods or recommendations for within grade or merit pay actions. Conduct-related records, such as reprimands, admonishments, cautions, or warnings and supporting documentation are also part of this system.

l. To the extent that the records listed here are also maintained in an agency automated personnel or microform records system, those versions of the above records are considered to be covered by this system notice. Any additional copies of these records (including performance appraisal and conduct-related documents maintained by first line supervisors and managers) maintained by agencies at field/administrative offices remote from where the original records exist are considered part of this system.

Note.—*It is not the intent of the Office to limit this system of records to the OPF only. Records may be filed in other folders which are located in Offices other than where the OPF is located. Further, as indicated in the records location section, some of these records may be duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or supervisors work folder) and still be covered by this system.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM.

5 U.S.C. 1302, 2951, 3301, 3372, 4118, 4305, 4315, 7504, 7514, 7543, 8347, 8716, 8913; and Executive Orders 9397, 9830, and 12107.

PURPOSE:

The Official Personnel folder (OPF) and other general personnel records files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's Federal service. The personnel action reports and other documents, some of which are filed as long term records in the OPF, give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment.

These files and records are maintained by agencies for the Office and in accordance with Office regulations and instructions. The Official Personnel Folder is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage or, as appropriate, to the next employing agency. Other records are either retained at the agency for various lengths of time in accordance with General Services Administration records schedules or destroyed when they have served their purpose or when the employee leaves the agency. They provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses by agency personnel offices, including: screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and for other information needed in providing personnel services. These records and their automated or microformed equivalents may also be used to locate individuals for personnel research.

Temporary documents on the left side of the OPF may lead (or have led) to a formal action, but do not constitute a record of it, nor make a substantial contribution to the employee's long term record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

b. To disclose information to educational institutions on appointment of a recent graduate to a position in the Federal service, and to provide college and university officials with information about their students working under the Cooperaitve Education, Volunteeer

Service, or other similar programs where necessary to a student's obtaining credit for the experience gained.

c. To disclose information to officials of foreign governments for clearance before a Federal employee is assigned to that country.

d. To disclose information to: the Department of Labor, Veterans Administration, Social Security Administration, Department of Defense, Federal agencies that have special civilian employee retirement programs; or a national, State, county, municipal, or other publicly recognized charitable or Social Security Administration agency (e.g., State unemployment compensation agencies), where necessary to adjudicate a claim under the retirement, insurance or health benefits programs of the Office of Personnel Management or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs.

e. To disclose to the Office of Federal Employees Group Life Insurance information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

f. To disclose to health insurance carriers contracting with the Office of Personnel Management to provide a health benefits plan under the Federal Employees Health Benefits Program, information necesssary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts.

g. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

h. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee awards or honors.

i. To consider employees for recognition through quality step increases, and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

j. To disclose information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit.

m. To disclose to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract; the issuance of a license, grant, or other benefit by the requesting agency; or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. (See 46 FR 3714, July 17, 1981.)

n. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

o. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

p. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

q. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

r. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

s. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

t. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

u. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under:

(1) Fitness-for-duty examination procedures; or

(2) Agency-filed disability retirement procedures.

v. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

w. To disclose to a requesting agency, organization, or individual the home address and other relevant information concerning those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from a health hazard while employed in the Federal work force.

x. To disclose specific civil service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve, to assure continuous mobilization readiness of Ready Reserve units and members.

y. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, United States Public Health Service, Veterans Administration, and the United States Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation

provisions of section 5532 of title 5, United States Code.

z. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

aa. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

bb. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards where a question of material fact is raised and matters before the Federal Service Impasses Panel.

cc. To disclose to prospective non-Federal employers, the following information about a current or former Federal employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in the agency and the Government, and

(4) When separated, the date and nature of action as shown on the Notification of Personnel Action. Standard Form 50.

dd. To disclose information on employees of Federal health care facilities to private sector (i.e., other than Federal, State, or local government) agencies, boards, or commissions (e.g., the Joint Commission on Accreditation of Hospitals). Such disclosures will be made only where the disclosing agency determines that it is in the Government's best interest (e.g., to assist in the recruiting of staff in the community where the facility operates or to avoid any adverse publicity that may result from a public criticism of the facility's failure to obtain such approval) to obtain accreditation or other approval rating and only to the extent that the information disclosed is relevant and necessary for that purpose.

ee. To disclose information to any member of an agency's Performance Review Board or other board or panel (e.g., one convened to select or review nominees for awards of merit pay increases), when the member is not an official of the employing agency; information would then be used for the purposes of approving or recommending selection of candidates for executive development or SES candidate programs, issuing a performance appraisal rating, issuing performance awards, nominating for Meritorious and Distinguished Executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

ff. To disclose information to the Federal Acquisition Institute (FAI) about Federal employees in procurement occupations and other occupations whose incumbents spend the predominant amount of their work hours on procurement tasks; provided that the FAI shall only use the data for such purposes and under such conditions as prescribed by the notice of the Federal Acquisition Personnel Information System as published in the Federal Register on February 7, 1980 (45 FR 8399). (See 46 FR 8812, January 27, 1981.)

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists and forms, microfilm or microfiche, and in computer processible storage media.

RETRIEVABILITY:

These records are retrieved by various combinations of name, birth date, Social Security Number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

Paper or microfiched/microfilmed records are located in lockable metal file cabinets or in secured rooms with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

a. Long Terms, Records. The Official Personnel Folder (OPF) is retained by the employing agency as long as the individual is employed with that agency. Medical records are kept separate from the OPF while the individual is employed by an agency. When the individual transfers to another Federal agency or to another appointing office, the OPF, with the long term medical records, in a separate envelope, inserted therein is sent to that agency or office. Other medical records covered by this system, i.e., fitness for duty examinations, are considered temporary in nature. Such records, when not submitted to the Office for retention in a disability retirement file (or submitted, but the Office does not approve retirement), shall be destroyed no later than six months after closing action on the case or sooner at the discretion of the agency.

Within 90 days after the individual separates from the Federal service, the OPF is sent to the National Personnel Records Center for long term storage. In the case of administrative need or a retired employee or one who dies in service, the OPF is sent to the Records Center within 120 days.

Destruction of the OPF is in accord with General Records Schedule 1.

b. Other Records. These records are detained for varying periods of time. Generally they are maintained for a minimum of one year, or until the employee transfers or separates.

c. Records contained on computer processible media with in the Central Personnel Data File (and in agency automated personnel records) may be retained indefinitely as a basis for longitudinal work history statistical studies.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Workforce Information, Compliance and Investigations Group, Office of Personnel Management, 1900 E. Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate OPM or agency office, as follows:

a. Current Federal employees should contact the Personnel Officer or other responsible official (as designated by the employing agency), Department or Agency with which employed, Local Agency Installation, regarding records in this system.

b. Former Federal employees should contact one of the Office's regional or area offices (see list of regional office addresses in the Appendix), or, as explained in the Note below, the National Personnel Records Center (Civilian), 111 Winnebago St., St. Louis, Missouri 63118, regarding the records in this system.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Last employing agency (including duty station) and approximate date of the employment (for former Federal employees).

e. Signature.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the appropriate OPM or agency office, as specified in the Notification procedures section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Last employing agency (including duty station) and approximate date of the employment (for former Federal employees).

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

Note.—An individual who is a former Federal employee may direct a request to the National Personnel Records Center (NPRC) for a copy of a specific OPF document or for a transcript of his or her own employment history compiled from documents in the Offical Personnel Folder (OPF). The transcript includes the individual's name; date of birth; Social Security Number; past and present grades, position titles, duty stations, and salaries; and dates of personnel actions.

Under no circumstances shall an individual direct a request to NPRC for access to copies of all records maintained in his/her OPF. Though NPRC stores and services the OPFs of former Federal employees covered by this system that record remains the property of the Office of Personnel Management, and such requests will be handled and processed by the nearest OPM office to where the requester lives. (See list of OPM regional office addresses in the Appendix.)

CONTESTING RECORD PROCEDURES:

Current employees wishing to request amendment of their records should contact their current agency. Former employees should contact the system manager and not the nearest OPM office. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Last employing agency (including duty station) and approximate dates of the employment (for former Federal employees).

e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

Note.—Under no circumstances shall former employees direct a request for amendment to records in the OPF to the NPRC or to OPM regional or area offices. NPRC only stores and services the OPFs on former Federal employees covered by this system and OPM regional or area offices process only access requests. Processing under the amendment provisions of the Privacy Act will be handled only by the system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.

b. Physicians examining the individual.

c. Educational institutions.

d. Agency officials and other individuals or entities.

e. Other sources of information for long term records maintained in an employee's OPF, in accordance with Federal Personnel Manual Chapter 293.

OMP/GOVT—3

SYSTEM NAME:

Records of Adverse Actions and Actions Based on Unacceptable Performance.

SYSTEM LOCATIONS:

These records are located in personnel or designated offices in Federal agencies in which the actions were processed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees (including Senior Executive Service employees) against whom such an action has been proposed or taken in accordance with Parts 432, 752, or 754 of the Office's regulations (5 CFR 432, 752, or 754).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents related to the processing of adverse actions and actions based on unacceptable performance. The records include copies of the notice of proposed action; materials relied on by the agency to support the reasons in the notice; replies by the employee; statements of witnesses; hearing notices; reports; and agency decisions.

Note.—This system does not include records, including the action file itself, compiled when such actions are appealed to the Merit Systems Protection Board (MSPB) or become part of a discrimination complaint record at the Equal Employment Opportunity Commission (EEOC). Such appeal and discrimination complaint file records are covered by the appropriate MSPB or EEOC system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4303, 7504, 7514, and 7543.

PURPOSE:

These records result from the proposal, processing, and documentation of these actions either taken by the Office or agencies against employees in accordance with Parts 432, 752, or 754 of the Office's regulations (5 CFR 432, 752, or 754).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of an violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested in the course of processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, or the classifying of jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. By the agency maintaining the records or the Office to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

k. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

l. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

m. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records documenting an adverse action or a performance based removal or demotion action are disposed of 4 years after the closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER:

Assistant Director, Office of Planning and Evaluation, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415 for actions taken under Parts 432, 752 (Subparts A through D only) and 754. Associate Director, Administration Group, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415 for actions taken against Senior Executive Service appointees under Subparts E and F Part 752.

NOTIFICATION PROCEDURE:

Individuals receiving notice of a proposed adverse, removal, or demotion action must be provided access to all documents supporting the notice. At any time thereafter, individuals subject to the action will be provided access to the completed record. Individuals should contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

RECORD ACCESS PROCEDURE:

Individuals against whom such actions are taken must be provided access to the record. However, after the action has been closed, an individual may request access to the official copy of an adverse action file by contacting the agency personnel or designated office where the action was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the agency personnel or designated office where the action was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

RECORDS SOURCE CATAGORIES:

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By agency officials.

d. From related correspondence from organizations or persons.

OPM/GOVT—4

SYSTEM NAME:

Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records.

SYSTEM LOCATION:

Director, Office of Government Ethics, Office of Personnel Management, 1717 H Street NW., Washington, D.C. 20419, and designated agency ethics offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on: The President, Vice President and candidates for those offices; officers and employees, including special Government employees, whose positions are classified at grades GS–16 and above or at an equivalent rate under another pay schedule; officers or employees in a position determined by the Director of the Office of Government Ethics to be of equal classification of GS–16, Administrative Law Judges; employees in the excepted service in positions which are of a confidential or policymaking nature unless an employee or groups or employees are exempted by the Director of the Office of Government Ethics; each member of a uniformed service whose pay grade is at or in excess of O–7 under section 201 of title 31, United States Code; the Postmaster General, the Deputy Postmaster General, Governor of the Board of Governors of the U.S. Postal Service, and each officer or employee of the United States Postal Service whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS–16; the Director of the Office of Government Ethics and officials designated to act as agency ethics officers (designated agency ethics officials); and nominees for positions requiring Senate confirmation. This system includes both former and current employees in these categories who have filed financial disclosure statements under the requirements of the Ethics in Government Act of 1978, as amended. *For the purpose of administering all provisions of the Ethics in Government Act of 1978, as amended, the system may contain information on any officer or employee of the Executive Branch.*

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains: financial information such as salary, dividends, receipts from the purchase or sale of land, exchange of property, spouse's and children's interest earnings, funds from trust accounts, gifts, reimbursements, interest on property, and compensation for duties performed; information relating to liabilities in excess of $10,000; information about positions as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business, non-profit organizations, labor organizations, or educational institution; information about non-Government employment agreements, such as leaves of absence to accept Federal service, continuation of payments by non-Federal former employers, and participation in prior non-Federal employer welfare and benefit plans; and information about assets placed in trust pending disposal; and other documents developed by the Director, Office of Government Ethics, or agency ethics officials in administering the Ethics in Government Act of 1978, as amended. Such other documents may include, but will not be limited to, information necessary for the rendering of advice or formal advisory opinions, or the resolution of complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 95–521, Ethics in Government Act of 1978 as amended.

PURPOSE:

These records are maintained to meet the requirements of the Ethics in Government Act of 1978, Public Law 95–521 as amended, regarding the filing of financial status reports and reports concerning certain agreements between the covered individual and any prior private sector employer. Such statements and related records are required to assure compliance with the Act and to preserve and promote the integrity of public officials and institutions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose any and all of the information furnished by the reporting official, in accordance with provisions of section 205 of the Ethics in Government Act of 1978, to any requesting person.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

d. To disclose information to any source where necessary to obtain information relevant to a conflict-of-interest investigation or determination.

e. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are generally maintained for a period of six years after filing, except when filed by a nominee for an appointment requiring confirmation by the Senate where the nominee is not appointed and Presidential and Vice-Presidential candidates who are not elected. In these cases the record is destroyed one year after the date the individual ceased being under Senate consideration for appointment or is no longer a candidate for office. Destruction is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers are:

1. For records filed directly with the Office of Government Ethics, the system manager is the Director, Offfice of Government Ethics, Office of Personnel Management, 1717 H Street NW., Washington, D.C. 20419;

2. For records filed with designated agency ethics officials or the Secretary concerned, the system manager is: Designated Agency Ethics Officials, Headquarters, Department or Agency, Washington, D.C. (ZIP code); and

3. For records filed with the Federal Election Commission by candidates for President or Vice-President, the system manager is the Staff Director, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate system manager. Individuals must furnish the following

information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the appropriate system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

Individuals requesting access to information not generally available to the public under the Act, must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURES:

Since the information in these records is updated on a periodic basis, most record corrections can be handled through established administrative procedures for updating the records. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the appropriate system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The subject individual or by a designated person such as a trustee, attorney, accountant, or relative;

b. Federal officials who review the statements to make conflict of interest determinations;

c. Persons alleging conflicts of interests and persons contacted during any investigation of the allegations.

OMP/GOVT—5

SYSTEM NAME:

Recruiting, Examining, and Placement Records.

SYSTEM LOCATION:

Associate Director, Staffing Group, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, OPM regional and area offices (see list of OPM regional office addresses in the Appendix), Office of Personnel Management Job Information Centers, and personnel or other designated offices of Federal agencies that are authorized to make appointments and to act for the Office by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied to the Office of Personnel Management or agencies for Federal employment and current and former Federal employees submitting applications for other positions in the Federal service.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, all records in this system contain identifying information including: name, date of birth, Social Security Number, and home address. These records pertain to assembled and unassembled examining procedures and contain information related to both competitive examinations and to certain noncompetitive actions such as determinations of time-in-grade restriction waiver, waiver of qualification requirement determination, and variations in regulatory requirements in individual cases. This system includes such records as:

a. Applications for employment that contain information on work and educational experience, convictions for offenses against the law; military service, and indications of specialized training or receipt of awards or honors. These records may also include copies of correspondence between the applicant and the Office or agency.

b. Results of written exams and indications of how information in the application was rated. These records also contain information on the ranking of an applicant, on his/her placement on a list of eligibles, on what certificates applicants' names appeared on an agency's request for Office approval of the agency's objection to an eligible's qualification and OPM's decisions in the matter, on an agency's request for Office approval for the agency to pass over an eligible and OPM's decision in the matter, and on an agency's decision to object/pass over an eligible where the agency has authority to make such decisions under agreement with OPM.

c. Records regarding OPM's final decision regarding an agency's decision to object/pass over an eligible for suitability or medical reasons or where the objection/pass over decision applies to a compensable preference eligible with 30 percent or more disability.

d. Responses to and results of approved personality or similar tests administered by the Office or agency.

e. Records relating to rating appeals filed with the Office or agency.

f. *Registration sheets, control cards, and related documents regarding Federal employees requesting placement assistance in view of pending or realized displacement due to reduction in force, transfer or discontinuance of function, or reorganization:*

g. Records concerning non-competitive action cases referred to the Office for decision. These files include such records as waiver of time in grade requirements, decisions on superior qualification appointments, temporary appointments outside a register, and waiver of requirement to reduce retired pay. Authority for making decisions on many of these actions has also been delegated to agencies. The records retained by the Office on such actions and copies of such files retained by the agency submitting the request to OPM, along with records that agencies maintained as a result of OPM's delegation of authorities are considered part of this system of records.

h. Records retained to support Schedule A appointments of severely physically handicapped individuals, both retained by OPM and agencies acting under OPM delegated authorities, are part of this system.

i. Agency applicant supply file systems (where the agency retains applications, resumes, and other related records for hard to fill or unique positions, for future consideration), along with any pre-employment vouchers obtained in connection with an agency's processing of an application, are included in this system.

j. Records derived from OPM-developed or agency-developed assessment center exercises.

Note.—To the extent that an agency utilizes an automated medium in connection with maintenance of this system of records, the automated versions of these records are considered covered by this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C. Sections 1302, 3109, 3301, 3302, 3304, 3306, 3307, 3309, 3313, 3317, 3318, 3319, 3326, 4103, 5532, 5533, and 4723; Executive Order 9397.

PURPOSE:

The records are used in consider individuals who have applied for positions in the Federal service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment considerations, including appointment, transfer, reinstatement, reassignment, or promotion. Records derived from OPM-developed or agency-developed assessment center exercises may be used to determine training needs of participants. These records may also

be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To refer applicants including current and former Federal employees to Federal agencies for consideration for employment, transfer, reassignment, reinstatement, or promotion.

b. With the permission of the applicant, to refer applicants to State and local governments, congressional offices, international organizations, and other public offices for employment consideration.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extend necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevent to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of positions, the letting of a contract, or the issuance of a license, grant, or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of positions, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision the matter.

f. To disclose information to the Office of Management and Budget at any stage in the Legislative coordination and clearance process in connection with priviate relief legislation as set forth in OMB Circular No. A–19.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

h. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

i. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

j. By the agency maintaining the records or the Office to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual indentifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

k. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevent to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes, disc, punched cards, microfiche, cards, lists, and forms.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, or Social Security Number of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records in this system are retained for varying lengths of time, ranging from a few months to five years. Most records are retained for a period of one to two years. Some records, such as individual applications, become part of the person's permanent official records when hired, while some records, e.g., non-competitive action case files, are retained for five years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Staffing Group, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the agency or OPM office where application was made, or where an examination was taken. Resource specialists should contact the OPM Area Office which provides examining and rating assistance. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social Security Number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(c)(3) and (d), regarding access to records. The section of the notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the

kinds of materials exempted and the reasons for exempting them from access. Individuals wishing to request access to their non-exempt records should contact the agency or OPM office where application was made, or where an examination was taken. Resource specialists should contact the OPM Area Office providing examining and rating assistance. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social Security Number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them from amendment. An individual may contact the agency or OPM office where his or her application is filed at any time to update qualifications, education, experience, or other data maintained in the system. Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the agency or OPM office where application was made, or where an examination was taken. Resource specialists should contact the OPM Area Office providing examining or rating assistance. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social Security Number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from: the individual to whom it applies or is derived from information the individual supplied, except reports from medical personnel on physical qualifications; results of examination which are made known to applicants; agencies and Office records; and vouchers supplied by references or other sources which the applicant lists or which are developed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigative materials that are used solely to determine the appropriateness of a request for approval of an objection to an eligible's qualifications for Federal civilian employment or vouchers received during the processing of an application. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such investigative material from certain provisions of the Act, to the extent that release of the material to the individual whom the information is about would:

1. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

2. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

This system contains testing and examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, where disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office of Personnel Management has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to an amendment of records.

The specific materials exempted include but are not limited to the following:

a. Answer keys.
b. Assessment center exercises.
c. Assessment center exercise reports.
d. Assessor guidance material.
e. Assessment center observation reports.
f. Assessment center summary reports.
g. *Other applicant appraisal methods—such as performance tests, work samples and simulations, miniature training and evaluation exercises, structured interviews—and their associated evaluation guides and reports.*
h. Item analyses and similar data which contain test keys.
i. Ratings given for the purpose of validating examinations.
j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.
k. Rating sheets.
l. Test booklets, including the written instructions for their preparation.
m. Test item files.
n. Test answer sheets.

OPM/GOVT—6

SYSTEM NAME:

Personnel Research and Test Validation Records.

SYSTEM LOCATION:

Personnel Research and Development Center (PRDC), Staffing Group, Office of Personnel Management, Room 3H30, 1900 E Street NW., Washington, D.C. 20415, OPM regional Offices (see list of regional office addresses in the Appendix), and agency personnel offices (or other designated offices) conducting such programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees; applicants for Federal employment; current and former State and local government employees; applicants for State and local government employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information on education and employment history, test scores, responses to test items and questionnaires, interview data, and ratings of supervisors regarding the individuals to whom the records pertain. Additional information (race, national origin, disability status, and background) is collected from applicants for certain examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C. Sections 1303 and 3301.

PURPOSE:

These records are collected, maintained, and used by the Office or agencies for the construction, analysis, and validation of written tests, and for research on and evaluation of personnel/organizational measurement and selection methods. Such research

includes studies extending over a period of time (longitudinal studies). Race and national origin data are used by agencies to evaluate the role of examinations in the total employee selection process and by the Office in assessing agency compliance with this and other requirements of the Uniform Guidelines on Employee Selection Procedures. Use of these race and national origin data is limited to such evaluation and oversight projects conducted by the agencies or the Office.

The records also may be used by the Office or employing agencies to locate individuals for personnel research. Data are collected on a project-by-project basis under conditions assuring the confidentiality of the information. No personnel actions or selections are made using these research records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Under normal circumstances, no individually identifiable records will be provided. However, under those unusual circumstances where an individually identifiable record is required, proper safeguards will be maintained to protect the information collected from unwarranted invasion of personal privacy. Such protection must be specified in writing by the requestor and to the satisfaction of the agency official responsible for maintaining the data that the proposed use of the data is in the compliance with the letter and spirit of the Privacy Act. Under these circumstances, the routine uses are as follows:

a. By the Office or employing agency maintaining the records to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

b. To furnish personnel records and information to the Equal Employment Opportunity Commission for use in determining the existence of adverse impact in the total selection program, in reviewing allegations of discrimination, or in assessing the status of compliance with Federal law.

c. To furnish information to the Merit Systems Protection Board, including the Office of the Special Counsel, in connection with actions by offices relating to allegations of discriminatory practices on the part of an agency or one of its employees.

d. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to subject matter involved in a pending judicial or administrative proceeding.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. To provide information to a congressional office from the record of an individual in response to a request from that congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on punched cards, disks, and magnetic tape.

RETRIEVABILITY:

Records are generally maintained by project. Personal information can be retrieved by name of personal identifier only for certain research projects such as those involving longitudinal studies.

SAFEGUARDS:

Records are kept in locked files in a locked room with access limited to authorized staff. Access to tape, disk, and other files used in data processing will be only by authorized staff.

RETENTION AND DISPOSAL:

Records are retained for two years after completion of the project unless needed in the course of litigation or other administrative actions involving a research or test validation survey. Manual records are destroyed by shredding or burning and magnetic tapes or disks are erased.

SYSTEM MANAGER AND ADDRESS:

Director, Personnel Research and Development Center, Staffing Group, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager, the OPM regional office servicing the State where they are employed (see list of OPM regional office addresses in the Appendix), or their employing agency's personnel office. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the test validation research study in which the individual participated.

d. Social Security Number.

e. Signature.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them for access. Individuals wishing to request access to non-exempt records should contact the system manager indicated above the OPM regional office, or their agency personnel or other designated office, as appropriate. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the test validation research study in which the individual participated.

d. Social Security Number.

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d) regarding amendment of records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of any non-exempt records should contact the system manager indicated above, the OPM regional office, or their agency personnel or other designated office, as appropriate. Individuals must furnish the following information for their records to be located and identified.

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the test validation research study in which the individual participated.

d. Social Security Number.

e. Signature.

Individuals requesting amendment must also comply with the Office's

Privacy Act regulations regarding verifications of identity and amendment of records. (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Individual applicants, including Federal, State, or local government employees; supervisors; assessment center assessors; and agency or Office personnel files and records (e.g., race, sex, national origin, and disability status data from OPM/GOVT–1 and OPM/GOVT–7 systems of records).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examining materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing and examination material and information from certain provisions of the Act, when the disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office of Personnel Management has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relates to access to an amendment of records.

The specific materials exempted include but are not limited to the following:

a. Answer keys.

b. Assessment center exercises.

c. Assessment center exercise reports.

d. Assessor guidance material.

e. Assessment center observation reports.

f. Assessment center summary reports.

g. *Other applicant appraisal methods—such as performance tests, work samples and simulations, miniature training and evaluation exercises, structured interviews—and their associated evaluation guides and reports.*

h. Item analyses and similar data which contain test keys.

i. Ratings given for the purpose of validating examinations.

j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.

k. Ratings sheets.

l. Test booklets, including the written instructions for their preparation.

m. Test item files.

n. Test answer sheets.

OPM/GOVT—7

SYSTEM NAME:

Applicant Race, Sex, National Origin, and Disability Status Records.

SYSTEM LOCATION:

Records in this system may be located in the following offices:

1. Personnel research and Development Center (PRDC), Staffing Group, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

2. Office of Affirmative Employment Programs, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415;

3. OPM Regional Offices (see list of OPM regional office addresses in the Appendix) and any register-holding area offices under the jurisdiction of a regional office; and

4. Agency Personnel, Equal Employment Opportunity, or Federal Equal Opportunity Recruitment Program offices or other designated offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees and individuals who have applied for Federal employment, including:

1. Applicants for examinations administered either by OPM or by agencies.

2. Applicants on registers or in inventories maintained by OPM and subject to its regulations.

3. Applicants for positions in agencies having direct hire authority and using their own examining procedures in compliance with OPM regulations.

4. Applicants whose records are retained in an agency Equal Opportunity Recruitment file (including any file an agency maintains on current employees from under-represented groups); and

5. Applicants (including current and former Federal employees) who apply for vacancies announced under an agency's merit promotion plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include the individual's name, Social Security Number, date of birth, statement of major field of study, type of current or former Federal employment status (e.g., career or temporary), applications showing work and education experience, and race, sex, national origin, and disability status data.

Note.—The race and national origin information in this system is obtained by three alternative methods: (1) Use of an OPM Form on which individuals identify themselves as to race and national origin; or (2) by visual observation (race) or knowledge of an individual's background (National origin); or (3) at the agency's option, from the OPM/GOVT–1 system in the case of applicants who are current Federal employees. Disability status is obtained by use of Standard Form 256, "Self Identification of Medical Disability," which allows for a description by self-identification of the handicap.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7201, Sections 4A, 4B, 15A (1) and (2), 15B(11), and 15D(11), Uniform Guidelines on Employee Selection Procedures (1978), 43 FR 38297 et seq. (August 25, 1978); 29 CFR 1613.301; and 5 CFR 720.301.

PURPOSE:

These records are used by OPM and agencies to:

1. Evaluate personnel/organizational measurement and selection methods;

2. Implement and evaluate agency affirmative employment programs,

3. Implement and evaluate agency Federal Equal Opportunity Recruitment Programs (including establishment of minority recruitment files);

4. Enable the Office to meet its responsibility to assess an agency's implementation of the Federal Equal Opportunity Recruitment Program.

5. Determine adverse impact in the selection process as required by the Uniform Guidelines cited in the "Authority" section above. (See also "Questions and Answers," on those Guidelines published at 44 FR 11996, March 2, 1979); and

6. Enable reports to be prepared regarding breakdowns, by race, sex, national origin, of applicants, by exams taken, and on the selection of such applicants for employment.

7. To locate individuals for personnel research.

Note.—These data are maintained under conditions that ensure that the individual's identification as to race, sex, national origin, or disability status, does not accompany that individual's application nor is otherwise made known when the individual is under consideration by a selecting official.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose information to the Equal Employment Opportunity Commission (EEOC), in response to its request for use in the conduct of an examination of an agency's compliance with affirmative action plan instructions and the Uniform Guidelines on Employee Selection Procedures (1978), or other requirements imposed on agencies under EEOC authorities promulgated in reorganization Plan No. 1 of 1978, in connection with agency Equal Employment Opportunity programs.

b. To disclose information to the Merit Systems Protection Board, including the

Office of the Special Counsel, in response to its request in connection with the processing of appeals, special studies relating to the civil service and other merit systems in the executive branch, investigations into allegations of prohibited personnel practices, and such other functions, e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

c. By the Office or employing agency maintaining the records to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

d. To disclose information to a Federal agency in response to its request for use in its Federal Equal Opportunity Recruitment Program, to the extent that the information is relevant and necessary to the agency's efforts in identifying possible sources for minority recruitment.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on magnetic tape, and on disks.

RETRIEVABILITY:

Records are retrieved by the name and Social Security Number of the individuals on whom they are maintained.

SAFEGUARDS:

Records are retained in lockable metal filing cabinets in a secured room or in a computerized system accessible by confidential passwords issued only to specific personnel.

RETENTION AND DISPOSAL:

Records are generally retained for two years, except when needed to process applications or to prepare adverse impact and related reports, or for as long as an application is still under consideration for selection purposes. Where records are needed in the course of an administrative procedure or litigation they may be maintained until the administrative procedure or litigation is completed. Manual records are shredded or burned and magnetic tapes or disks are erased.

Note.—When an agency retains an automated version of any of the records in this system, maintenance of that record beyond the above retention schedules is permitted for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains after the prescribed destruction date.

SYSTEM MANAGER AND ADDRESS:

Director, Personnel Research and Development Center (PRDC), Staffing Group, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Those individuals wishing to inquire if this system contains information about them should contact the system manager, OPM regional offices (see list of OPM regional office addresses in the Appendix) covering the State wherein the application for Federal employment was directly filed with an OPM office, or the Personnel, Equal Employment Opportunity, or Federal Equal Employment Opportunity Recruitment office or other designated office at the agency where they took an exam, filed an application, or where they are employed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Social Security Number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or agency office where they are employed or submitted the information.

e. Signature.

RECORDS ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the appropriate office shown in the Notification procedure section. Individuals must furnish the following information for their records to be located and identified.

a. Name.

b. Social Security Number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or agency office where they are employed or submitted the information.

e. Signature.

An individual requesting access must also follow the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the appropriate office shown in the Notification procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Social Security Number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or agency office where they are employed or submitted the information.

e. Signature.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains, on such forms as Personnel Research Questionnaire 79–1 (OPM Form 1377) or Background Survey Questionnaire 79–2 (OPM Form 1386), or equivalent forms, or is obtained directly from other agency or Office records (e.g., race, sex, national origin, and disability status data may be obtained from the OPM/GOVT–1 General Personnel Records system).

OPM/GOVT—8

SYSTEM NAME:

Confidential Statements of Employment and Financial Interests.

SYSTEM LOCATION:

Individual agency ethics offices or other designated agency offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and employees who are required by their agency under Executive Order 11222 and 5 CFR Part 753 to file such statements. The system includes both former and current employees in these categories.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain statements of personal and family holdings and other interests in business enterprises and real property; listings of creditors and outside employment; opinions of counsel; and other information related to conflict of interest determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222.

PURPOSE:

These records are maintained to meet requirements of Executive Order 11222 regarding the filing of employment and financial interest statements. Such statements are required to assure compliance with the standards of conduct for Government employees contained in the Executive Order and title 18 of the U.S. Code, and to determine if a conflict of interest exists between the employment of individuals by the Federal Government and their personal employment and financial interests. To enable the Director, Office of Government Ethics, to ensure that these purposes are met, agency maintained records are to be made available to that office on request.

Note.—When an agency is requested to furnish such records to the Director, Office of Government Ethics, such a disclosure is to be considered as made pursuant to provisions of the Privacy Act (5 U.S.C. 552a(b)(1)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These statements and amended statements required by or pursuant to Executive Order 11222, Part IV, are to be held in confidence and no information shall be disclosed except;

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

c. To disclose information to any source where necessary to obtain information relevant to a conflict-of-interest investigation or determination.

d. By the National Archives and Records Service (General Services Administration) in record management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

e. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal file cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of 5 years after the date they are filed by the individual. Disposal is by burning or shredding.

SYSTEM MANAGER AND ADDRESS:

This system manager is:
Director, Office of Government Ethics, Office of Personnel Management, 1717 H Street, N.W., Washington, D.C. 20419.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Ethics Officer at the agency where the reports were filed.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the Ethics Officer at the agency where the reports were filed. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURES:

Since the information in these records is updated on a periodic basis, most record corrections can be handled through established administrative procedures for updating the records. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the Ethics Officer at the agency where the reports were filed.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The subject individual or by a designated person such as a trustee, attorney, accountant, or relative;

b. Federal officials who review the statements to make conflict of interest determinations.

c. Persons alleging conflicts of interests and persons contacted during any investigation of the allegations.

Appendix

An individual can obtain information regarding the location of systems of records that may contain personal information on him or her by contacting in person or in writing one of the offices indicated below that is nearest to where he or she resides.

Office of Personnel Management

Regional and Area Offices

SOUTHEAST REGION

Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303.

Area Offices

Southerland Building, 806 Governors Dr., S.W., Huntsville, Alabama 35801.

Federal Building, 80 N. Hughey Avenue, Orlando, Florida 32801.

Richard B. Russell Federal Office Building, 75 Spring St., S.W. Atlanta, Georgia 30303.

600 Federal Place, Louisville, Kentucky 40202.

Federal Office Building, 100 W. Capitol St., Jackson, Mississippi 39201.

310 New Bern Ave., Raleigh, North Carolina 27601.

Federal Office Building, 334 Meeting St., Charleston, South Carolina 29403.

100 N. Main St., Memphis, Tennessee 38103.

NEW ENGLAND REGION

John W. McCormack Post Office and Courthouse Building, Boston, Massachusetts 02109.

Area Offices

Federal Building, 450 Main St., Hartford, Connecticut 06103.

Federal Building, Augusta, Maine 04330.

3 Center Plaza, Boston, Massachusetts, 02108.

Federal Post Office Building, Portsmouth, New Hampshire 03801.

Federal Building, Burlington, Vermont 05401.

GREAT LAKES REGION

John C. Kluczynski Federal Building, 30th Floor, 230 South Dearborn St., Chicago, Illinois 60604.

Area Offices

219 S. Dearborn St., Chicago, Illinois 60604.
U.S. Courthouse and Federal Building, 46 E. Ohio St., Indianapolis, Indiana 46204.
477 Michigan Ave., Room 565, Detroit, Michigan 48226.
Federal Building, Room 501, Fort Snelling, Twin Cities, Minnesota 55111.
U.S. Courthouse and Federal Building, Room 507, 200 W. 2nd Street, Dayton, Ohio 45402.
161 W. Wisconsin Ave., Milwaukee, Wisconsin 53203.

SOUTHWEST REGION

1100 Commerce St., Dallas, Texas 75242.

Area Offices

Federal Building, 610 South St., New Orleans, Louisiana 70130.
421 Gold Ave., S.W. Albuquerque, New Mexico 87102.
200 N.W. 6th St., Oklahoma City, Oklahoma 73102.
1100 Commerce St., Room 6B4, Dallas, Texas 75242.
643 E. Durango Blvd., San Antonio, Texas 79205.

ROCKY MOUNTAIN REGION

Building 20, Denver Federal Center, Denver, Colorado 80225.

Area Offices

The Rocky Mountain Region has no OPM Area Offices.

EASTERN REGION

Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

Area Offices

Peter W. Rodino, Jr. Federal Building, 970 Broad St., Newark, New Jersey 07102.
26 Federal Plaza, New York, New York 10278.
U.S. Courthouse and Federal Bldg., 100 S. Clinton St., Syracuse, New York 13260.
Federico Degetau Federal Office Building, Carlos A. Chardon St., Hato Rey, Puerto Rico 00918.

MID-ATLANTIC REGION

William J. Green, Jr., Federal Building, 600 Arch St., Philadelphia, Pennsylvania 19106.

Area Offices

Edward A. Garmartz Federal Building and Courthouse, 101 W. Lombard St., Baltimore, Maryland 21201.
William J. Green, Jr., Federal Building, 600 Arch St., Philadelphia, Pennsylvania 19106.
Federal Building, 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222.
Federal Building, 200 Granby Mall, Norfolk, Virginia 23510.

MID-CONTINENT REGION

1256 Federal Building, 1520 Market St., St. Louis, Missouri 63103.

Area Offices

120 S. Market St., Wichita, Kansas 67202.
601 E. 12th St., Kansas City, Missouri 64106.
1520 Market St., St. Louis, Missouri 63103.

WESTERN REGION

23rd Floor, 525 Market Street, San Francisco, California 94105.

Area Offices

522 North Central Ave., Phoenix, Arizona 85004.
845 S. Figueroa Street, 3rd Floor, Los Angeles, California 90017.
650 Capitol Mall, Sacramento, California 95814.
880 Front Street, San Diego, California 92188.
525 Market Street, San Francisco, California 94105.
300 Ala Moana Boulevard, Book 50028, Honolulu, Hawaii 96850.

NORTHWEST REGION

Room 2562, Federal Building, 915 Second Avenue, Seattle, Washington 98174.

Area Offices

Federal Building and Courthouse 701 C Street, Box 22, Anchorage, Alaska 99513.
Federal Building, Room 376, 1220 S.W. 3rd St., Portland, Oregon 97204.
Room 2562 Federal Building, 915 Second Ave., Seattle, Washington, 98174.

[FR Doc. 82-10152 Filed 4-15-82; 8:45 am]
BILLING CODE 6325-01-M

federal register

Friday
April 16, 1982

Part IV

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California:	
CA81–5119	May 15, 1981.
CA81–5132	July 7, 1981.
Connecticut:	
CT82–3001	Feb. 5, 1982.
CT81–3032	May 15, 1981.
Hawaii: HI82–5105	Mar. 12, 1982.
Idaho: ID81–5157	Oct. 9, 1981.
Louisiana: LA81–4085	Nov. 6, 1981.
Minnesota: MN81–2047	July 17, 1981.
Montana: MT82–5101	Feb. 5, 1982.
New Jersey: NJ81–305	Oct. 9, 1981.
Oregon: OR82–5100	Mar. 12, 1982.
Tennessee: TN81–1202	May 1, 1981.
Texas: TX81–4079	Oct. 2, 1981.
Utah: UT81–5156	Oct. 2, 1981.
Washington: WA81–5163	Dec. 4, 1981.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Illinois: IL79–2071(IL82–2028)	Sept. 7, 1979.
Kansas:	
KS81–4053(KS82–4013)	Oct. 2, 1981.
KS81–4047(KS82–4014)	July 6, 1981.
KS82–4003(KS82–4015)	Jan. 15, 1982.
KS81–4099(KS82–4016)	Nov. 27, 1981.
KS81–4100(KS82–4017)	Dec. 4, 1981.
Minnesota: MN80–2088(MN82–2029)	DEc. 19, 1980.

Cancellation of General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor intends to withdraw 14 days from the date of this notice the following general wage determination:

IN78–2132, Vanderburgh County, Indiana—Residential Construction in 42 FR 49196 dated October 20, 1978.

Signed at Washington, D.C., this 9th day of April 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510–27–M

DECISION NO. CA81-5119 - Mod. #6
(46 FR 27017 - May 15, 1981)

Alameda, Amador Calaveras, Contrs Costa, Del Norte, El Dorado, Humboldt, Marin, Mariposa, Merced, Napa, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Tuolumne, Yolo, and Yuba Counties, California	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers:					
Area 5	$18.31	$1.64	$2.05	$1.10	
Roofers:					
Area 6	14.15	1.40	1.65	2.00	.10
Omit:					
Carpenters (entire schedule as previously issued)					
Add:					
Carpenters:					
Area 1:					
Carpenters, Millwrights	16.95	1.755	2.95	1.35	.17
Hardwood Floorlayers; Shingler; Power Saw Operator; Steel Scaffold Erector and Steel Shoring; Saw Filers	17.10	1.755	2.95	1.35	.17
Area 2:					
Carpenters	16.05	1.755	2.95	1.35	.17
Hardwood Floorlayers; Shinglers; Power Saw Operators; Steel Scaffold Erector and Steel Shoring; Saw Filers	16.20	1.755	2.95	1.35	.17
Sheet Metal Workers:					
Area 5	19.26	1.46	3.29		.21

AREA DESCRIPTIONS

Area 1: Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma Counties
Area 2: Amador, Calaveras, Del Norte, El Dorado, Mariposa, Merced, Nevada, Placer, Sacramento, San Joaquin, Sutter, Tuolumne, Yolo, and Yuba Counties
SHEET METAL WORKERS:
Area 5: Monterey, San Benito, Santa Clara, and Santa Cruz Counties

DECISION NO. CA81-5132 - Mod. #10
(46 FR 35860 - July 7, 1981)

Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba Counties, California	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers:					
Area 5	$18.31	$1.64	$2.05	$1.10	
Area 7	15.95	1.41	2.10	2.00	.04
Area 8	14.89	1.40	2.26	2.00	.10
Brick Tenders:					
Area 3	15.54	1.30	2.00	1.55	
Area 4	15.54	1.30	2.00	1.55	
Carpenters:					
Areas 1 and 2 change Fringe Benefits ONLY		1.755	1.95	1.35	.17
Cement Masons:					
Cement Masons	15.60	1.65	1.75	2.00	.08
Mastic; Magnesite; All Composition Masons	15.85	1.65	2.75	2.00	.08
Men working from swinging or slip form scaffolds	15.85	1.65	2.75	2.00	.08
Roofers:					
Area 7	14.15	1.40	1.65	2.00	.10
Sheet Metal Workers:					
Area 2	17.05	1.28	2.37		.02
Area 3	16.51	1.28	2.68		.13
Area 4	17.05	1.28	2.68		.04
Area 5	19.36	1.46	3.29		.21

Change: Modification No. 8 in Vol. 47 FR, Page 14337, April 2, 1982 to read Modification No. 9
Add: Del Norte County to Modifications 4 thru 9 published in the Federal Register

DECISION NO. CT82-3001 - MOD. #4 (47 FR 5621 - February 5, 1982) FAIRFIELD, LITCHFIELD AND WINDHAM COUNTIES, CONNECTICUT	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
POWER EQUIPMENT OPERATORS					
BUILDING CONSTRUCTION:					
Derrick, hoisting engineer 2 drums and over, hoisting structural steel, pile driver & setting stone	17.01	1.30	1.35	a	.20
Dragline, forklift - over 5' lift, front end loader - 7 cy. or over, gradall, hoisting engineer (all types of equipment where a drum and cable are used to hoist, pull or drag material regardless of motive power or operation), Koehring scooper loader and/or hoe, master mechanic, shovel & tower crane	16.85	1.30	1.35	a	.20
Maintenance engineer	16.69	1.30	1.35	a	.20
Central mix operator, Coleman loader and screening plant or similar equipment, combination hoe and loader over ½ yd, conveyors - regardless of motive power, front end loader 3 cy. up to 7 cy., joy drill limited to joy heavy weight champion or equivalent, mucking machine, post hole digger, pumpcrete machine, rock boring machine, vibratory hammer, welder & well digger	16.31	1.30	1.35	a	.20
Asphalt spreader	15.97	1.30	1.35	a	.20

DECISION NO. CT82-3001 - (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bulldozer, carry-all operators, grader & scraper pan	15.87	1.30	1.35	a	.20
Combination hoe and loader machine, concrete mixer - 5 bags and over, front end loader under 3 cy., powerstone spreader	15.81	1.30	1.35	a	.20
Fork lift not over 4' & Steam Jenny	15.64	1.30	1.35	a	.20
Mechanical Heater	14.28	1.30	1.35	a	.20
Roller	15.49	1.30	1.35	a	.20
Dinky machine, power pavement breaker	15.23	1.30	1.35	a	.20
Fireman (High Pressure)	13.96	1.30	1.35	a	.20
Oiler	13.24	1.30	1.35	a	.20
Crane with boom excluding jib, over 150' - $.25 extra					
Crane with boom, excluding jib, over 200' - $.50 extra					
FOOTNOTE:					
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Good Friday					
POWER EQUIPMENT OPERATORS					
HEAVY & HIGHWAY:					
Class 1	17.06	1.30	1.35	a	.20
Class 2	16.81	1.30	1.35	a	.20
Class 3	16.33	1.30	1.35	a	.20
Class 4	16.03	1.30	1.35	a	.20
Class 5	15.78	1.30	1.35	a	.20
Class 6	15.51	1.30	1.35	a	.20
Class 7	15.17	1.30	1.35	a	.20
Class 8	13.81	1.30	1.35	a	.20
Class 9	13.98	1.30	1.35	a	.20
Class 10	14.52	1.30	1.35	a	.20
Class 11	15.06	1.30	1.35	a	.20
Class 12	13.27	1.30	1.35	a	.20
Class 13	14.42	1.30	1.35	a	.20
Class 14	8.81	1.30	1.35	a	.20
Crane with 150' boom $.25 extra					
Crane with 200' boom $.50 extra					

DECISION NO. CT82-3001 -
(CONT'D)

Class 1: Erecting and handling structural steel; front end loader (7 cy. or over)
Class 2: Piledriver; power shovel and crane; dragline; gradall; trenching machine; lighter derrick; paver (concrete); derrick (stiff leg and guy); steel pile sheeting; koehring loader (scooper) master mechanic
Class 3: Drill (joy heavy weight champion or equivalent); side boom; loader (euclid); mucking machine; pumpcrete; rock and earth boring machine; post hole digger; well digger; & hammer (vibratory) central mix; combination hoe & loader (over ½ yd.)
Class 4: Asphalt spreader
Class 5: Front end loader (3 yds. or over); grader; power stone spreader; combination hoe and loader
Class 6: Asphalt roller; bulldozer; carryall; maintenance engineer concrete mixer (5 bags and over); welder
Class 7: Front end loader (under 3 yds.); roller; power chipper; fork lift; finishing machine; asphalt plant; power pavement breaker; dinky machine
Class 8: Compressor; pump
Class 9: Fireman (high pressure)
Class 10: Well point system
Class 11: Compressor battery
Class 12: Oiler
Class 13: Batch plant; bulk cement plant
Class 14: Track backhoe oiler

FOOTNOTE:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day Labor Day, Thanksgiving Day, Christmas Day and Good Friday

DECISION NO. CT81-3032 - MOD. #11 (46 FR 27040 - May 15, 1981) HARTFORD, MIDDLESEX, NEW HAVEN, NEW LONDON AND TOLLAND COUNTIES, CONNECTICUT	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
POWER EQUIPMENT OPERATORS					
BUILDING CONSTRUCTION:					
Derrick, hoisting engineer 2 drums and over, hoisting structural steel, pile driver & setting stone	17.01	1.30	1.35	a	.20
Dragline, forklift - over 5' lift, front end loader - 7 cy. or over, gradall, hoisting engineer (all types of equipment where a drum and cable are used to hoist, pull or drag material regardless of motive power or operation), Koehring scooper loader and/or hoe, master mechanic, shovel & tower crane	16.85	1.30	1.35	a	.20
Maintenance engineer	16.69	1.30	1.35	a	.20
Central mix operator, Coleman loader and screening plant or similar equipment, combination hoe and loader over ½ yd, conveyors - regardless of motive power, front end loader 3 cy. up to 7 cy., joy drill limited to joy heavy weight champion or equivalent, mucking machine, post hole digger, pumpcrete machine, rock boring machine, vibratory hammer, welder & well digger	16.31	1.30	1.35	a	.20
Asphalt spreader	15.97	1.30	1.35	a	.20

DECISION NO. CT81-3032 (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bulldozer, carry-all operators, grader & scraper pan	15.87	1.30	1.35	a	.20
Combination hoe and loader machine, concrete mixer - 5 bags and over, front end loader under 3 cy., powerstone spreader	15.81	1.30	1.35	a	.20
Fork lift not over 4' & Steam Jenny	15.64	1.30	1.35	a	.20
Mechanical Heater	14.28	1.30	1.35	a	.20
Roller	15.49	1.30	1.35	a	.20
Dinky machine, power pavement breaker	15.23	1.30	1.35	a	.20
Fireman (High Pressure)	13.96	1.30	1.35	a	.20
Oiler	13.24	1.30	1.35	a	.20

Crane with boom excluding jib, over 150' - $.25 extra

Crane with boom, excluding jib, over 200' - $.50 extra

FOOTNOTE:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Good Friday

POWER EQUIPMENT OPERATORS HEAVY & HIGHWAY:					
Class 1	17.06	1.30	1.35	a	.20
Class 2	16.81	1.30	1.35	a	.20
Class 3	16.33	1.30	1.35	a	.20
Class 4	16.03	1.30	1.35	a	.20
Class 5	15.78	1.30	1.35	a	.20
Class 6	15.51	1.30	1.35	a	.20
Class 7	15.17	1.30	1.35	a	.20
Class 8	13.81	1.30	1.35	a	.20
Class 9	13.98	1.30	1.35	a	.20
Class 10	14.52	1.30	1.35	a	.20
Class 11	15.06	1.30	1.35	a	.20
Class 12	13.27	1.30	1.35	a	.20
Class 13	14.42	1.30	1.35	a	.20
Class 14	8.81	1.30	1.35	a	.20
Crane with 150' boom $.25 extra					
Crane with 200' boom $.50 extra					

DECISION NO. CT81-3032 (CONT'D)

Class 1: Erecting and handling structural steel; front end loader (7 cy. or over)
Class 2: Piledriver; power shovel and crane; dragline; gradall; trenching machine; lighter derrick; paver (concrete); derrick (stiff leg and guy); steel pile sheeting; koehring loader (scooper) master mechanic
Class 3: Drill (joy heavy weight champion or equivalent); side boom; loader (euclid): mucking machine; pumpcrete; rock and earth boring machine; post hole digger; well digger; & hammer (vibratory) central mix; combination hoe & loader (over ½ yd.)
Class 4: Asphalt spreader
Class 5: Front end loader (3 yds. or over); grader; power stone spreader; combination hoe and loader
Class 6: Asphalt roller; bulldozer; carryall; maintenance engineer concrete mixer (5 bags and over); welder
Class 7: Front end loader (under 3 yds.); roller; power chipper; fork lift; finishing machine; asphalt plant; power pavement breaker; dinky machine
Class 8: Compressor; pump
Class 9: Fireman (high pressure)
Class 10: Well point system
Class 11: Compressor battery
Class 12: Oiler
Class 13: Batch plant; bulk cement planst
Class 14: Track backhoe oiler

FOOTNOTE:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day Labor Day, Thanksgiving Day, Christmas Day and Good Friday

DECISION NO. HI82-5105 - Mod #1 (47 FR 10948 - March 12, 1982) Statewide Hawaii	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
PLUMBERS; STEAMFITTERS	$14.00	1.05	2.05	15.86%	.15

DECISION NO. ID81-5157 - Mod #9 (46 FR 50223 - Oct. 9, 1981) Statewide Idaho	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS: (Area 1)	$18.41	1.30	1.25	1.00	.04

DECISION NO. LA81-4085 - MOD. #4 (46 FR 55206 - November 6, 1981) Allen, Beauregard, Bossier, Caddo, Calcasieu, Cameron, Jefferson, Jefferson Davis, Orleans, Plaquemines, St. Bernard & St. Charles Parishes, Louisiana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Carpenters & piledrivermen:					
Zone 1	$11.97	.75	.55		.06
Cement masons - Zone 2	11.80	.70			
Electricians:					
Zone 3 - Electricians	14.80	2.20	3%		1%
Cable splicers	15.30	2.20	3%		1%
Laborers:					
Zone 2 - Group 1	7.98	.25	.27		.05
Group 2	8.08	.25	.27		.05
Group 3	8.53	.25	.27		.05
Group 4	8.78	.25	.27		.05
Painters:					
Zone 2 - Group 1	12.05	.975	.80		.12
Group 2	12.43	.975	.80		.12
Group 3	14.00	.975	.80		.12
Power equipment ops.:					
Zone 2 - Group 1	12.28	.65	1.20		.10
Group 2	12.53	.65	1.20		.10
Group 3	12.03	.65	1.20		.10
Group 4	10.72	.65	1.20		.10
Group 5	10.02	.65	1.20		.10
Group 6	8.74	.65	1.20		.10
Group 7	7.77	.65	1.20		.10
Group 8	10.35	.65	1.20		.10
Group 9	10.62	.65	1.20		.10
Group 10	8.35	.65	1.20		.10
Truck drivers:					
Zone 2 - Group 1	9.21				
Group 2	9.31				
Group 3	9.54				
Group 4	9.75				
Group 5	10.17				

DECISION NO. MN81-2047 - MOD. #2
(46 FR 37182 - July 17, 1981)
Benton, Sherburne & Stearns Cos., Minnesota

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Plumbers & Steamfitters: Benton & Stearns Cos. & the Western ½ of Sherburne Co.	$14.77	.85	.63		.06

DECISION NO. MT82-5101 - Mod. #2
(46 FR 5630-February 5, 1982)
Statewide, Montana

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Painters- Area 2:					
Brush; Preparatory work; Pot Tender; Parking Lot Striping and related work; Roller up to 9"	$11.97	$1.24	.40		1%
Hand Taper	12.37	1.24	.40		1%
Machine Taper	13.62	1.24	.40		1%
Paperhanger; Brush on Steel	12.47	1.24	.40		1%
Roller over 9" long	15.57	1.24	.40		1%
Water and Sandblasting Application of cold tar products, epoxies and polyurethanes and acid resistant paints; Spraying and airless spray	14.22	1.24	.40		1%

DECISION NO. NJ81-3053 - MOD. #11
(46 FR 50243 - October 9, 1981)
BERGEN, ESSEX, HUDSON, HUNTERDON, MIDDLESEX, MORRIS, PASSAIC, SOMERSET, SUSSEX, UNION AND WARREN COUNTIES, NEW JERSEY

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
LABORERS, BUILDING CONSTRUCTION: ZONE 6	9.50	.75	1.50		.10

DECISION NO. OR82-5100 - Mod #2
(47 FR 10954 - March 12, 1982)
Statewide Oregon

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS	$18.41	1.30	1.25	1.00	.04
SOFT FLOOR LAYERS: Area 1	13.74	.95	1.15	b	.13

DECISION #TN81-1202 - Mod. #5 (46 FR 24886 - May 1, 1981) Shelby County, Tennessee	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Asbestos workers	$15.05	.85	1.50		.09
Boilermakers	$14.50	1.475	1.50		.04
Bricklayers & Stone masons	14.75	.63	.30		.15
Carpenters, Piledrivermen, & Soft floor layers	12.63	.85	1.10		.085
Elevator Constructors:					
Mechanics	13.60	1.345	1.085	a + b	.035
Helpers	9.52	1.345	1.085	a + b	.035
Probationary helpers	6.80				
Glaziers	13.40	.75	.40		
Laborers:					
Group 1	9.115	.50	.45		.05
Group 2	9.215	.50	.45		.05
Group 3	9.265	.50	.45		.05
Group 4	9.465	.50	.45		.05
Group 5	9.665	.50	.45		.05
Group 6	9.60	.50	.45		.05
Marble, Tile, & Terrazzo workers	10.66	.73	.36		.05
Marble, Tile, & Terrazzo finishers	6.10				
Painters:					
Commercial work	12.575	.60	.55		.10
Industrial work, spray, & sandblast	12.825	.60	.55		.10
Roofers	11.50		.45		.04

DECISION NO. TX81-4079 - MOD. #4 (46 FR 48867 - October 2, 1981) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Building Construction:					
Sheet metal workers - Zone 1	$12.13	3%+.65	.84		.09
Zone 2	12.61	3%+.65	.84		.09
Zone 3	13.58	3%+.65	.84		.09
OMIT:					
All rates & classifications for Incidental Paving & Utilities					
ADD:					
Incidental Paving & Utilities:					
Asphalt Heaterman	4.55				
Asphalt Raker	5.55				
Carpenter	6.50				
Carpenter Helper	5.00				
Concrete Finisher (Structures)	5.50				
Concrete Finisher Helper (Structures)	4.25				
Concrete Rubber	4.70				
Electrician	9.00				
Electrician Helper	5.90				
Form Builder (Structures)	5.50				
Form Builder Helper (Structures)	4.50				
Form Setter (Structures)	5.00				
Form Setter Helper (Structures)	4.40				
Laborer, Common	4.10				
Laborer, Utility Man	4.45				
Mechanic	6.55				
Oiler	5.50				
Serviceman	4.75				
Pipelayer:					
Bosque, Falls, Hill & McLennan Cos.	6.00				
Pipelayer (Concrete & clay):					
Bell & Coryell Cos.	6.00				
Plumbers (Bell & Coryell Cos.)					
Zone 1 - 20 to 45 miles from McLennan Court House including towns of Temple & Belton	12.65	.40	.55		.04
Zone 2 - all areas not included in Zone 1	13.65	.40	.55		.04
Reinforcing Steel Setter (Structures)	5.85				
Reinforcing Steel Setter Helper	5.00				

DECISION NO. TX81-4079 - MOD. #4 (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sign Erector	$ 4.65				
Spreader Box Man	4.80				
Power Equipment Operators:					
Asphalt Distributor	5.65				
Asphalt Paving Machine	5.25				
Broom or Sweeper Operator	4.65				
Bulldozer 150 HP & Less	5.15				
Bulldozer over 150 HP	6.00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	5.25				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & Over)	6.50				
Crushing or Screening Plant Op.	4.60				
Front End Loader (2½ CY & Less)	5.15				
Front End Loader (Over 2½ CY)	6.15				
Motor Grader Op., Fine Grade	7.00				
Motor Grader Operator	5.50				
Roller, Steel Wheel (Plant-Mix Pavements)	4.50				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	4.95				
Roller, Pneumatic (Self-Propelled)	4.45				
Scrapers (17 CY & Less)	5.10				
Scrapers (Over 17 CY)	5.25				
Tractor (Crawler Type) 150 HP & Less	4.10				
Tractor (Pneumatic) 80 HP & Less	4.65				
Tractor (Pneumatic) over 80 HP	5.20				
Truck Drivers:					
Single Axle, Light	4.65				
Single Axle, Heavy	5.50				
Tandem Axle or Semitrailer	5.60				

DECISION NO. UT81-5156 - Mod. #6

(46 FR 48870 - October 2, 1981)

Statewide, Utah

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change					
Painters:					
Area 1:					
Brush; Roller	$11.22	.51	.50		.05
Spray; Sandblaster; Steeplejack; Brush, steel and bridge; Brush (swing stage)	11.47	.51	.50		.05
Spray (swing stage); Sandblaster (swing stage); Spray, steel and bridge	11.67	.51	.50		.05
Omit:					
Power Equipment Operators Schedules as issued:					
Heavy and Highway (Areas 1 and 2)					
Steel Erection and Piledriving					
Add:					
Power Equipment Operators Schedules-attached					

DECISION NO. UT81-5156 - (Cont'd)

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:						
Heavy and Highway Construction:	AREA 1	AREA 2				
Group 1	$12.51	$14.51	$1.88*	$2.00	$1.32	.17
Group 2	12.86	14.86	1.88*	2.00	1.32	.17
Group 3	13.04	15.04	1.88*	2.00	1.32	.17
Group 4	13.15	15.15	1.88*	2.00	1.32	.17
Group 5	13.61	15.61	1.88*	2.00	1.32	.17
Group 6	13.76	15.76	1.88*	2.00	1.32	.17
Group 6-A	13.87	15.87	1.88*	2.00	1.32	.17
Group 7	14.17	16.17	1.88*	2.00	1.32	.17
Group 7-A	14.23	16.23	1.88*	2.00	1.32	.17
Group 8	14.29	16.29	1.88*	2.00	1.32	.17
Group 9	14.45	16.45	1.88*	2.00	1.32	.17
Group 10	14.89	16.89	1.88*	2.00	1.32	.17
Group 10-A	15.85	16.85	1.88*	2.00	1.32	.17
Group 10-B	16.30	18.30	1.88*	2.00	1.32	.17
Group 11	16.46	18.46	1.88*	2.00	1.32	.17

* Includes $.40 to Pensioned Health and Welfare

UNDERGROUND and SHAFT WORK:
Underground Work; Employees working underground shall receive $0.30 per hour in addition ot their straight-time hourly rate.

Shaft Work: Employees working within Shafts, Stopes and Raises shall receive $0.50 per hour in addition to their straight-time hourly rate.

DECISION NO. UT81-5156 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:					
Steel Erection:					
Group 1	$13.77	$1.88*	$2.00	$1.32	.17
Group 2	14.27	1.88*	2.00	1.32	.17
Group 3	15.65	1.88*	2.00	1.32	.17
Group 4	15.83	1.88*	2.00	1.32	.17
Group 4-A	16.25	1.88*	2.00	1.32	.17
Group 5	16.92	1.88*	2.00	1.32	.17
Group 6	17.49	1.88*	2.00	1.32	.17
Group 7	17.90	1.88*	2.00	1.32	.17
Group 8	18.29	1.88*	2.00	1.32	.17
Group 9	19.69	1.88*	2.00	1.32	.17
Piledriving:					
Group 1	13.14	1.88*	2.00	1.32	.17
Group 1-A	13.60	1.88*	2.00	1.32	.17
Group 1-B	13.87	1.88*	2.00	1.32	.17
Group 2-A	13.87	1.88*	2.00	1.32	.17
Group 2-B	14.60	1.88*	2.00	1.32	.17
Group 2-C	14.88	1.88*	2.00	1.32	.17
Group 2-D	15.08	1.88*	2.00	1.32	.17
Group 3	15.28	1.88*	2.00	1.32	.17
Group 3-A	15.86	1.88*	2.00	1.32	.17
Group 4	16.59	1.88*	2.00	1.32	.17
Group 5	16.83	1.88*	2.00	1.32	.17
Group 6	18.35	1.88*	2.00	1.32	.17

* Includes $.40 to Pensioned Health and Welfare

UNDERGROUND and SHAFT WORK:
Underground Work; Employees working underground shall receive $0.30 per hour in addition ot their straight-time hourly rate.

Shaft Work: Employees working within Shafts, Stopes and Raises shall receive $0.50 per hour in addition to their straight-time hourly rate.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. WA81-5163 - Mod #9					
(46 FR 59457 - Dec. 4, 1981)					
Statewide Washington					
CHANGE:					
BOILERMAKERS:	$18.41	1.30	1.25	1.00	.04
SOFT FLOOR LAYERS:					
Area 5	15.03	1.43	1.50		1%
Area 6	13.74	.95	1.15	c	.13
TERRAZZO WORKERS; TILE SETTERS					
Area 8	15.11	1.22	1.80		.16

STATE: Illinois COUNTY: Kankakee
DECISION NUMBER: IL82-2028 DATE: Date of Publication
Supersedes Decision No. IL79-2071, dated September 7, 1979 in 44 FR 52545
DESCRIPTION OF WORK: Building (Including Residential) Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$17.00	1.145	1.645		.06
BOILERMAKERS	16.80	1.675	1.75	5%	.18
BRICKLAYERS; Caulkers, Cement Masons; Cleaners; Pointers; Stonemasons; & Tile Setters	15.20	.80	1.55		
CARPENTERS:					
Commercial Building:					
Carpenters; Dry Wallers; Millwrights; Piledrivermen & Soft Floor Layers	15.85	.95	.80		.03
Residential	70%JR				
ELECTRICIANS:					
Commercial Building:					
Electricians	16.88	.88	3%+1.20		.6%
Cable Splicers	17.28	.88	3%+1.20		.6%
Residential	10.75	.88	3%+.70		.6%
ELEVATOR CONSTRUCTORS:					
Constructors	17.36	1.345	.95	a & b	.035
Helpers	70%JR	1.345	.95	a & b	.035
Helpers (Prob.)	50%JR				
GLAZIERS:					
Excluding Area East of Cabery	15.70	.83	1.42		.02
IRONWORKERS	16.00	1.345	1.255		.05
PAINTERS:					
Brush; Roller; & Taping (Hand)	12.45	.70	1.50		
Spray	13.95	.70	1.50		
Paperhanging	13.45	.70	1.50		
Taping (Machine); Sandblasting; & Steamcleaning	14.45	.70	1.50		
PLASTERERS	15.00	.80	1.55		
PLUMBERS; Pipefitters; & Steamfitters	16.86	.70	1.10		.08
ROOFERS	16.35	.65			
SHEET METAL WORKERS	16.43	1.32	1.30		.14
SPRINKLER FITTERS	15.31	.95	1.40		.08
TILE SETTERS' FINISHERS	12.80	.81	.72		
TRUCK DRIVERS:					
2-3 Axle Trucks	12.025	$29.50c	$31.00c		
4 Axle Trucks	12.225	29.50c	31.00c		
5 Axle Trucks	12.425	29.50c	31.00c		
6 Axle Trucks	12.575	29.50c	31.00c		

DECISION NO. IL82-2028

FOOTNOTES:
a. 7 Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving Day; & Christmas Day
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years; 6% for less than 5 years
c. Per Employee Per Week

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Unskilled	$13.20	.65	.85		.05
Semi-Skilled	13.40	.65	.85		.05
Skilled	13.60	.65	.85		.05
Pump Men	14.00	.65	.85		.05

LABORERS CLASSIFICATIONS
UNSKILLED: Asphalt Plant Laborers; Carpenter Tender; Cleaning of Windows, Doors, Walls, Floors, Scrubbing & Waxing of Floors; Common Laborer; Dumpmen & Spotters; Firemen or Salamander Tender; Fireproofing Laborer; Gravel Box Men; Landscapers; Planting & Placing of Trees, Shrubs, Sod & Seeding; Tool Cribmen; Unloading Explosives; & All Laborers not otherwise mentioned
SEMI-SKILLED: Asphalt Workers w/Machine & Layers; Bankmen on Floating Plant; Batch Dumpers; Cement Handlers; Cement Silica, Clay, Fly Ash, Lime & Plasters, Handlers (Bulk or Bag); Chloride Handlers; Cofferdam Workers Plus Depth; Concrete Workers (wet); Deck Hand, Dredge Hand & Shore Laborers; Driving All Stakes, Stringlines for all Machinery; Grade Checker; Handling of Materials Treated w/Oil, Creosote, Asphalt and/or Foreign Material Harmful to Skin or Clothing; Kettle & Tar Men; Laborers w/De-watering Systems; Mason Tenders; Mortar Mixer Operators; Motorized Buggies or Motorized Unit Used for Wet Concrete or Handling of Building Materials; On All Concrete Paving & Slope Walls, Placing, Cutting & Tying of Reinforcing (re-bars & wire mesh); On Concrete Paving, Placing, Cutting & Tying of Reinforcing; Plastic Installers; Power Tools; Scaffold Workers; Setting & Building of Manholes & Catch Basins; Sewer Workers Plus Depth; Stripping of all Concrete Forms, except Paving Forms; Tank Cleaners; The Unloading & Laborers w/Steel Workers & Re-bars; Track Laborers; Tunnel Tenders in free air; & Vibrator Operators
SKILLED: Air Tamping Hammerman; Asphalt Raker; Caisson Workers Plus Depth; Chain Saw Operators; Concrete Burning Machine Operator; Concrete Saw Operator; Coring Machine Operator; Curb Asphalt Machine Operator; Front End Man on Chip Spreader; Gunnite Nozzle Men; Laborers Handling Masterplate or Similar Materials; Laborers Tending Masons w/Hot Material or Where Foreign Materials are used; Laser Beam Operator; Layout Man and/or Tile Layer; Lead Man on Sewer Work; Luteman; Multiple Concrete Duct-Leadman; Paving Breaker, Jackhammer & Drill Operators; Plaster Tenders; Ready Mix Scalemen, Permanent, Portable or Temporary Plant; Screenman on Asphalt Pavers; Signal Man on Crane; Steel Form Setters-Street & Highway; Tree Topper or Trimmer; Underpinning & Shoring of Buildings; & Welders, Cutters, Burners & Torchmen

DECISION NO. IL82-2028

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$15.80	$1.50	$1.35	.80	.05
CLASS II	14.50	1.50	1.35	.80	.05
CLASS III	13.05	1.50	1.35	.80	.05
CLASS IV	11.60	1.50	1.35	.80	.05

CLASS I: Asphalt Plant; Asphalt Spreader; Autograde; Batch Plant; Benoto (requires two engineers); Boiler and Throttle Valve; Caisson Rigs; Central Redi-mix Plant; Combination Back Hoe Front Endloader Machine; Compressor and Throttle Valve; Concrete Breaker (truck mounted); Concrete Conveyor; Concrete Paver; Concrete Placer; Concrete Pump (truck mounted); Concrete Tower; Cranes; Creter Crane; Crusher, stone; Derricks; Derricks, traveling; Formless Curb and Gutter Machine; Crader, elevating; Grouting Machines; Highlift Shovels or Front Endloader, 2½ yards and over; Hoists, elevators (outside type rack and pinion and similar machines); Hoists, one, two, and three drum; Hoists, two tugger one floor; Hydraulic Backhoes; Hydraulic Dump Trucks; Locomotives; Mechanic; Motor Patrol; Pile Drivers and Skid Rig; Post Hole Digger; Pre-stress Machine; Pump Cretes Dual Ram; Pump Cretes: Squeeze Cretes - screw type pumps, Gypsum Bulker and Pump; Raised and Blind Hole Drill; Rock Drill (self-propelled); Rock Drill (truck mounted); Roto Mill Grinder; Scoops, tractor drawn; Slip Form Paver; Straddle Buggies; Tournapull; Tractor with boom, and side boom; Trenching Machines
CLASS II: Bobcat (over 3/4 cu. yd.); Boilers; Brick Forklift; Broom, all power propelled; Bulldozers; Concrete Mixer (two bag and over); Conveyor, portable; Forklift Trucks; Greaser Engineer; Highlift Shovels or Front Endloaders, under 2½ yds.; Hoists, automatic; Hoists, inside freight elevators; Hoists, sewer dragging machine; Hoists, tugger single drum; Rollers; Steam Generators; Tractors; Tractor drawn Vibratory Roller (receives an additional $0.50 per hour); Winch Trucks with "A" Frame
CLASS III: Air Compressor; Combination, small equipment Operator; Generators; Heaters, mechanical; Hoists, inside elevators (Rheostat manual controlled and push button with automatic doors); Hydraulic Power Units (Pile Driving and extracting); Pumps, over 3" (1 to 3 not to exceed a total to 300 ft.); Pumps, Well Points; Welding Machines (2 through 5); Winches, 4 small electric Drill Winches; Bobcat (up to and including 3/4 cu. yd.); Brick Forklift
CLASS IV: Oilers

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Kansas COUNTY: Leavenworth
DECISION NUMBER: KS82-4013 DATE: Date of Publication
Supersedes Decision No. KS81-4053 dated October 2, 1981, in 46 FR 48847
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$16.69	1.05	1.75		.06
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS, STONEMASONS	13.39	1.00	.95	1.50	
CARPENTERS:					
Carpenters, Millwrights, & Piledrivermen	14.05	.65	.75		.07
CEMENT MASONS	13.925	.80	.85		
ELECTRICIANS:					
Zone 1:					
Delaware, Kickapoo, High Prairie & Leavenworth Townships	16.18	.69	3%+1.00	7%	.12
Zone 2:					
Remainder of County	15.55	1.00	3%+ .85		.13
ELEVATOR CONSTRUCTORS	14.135	1.195	.95	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	9.89	1.195	.95	a	.035
GLAZIERS	13.53	.90	1.34	17.14%	.05
IRONWORKERS	15.10	.85	1.80	1.00	.10
LATHERS	14.05	.65	.75		.07
LINE CONSTRUCTION:					
Zone 1:					
Southwest 2/3 of Leavenworth County:					
Linemen	14.52	.45	3%		½%
Cable Splicers	15.26	.45	3%		½%
Groundmen	9.03	.45	3%		½%
Powdermen	12.03	.45	3%		½%
Line Truck & Equipment Operators	12.03	.45	3%		½%
Zone 2:					
Remainder of Leavenworth County:					
Linemen	17.33	.45	3%+.25		½%
Linemen Operators	16.13	.45	3%+.25		½%
Groundmen Powdermen	12.02	.45	3%+.25		½%
Groundmen	11.42	.45	3%+.25		½%
MARBLE & TILE SETTERS	15.20	5%	5%		
PAINTERS:					
Brush, Roller, Tapers	12.19	.55	.70		.08
Spray	13.19	.55	.70		.08
Paperhangers	12.69	.55	.70		.08
PLASTERERS	15.80				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PIPEFITTERS	$14.54	.72	1.60		.10
PLUMBERS	16.16	1.20	1.30		.15
ROOFERS	13.05	.75	.75		.14
SHEET METAL WORKERS	14.17	.75	1.44	1.25	.17
SOFT FLOOR LAYERS	11.26	.60	1.00	1.00	1%
SPRINKLER FITTERS	15.10	.95	1.40		.08
TERRAZZO WORKERS	14.31	5%	5%		
WELDERS - Receive rate prescribed for craft performing operation to which the welding is incidental.					

FOOTNOTE:

a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Also 7 paid holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksviging Day, & Christmas Day.

LABORERS (Building Construction:					
General Laborers	8.85	.75	.60	.50	.05
Power Tool Operators; Compactors; Concrete Breakers; Chipping Tools; Drilling Tools; Concrete Saws; Mechanically Operated Georgia Buggy	9.05	.75	.60	.50	.05
Mason Tenders; Plaster Tenders; Mortar Mixers for Plasterers, Masons and Cement Finishers; All Stocking Scaffold; Clean up for Masons (Building & Wrecking)	9.15	.75	.60	.50	.05
Sand and Concrete Gun Nozzlemen Powdermen	9.25	.75	.60	.50	.05
LABORERS (Site Preparation and Grading):					
Group 1	8.20	.95	.60	.50	.05
Group 2	8.35	.95	.60	.50	.05
Group 3	8.45	.95	.60	.50	.05
Group 4	8.60	.95	.60	.50	.05

LABORERS (Site Preparation & Grading) - Classifications:

Group 1: Board Mat Weavers and Cable Tiers; Georgia Buggy, Manually Operated; Mixermen - No Skip Lift; Salamander Tenders; Track Men; Tractor Swampers; Truck Dumpers; Wire Mesh Setters; Water Pump up to 4 inches; and all other General Laborers.
Group 2: Air Tool Operators; Cement Handlers (Bulk); Chain Saw; Georgia Buggy (Mechanically Operated); Grade Men; Hot Mastic Kettlemen; Crusher Feeders; Joint Men; Jute Men; Mason Tenders; Material Batch Hopper and Scale Men; Mixer Men; Pier Hole Men Working 10 ft. deep; Pipelayer - Drainage (Concrete and/or Corrugated Metal); Signal Men (Crane); Truck Dumper--Dry Batch; Vibrator Operator; Wagon & Churn Drill Operator.
Group 3: Asphalt Raker; Barco Tamper; Concrete Saw, Creosote Material--Handling and Applying; Nozzle Burner (Cutting Torch and Burning Bar).
Group 4: Conduit Pipe; Tile and Duct Line Setter; Form Setter and Liner on Concrete Paving; Powderman; Sand-blasting and Gunnite Nozzleman; Sanitary Sewer Pipe Layer; Steel Plate Structure Erectors; Water and Gas Distribution Lines.

POWER EQUIPMENT OPERATORS (Building Construction):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$16.51	1.00	1.65		.20
Group 2	16.16	1.00	1.65		.20
Group 3	13.76	1.00	1.65		.20
Group 4	14.26	1.00	1.65		.20
Group 5	14.51	1.00	1.65		.20
Group 6	16.41	1.00	1.65		.20
Group 7	16.76	1.00	1.65		.20
Group 8	16.26	1.00	1.65		.20
Group 9	16.01	1.00	1.65		.20
Group 10	14.01	1.00	1.65		.20
Group 11	17.01	1.00	1.65		.20

Group 1: Asphalt Paver and Spreader; Asphalt Plant Mixer Operator; Asphalt Plant Operator; Back Fillers; Backhoe, All Types; Barber-Green Loader (Similar Type); Blade--Power, All Types; Boats--Power; Boilers (2); Boring Machines (All Types); Cable Ways; Cherry Pickers (All Types); Chip Spreader; Clamshells; Combination Concrete Hoist and Mixer, Such As Mixermobile; Concrete Ready-Mixed Plant, Portable (Job Site); Concrete Mixer Paver; Crane--Overhead; Crain or rigs (All Types); Crusher, Rock; Derricks and Derrick Cars (Power Operated); Ditching Machines; Dozer; Draglines; Dredges--Any Type Power; Forklift (All Types and Sizes Except

POWER EQUIPMENT OPERATORS (Building Construction) (Cont'd):

Masonry); Grade-all--Similar Type; Hoist, Endless Chain--Power Operated with Power Travel; Loaders, All Types; Locomotives, All Types; Mechanics and Welders; Mucking Machines; Orange Peels; Pile Drivers (All Types); Pumps--Material--All Types; Push Cats; Scoops (All Types); Self-Propelled Rotary Drill; Shovel; Power; Side Boom; Skimmer Scoop; Testhold Machine; Throttle Man.

Group 2: Boilers (1); Brooms, Power Operated (All Types); Chip spreader (Font Man); Clef Plane Operator; Compressor (1), 105 Ft. or Over; Compressors (2), 105 Ft. or Over, Not More Than 20 Ft. Apart; Compressors, Tandem (Any Size); Compressor, Single, Truck Mounted; Concrete Saws, Self-Propelled; Crab--Power Operated; Curb Finishing Machine; Elevator; Finishing Machine; Fireman on Rigs; Flex Plane; Floating Machine; Form Grader; Greaser, Hoist, Endless Chain, Power Operated; Hopper, power operated; Hydra Hammer (All Types); Lad-A-Vator, Similar Type; Roller, All Types; Siphone, Jets and Jennies; Sub-grader; Tractors over 50 HP.

Group 3: Oiler

Group 4: Fork Lift, Masonry; Oiler Driver, All Types.

Group 5: "A" Frame Trucks; Mixers (With Side Loaders); Pumps (With Well Points Dewatering Systems, Test and Pressure Pumps); Tractors (Except When Hauling Material), less than 50 HP.

Group 6: Hoists, Each Additional Drum Over 1 Drum.

Group 7: Clamshells, 80 Ft. of Boom or Over (Including Jib); Crane or Rigs, 80 Ft. of Boom or Over (Including Jib) and Over 200 Feet; Draglines, 80 Ft. of Boom or Over (Including Jib); Pile Drivers, 80 Ft. of Boom or Over (Including Jib).

Group 8: Crane Operator.

Group 9: Loader Operator; Plant Man.

Group 10: Conveyor Operator

Group 11: Crane, Tower or Climbing.

POWER EQUIPMENT OPERATORS: (Cont'd) Site Preparation & Grading:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$14.00	1.00	1.50	1.07	.20
Group 2	13.75	1.00	1.50	1.07	.20
Group 3	13.05	1.00	1.50	1.07	.20
Group 4: (A)	11.55	1.00	1.50	1.07	.20
(B)	9.03	1.00	1.50	1.07	.20
(C)	12.05	1.00	1.50	1.07	.20

Group 1: Asphalt Paver and Spreader; Asphalt Plant Console Operator; Auto Grader; Backhoe; Blade Operator, all types; Boilers (2); Booster Pump on Dredge; Boring Machine (truck or crane mounted); Bulldozer Operator; Clamshell Operator; Compressor Maintenance Operator, 2; Concrete Plant Operator, Central Mix; Concrete Mixer Paver; Crane Operator; Derrick or Derrick Trucks; Ditching Machine; Dragline Operator; Dredge Engineman; Dredge Operator; Drill Cat with Compressor mounted on Cat; Drilling or Boring Machine, Rotary, self-propelled; High Loader-Fork Lift; Hoisting Engineer, 2 active drums; Locomotive Operators, Standard Guage; Mechanics and Welders, field or shop; Maintenance Operator; Mucking Machine; Piledriver Operator; Pitman Crane Operator; Pump, 2; Pushcat Operator; Quad-trac; Scoop Operator, all types; Scoops in Tandem; Self-Propelled Rotary Drill (Leroy or equal, not air trac); Shovel Operator; Side Discharge Spreader; Sideboom Cats; Skimmer Scoop Operator; Slip-Form Paver (CMI, REX, or equal); Throttle Man; Truck Crane; Welding Machine Maintenance Operator (2).

Group 2: A-Frame Truck; Asphalt Hot Mix Silo; Asphalt Plant Fireman, Drum or Boiler; Asphalt Plant Mixer Operator; Asphalt Plant Man; Asphalt Roller Operator; Backfiller Operator; Chip Spreader; Concrete Batch Plant, Dry, Power-Operated; Concrete Mixer Operator; Skiploader; Concrete Pump Operator; Crusher Operator; Elevating Grader Operator; Greaser, Hoisting engine, 1 drum; LaTourneau Rooter; Multiple Compactor; Pavement Breaker, Self-Propelled of the Hydra-hammer or similar type; Power shield; Pug Mill Operator; Stump Cutting Machine; Towboat Operator; Tractor Operator, over 50 HP.

Group 3: Boilers, 1; Chip Spreader (Front Man); Churn Drill Operator; Compressor Maintenance Operator, 1; Concrete Saws, self-propelled; Conveyor Operator; Distributor Operator; Finishing Machine Operator; Fireman, Rig; Float Operator; Form Grader Operator; Pump; Pump Maintenance Operator, other than dredge; Roller Operator, other than high type asphalt;

POWER EQUIPMENT OPERATORS (Cont'd)
Site Preparation and Grading (Cont'd):

Group 3 -(Cont'd): Screening and Washing Plant Operator; Self-propelled Street Broom or Sweeper; Siphons and Jets; Sub-grading Machine Operator; Tank Car Heater Operator combination Boiler and Booster; Tractor, 50 HP or less, without attachments; Vibrating Machine Operator, not hand; Welding Machine Maintenance Operator, 1.

Group 4 (A): Mechanics' Helpers.

Group 4 (B): Oiler

Group 4 (C): Oiler Driver, all Types

TRUCK DRIVERS: (Building Construction):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Single Axle Trucks	$ 6.55	.75	1.00		
Warehousemen - Supply	9.925	.75	1.00		
Fork Lift - Supply	10.175	.75	1.00		
Tandem Axle Trucks	10.84	.75	1.00		
Warehousemen & Stock Men	10.925	.75	1.00		
Flat Bed Trucks; Pick-up Trucks; Dump Trucks (under 10 yards capacity)	10.975	.75	1.00		
Dump Trucks (10 yds. capacity & over); Semi-truck; Steel Truck	11.05	.75	1.00		
Transit Mix (under 5 yds)	11.025	.75	1.00		
Oiler, Greaser & Mechanic Helpers; Distributor Driver & Operator	11.075	.75	1.00		
Transit Mix (5 Yds.& Over)	11.125	.75	1.00		
Straddle Trucks; Wheel Tractors (when used for towing); Heavy Hauling, A-frame & Winch Trucks; Fork Lift Trucks; Hydro Lift Trucks; Hydraulically operated Aerial Lift, heavy excavating; Double bottom units (20 ton capacity & over)	11.175	.75	1.00		
Transit Mix Tractor Trailer; Mechanics	11.275	.75	1.00		

TRUCK DRIVERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Site Preparation & Grading:					
Group 1	$11.50	1.00	1.50	.75	
Group 2	11.70	1.00	1.50	.75	
Group 3	12.01	1.00	1.50	.75	
Group 4	12.16	1.00	1.50	.75	
Group 5	11.28	1.00	1.50	.75	

Group 1: One Team; Station Wagons; Pickup Trucks; Material trucks, single axle, Tank Wagon Drivers, single axle.

Group 2: Material Trucks, Tandem; Two teams; Semi-trailer; Winch Truck, Fork Trucks; Distributor Drivers and Operators; Agitator and Transit Mix; Tank Wagon Drivers; single axle; Tank Wagon Drivers, Tandem or Semi-trailers; Insley Wagon; Dump Trucks; excavating, 5 cu. yds. and over, Dumpster, Half-trucks, Speedace, Euclids and other similar excavating equipment.

Group 3: A-Frame, Low Boy, and Boom Truck Drivers

Group 4: Mechanics and Welders

Group 5: Mechanics' Helpers; Oilers and Greasers.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses, (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Kansas COUNTY: Sedgwick
DECISION NO. KS82-4014 DATE: Date of Publication
Supersedes Decision No. KS81-4047, dated July 6, 1981, in 46 FR 34971

DESCRIPTION OF WORK: Building Construction Projects(excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$15.53				
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS; STONEMASONS	13.00	.85	.75		.03
CARPENTERS:					
Carpenters	12.65	.70			.08
Millwrights, Piledrivermen	12.95	.70			.08
CEMENT MASONS	11.10				
ELECTRICIANS	14.25	.75	3%+.75		1%
Cable Splicer	14.50	.75	3%+.75		1%
ELEVATOR CONSTRUCTORS	12.21	1.345	.95	a	.035
ELEVATOR CONSTRUCTOR HELPERS	8.55	1.345	.95	a	.035

FOOTNOTE:
a-Employer contributes 8% of basic hourly rate for over 5 years service, and 6% of basic hourly rate for under 5 years as Vacation Pay Credit. Also 7 paid holidays.

GLAZIERS	10.99	.90	.80	1.53	.06
IRONWORKERS	12.76		1.00	.53	.14
LABORERS (BUILDING CONSTRUCTION):					
Group 1-Common laborers	8.60	.85	.50	.50	.05
Group 2-Power tool operator, compactors, concrete breaker chipping tools, drilling tools, concrete saws, mechanically operated georgia buggy, mason tenders, plaster tenders, mortar mixers for plasterers, mason and cement finishers, all stocking scaffold, clean up for masons(building & wrecking), Sand and concrete gun nozzleman,powderman	8.80	.85	.50	.50	.05
LABORERS (SITE PREPARATION AND GRADING):					
Group 1	6.00	.85	.50	.50	.05
Group 2	6.15	.85	.50	.50	.05
Group 3	6.25	.85	.50	.50	.05
Group 4	6.40	.85	.50	.50	.05

CLASSIFICATION DEFINITIONS - LABORERS (SITE PREPARATION & GRADING)

Group 1 - Board mat weavers & cable tiers, georgia buggy (manually operated) Mixerman-no skip, lift, salamander tenders, track men, tractor swamper, truck dumper, wire mesh setter, water pump up to 4 inches,& all other general laborers.
Group 2 - Air tool operators, cement handlers (bulk), chain saw, georgia buggy (mechanically operated), grade man, hot mastic kettlemen, crusher feeder, joint man, jute man, mason tenders, material batch hopper & scale man, mixer man, pier hole man working 10 ft. deep, pipelayer-drainage (concrete and/or corrugated metal), signal man (crane), truck dumper-dry batch, vibrator operator, wagon and churn drill operator.
Group 3 - Asphalt raker, barco tamper, concrete saw, creosote material--handling & applying, nozzle burner (cutting torch and burning bar).
Group 4 - Conduit pipe, tile & duct line setter, form setter & liner on concrete paving, powderman, sandblasting & gunnite nozzleman, sanitary sewer layer, steel plate structure erectors, water and gas distribution lines.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Linemen	$14.52	.45	3%		½%
Cable Splicers	15.26	.45	3%		½%
Groundman	9.03	.45	3%		½%
Powderman	12.03	.45	3%		½%
Line truck & equipment opr.	12.03	.45	3%		½%
PAINTERS:					
Brush	12.14	.10	.60		
Spray	12.84	.10	.60		
PLASTERERS	11.00				
PIPEFITTERS, PLUMBERS	14.60	.80	1.00		.08
POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):					
Cranes with lifting ring	14.75	1.00	1.25		
Cranes with shovels- 100 ft of boom or over including jib or 30 tons or over or 2 yard capacity, three (3) drum hoist	14.00	1.00	1.25		
Cranes & shovels - boom 200 ft. & over four (4) drum hoist, frankie - type pile driving machines, & tower cranes & derricks	14.25	1.00	1.25		
GROUP I	13.75	1.00	1.25		
GROUP II	13.35	1.00	1.25		
GROUP III: CLASS A	11.70	1.00	1.25		
CLASS B	11.95	1.00	1.25		
GROUP IV: CLASS A	11.15	1.00	1.25		
CLASS B	11.40	1.00	1.25		

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION)

Group I - Boiler (2), boom cat, boring machine, ditching machine, concrete ready mix plant, crane, truck crane, clamshell dragline, dozer, scraper, all types, patrol, firemen (when operating steam or air valve),gradall, hi-loaders (over 1 yard), hoist two drum, mechanic or welder, mixermobile, paver, or any other machine with power swing, piledriver operator, power shovel, pump, concrete or other material, locomotive.
Group II - A-frame truck, bob cat/hi-loaders (1 yard or under), barber-greene loader or similar type, boiler (1), ditching machine - small, elevator operator, fireman, forklift, hoist, one active drum, hydra hammer jeep ditcher, mixer, other than paver, power broom, pump 4" or larger, small machine engineer, welding machine (1), greaser equipment.
Group III:
CLASS A - Farm tractor (without attachments).
CLASS B - Farm tractor (with attachments)
Group IV:
CLASS A - Oiler
CLASS B - Motor crane oiler.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (Site Preparation & Grading)					
GROUP 1	$12.10	1.00	1.25		.20
GROUP 2	11.85	1.00	1.25		.20
GROUP 3	11.60	1.00	1.25		.20
GROUP 4	11.25	1.00	1.25		.20
GROUP 4-A	11.35	1.00	1.25		.20

CLASSIFICATION DEFINITIONS - SITE PREPARATION AND GRADING - PEO:
Group 1 - Asphalt paver and spreader; backhoe, boring machine; blades, all types; clamshell; concrete mixer paver operator; concrete central plant operator (automatic); crane, truck crane, pitman crane, hydro crane, or any machine with power swing;derrick or derrick trucks; dragline operator; dredge operator; dozer; ditching machine; euclid loader; hoist - 2 active drums; loader; all types; mechanic or welder; mixer-mobile; multi-unit scrapper; pile driver operator; power shovel operator scoop operator, all types; side boom-cherry picker; skimmer scoop operator; pushcat operator; quad track.
Group 2 - Asphalt plant operator; elevating grader operator.
Group 3 - A-frame truck, asphalt roller operator; asphalt plant boiler fireman; backfiller operator; barber-greene loader; boiler other than asphalt bull float operator; churn drill operator; compressor operator (1); concrete central plant operator; concrete mixer operator skip; concrete pump operator; crusher operator, distributor operator; finish machine operator - concrete; fireman other than asphalt; flex plane operator, fork lift; form grader operator; greaser; hoist-1 drum; jeep ditching machine; pavement breakers, self-propelled (of the hydra hammer or similar type); pump operator, 4" or over, two; pump operator, other than dredge; screening and gas plant operator; small machine operator; spreader

CLASSIFICATION DEFINITION - SITE PREPARATION AND GRADING - PEO:
(Cont'd):
box operator, self-propelled; tractor operator over 50 h.p.; self-propelled roller operator, other than asphalt; siphons and jets; subgrading machine operator; tank car heater operator, combination booster and boiler; towboat operator; vibrator machine operator, not hand.
Group 4 - Concrete gang saw, self-propelled (con-cut); conveyor operator; Harrow, disc, seeder; oiler; tractor operator, 50 h.p. or less without attachments.
Group 4-A - Oiler, motor crane

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Roofers, Kettlemen	$11.60	.48			.02
Pitch	12.35	.48			.02
SHEET METAL WORKERS	12.56	3%+1.18	.66		.14
SPRINKLER FITTERS	15.10	.95	1.40		.08
TILE, MARBLE & TERRAZZO MECHANICS	11.80				
TRUCK DRIVERS (BUILDING CONSTRUCTION):					
Group 1 - Pickups, station wagons, flat beds 12,000 and under GVW license capacity	8.90	.50	.35		
Group 2 - Flat Beds - 16,000# GVW license capacity	8.975	.50	.35		
Group 3 - Flat beds - 20,000# over GVW license capacity, dump, batch & water truck, single axle	9.05	.50	.35		
Group 4 - Lowboys, semi-trailers dumpstors, A-frame tandems winch truck when used as such & transit mix	9.15	.50	.35		
TRUCK DRIVERS (SITE PREPARATION & GRADING):					
Group 1	8.65	.70	.50		
Group 2	8.75	.70	.50		
Group 3	8.90	.70	.50		

TRUCK DRIVER (SITE PREPARATION & GRADING) CLASSIFICATION DEFINITIONS

Group 1 - Pickups; panel trucks; station wagons; flat beds; dump and batch trucks (single axle)

Group 2 - Tandem trucks, warehousemen or partsmen; mechanic helpers and servicemen.

Group 3 - Lowboys; semi-trailers, all transit mixer trucks (single or tandem axle); A-frame and winch trucks when used as such; euclid, end and bottom dump; tournarockers; atheys; dumptors and similar off-road equipment and mechanics on such equipment

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERDEDEAS DECISION

STATE: KANSAS

COUNTIES: Douglas, Jefferson, Leavenworth, Miami and Shawnee

DECISION NUMBER: KS82-4015 DATE: Date of Publication
Supersedes Decision No. KS82-4003 dated January 15, 1982, in 47 FR 27048
DESCRIPTION OF WORK: Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS & PILEDRIVERMEN:*					
Zone 1	$11.15	.70	.75		.05
Zone 2	14.05	.65	.75		.07
Zone 3	8.50	.70	.75		
CEMENT MASONS:*					
Zone 1	10.20	.40	.50	1.25	
Zone 2	11.60	.70	.35		
Zone 3	11.30	.70	.35		
ELECTRICIANS:*					
Zone 1	16.18	.69	3%+1.00	7%	.12
Zone 2	15.55	1.00	3%+ .85		.13
IRONWORKERS	15.10	.85	1.80	1.00	.10
LINE CONSTRUCTION:*					
Zone 1:					
Lineman	17.33	.45	3%+.25		½ of 1%
Lineman Operator	16.13	.45	3%+.25		½ of 1%
Groundman Powderman	12.02	.45	3%+.25		½ of 1%
Groundman	11.42	.45	3%+.25		½ of 1%
Zone 2:					
Lineman	14.52	.45	3%		½%
Cable Splicers	15.26	.45	3%		½%
Groundman	9.03	.45	3%		½%
Powderman	12.03	.45	3%		½%
Line Truck & Equipment Operator	12.03	.45	3%		½%

*ZONE DESCRIPTIONS

CARPENTERS AND PILEDRIVERMEN:
Zone 1: Douglas, Shawnee and Jefferson Counties
Zone 2: Leavenworth County
Zone 3: Miami County

CEMENT MASONS:
Zone 1: Leavenworth and Miami Counties
Zone 2: Douglas and Shawnee Counties
Zone 3: Jefferson County

ELECTRICIANS:
Zone 1: Leavenworth County (Delaware, High Prairie, Kickapoo and Leavenworth Townships)
Zone 2: Douglas, Jefferson, Miami, Shawnee and the remainder of Leavenworth County

LINE CONSTRUCTION:
Zone 1: Leavenworth County, north of Fairmont Strainger, and Tanganoxie Townships
Zone 2: Douglas, Jefferson, Miami, Shawnee Counties, and remainder of Leavenworth County

LABORERS:

ZONE 1: Jefferson County
ZONE 2: Douglas and Shawnee Counties
ZONE 3: Leavenworth County
ZONE 4: Miami County

GROUPS	ZONE 1	ZONE 2	ZONE 3	ZONE 4
1	$ 7.60	$ 8.40	$ 8.40	$ 7.60
2	7.75	8.55	8.55	7.75
3	7.85	8.65	8.65	7.85
4	8.00	8.80	8.80	8.00

FRINGE BENEFITS PAYMENTS - ZONES 1, 2 and 4:

Health and Welfare	$0.85
Pensions	0.50
Vacations	0.50
Apprenticeship Training	0.05

FRINGE BENEFITS PAYMENTS - ZONE 3:

Health and Welfare	$0.75
Pensions	0.60
Vacations	0.50
Apprenticeship Training	0.05

Group 1: Board Mat Weavers and Cable Tiers; Georgia Buggy (manually operated); Mixerman-on skip lift; Salamander Tenders; Track Men; Tractor Swamper; Truck Dumper; Wire Mesh Setter; Water Pump, up to 4 inches and all other General Laborers

Group 2: Air Tool Operators; Cement Handlers (bulk); Chain Saw; Georgia Buggy (mechanically operated); Grademen; Hot Mastic Kettlemen; Crusher Feeder; Joint Man; Jute Man; Mason Tender; Material Batch Hopper and Scale Man; Mixer Man; Pier Hole Man working 10 feet deep; Pipelayer-drainage (concrete and/or corrugated metal); Signal Man (Crane); Truck Dumper-Dry Batch; Vibrator Operator; Wagon and Churn Drill Operator

Group 3: Asphalt Raker; Barco Tamper; Concrete Saw; Creosote Material, handling and applying; Nozzle Burner (cutting torch and burning bar)

Group 4: Conduit Pipe; Water and Gas Distribution Lines; Tile and Duct Line Setter; Form Setter and Liner on concrete paving; Powderman; Sandblasting and Gunite Nozzleman; Sanitary Sewer pipe Layer; Steel Plate Structure Erectors

POWER EQUIPMENT OPERATORS: Zone 1: Leavenworth County:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$14.00	1.00	1.50	1.07	.20
Group 2	13.75	1.00	1.50	1.07	.20
Group 3	13.05	1.00	1.50	1.07	.20
Group 4A	11.55	1.00	1.50	1.07	.20
Group 4B	9.03	1.00	1.50	1.07	.20
Group 4C	12.05	1.00	1.50	1.07	.20

Group 1: Asphalt Paver and Spreader; Asphalt Plant Console Operator; Auto Grader; Back Hoe; Blade Operator, all types; Boiler, 2; Booster Pump on Dredge; Boring Machine (truck or crane mounted); Bulldozer Operator; Clamshell Operator; Compressor Maintenance Operator, 2; Concrete Plant Operator, Central Mix; Concrete Mixer Paver; Crane Operator; Derrick or Derrick Trucks; Ditching Machine; Dragline Operator; Dredge Engineman; Dredge Operator; Drillcat with compressor mounted on cat; Drilling or Boring Machine; Rotary, self-propelled; High Loader-Fork Lift; Locomotive Operator, standard guage; Mechanics and Welders; Maintenance Operator; Mucking Machine; Pile Driver Operator; Pitman Crane Operator; Pump, 2; Quad-trac; Scoop Operator, all types; Scoops in tandem; Self-propelled Rotary Drill (Leroy or equal-not Air Trac); Shovel Operator; Side Discharge Spreader; Sideboom Cats; Skimmer Scoop Operator; Slip-form Paver (CMI, REX, or equal); Throttle Man; Truck Crane; Welding Machine Maintenance Operator, 2; Hoisting Engine, 2; Active Drums

Group 2: "A" Frame Truck; Asphalt Hot Mix Silo; Asphalt Plant Fireman, drum or boiler; Asphalt Plant Mixer Operator; Asphalt Plant Man; Asphalt Roller Backfiller Operator; Chip Spreader; Concrete Batch Plant, dry-power operated; Concrete Mixer Operator; Skip Loader; Concrete Pump Operator; Crusher Operator; Elevating Grader Operator; Greaser, hoisting engine, 1 drum; Latourneau Rooter; Multiple Compactor; Pavement Breaker, self-propelled of the Hydra-hammer or similar type; Power Shield; Pug Mill Operator; Stump Cutting Machine; Towboat Operator; Tractor Operator, over 5 H.P.

Group 3: Boilers, 1; Chip Spreader (Front Man); Churn Drill Operator; Compressor Maintenance Operator, 1; Concrete Saws;, self-propelled; Conveyor Operator; Distributor Operator; Finishing Machine Operator; Fireman, Rig; Float Operator; Form Grader Operator; Pump; Pump Maintenance Operator, other than Dredge; Roller Operator, other than high type asphalt; Screening and Washing Plant Operator; Self-propelled Street Broom or Sweeper; Siphons and Jets; Sub-grading Machine Operator; Tank Car Heater Operator, combination boiler and booster; Tractor, 50 H.P. or less without attachments; Vibrating Machine Operator, not hand; Welding Machine Maintenance Operator, 1

Group 4A: Mechanic's Helper

Group 4B: Oiler

Group 4C: Oiler Driver, all types

Men working in tunnels or shafts (not air shafts or coffer dams) of twnety-five (25) feet or more in length or depth will be paid fifty (50) cents per hour above the regular classification

POWER EQUIPMENT OPERATORS: (Cont'd) Zone 2: Jefferson & Miami Counties:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$8.60	.50	1.00	.75	.10
Group 2	8.35	.50	1.00	.75	.10
Group 3	8.10	.50	1.00	.75	.10
Group 4	7.85	.50	1.00	.75	.10
Group 5	7.50	.50	1.00	.75	.10
Group 6	7.60	.50	1.00	.75	.10

Group 1: Master Mechanic

Group 2: Asphalt Paver & Spreader; Backhoe; Boring Machine; Blades, all types; Clamshell; Concrete Mixer Paver Operator; Concrete Plant Operator (automatic); Crane; Truck Crane; Pitman Crane; Hydro Crane or any machine with power swing; Derrick or Derrick Trucks; Dragline Operator; Dredge Operator; Dozer; Ditching Machine; Euclid Loader; Hoist, 2 active drums; Loader, all types; Mechanic or Welder; Mixermobile; Multi-unit Scraper; Piledriver Operator; Power Shovel Operator; Quad Track; Scoop Operator, all types; Sideboom Cat, Cherry Picker; Skimmer Scoop Operator; Push-cat Operators

Group 3: Asphalt Plant Operator; Elevating Grader Operator

Group 4: A-frame Truck; Asphalt Roller Operator; Asphalt Plant Boiler Fireman; Backfiller Operator; Barber Green Loader; Boiler, other than asphalt; Bull Float Operator; Churn Drill Operator; Compressor Operator (1); Concrete Central Plant Operator; Concrete Mixer Operator, Skip; Concrete Pump Operator; Crusher Operator; Distributor Operator; Finish Machine Operator, concrete; Fireman, other than asphalt; Flex Plane Operator; Fork Lift; Form Grader Operator; Greaser; Hoist, 1 drum; Jeep Ditching Machine; Pavement Breaker, self-propelled (of the Hydra Hammer or similar type); Pump Operator, 4" or over, two; Pump Operator, other than Dredge Screening and Wash Plant Operator; Small Machine Operator; Spreader Box Operator, self-propelled; Tractor Operator, over 50 H.P.; Self-propelled Roller Operator, other than Asphalt Siphons and Jets; Subgrading Machine Operator; Tank Car Heater Operator; Combination Booster and Boilers; Towboat Operator; Vibrating Machine Operator, not hand

Group 5: Concrete Gang Saw, Self-propelled (con-cut); Conveyor Operator; Harrow, disc. Seeder; Oiler; Tractor Operator, 50 H.P. or less without attachments

Group 6: Oiler; Motor Crane

POWER EQUIPMENT OPERATORS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 3: Douglas & Shawnee Counties:					
Group 1	$12.10	1.00	1.25		.20
Group 2	11.85	1.00	1.25		.20
Group 3	11.60	1.00	1.25		.20
Group 4	11.25	1.00	1.25		.20
Group 4A	11.35	1.00	1.25		.20

Group 1: Asphalt Paver and Spreader; Backhoe; Boring Machine; Blades, all types; Clamshell; Concrete Mixer Paver Operator; Concrete Plant Operator (automatic); Crane; Truck Crane; Pitman Crane; Hydro Crane or any machine with power swing; Derrick or Derrick Trucks; Dragline Operator; Dredge Operator; Dozer; Ditching Machine; Euclid Loader; Hoist, 2 active drums; Loaders, all types; Mechanic or Welder; Mixer-Mobile; Multi-unit Scraper; Piledriver Operator; Power Shovel Operator; Quad Track; Scoop Operators, all types; Sideboom Cat, Cherry Picker; Skimmer Scoop Operator; Pushcat Operators

Group 2: Asphalt Plant Operator; Elevating Grader Operator

Group 3: A-frame Truck; Asphalt Roller Operator; Asphalt Plant Boiler Fireman; Backfiller Operator; Barber Green Loader; Boiler, other than asphalt; Bull Float Operator; Churn Drill Operator; Compressor Operator (1); Concrete Central Plant Operator; Concrete Mixer Operator, skip; Concrete Pump Operator; Crusher Operator; Distributor Operator; Finish Machine Operator, concrete; Fireman, other than asphalt; Flex Plane Operator; Fork Lift; Form Grader Operator; Greaser; Hoist, 1 drum; Jeep Ditching Machine; Pavement Breaker, self-propelled (of the Hydra Hammer or similar type); Pump Operator, 4" or over, two; Pump Operator, other than Dredge Screening and Wash Plant Operator; Small Machine Operator; Spreader Box Operator, self-propelled; Tractor Operator over 50 H.P.; Self-propelled Roller Operator, other than asphalt siphons and jets; Subgrading Machine Operator; Tank Car Heater Operator; Combination Booster and Boilers; Towboat Operator; Vibrating Machine Operator, not hand

Group 4: Concrete Gang Saw, self-propelled (con-cut); Conveyor Operator; Harrow; Disc. Seeder; Oiler; Tractor Operator, 50 H.P. or less without attachments

Group 4A: Oiler; Motor Crane

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 1: Leavenworth County:					
Group 1	$8.89	.75	1.00	.75	
Group 2	9.09	.75	1.00	.75	
Group 3	9.40	.75	1.00	.75	
Group 4	9.55	.75	1.00	.75	
Group 5	8.665	.75	1.00	.75	
Zone 2: Douglas, Shawnee and Jefferson Counties:					
Group 1	9.40	.70	.50		
Group 2	9.50	.70	.50		
Group 3	9.65	.70	.50		
Group 3: Miami County:	8.35	.75	1.00	.75	

CLASSIFICATIONS - ZONE 1

Group 1: One Team; Station Wagons; Pickup Trucks; Material Trucks, single axle; Tank Wagon Drivers, single axle

Group 2: Material Trucks; Tandem; Two Teams; Semi-trailers; Winch Trucks-Fork Trucks; Distributor Drivers and Operators; Agitator and Transit Mix Tank Wagon Drivers, single axle; Tank Wagon Drivers; Tandem or Semi-trailer; Insley Wagons; Dump Trucks; Excavator, 5 cu. yds. and over; Dumpsters; Half-tracks; Speedace; Euclids and other similar excavating equipment

Group 3: A-frame; Lowboy; Boom Truck Drivers

Group 4: Mechanics and Welders

Group 5: Mechanics' Helpers; Oilers and Greasers

CLASSIFICATIONS - ZONE 2

Group 1: Pickups; Panel Trucks; Station Wagons; Flat Beds; Dump and Batch Trucks, single axle

Group 2: Tandem Trucks; Warehousemen or Partsmen; Mechanic Helpers and Servicemen

Group 3: Lowboys; Semi-trailers; all Transit Mixer Trucks (single or tandem axle); A-frame and Winch Trucks when used as such; Euclid, End and Bottom Dump; Tournarockers, Atheys, Dumpsters and similar off-road equipment and Mechanics on such equipment

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Kansas COUNTY: Shawnee
DECISION NO.: KS82-4016 DATE: Date of Publication
Supersedes Decision No. KS81-4099 dated November 27, 1981 in 46 FR 58026
DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes & apartments up to & including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$16.69	1.05	1.75		.06
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS;STONEMASONS	14.44	.70	.25		
CARPENTERS:					
Carpenters	12.50	.70	.75		.05
Millwrights	11.90	.70	.75		.05
Piledrivermen	12.875	.70	.75		.05
CEMENT MASONS	11.70	.70	.35		
ELECTRICIANS:					
Electricians	15.55	1.00	3%+.85		.13
Cable Splicers	17.11	1.00	3%+.85		.13
ELEVATOR CONSTRUCTORS	12.21	1.345	.95	a	.035
GLAZIERS	12.23	.90	1.26	2.73	.05
IRONWORKERS	15.10	.85	1.80	1.00	.10
LABORERS (Building Construction):					
General Laborers	9.25	.85	.50	.50	.05
Power tool operators, compactors concrete breakers, chipping tools, drilling tools, concrete saws, mechanically operated georgia buggy	9.45	.85	.50	.50	.05
Mason tenders, plaster tenders, mortar mixers for masons and cement finishers, all stocking scaffold, clean up for masons (building & wrecking)	9.55	.85	.50	.50	.05
Sand & concrete gun nozzleman & powderman	9.65	.85	.50	.50	.05
LABORERS (Site Preparation & Grading:					
Group 1	8.40	.85	.50	.50	.05
Group 2	8.55	.85	.50	.50	.05
Group 3	8.65	.85	.50	.50	.05
Group 4	8.80	.85	.50	.50	.50

CLASSIFICATION DEFINITIONS

LABORERS (Site Preparation and Grading):

Group 1 - Board mat weavers and cable tiers; Georgia buggy (manually operated); mixerman - no skip; lift; nailers, salamander tenders; track men; tractor swamper; truck dumper, wire mesh setter, water pump up to 4 inces; & all other general laborer

Group 2 - Air tool operators, cement handlers (bulk), chain saw, georgia buggy (mechanically, operated); grade man, hot mastic kettlemen, crusher feeder, joint man, jute man; mason tenders; material batch hopper and scale man, mixer man; pier hole man working 10 ft. deep; pipelayer-drainage (concrete and/or corrugated metal); signal man(crane), truck dumper-dry batch; vibrator operator; wagon and churn drill operator

Group 3 - Asphalt raker, barco tamper; concrete saw; creosote material-handling and applying; nozzle burner (cutting torch and burning bar)

Group 4 - Conduit pipe; tile and duct line setter; form setter and liner on concrete paving; powderman; sandblasting and gunite nozzleman; sanitary sewer pipe layer; steel plate structure erectors; water and gas distribution

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	$12.50	.70	.75		.05
LINE CONSTRUCTION:					
Lineman	14.52	.45	3%		½%
Cable Splicers	15.26	.45	3%		½%
Groundman	9.03	.45	3%		½%
Powderman	12.03	.45	3%		½%
Line Truck & Equipment Oprs.	12.03	.45	3%		½%
PAINTERS:					
Brush, drywall, sandling & taping	12.79	.70			.03
Painting of structures over 50' (all types); spray	13.54	.70			.03
PLASTERERS	14.40				.01
PIPEFITTERS; PLUMBERS	14.93	1.00	1.00		.04
ROOFERS:					
Roofers, Flate Slate & Tile damproofers and Waterproofers	14.66		.60	b	
Roofers working in pitch, tar or Creosote, Coal	15.76		.60	b	
SHEET METAL WORKERS	13.76	3%+.75	1.77		.07
SOFT FLOOR LAYERS	12.45	.50	.55		.06
SPRINKLER FITTERS	15.10	.95	1.40		.08
TILE SETTERS	14.00				

POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cranes with lifting ring	$14.90	1.00	1.25		.20
Cranes and shovels-100 ft. of boom or over including jib or 30 tons or over or 2 yard capacity, three (3) drum hoist	14.15	1.00	1.25		.20
Cranes and shovels-booms 200 ft. & over four (4) drum hoist, Frankie - type pile driving machines, & tower cranes & derricks	14.40	1.00	1.25		.20
GROUP I	13.90	1.00	1.25		.20
GROUP II	13.50	1.00	1.25		.20
GROUP III:					
CLASS A	11.70	1.00	1.25		.20
CLASS B	11.95	1.00	1.25		.20
GROUP IV:					
CLASS A	11.15	1.00	1.25		.20
CLASS B	11.40	1.00	1.25		.20

GROUP I
Boiler (2), boom cat, boring machine, ditching machine, concrete ready-mix plant, crane, truck crane, clamshell dragline, dozer, scrapper, all types, patrol, fireman (when operating steam or air valve), gradall, hi-loaders (over one yard), hoist, two drum, mechanic or welder, mixermobile, paver, or any other machine with power swing, piledriver operator, power shovel, pump, concrete or other material, locomotive

GROUP II
A-frame truck, bob cat/hi-loaders (1 yard or under), barber-greene loader or similar type, boiler (1), ditching machine - small - elevator operator, fireman, forklift, hoist, or active drum, hydra hammer jeep ditcher, mixer, other than paver, power broom, pump 4" or larger, small machine engineer, welding machine (1), greaser equipment

GROUP III
CLASS A - Farm tractor (without attachments)
CLASS B - Farm tractor (with attachments)

GROUP IV
CLASS A - Oiler
CLASS B - Motor crane oiler

POWER EQUIPMENT OPERATORS Site Preparation & Grading:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$12.10	1.00	1.25		.20
Group 2	11.85	1.00	1.25		.20
Group 3	11.60	1.00	1.25		.20
Group 4	11.25	1.00	1.25		.20
Group 4A	11.35	1.00	1.25		.20

CLASSIFICATION DEFINITIONS

Group 1 - Asphalt paver and spreader, backhoe; boring machine, blades, all types; clamshell; concrete mixer paver operator; concrete central plant operator (automatic); crane, truck crane, pitman crane, hydro crane, or any machine with power swing; derrick or derrick trucks; dragline operator; dredge operator; dozer; ditching machine; euclid loader; hoist - 2 active drums; loader, all types, mechanic or welder; mixer-mobile; track; scoop operator, all types; side boom cat-cherry picker; skimmer scoop operator; pushcat operator
Group 2 - Asphalt plant operator; elevating grader operator
Group 3 - A-frame truck; asphalt roller operator; asphalt plant boiler fireman; backfiller operator; barber greene loader; boiler other than asphalt; bull float operator; churn drill operator; compressor operator (1); concrete central plant operator; concrete mixer operator skip; concrete pump operator; crusher operator; distributor operator; finish machine operator - concrete; fireman other than asphalt; flex plane operator, fork lift; form grader operator; greaser; hoist 1 drum; jeep ditching machine; pavement breakers, self-propelled (of the hydra hammer or similar type); pump operator, 4" or over, two; pump operator, other than dredge; screening and wash plant operator; small machine operator; spreader box operator, self-propelled; tractor operator over 50 h.p.; self-propelled roller operator, other than asphalt; siphon and jets; subgrading machine operator; tank car heater operator, combination booster and boiler; towboat operators; vibrating machine operator, not hand
Group 4 - Concrete gang saw, self-propelled (con-cut); conveyor operator; Harrow, disc seeder; oiler; tractor operator, 50 h.p. or less without attachments
Group 4A - Oiler, motor crane

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS - BUILDING CONSTRUCTION:					
TRUCK DRIVERS - Light Station Wagons, Pickups	$9.225	.40	.35		
TRUCK DRIVERS - Medium Flatbeds and dump five ton or less, Warehousemen & Partsmen	9.325	.40	.35		
TRUCK DRIVERS - Heavy - Over 5 ton, Semi-Trailers, Fork Lifts, Industrial Tractors as used in Teamsters jurisdiction, Straddle Trucks, A-frame & Winch Trucks when used as such	9.575	.40	.35		
Mechanics & Dispatchers	9.725	.40	.35		
TRUCK DRIVERS (Site Preparation & Grading):					
Group 1	9.40	.70	.50		
Group 2	9.50	.70	.50		
Group 3	9.65	.70	.50		

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS (SITE PREPARATION & GRADING):

Group 1 - Pickups; panel trucks; station wagons; flat beds; dump and batch trucks (single axle)

Group 2 - Tandem trucks, warehousemen or partsmen; mechanic helpers and servicemen

Group 3 - Lowboys; semi-trailers, all transit mixer trucks (single or tandem axle); A-frame and winch trucks when used as such; euclid, end and bottom dump; tournarockers; atheys; dumptors; and similar off-road equipment and mechanics on such equipment

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for over 5 years of service and 6% of basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. Also 7 paid holidays.

b. After 6 months of employment $.26; after 5 years $.52.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: KANSAS COUNTY: Shawnee
DECISION No. : KS82-4017 DATE: Date of Publication
Supersedeas Decision No. KS81-4100 dated Dec. 4, 1981, in 46 FR 59439

DESCRIPTION OF WORK: Residential construction consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$16.69	1.05	1.75		.06
Boilermakers	14.97	1.375	1.15		.05
Bricklayers & Stonemasons	14.44	.70	.25		
Carpenters	9.12	.70	.75		.05
Cement Masons	11.70	.70	.35		
Electricians	10.65	.75	3% + .50		.10
Ironworkers	15.10	.85	1.80	1.00	.10
Laborers:					
General Laborers	9.25	.85	.50	.50	.05
Power tool operators, compactors concrete breakers, chipping tools, drilling tools, concrete saws, mechanically operated georgia buggy	9.45	.85	.50	.50	.05
Mason tenders, plaster tenders, mortar mixers for plasterers, masons and cement finishers, all stocking scaffold, clean up for masons (building & wrecking)	9.55	.85	.50	.50	.05
Sand and concrete gun nozzleman powderman	9.65	.85	.50	.50	.05
Laborers (Site preparation and grading)					
Group 1	8.40	.85	.50	.50	.05
Group 2	8.55	.85	.50	.50	.05
Group 3	8.65	.85	.50	.50	.05
Group 4	8.80	.85	.50	.50	.05

CLASSIFICATION DEFINITIONS

Laborers (Site Preparation and Grading)
Group 1 - Broad mat weavers and cable tiers; georgia buggy (manually operated); mixerman - no skip; lift; nailers; salamander tenders; track men; tractor swamper; truck dumper; wire mesh setter; water pump up to 4 inches; and all other general laborer

Group 2 - Air tool operators; cement handlers (bulk); chain saw; georgia buggy (mechanically operated); grade man; hot mastic kettlemen; crusher feeder; joint man; jute man; mason tender; material batch hooper and scale man; mixer man; pier hole man working 10 feet deep; pipe layer - drainage (concrete and/or corrugated metal); signal man (crane); truck dumper-dry batch; vibrator; wagon and churn drill operator

Group 3 - Asphalt raker; barco tamper; concrete saw; creosote material handling and applying; nozzle burner (cutting torch and burning bar)

Group 4 - Conduit pipe; tile and duct line setter; from setter and liner on concrete paving; sandblasting and gunite nozzleman; sanitary sewer pipe layer; steel plate structure erectors; water and gas distribution

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Line Construction					
Lineman	$14.52	.45	3%		½%
Cable Splicers	15.26	.45	3%		½%
Groundman	9.03	.45	3%		½%
Powderman	12.03	.45	3%		½%
Line truck and equipment operator	12.03	.45	3%		½%
Painters	8.52	.70			.03
Plasterers	14.40				.01
Plumbers & Pipefitters	14.93	1.00	1.00		.04
Roofers					
Roofers flat slate and tile damproofers	14.66		.60	a	
Roofers working in pitch, tar or creosote coal	15.76		.60	a	
Sheet Metal Workers	13.76	3% + .75	1.77		.07
Soft Floor Layers	12.45	.50	.55		.06
Sprinkler Fitters	15.10	.95	1.40		.08
Tile Setters	14.00				

FOOTNOTE: a - After 6 months of employment .26; After 5 years .52

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators Site Preparation and Grading					
Group 1	$12.10	1.00	1.25		.20
Group 2	11.85	1.00	1.25		.20
Group 3	11.60	1.00	1.25		.20
Group 4	11.25	1.00	1.25		.20
Group 4A	11.35	1.00	1.25		.20

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS (Site preparation and Grading)
Group 1 - Asphalt paver and spreader, backhoe, boring machine, blades all types, clamshell, concrete mixer paver operator, concrete central plant operator (automatic), crane, truck crane, pitman crane, hydro crane, or any machine with power swing, derrick or derrick trucks, dragline operator, dozer, ditching machine euclid loader, hoist - 2 active drums, loader, all types, mechanics or welder, mixer-mobile, track, scoop operator, all types, side boom cat-cherry picker, skimmer scoop operator, pushcat operator, dredge operator
Group 2 - Asphalt plant operator, elevating grader operator
Group 3 - A-frame truck, asphalt roller operator, asphalt plant boiler fireman, backfiller operator, barber greene loader, boiler other than asphalt, bull float operator, churn drill operator, compressor operator (1), concrete central plant operator, concrete mixer operator skip, concrete pump operator, crusher operator, distributor operator, finish machine operator - concrete, fireman other than asphalt, flex plane operator, fork lift, form grader operator, greaser, hoist 1 drum, jeep ditching machine, pavement breakers, self-propelled (of the hydro hammer or similar type), pump operator, 4" or over, two, pump operator, other than dredge, screening and wash plant operator, small machine operator, spreader box operator, self-propelled, tractor operator over 50 h.p., self-propelled roller operator, other than asphalt, siphon and jets, subgrading machine operator, tank car heater operator, combination booster and boiler, towboat operators, vibrating machine operator, not hand
Group 4 - Concrete gang saw, self-propelled (con-cut), conveyor operator, Harrow, disc seeder, oiler, tractor operator, 50 h.p. or less without attachments
Group 4 - Oiler, motor crane

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS - Light Station Wagons, Pickups	$9.225	.40	.35		
TRUCK DRIVERS - Medium Flatbeds and dump five ton or less, Warehousemen & Partsmen	9.325	.40	.35		
TRUCK DRIVERS - Heavy - Over 5 tons, Semi-Trailers, Fork Lifts, Industrial Tractors as used in Teamsters jurisdiction, Staddle Trucks when used as such	9.575	.40	.35		
Mechanics and Dispatchers	9.725	.40	.35		
TRUCK DRIVERS (Site Preparation and Grading)					
Group 1	9.40	.70	.50		
Group 2	9.50	.70	.50		
Group 3	9.65	.70	.50		

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS: (Site Preparation and Grading)

Group 1 - Pickups, panel trucks, station wagons, flat beds, dump and batch trucks (single axle)

Group 2 - Tandem trucks, warehousemen or partsmen, mechanic helpers and servicemen

Group 3 - Lowboys, semi-trailers, all transit mixer trucks (single or tandem axle), A-frame and winch trucks when used as such, euclid, end and bottom dump, tournarockers, atheys, dumptors and similar off-road equipment and mechanics on such equipment

WELDERS: Receive rates prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR. 5.5 (a)(1)(ii)).

[FR Doc. 82-10257 Filed 4-15-82; 8:45 am]

BILLING CODE 4510-27-C

SUPERSEDEAS DECISION

STATE: Minnesota COUNTIES: *See Below
DECISION NO.: MN82-2029 DATE: Date of Publication
Supersedes Decision No. MN80-2088, dated December 19, 1980 in 45 FR 83810
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

*Becker, Cass, Clay, Hubbard, Otter Tail, Todd, Wadena, & Wilkin

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS	$11.49	.18	.70	.50	.03
CEMENT MASONS	10.15				
LABORERS:					
General	7.23				
Rakers	7.87	.56	.47		
POWER EQUIPMENT OPERATORS:					
Roller Compactor Operator	8.83	.56	.47		
Firemen	9.51	.56	.47		
Roller, Finish	9.54	.46	.40		
Scrapers	9.56				
Roller Operator	9.58	.56	.47		
Mechanics	9.91	.56	.47		
Oilers	9.92	.95	.70		.05
Front End Loaders	10.22				
Asphalt Distributor Spreader; Bulldozer; Crushing & Screening Plant; Paver; Screedman; Tractor; & Turnapull	10.32	.56	.47		
Asphalt Plant; Motor Patrols	10.70	.56	.47		
Cranes, Derricks, & Draglines	11.18				
TRUCK DRIVERS:					
Dumpman	7.25	.46	.47		
Single Axle	8.22	.56	.47		
Wheel Tractor	8.83	.56	.47		
Truck Mechanic	9.13	.46	.40		
Bituminous Distributor Driver; Tandem	9.51	.56	.47		
Five Axle	9.91	.56	.47		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

federal register

Friday
April 16, 1982

Part V

Department of Agriculture

Animal and Plant Health Inspection Service

Swine Health Protection

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket 81-061]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to regulate the treatment of garbage to be fed to swine pursuant to the Swine Health Protection Act. This action is necessary to prevent the introduction into or dissemination within the United States of any infectious or communicable diseases of swine through the medium of garbage. The proposed regulations would establish minimum standards for treating garbage to be fed to swine.

DATE: Comments must be received on or before June 18, 1982.

ADDRESS: Written comments should be submitted to the Deputy Administrator, Veterinary Services, APHIS, USDA, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: R. D. Good, Staff Veterinarian, Swine Diseases, Swine and Poultry Diseases Staff, Veterinary Services, APHIS, USDA, Federal Building, Room 841, Hyattsville, MD 20782, 301-436-8487.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the recordkeeping provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

Background

Garbage can serve as a means of transmission of numerous infectious or communicable foreign and domestic diseases of swine including, but not limited to, African swine fever (ASF), hog cholera, foot-and-mouth disease, swine vesicular disease, and vesicular exanthema of swine.

Domestic swine are highly susceptible to and have no resistance to any of these foreign diseases. This susceptibility is because there is no natural immunity to any of these diseases and there is either an ineffective vaccine or no vaccine available for some of the diseases. Slaughter of infected or exposed swine is the only disease eradication technique available. The effect of the diseases themselves and the necessary slaughter of infected or exposed swine would result in the death of all swine involved. Depending on the population of swine involved, this number could be great. Foreign disease outbreaks could, therefore, cause a severe economic crisis for U.S. swine producers and the pork industry in general. Widespread outbreaks would result in shortages of pork and pork products, causing higher food prices for consumers.

ASF is potentially the most dangerous of the above-named diseases because of its close proximity to the United States and Puerto Rico. Since 1978, ASF has been diagnosed in Cuba, the Dominican Republic, Brazil, and Haiti. It has apparently been eradicated from the Dominican Republic and Cuba. There is no effective vaccine for ASF.

All these foreign diseases can be spread through infected meat scraps in improperly treated garbage that is fed to swine or material that has been associated with such meat scraps. For example, ASF was most likely introduced into the Dominican Republic and Brazil via garbage from international airline flights. U.S. officials are conducting an intensified program to inspect meat and related products entering the United States, especially from countries in the Western Hemisphere with ASF. Complete surveillance is impossible considering the tremendous volume of international traffic, especially between the Caribbean Islands and the United States. A single contaminated meat product in garbage that reaches susceptible hogs could cause an outbreak.

Under these circumstances, the domestic swine population would be best protected by requiring pathogen-killing treatment of garbage that is to be fed to swine. Cooking of garbage prior to being fed to hogs is the only known practical means of protecting swine from the pathogens contained in garbage. Proper heat treatment of garbage kills the organisms that cause the aforementioned foreign animal diseases and generally assists in endemic disease control by eliminating one source of infection. This process also provides a source of food for swine that could not otherwise be utilized because of the danger of disease transmission. In addition, the conversion of discarded food to swine feed lessens the burden on disposal landfills, lagoons, and sewage plants.

The Swine Health Protection Act (7 U.S.C. 3801 *et seq.*), hereinafter referred to as the Act, is designed to protect the commerce of the United States and the health and welfare of the people of this country by regulating the treatment of garbage to be fed to swine and the feeding thereof in accordance with the provisions of the Act. Based on the above needs, Congress selected two basic methods to achieve this objective: (1) establishing standards for the handling and treatment of garbage that is intended to be fed to swine and (2) licensing garbage-treatment facilities. The Secretary of Agriculture is authorized by the Act to issue such regulations and to require the maintenance of such records as he deems necessary to carry out the provisions of the Act.

In accordance with the Act, these proposed regulations would prohibit the feeding of garbage to swine except when it is properly heat treated at a licensed treatment facility. Garbage is defined in the Act and these proposed regulations as all waste material derived in whole or in part from the meat of any animal (including fish and poultry) or other animal material, and other refuse of any character whatsoever that has been associated with any such material, resulting from the handling, preparation, cooking, or consumption of food, except that such term shall not include waste from ordinary household operations which is fed directly to swine on the same premises where such household is located. The regulations would establish procedures and standards for treating garbage and for the issuance, suspension, and revocation of licenses for treatment facilities.

Feeding of garbage to swine would be allowed if it is properly treated, except in States where prohibited. Handling, storage, and treatment operations for garbage to be fed to swine would have to be constructed so that swine would not have access to these areas.

It was Congress' intent for the Act to serve as minimum standards for the individual State programs. Primary enforcement responsibility under the Act would be delegated to States which have developed adequate laws and regulations concerning the treatment of garbage to be fed to swine and the feeding thereof, which laws and regulations meet the minimum standards of the Act and regulations. To be delegated primary enforcement responsibility, a State would also have to have adopted and be implementing adequate procedures for the effective enforcement of such State laws and regulations, and keep such records and make such reports showing compliance with these standards as required by

regulations. This determination would be made by the Deputy Administrator under Section 10 of the Act (7 U.S.C. 3809).

At present, 16 States with more than 50 percent of the national swine population prohibit the feeding of garbage, in any form, to swine. The 34 remaining States and Puerto Rico already have laws and/or regulations that regulate the treatment of garbage before it is fed to swine. However, the adequacy of the enforcement fo these State laws and regulations is yet to be determined.

Executive Order 12291

Based on information compiled by the Department of Agriculture, this proposal is determined to be non-major. The proposed rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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 Impact Analysis of Proposed Regulations for Swine Health Protection Summary Statement

The proposed regulations would reduce the risk of the introduction and dissemination of infectious or communicable foreign diseases of swine and reduce the spread of domestic swine diseases. These proposed regulations would affect the swine industry. The segments of the swine industry that would incur costs are the segment affected by current State laws and regulations and the segments of the industry in the U.S. territories and possessions that are currently unregulated.

Benefits of the proposed regulations would include:

- Improved effectiveness of APHIS programs designed to minimize the introduction and spread of animal diseases.
- Providing swine producers a means to safely utilize an alternate feed source.
- Improved public health by reducing the risk of disease transmission from animals to humans.
- Reduction in the amount of solid waste going into sewage plants, natural water systems and landfills.

Initial Regulatory Flexibility Analysis Summary

For purposes of the regulatory flexibility analysis, the impacted sector is defined as the entire swine industry. It is estimated that 95 to 99 percent of the industry are small entities. The economic impact of these proposd regulations will be incurred by only 1.4 percent of the swine industry, which is that segment of the industry that feeds untreated garbage or treated garbage to swine and which would not qualify for exemption from the regulations under the definition of "garbage." Garbage is defined in the Act and proposed regulations to include material except that "* * * from ordinary household operations which is fed directly to swine on the same premises where such household is located."

As of November 1981, a reported 8,229 premises were already regulated under State and Commonwealth laws similar to these proposed regulations, and persons feeding garbage to swine in these jurisdictions incur costs comparable to those that would result from these proposed regulations. However, costs would rise in some areas.

It is anticipated that most licensees operating garbage treatment facilities would need to purchase a thermometer at an esimaed cost of $3 to $30, as a thermometer is not presently reuired in Puerto Rico or most States.

Garbage feeding operations on premises located in American Samoa, Guam, the Northern Mariana Islands, and the Virgins Islands are currently unregulated. Based on information available to the Department, it appears that not all swine in these areas are fed garbage. Further, an undertermined number of these garbage feeders would be exempted by the definition of garbage as explained above. However, there is no means by which an accurate estimate of affected persons in these territories can be made at this time. Cost to the affected persons in these territories would include initial set-up costs plus additional costs for labor and fuel necessary in garbage cooking.

The Department has analyzed and considered alternatives to specific proposed requirements in order to minimize the regulatory burden on small entities. The specific proposed rules relate to licensing requirements, cooking requirements, including garbage temperature verification, recordkeeping requirements and cleaning and disinfecting costs to licensees. The alternatives proposed are those that minimize the impact on the regulated small entities as much as possible without increasing the risk of introduction and spread of swine diseases. The Department has concluded that different requirements or standards or the granting of exemptions for small entities is not possible without defeating the goal of this disease-prevention program.

A copy of the Initial Regulatory Flexibility Analysis is available upon request.

In this document, all references to § 166.1 *et seq.*, refer to sections of the proposed regulations, in proposed Part 166 of 9 CFR.

Proposal

The Act specifically requires that garbage that is to be fed to swine must be treated to kill disease organisms and that such treatment must only be at a facility (7 U.S.C. 3803(b)) holding a valid permit pursuant to the Act. Facilities must meet certain requirements, including the means to keep swine away from untreated garbage (7 U.S.C. 3804).

The Act requires all operators of facilities that treat garbage that is to be fed to swine to obtain permits from the Secretary or appropriate State officials. To be consistent with USDA, APHIS, Veterinary Services and State and industry terminology, the word "license" has been defined to mean "permit" in proposed § 166.10, which would detail the licensing requirements.

Proposed § 166.2(a) would prohibit the feeding of garbage to swine unless it is treated to kill disease organisms at a facility operated by a person holding a valid license for such treatment. Section 166.2(b) would require such treatment facilities to meet requirements specified in Part 166 before the operator could be licensed, including the requirement that the treatment facility be constructed so that swine of all ages and sizes would have no access to untreated garbage or to equipment and other material coming into contact with untreated garbage, unless it has been cleaned and disinfected in accordance with § 166.13, which is discussed below. This is to ensure that no disease organisms are transmitted to the swine.

According to section 13 of the Act (7 U.S.C. 3812), nothing in the Act shall be construed to repeal or supersede State laws that prohibit garbage feeding or to prohibit any State from enforcing garbage treating or feeding requirements which are more stringent than Federal law or the regulations issued under the Act. Section 166.2(c) restates this intent and makes it clear that under no circumstances would Federal licenses for the treatment of garbage be issued in any State which by law prohibited the feeding of garbage to swine.

Not only does the Act require (7 U.S.C. 3804(a)(2)), but it is important, that treatment facilities be properly designed to keep swine from having

access to untreated garbage or to its runoff (drainage) or material coming in contact with untreated garbage. Therefore, § 166.3)(a)— and (b) would require that untreated garbage at such facilities be inaccessible to swine in order to prevent their exposure to any infectious agents that might be present in the untreated garbage.

Likewise, the effort expended in cooking would be wasted if untreated garbage were leaked or spilled where swine could have access to it. An example would be in a facility where swine were properly separated from the handling/treating area, but where the garbage to be treated was moved through the swine pens. If untreated garbage were to be spilled in the pens, the swine would be exposed to any infectious agents present. Therefore, § 166.3(b) of the regulations would specifically require that swine be kept out of areas where they could come in contact with untreated garbage or its runoff.

In general, untreated garbage needs to be kept in covered, leak-proof and spill-proof containers to avoid leaks and spills that would result in unsanitary conditions, and, as explained previously, to prevent possible disease transmission. This would be required by proposed § 166.4(a).

In addition, proposed § 166.4(a) and (b) would require separate containers for transporting and storage of untreated garbage and treated garbage to prevent disease agent carryover. Once garbage has been properly cooked, the resultant product should be transported to the feeding area in either: (1) containers used only for treated garbage, (2) containers previously used for untreated garbage that have been cleaned and disinfected, or (3) containers in which the untreated garbage was cooked. The slightest amount of residue of untreated garbage remaining in a container is sufficient to transmit disease because infectious agents are microscopic in size and well protected in such garbage. Under §166.4(b)(3) of the proposed regulations, if a container was used for cooking, it could also be used as the feeding container. This would be allowed because any infectious agents present would be destroyed when the garbage in the container was properly cooked. Standards would be established in proposed § 166.5 for maintaining premises and equipment used in treatment of garbage that is to be fed to swine. These are needed to ensure that persons licensed to cook garbage will maintain clean and sanitary surroundings. Clean premises and equipment are necessary to help prevent the spread of disease organisms. One aspect of maintaining clean and sanitary surroundings is to control insects, rodents, other wildlife, and domesticated animals, including dogs and cats, which are capable of transmitting domestic and foreign animal diseases. Under the proposed standards, animal and pest control would be required (§ 166.5(a)).

A garbage treatment facility could serve as a continual source of disease if proper sanitation were not practiced. Mechanical transmission of disease agents present on an object as simple as a shovel or bucket can and does occur. An example of what would appear to be an innocent practice, but which in fact is a dangerous practice, would be to feed treated garbage to swine with the same equipment that has been used to handle untreated garbage. Unless the equipment had been cleaned and disinfected so as to kill infectious agents, this practice could spread disease. Therefore, strict limitations on the use of the equipment must be followed. The proposed regulations would require cleaning and disinfecting of equipment used in handling and treating garbage before being used for feeding purposes (§ 166.5(b)). The disinfectants allowed and the procedures to be followed in the cleaning of the premises, equipment, and garbage transporting vehicles would be specified in proposed § 166.14. This proposed section is discussed in greater detail below.

Any untreated garbage, or material associated with such garbage, could also be a source of infection. Therefore, untreated garbage and any such related material that was to be discarded on the premises of a licensed facility would have to be disposed of according to State and local environmental requirements in an area inaccessible to swine. For example, in situations where burial was appropriate, waste garbage should be buried in an area where it could not be uncovered due to the normal swine behavior of "rooting;" i.e., digging with the snout in the soil (§ 166.5(c)).

Proposed § 166.6 would require untreated garbage and any associated material or equipment to be kept away from swine until properly treated or cleaned and disinfected, as appropriate.

The cooking requirements would be specified by proposed § 166.7(a)—to heat garbage throughout at boiling (212°F or 100°C at sea level) for 30 minutes. This is the only known practical means to ensure destruction of infectious agents that are of concern while maintaining edibility of garbage for swine.

During the cooking process, temperature differences within the garbage increase in proportion to the size of the cooking container and distance of the contents from the heat source. Heat is not uniformly transmitted to the mass being cooked due to differences in density, fluidity, and size of garbage components. Therefore, agitation of the semiliquid garbage mass during cooking would be required in § 166.7(b), in order to eliminate significant temperature differences within the garbage by distributing heat more evenly between the top and bottom or the middle and ends of the cooking container. Agitation also aids in preventing the garbage from scorching and forming an insulating crust on the bottom of the cooking container. An exception to this requirement would be allowed for steam cooking equipment. The steaming process itself, when functioning properly, serves to agitate the garbage and heat it uniformly.

In order to have an ongoing evaluation of cooking sufficiency, the temperature of the garbage shall be read by the use of a functioning thermometer at prescribed locations within the cooker (§ 166.7(c)). § The locations, which are detailed in the proposed regulations, have been chosen to ensure that the required temperature is attained throughout the garbage mass. The garbage must be cooked for the required 30 minutes after the required temperature is reached.

Vehicles used to transport untreated garbage and then used to haul animals could act as mechanical carriers of disease. It has been documented that disease agents may persist in organic material. Garbage does contain organic material. Therefore, it is necessary that proposed § 166.8 would require the cleaning and disinfecting of vehicles used by a licensee to transport untreated garbage prior to their use for hauling animals. The procedures and disinfectants to use, which have all been found effective, would be detailed in proposed § 166.13. The disinfectants have all been approved by the Environmental Protection Agency for the required uses.

Proposed § 166.9(a) would require licensees to record the destinations and dates of untreated and treated garbage that have left their premises. An infectious agent might enter and exit the premises via untreated or inadequately "treated" garbage. The records would be used by veterinary medical personnel to aid in determining the source and

spread of disease. To be useful, all records would be required to be legible and indelible (§ 166.9(b). All records would have to be certified as accurate by initials or signature of the licensee or his authorized employee (§ 166.9(c)). Individual records would have to be maintained for a period of 1 (one) year for enforcement purposes and be available upon request to Department personnel for review (§ 166.9(d)). It is necessary to keep the records for one year because the clinical appearance of a garbage-borne disease of swine may not occur until some time after the infective treated garbage has been consumed by the swine. In the case of a low virulent form of a disease, this period could be quite long.

It should be noted that those situations where a household's table waste is fed directly to swine at the same location would not be subject to the license requirements. This is because section 3(2) of the Act (7 U.S.C. 3802(2)) defines "garbage" to exclude "waste from ordinary household operations when such waste is fed directly to swine on those same premises where the household is located." Each separate facility that treats garbage for feeding to swine would be licensed and judged on its individual merits. Those persons with more than one treatment facility would have to obtain a license for each facility. Any exemptions to the licensing requirements would be decided on a case-by-case basis as set forth in section 4(b) of the Act (7 U.S.C. 3803(b)). That is, an exemption could be granted by the Deputy Administrator if he determined that there would not be a risk to the swine industry in the United States.

Under the proposed licensing procedures, each license applicant would be given a copy of the Act and regulations. At the time of the required prelicensing inspection, the applicant would sign an acknowledgement that he has received copies of the Act and regulations, that he understands, them, and that he will comply with the Act and regulations (§ 166.10(b)).

Prelicensing inspections of garbage-treating facilities would be required under proposed § 166.10(c) to ensure that the applicant's facility meets the provisions of the Act and regulations. Under the proposed regulations, Veterinary Services policy would be to license only those facilities that comply with the Act and regulations. Licensed facilities in operation, but not meeting the Act or regulations, as well as unlicensed garbage treatment facilities, would be in violation of the Act and the regulations.

In the case of applicants for licensing that are suspected of violating or having violated the Act or regulations where the issue has not been resolved in an administrative proceeding, proposed § 166.10(d) would authorize the Deputy Administrator to institute administrative proceedings to determine if the application should be denied. If the application is denied, the applicant would be precluded from again applying for a license for a period of one year.

Under proposed § 166.11 in addition to imposing civil penalties and issuing cease and desist orders under the Act, the license of any facility may be suspended or revoked for any violation of the Act or regulations. Before such action is taken, the licensee would be notified in writing of such proposed action and the reasons therefor and afforded, upon request, an opportunity for a hearing with respect to the merits or validity of such action in accordance with rules of practice which shall be adopted for the proceeding.

Under proposed § 166.11(b), the Deputy Administrator could summarily suspend a license when he has reason to believe a Federal licensee has not or is not complying with any provision of the Act or regulations issued thereunder when he deems such action to be necessary to protect the public health, interest or safety, pending the final determination of a formal proceeding and any judicial review thereof. The suspension would be effective immediately upon oral or written notification, whichever is earlier, to the operator or licensee of the facility. In the event of oral notification, written confirmation would be provided. The suspension would remain in effect pending a final determination in formal proceedings and judicial review thereof, unless otherwise ordered by the Deputy Administrator.

In addition, automatic revocation of a license which is mandated by section 5(c) of the Act, after a licensee has been convicted twice under the criminal provisions of the Act, would be provided for in § 166.11(d). Employees of licensees with suspended or revoked licenses would not be allowed to become licensed for the purpose of continuing the business of the facility when still owned and/or operated by the licensee whose license has been suspended or revoked while the order of suspension or revocation is in effect. This action is necessary to prevent circumvention of the regulations or the intent of the Act (§ 166.11(e)).

Inspections of garbage-treatment facilities of licensees, as set forth in § 166.12(a), are necessary to assure that garbage is being properly cooked at all times and that there is compliance with the Act and regulations. Licensees would be required to allow personnel authorized by the Secretary to take samples of treated and untreated garbage, so that cooking effectiveness could be checked by laboratory tests.

In addition, because any unusual illness or death of any animal species on a licensed facility's premises, not normally associated with its operation, may indicate the start of a disease problem, licensees would be required by proposed § 166.12(b) to call such illnesses or death losses to the attention of an inspector to evaluate the situation. All species would be included because domestic animals, including dogs and cats, and all forms of wildlife may show symptoms of certain illnesses prior to swine becoming affected. Not only would prompt action serve the public interest in disease control, but the producer would also benefit from early disease diagnosis.

The Department needs to be informed of any change in the ownership or management of the treatment facility by the licensee in order to maintain an effective and efficient program and to prevent circumvention of the regulations or the intent of the Act. Under proposed § 166.12(c) licensees would be required to notify the Department of such changes within 30 days of making the change.

The licensees would be required to supply garbage source information when requested by an authorized representative of the Department to do so. This would assist Department and State personnel in determining the source and spread of disease. Information required would include the source of garbage and the date of pickup (§ 166.12(e)).

Enforcement of the Act and regulations is the responsibility of States which have "primary responsibility" as determined by the Secretary under section 10 of the Act (7 U.S.C. 3809). However, pursuant to the Act, the proposed regulations provide that Federal officials would assume enforcement responsibility in those States that do not have adequate laws and regulations or those States that are not effectively enforcing such laws or regulations as determined by the Deputy Administrator (who is delegated authority to take such action), and after proper notification pursuant to Section 10 of the Act. These designations, along with the information on which States prohibit the feeding of untreated garbage to swine and addresses of State and Federal offices in each State which

the public may contact for information, would appear in proposed § 166.14.

Cleaning and disinfecting procedures would be placed in a separate section (§ 166.13) because of their importance. The types of disinfectants which could be used and the procedures to be followed in the cleaning of premises, equipment, and garbage transporting vehicles would be specifically addressed in proposed § 166.13 (a), (b), and (c). The disinfectants prescribed in § 166.13(a) are further described in Part 71 of Title 9, Code of Federal Regulations. The instructions for the cleaning and disinfecting of facilities (§ 166.13(b)) and vehicles (§ 166.13(c)) prescribed have been proven effective through use in the successful vesicular exanthema and hog cholera eradication programs. No deviation from the stated requirements would be allowed, unless specified by the Deputy Administrator. Exemptions to the requirements, granted by the Deputy Administrator, would be based on disease risk factors. Cleaning and disinfecting would be the responsibility of the licensee, who would have to bear its cost (§ 166.13(d)).

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Foot and mouth disease, Garbage, Hogs, Hog cholera, Swine vesicular disease, Vesicular exanthema of swine.

Accordingly, in Title 9, Code of Federal Regulations, a new Subchapter K and Part 166 would be added to read:

PART 166—SWINE HEALTH PROTECTION

General Provisions

Sec.

166.1 Definitions in alphabetical order.
166.2 General restrictions.
166.3 Separation of swine from the garbage handling and treatment areas.
166.4 Storage of garbage.
166.5 Licensed garbage-treatment premises and equipment standards.
166.6 Swine feeding area standards.
166.7 Cooking standards.
166.8 Vehicles used to transport garbage.
166.9 Recordkeeping.
166.10 Licensing.
166.11 Suspension and revocation of licenses.
166.12 Licensee responsibilities.
166.13 Cleaning and disinfection.
166.14 State status.

Authority: Sec. 511, Pub. L. 96–592, 94 Stat. 3451 (7 U.S.C 3802); Secs. 4, 5, 9, 12, Pub. L. 96–468, 94 Stat. 2229 (7 U.S.C. 3803, 3804, 3808, 3811); 45 FR 85696, 46 FR 7266

§ 166.1 Definitions in alphabetical order.

For the purposes of this Part, the following terms shall have the meanings assigned them in this Section. Unless otherwise required by the context, the singular form shall also import the plural and the masculine form shall also import the feminine, and vice versa. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

(a) *Act.* The Swine Health Protection Act (Pub. L. 96–468) as amended by the Farm Credit Act Amendments of 1980 (Pub. L. 96–592).

(b) *Administrator.* The Administrator of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), or any other official to whom authority has heretofore been delegated or to whom authority may hereafter be delegated to act in his stead.

(c) *Animal and Plant Health Inspection Service (APHIS).* Animal and Plant Health Inspection Service, United States Department of Agriculture.

(d) *Animals.* All domesticated and wild mammalian, poultry, and fish species, including pets such as cats and dogs.

(e) *Area Veterinarian in Charge.* The veterinarian of Veterinary Services who is assigned by the Deputy Administrator to supervise and perform the official work of Veterinary Services in a State or States or any other official to whom authority has heretofore been delegated or to whom authority may hereafter be delegated to act in his stead.

(f) *Birds.* All domesticated and wild avian species.

(g) *Department.* The United States Department of Agriculture (USDA).

(h) *Deputy Administrator.* The Deputy Administrator for Veterinary Services or any other official to whom authority has heretofore been delegated or to whom authority may hereafter be delegated to act in his stead.

(i) *Garbage.* All waste material derived in whole or in part from the meat of any animal (including fish and poultry) or other animal material, and other refuse of any character whatsoever that has been associated with any such material, resulting from the handling, preparation, cooking or consumption of food, except that such term shall not include waste from ordinary household operations which is fed directly to swine on the same premises where such household is located.

(j) *Inspector.* Any inspector or veterinarian employed by the Department or by the State for the purposes of enforcing the Act and this Part.

(k) *License.* A permit issued to a person for the purpose of allowing such person to operate a facility to treat garbage that is to be fed to swine.

(l) *Licensee.* Any person licensed pursuant to the Act and regulations.

(m) *Person.* Any individual, corporation, company, association, firm, partnership, society or joint stock company or other legal entity.

(n) *State.* The fifty States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

(o) *State animal health official.* The State animal health official responsible for livestock and poultry disease control and eradication programs or any other official to whom authority has heretofore been delegated or to whom authority may hereafter be delegated to act in his stead.

(p) *Treated garbage.* Edible waste for animal consumption derived from garbage (as defined in this section) that has been heated throughout at boiling or equivalent temperature (212°F or 100°C at sea level) for 30 (thirty) minutes under the supervision of a licensee, or otherwise treated according to a method approved by the Deputy Administrator.

(q) *Treatment.* The heating of garbage to specifications as set forth in this part, or any other method of treating garbage approved by the Deputy Administrator.

(r) *Untreated garbage.* Garbage that has not been treated in accordance with the Act and these regulations.

(s) *Veterinary Services.* The unit of the Animal and Plant Health Inspection Service which is assigned responsibility for the performance of functions under the Act.

§ 166.2 General restrictions.

(a) No person shall feed or permit the feeding of garbage to swine unless it is treated to kill disease organisms, pursuant to the regulations, at a facility operated by a person holding a valid license for the treatment of garbage.

(b) No person operating such a facility may be licensed to treat garbage unless he or she meets the requirements of this Part designed to prevent the introduction or dissemination of any infectious or communicable disease of animals and unless the facility is so constructed that swine are unable to have access to untreated garbage or equipment and material coming in contact with untreated garbage.

(c) The regulations of this Part shall not be construed to repeal or supersede State laws that prohibit feeding of garbage to swine or to prohibit any State from enforcing requirements relating to the treatment of garbage that is to be fed to swine or the feeding

thereof which are more stringent than the requirements contained in this Part. In a State which prohibits the feeding of garbage to swine, a Federal license under the Act will not be issued to any applicant.

§ 166.3 Separation of swine from the garbage handling and treatment areas.

(a) Access by swine to garbage handling and treatment areas shall be prevented by construction of facilities to exclude all ages and sizes of swine.

(b) All areas, and drainage therefrom, used for the handling and treatment of untreated garbage shall be inaccessible to swine on the premises. This shall include the roads and areas used to transport and unload untreated garbage on the premises.

§ 166.4 Storage of garbage.

(a) Untreated garbage at a treating facility shall be stored in covered, leak-proof and spill-proof containers until treated.

(b) Treated garbage shall be transported to the feeding area at the treatment facility only in (1) containers used only for such treated garbage; (2) containers previously used for garbage which have been cleaned and disinfected in accordance with § 166.13; or (3) containers in which the garbage was treated.

§ 166.5 Licensed garbage-treatment premises and equipment standards.

Garbage-treatment premises, and all associated equipment, shall be maintained as set forth in this section.

(a) Insects and animals shall be controlled. Accumulation of any material on the premises where insects and rodents may breed is prohibited.

(b) Equipment used for garbage handling, except for the containers in which the garbage has been treated, may not be subsequently used in the feeding of swine unless first cleaned and disinfected as set forth in § 166.13(b).

(c) Garbage that is not to be fed to swine and materials in association with such garbage shall be disposed of in a manner consistent with State and local environmental requirements and in an area inaccessbile to swine.

§ 166.6 Swine feeding area standards.

Untreated garbage shall not be allowed into swine feeding areas. Any equipment or material associated with garbage, except for containers holding treated garbage which was treated in such containers, shall not be allowed into swine feeding areas at treatment facilities until properly cleaned and disinfected as set forth in § 166.13(b).

§ 166.7 Cooking standards.

(a) Garbage shall be heated throughout at boiling (212°F or 100°C at sea level) for 30 minutes.

(b) Garbage shall be agitated during cooking, except in steam cooking equipment, to ensure that the prescribed cooking temperature is maintained throughout the cooking container for the prescribed length of time.

(c) A thermometer shall be inserted at the following prescribed locations within the cooking container to determine garbage temperature during each cooking: (1) 1 (one) inch above the bottom of the cooking container, (2) 1 (one) inch below the surface of the garbage, and (3) at the approximate midpoint of a line between the points described in (c) (1) and (2) of this paragraph. The temperature readings of (c) (1), (2), and (3) of this paragraph shall be taken in vertical line at the location within the cooking container that is the greatest distance from the heat source. After 212°F or 100°C at sea level is reached at all three points, the garbage must be cooked at that temperature or higher for a full 30 (thirty) minutes.

§ 166.8 Vehicles used to transport garbage.

Vehicles used by a licensee to transport untreated garbage shall not be used for hauling animals until cleaned and disinfected as set forth in § 166.14(c).

§ 166.9 Recordkeeping.

(a) Each licensee shall record the destination and date of removal of all treated or untreated garbage removed from the licensee's premises.

(b) Such records shall be legible and indelible.

(c) Each entry in a record shall be certified as correct by initials or signature of the licensee or an authorized agent or employee of the licensee.

(d) Such records shall be maintained by the licensee for a period of 1 (one) year from the date made and shall be made avilable to inspectors upon request during normal business hours at that treatment facility.

§ 166.10 Licensing.

(a) *Application.* Any person operating or desiring to operate a treatment facility for garbage that is to be treated and fed to swine shall apply for a license on a form which will be furnished, upon request, by the Area Veterinarian in Charge or, in States with primary enforcement responsibility, by the State animal health official in the State in which the person operates or intends to operate. When a person operates more than one treatment facility, a separate application to be licensed shall be made for each facility. Exemptions to the requirements of this paragraph may be granted in States other than those with primary enforcement responsibility by the Deputy Administrator, if he finds that there would not be a risk to the swine industry in the United States.

(b) *Acknowledgment of Act and regulations.* A copy of the Act and regulations shall be supplied to the applicant at the time the applicant is given a license application. The applicant shall sign a receipt at the time of the prelicensing inspection acknowledging that the applicant has received a copy of the Act and regulations, that the applicant understands them, and agrees to comply with the Act and regulations.

(c) *Demonstration of compliance with the regulations.* (1) Prior to licensing, each applicant shall demonstrate during an inspection of his premises, facilities, and equipment that the premises, facilities, and equipment to be used in the treatment of garbage comply with these regulations. If the applicant's premises, facilities, or equipment do not meet the standards established by the regulations, the applicant shall not be licensed and shall be advised of the deficiencies and the measures that must be taken to comply with the regulations.

(2) The licensee shall make his premises, facilities, and equipment available during normal business hours for inspections by an authorized representative of the Secretary to determine continuing compliance with the Act and regulations.

(3) The premises, facilities, and equipment of an applicant for a license shall be in compliance with all applicable State and Federal environmental regulations before the applicant will be licensed.

(d) *Issuance of License.* A license will be issued to an applicant when the requirements of paragraphs (a), (b), and (c) of this section have been met, provided that such facility is not located in a State which prohibits the feeding of garbage to swine; and further, that if the Deputy Administrator has reason to believe that the applicant for a Federal license is unfit to engage in the activity for which application has been made by reason of the fact that the applicant is engaging in or has, in the past, engaged in any activity in apparent violation of the Act or the regulations which has not been the subject of an administrative proceeding under the Act, an administrative proceeding shall be promptly instituted in which the

applicant will be afforded an opportunity for a hearing in accordance with the rules of practice under the Act, for the purpose of giving the applicant an opportunity to show cause why the application for license should not be denied. In the event it is determined that the application should be denied, the applicant shall be precluded from reapplying for a license for 1 (one) year from the date of the order denying the application.

§ 166.11 Suspension and revocation of licenses.

(a) *Suspension or revocation after notice.* In addition to imposing civil penalties and issuing cease and desist orders under the Act, the license of any facility may be suspended or revoked for any violation of the Act or the regulations in this Part. Before such action is taken, the licensee of the facility will be informed in writing of the reasons for proposed action and, upon request, shall be afforded an opportunity for a hearing with respect to the merits or validity of such action, in accordance with the rules of practice which shall be adopted for the proceeding.

(b) *Summary suspension.* If the Deputy Administrator has reason to believe that any Federal licensee has not complied or is not complying with any provisions of the Act or regulations in this Part and he deems such action necessary in order to protest the public health, interest, or safety, the Deputy Administrator may summarily suspend the license of such persons pending a final determination in formal proceedings and any judicial review thereof, effective upon verbal or written notice of such suspension and the reasons therefor. In the event of verbal notification, written confirmation shall follow as soon as circumstances permit. This summary suspension shall continue in effect pending the completion of the proceeding and any judicial review thereof, unless otherwise ordered by the Deputy Administrator.

(c) The license of a person shall be automatically revoked, without action of the Deputy Administrator, upon the final effective date of the second criminal conviction of such person, as is stated in Section 5(c) of the Act. The licensee will be notified in writing of such revocation by the Area Veterinarian in Charge or, in States having primary enforcement responsibility, by the State animal health official.

(d) Any person whose license has been suspended or revoked for any reason shall not be licensed in his own name or in any other manner, nor shall any of his employees be licensed for the purpose of operating the facility owned or operated by said licensee while the order of suspension or revocation is in effect. Any person whose license has been revoked shall not be eligible to apply for a new license for a period of 1 (one) hear from the effective date of such revocation. Any person who desires the reinstatement of a license that has been revoked must follow the procedure for new licensees set forth in § 166.10.

§ 166.12 Licensee responsibilities.

(a) A licensed facility shall be subject to inspections. Each inspector will be furnished with an official badge or numbered identification card, either of which shall be sufficient identification to entitle access during normal business hours to the facility premises for the purposes of inspection. At such time the inspector is duly authorized to:

(1) inspect premises and equipment, including cooker function;

(2) take samples of garbage;

(3) observe and physically inspect the health status of all species of animals on the premises;

(4) review records and make copies of such records; and

(5) take photographs.

(b) A licensee shall notify an inspector immediately upon detection of illness or death not normally associated with the licensee's operation in any animal species on the premises.

(c) A licensee shall notify an inspector or the State Animal Health Official or the Area Veterinarian in Charge, as appropriate, of any change in the name, address, management or substantial control or ownership of his business or operation within 30 (thirty) days after making such change.

(d) A licensee shall supply, upon request by an authorized representative of the Department, information concerning sources of garbage. Such information shall include the dates of supply and the names and addresses of the person and/or organization from which the garbage was received.

§ 166.13 Cleaning and disinfecting.

(a) *Disinfectants to be used.* Disinfection required under the regulations in this Part shall be performed with one of the following:

(1) a permitted brand of sodium orthophenylphenate that is used in accordance with directions on the Environmental Protection Agency (EPA) approval label.

(2) a permitted cresylic disinfectant that is used in accordance with directions on the EPA-approved label, provided such disinfectant also meets the requirements set forth in §§ 71.10(b) and 71.11 of Title 9, Code of Federal Regulations.

(3) disinfectants which are registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 *et seq.*), with tuberculocidal claims and labeled as efficacious against any species within the viral genus *Herpes*, that are used for purposes of this Part in accordance with directions on the EPA-approved labels.

(b) All licensed facilities at which garbage has been fed to swine in violation of the Act or regulations in this Part shall, prior to continued use for swine feeding purposes, be cleaned and disinfected under the supervision of an inspector or an accredited veterinarian as follows: Empty all troughs and other feeding and watering appliances, remove all litter, garbage, manure, and other organic material from the floors, posts, or other parts of such equipment, and handle such litter, garbage, manure, and other organic material in such manner as not to expose livestock to any disease that might be contained therein; clean all surfaces with water and detergent and saturate the entire surface of the equipment, fencing, troughs, chutes, floors, walls, and all other parts of the facilities, with a disinfectant prescribed in § 166.13(a). An exemption to the requirements of this paragraph may be given by the Deputy Administrator or in States with primary enforcement responsibility by the State Animal Health Official, when it is determined that a threat to the swine industry does not exist or that less encompassing corrective measures would be sufficient to remedy the situation.

(c) Any vehicle or other means of conveyance and its associated equipment which has been used by the licensee to move garbage shall, prior to use for livestock-related purposes, be cleaned and disinfected as follows: Remove all litter, garbage, manure, and other organic material from all portions of each means of conveyance, including all ledges and framework inside and outside, and handle such litter, garbage, manure, and other organic material in such manner as not to expose livestock to any disease that might be contained therein; clean the interior and the exterior of such vehicle or other means of conveyance and its associated equipment with water and detergent; and saturate the entire interior surface, including all doors, endgates, portable chutes, and similar equipment with a disinfectant prescribed in § 166.13(a).

(d) The owner of such facilities and vehicles shall be responsible for cleaning and disinfecting as required

under this Section, and the cleaning and disinfecting shall be done without expense to the Department of Agriculture.

§ 166.14 State status.

(a) The following States prohibit the feeding of garbage to swine: [1]

(b) The following States permit the feeding of treated garbage to swine. The public may contact the following State and Federal offices concerning the feeding of garbage to swine in these States: [1]

(c) The following States have primary enforcement responsibility under the Act:[1]

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 870, Hyattsville, MD during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the **Federal Register**.

Done at Washington, D.C., this thirteenth day of April 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 82-10426 Filed 4-13-82; 4:13 pm]

BILLING CODE 3410-34-M

[1] The lists of States will appear in the final rule.

federal register

Friday
April 16, 1982

Part VI

Environmental Protection Agency

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities: Liability Requirements

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 123, 264 and 265

[SWH-FRL-2091-8]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities: Liability Requirements

AGENCY: Environmental Protection Agency.

ACTION: Revised interim final rule.

SUMMARY: The Environmental Protection Agency is today revising regulations of January 12, 1981, on liability coverage requirements for hazardous waste facility owners or operators. Under these requirements, owners or operators must demonstrate liability coverage for bodily injury and property damage to third parties resulting from facility operations. The major revisions are: addition of the option of a financial test as a means of demonstrating liability coverage to satisfy the requirements; addition of the option of submitting a certificate of insurance as evidence of insurance; and changes in the requirements for the endorsement and certificate. In a future document, EPA will propose to delete two provisions of the January 12, 1981 regulations. These provisions are: the procedure to obtain a variance for liability coverage requirements; and the provision allowing an owner or operator to use State assumption of legal responsibility for liability coverage to satisfy the liability requirements. The January 12, 1981, regulations were issued under an accelerated schedule imposed by a court order. The revisions that are being made today are necessary to eliminate unworkable aspects of the previous regulations, improve their effectiveness, and allow reasonable flexibility in satisfying the requirements.

States applying for Phase II interim authorization to carry out State hazardous waste programs in lieu of EPA must include liability requirements substantially equivalent to those of Parts 264 and 265 as a condition of such authorization. EPA is amending its State program authorization requirements to provide that States which have already submitted draft applications for Phase II to EPA and which do not have liability coverage requirements must establish them as quickly as practicable but may in the meantime receive Phase II interim authorization.

DATES: Effective Date for 40 CFR 264.147 and 265.147: July 15, 1982; except for §§ 264.147(a)(1)(i), (b)(1)(i), (b)(5), (c), (d) and (f)(3)–(6); 264.151(g), (i), and (j); and 265.147(a)(1)(i), (b)(1)(i), (b)(5), (c), (d) and (f)(3)–(6), which contain information collection requirements under review by OMB.

Effective date for 40 CFR 123.129: April 16, 1982.

Comment date: EPA will accept public comments on the revised regulation until June 15, 1982.

ADDRESSES: Comments should be sent to Docket Clerk (Docket No. 3004), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Public Docket: The public docket for these regulations is located in Room S269-C, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C., which is open to the public from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

Submissions and Correspondence to the Regional Administrator: All documents and correspondence to be submitted to the Regional Administrator regarding these financial requirements should be marked "Attention: RCRA Financial Requirements" as part of the address.

Copies of Regulations: Single copies of these regulations will be available while the supply lasts from the RCRA Hotline, at the numbers given below.

FOR FURTHER INFORMATION CONTACT: For general information call the RCRA Hotline at (800) 424-9346 (toll-free) or (202) 382-3000 or write to Emily Sano, Desk Officer, State Programs and Resource Recovery Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

For information on implementation of these regulations, contact the EPA regional offices below:

Region I

Gary Gosbee, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-1591

Region II

Helen S. Beggun, Chief, Grants Administration Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-9860

Region III

Anthony Donatoni, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-7937

Region IV

Dan Thoman, Residuals Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308, (404) 881-306

Region V

Thomas Golz, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-4023

Region VI

Henry Onsgard, Attention: RCRA Financial Requirements, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 767-3274

Region VII

Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307

Region VIII

Carol Lee, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-6258

Region IX

Richard Procunier, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 974-8165

Region X

Kenneth D. Feigner, Chief, Waste Management Branch, 1200 6th Avenue, Seattle, Washington 98101, (206) 442-1260.

SUPPLEMENTARY INFORMATION:

I. Authority

These regulations are issued under the authority of Sections 1006, 2002(a), 3004, 3005, 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901, 6905, 6912(a), and 6924.

II. Background

Section 3004(6) of RCRA requires EPA to establish financial responsibility standards for owners or operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment. On January 12, 1981, EPA promulgated regulations requiring owners or operators to demonstrate liability coverage for bodily injury and property damage to third parties resulting from facility operations. These regulations were promulgated on an accelerated schedule imposed by a court order, *State of Illinois v. Costle*, No. 78-1689 *et al.* (D.D.C., December 18, 1979). On October 1, 1981, EPA deferred the effective date of these regulations and announced its intent to publish a proposal to eliminate the liability requirements (46 FR 48197). The Agency questioned whether these requirements were necessary or desirable to meet the

requirements of RCRA. In response to this announcement EPA received considerable comment from the public, regulated industries, insurance companies, members of Congress, and State agencies. These comments indicated fairly wide-scale support for a Federal liability coverage requirement for hazardous waste management facilities. There was virtually no opposition to such a requirement.

Some commenters stated that the liability requirements are important to assure that funds will be available for third parties seeking compensation for bodily injury and property damage arising from operation of the facilities. They felt that without such requirements, funds might not be available to compensate injured parties for damages, including payment for medical care and environmental restoration.

Other commenters argued that without a Federal liability coverage requirement there would be lessened public confidence in and greater opposition to proposed and existing hazardous waste facilities. They saw the liability requirements as an important factor facilitating the establishment of new and improved hazardous waste facilities.

Commenters also expected liability requirements to result in other potential benefits for public health and the environment. These include the potential for improved design and operation of the facility resulting from the incentive of lower insurance premiums and the oversight that insurers might provide over facility operations.

Based upon these comments the Agency has concluded that the liability requirements, although not "necessary" requirements are viewed by the public and therefore by the Agency as a desirable part of the RCRA regulatory program. Therefore EPA is placing these requirements in effect 90 days from today's date.

The financial responsibility standards promulgated January 12, 1981, included requirements for both liability insurance and for financial assurance for closure and post-closure care. The amendments promulgated today are limited to the liability requirements; amendments to the requirements for financial assurance for closure and post-closure care were issued April 7, 1982 (47 FR 15032–15074).

A. Proposed Rules

Financial responsibility standards for inclusion in Part 264 (standards to be used in issuing permits) and Part 265 (interim status standards for existing facilities awaiting final disposition of permit applications) were first proposed on December 18, 1978 (43 FR 58995, 59006–07). The proposed regulations included requirements for liability coverage as Part 264 permit standards. Insurance, self-insurance, or other evidence of financial responsibility were allowed as means of demonstrating liability coverage. Facilities in interim status were not required to have coverage because it was questionable whether insurance would be made available to facilities without permits.

In its reproposal of financial requirements on May 19, 1980 (45 FR 33260–78), the Agency added a requirement for coverage of sudden accidental occurrences for facilities in interim status. This was done because there was evidence that many owners or operators already possessed liability insurance covering sudden accidental occurrences as part of their comprehensive general liability policies and that other owners or operators should easily be able to obtain such insurance. For nonsudden accidental occurrences, however, availability of coverage still seemed doubtful for facilities without permits.

B. Interim Final Rule of January 12, 1981

Under the liability requirements (§§ 264.147 and 265.147) promulgated January 12, 1981, an owner or operator of a hazardous waste treatment, storage, or disposal facility was required to have liability insurance for sudden accidental occurrences arising from operations of the facilities (minimum amount: $1 million per occurrence, $2 million annual aggregate). If a facility was a surface impoundment, landfill, or land treatment facility, an owner or operator was required to have insurance also for claims resulting from nonsudden accidental occurrences ($3 million per occurrence, $6 million annual aggregate). These requirements applied to both interim status and permitted facilities. Under variance provisions of the regulations, the Regional Administrator could adjust the amounts of coverage required of an owner or operator, and he could require coverage for nonsudden accidental occurrences for facilities other than land disposal facilities, depending on determinations of risk at the particular facilities.

Because availability of insurance for nonsudden accidental occurrences was, and still is, limited (although increasing), the nonsudden accidental coverage requirement was phased in over 3 years. Owners or operators with the largest sales (sales of $10 million or more) were required to have the insurance 6 months after the effective date; those with sales between $5 and $10 million were required to have the insurance a year later, and the remaining owners or operators were required to have it a year after that.

As evidence of insurance coverage, the January 12, 1981, regulation required the owner or operator to submit a copy of the insurance policy to the Regional Administrator. Each policy had to have an endorsement attached which related to the regulatory requirement.

The preamble to the January 12, 1981, regulation stated that EPA was considering whether an owner or operator should be allowed to satisfy the liability requirements by passing a financial test, and requested comments on whether such a provision should be adopted.

C. Effective Date

The effective date for the January 12, 1981, regulations was deferred to April 13, 1982 (notice published October 1, 1981, 46 FR 48197), because the Agency was considering whether to propose withdrawal of the liability requirements and because amendments to the closure and post-closure financial assurance requirements were still in preparation. For reasons stated above, EPA has decided to proceed with liability coverage requirements.

The new effective date for the liability requirements is July 15, 1982. Owners or operators are required to submit evidence of coverage for sudden accidental occurrences by this date. This extension is necessary to allow owners or operators time to review today's revisions in the requirements and arrange to establish evidence of sudden accidental occurrence coverage that conforms to these revised requirements. Under the phase-in schedule for the requirement for nonsudden accidental occurrence coverage, owners or operators with annual sales or revenues of $10 million or more will be required to submit evidence of this coverage by January 16, 1983; those with annual sales or revenues of $5 million to $10 million, by January 16, 1984 and all others by January 16, 1985.

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect 6 months after promulgation. A primary purpose of the provision is to allow persons affected by the rulemaking sufficient lead time to prepare for compliance with major new regulatory requirements. The Agency has set the effective date of today's revised rule at 3 months rather than 6 months from the date of promulgation because the previous requirements are not substantially

changed except in ways that add greater flexibility and feasibility regarding compliance (i.e., addition of the financial test as a means of satisfying the requirements, the addition of the option of submitting a certificate of insurance as evidence of insurance, and changes in the language of the endorsement to the insurance policy).

III. Revisions and Responses to Comments

Because the January 12, 1981, regulations were promulgated on an accelerated schedule, substantial revisions were necessary. Revisions included in today's regulations are as follows:

- A financial test has been added as a means of demonstrating liability coverage to satisfy the requirements. In order to demonstrate that he meets the financial test, the owner or operator must submit to EPA statements from his chief financial officer and from an independent certified public accountant.
- In order to demonstrate that he has obtained insurance, the owner or operator can submit to EPA a certificate of insurance instead of an endorsement to the insurance policy.
- Changes have been made in the Hazardous Waste Facility Liability Endorsement. Essentially the same language is specified for the new certificate of insurance. The changes are:

Language referring to the extent of an insurer's liability has been revised;

The provisions concerning cancellation of the policy have been revised, but a requirement for 60 days' notice of cancellation to EPA has been retained; and

A requirement that insurers must give EPA at least 30 days's notice of any other termination of the policy, including nonrenewal, has been added.

- Minimum qualifications for insurers whose policies are used to satisfy the requirements have been added and proposals for additional qualifications for insurers have been made.
- A requirement that liability coverage must be maintained until certifications of closure are received by EPA has been added.
- Provisions relating to the phasing in of the requirement for coverage of nonsudden accidental occurrences have been clarified.
- A notification requirement has been added for those owners or operators of surface impoundments, landfills, or land treatment facilities who are not required to obtain coverage of nonsudden accidental occurrences until 18 or 30 months after the effective date.
- A proposal has been made to eliminate two provisions of the January 12, 1981 regulation: the procedure to obtain a variance for liability coverage requirements; and the provision allowing an owner or operator to use State assumption of legal responsibility for liability coverage to satisfy the liability requirements.

The required minimum amounts of coverage are unchanged: for sudden accidental occurrences, $1 million per occurrence with a $2 million annual aggregate; for nonsudden accidental occurrences, $3 million per occurrence with a $6 million annual aggregate. Liability insurance is required on an owner or operator basis rather than a facility basis because the use of an annual aggregate coverage requirement takes into account the risk of multiple occurrences among facilities belonging to one owner or operator.

The changes to the regulations are discussed below, together with the comments received from the public.

A. The Financial Test for Liability Coverage

1. *Proposal of December 1978.* Under the December 18, 1978, proposed regulation, an owner or operator could provide the required liability coverage by self-insuring for an amount not to exceed 10 percent of equity (43 FR 59007). Many commenters recommended that the Agency allow use of self-insurance to satisfy the liability requirements. Some commenters suggested that the Agency should limit self-insurance to percentages of equity other than the 10 percent that was proposed, and others suggested criteria other than a percentage of a firm's equity. Several commenters said that the criteria should parallel those in EPA's financial test for closure and post-closure financial responsibility (§§ 264.143, 264.145, 265.143, and 265.145).

The Agency gave these comments extensive consideration. Based on its analyses the Agency concluded that the 10-percent-of-equity measure was inappropriate for several reasons: the Agency's analysis found that equity amounting to 6 times the amount of liability covered, rather than 10 times, was sufficient; the equity percentage by itself does not measure liquidity; and it does not account for the significantly higher failure rates of smaller owners or operators. The Agency has developed a financial test for liability coverage which is more appropriate than the one that was proposed.

2. *The Financial Test for Liability Coverage as Promulgated Today.* An owner or operator may pass the financial test for liability coverage by demonstrating that he meets either of two sets of criteria.

Alternative I:

(A) Tangible net worth of at least $10 million; and

(B) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(C) Assets in the United States amounting to either: (1) at least 90 percent of total assets, or (2) at least six times the amount of liability coverage to be demonstrated by this test.

Alternative II:

(A) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least $10 million; and

(C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(D) Assets in the United States amounting to either: (1) At least 90 percent of total assets, or (2) at least six times the amount of liability coverage to be demonstrated by this test.

Alternative I was developed for testing owners or operators in manufacturing industries likely to be involved in hazardous waste management. Alternative II allows financially sound owners or operators in industries that typically do not maintain high net working capital (such as electric utilities) to use the financial test. By meeting the test, owners or operators demonstrate that they are capable of using their current assets to pay for damages up to the amounts of annual aggregate coverage required by the regulations. Therefore the public is still afforded reasonable assurance that funds will be available to compensate for damages which might result from the operation of their hazardous waste management facilities. Hence, the main objective of the liability requirements is satisfied. When an owner or operator demonstrates that he passes the test for only a portion of the required amounts of coverage, he must obtain liability insurance for the remainder.

A bond rating is required in Alternative II. An analysis of available data on the performance of the two major bond rating services (Moody's and Standard Poor's) showed that the four highest ratings (investment-grade bonds) demonstrate financial viability at least equal to that indicated by meeting the criteria of the first test option. Other elements are included with the bond rating in the second set of criteria in

order to assure that the owners or operators have adequate assets for the amounts of liability coverage to be demonstrated. The Agency will initially accept bond ratings issued only by Moody's or Standard and Poor's. However, in order to determine whether there are other bond rating services that could also be used, EPA request information establishing how well the ratings assigned by other bondrating services have performed over time.

The Agency analyzed many potential tests for liability coverage in conjunction with its analysis of tests for financial assurance for closure and post-closure care. The analysis of tests for both purposes is presented in detail in background documents for the financial tests, and the differences between the two tests are explained.

3. *Reporting Requirements.* To establish that he meets the financial test for liability coverage, an owner or operator uses the same procedures specified for the financial test to assure funds for closure and post-closure care. As evidence of satisfying the financial test, an owner or operator must submit:

(1) A letter to the Regional Administrator signed by his chief financial officer that includes the required data from the owner's or operator's independently audited, year-end financial statements, and

(2) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(3) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that the accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements and, in connection with this procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

If an owner or operator is using the financial test to demonstrate both liability coverage and financial assurance for closure and post-closure care, the same letter from the chief financial officer setting forth the required data must be used for both purposes; the wording of the letter is specified in § 264.151(g).

As in the case of the financial test for closure and post-closure care, if the auditor's opinion that is included in his report on examination of the owner's or operator's financial statements is an adverse opinion or contains a disclaimer of opinion, the owner or operator may not use the financial test to satisfy the financial requirements. An adverse opinion states that the financial statements do not present fairly the financial condition of the owner or operator in conformity with generally accepted accounting principles. A disclaimer of opinion states that the auditor does not express an opinion on the financial statements.

The Regional Administrator may disallow use of the financial test based on other qualifications expressed in the auditor's opinion of the owner's or operator's financial statements. For example, if the Regional Administrator determines that the opinion raises questions as to whether the owner or operator will continue as a "going concern," the financial test will be disallowed. Other qualified opinions will be evaluated on a case-by-case basis. The owner or operator must provide evidence of insurance for the entire required amount of coverage within 30 days after disallowance.

After the initial submission of the letter from the chief financial officer and the accountant's reports, a new letter and new reports for each subsequent fiscal year must be submitted to the Regional Administrator within 90 days after the end of the firm's fiscal year. Alternatively, by the end of this 90 day period the owner or operator must provide evidence of third-party liability insurance coverage to the Regional Administrator.

In some cases the effective date of the regulations may come too soon after the end of an owner's or operator's fiscal year to allow adequate time to prepare the required documents based on data for the just-completed fiscal year. To resolve this problem, the financial test provisions allow a one-time extension if an owner's or operator's fiscal year ends during the 90 days before the effective date and if the owner's or operator's financial statements are being independently audited. The extension may last up to the date 90 days after the end of the fiscal year. To obtain the extension the chief financial officer must send a letter to the Regional Administrator by the effective date of these regulations. In the letter he must request the extension; certify that he has grounds to believe that the owner or operator meets the financial test criteria; identify the facilities to be covered and the amounts of liability coverage to be demonstrated by the test; specify the date when the owner's or operator's fiscal year ended; specify the date no more than 90 days after the end of the fiscal year when he will submit the documents required; and certify that the owner's or operator's year-end financial statements are being independently audited.

4. *Use of Both the Financial Test and Insurance.* The financial test may be applied to satisfy a portion of the required amount of liability coverage. In such cases, the owner or operator must obtain liability insurance for the remainder. This enables the owner or operator to be responsible for the first dollars of liability coverage, which are the most expensive to cover through an insurance policy. Use of such "self-retention", or deductibles, is common practice. The amount of self-retention has a signficant effect on the amount of premium charged. In using the test for part of the required amount of coverage, the owner or operator must use that portion of the annual aggregate amount ($2 million for sudden accidental occurrences and $6 million for nonsudden accidental occurrences), that is not covered by insurance as the base for the multiples in the financial test.

5. *Guarantees by Parent Corporations To Enable Subsidiaries To Satisfy Liability Requirements.* The Agency considered permitting subsidiary corporations to rely on the assets of their parent corporations to demonstrate financial responsibility for the required liability coverage. However, there are major questions concerning the validity and enforceability of such an arrangement, especially as it may be affected by State insurance laws. Therefore guarantees by parent corporations are not included in today's regulations.

B. The Certificate of Insurance

The January 12, 1981, regulation required owners or operators of hazardous waste management facilities to obtain insurance policies containing a Hazardous Waste Facility Liability Endorsement. The purpose of this endorsement, which was to be worded as specified in the regulations, was to demonstrate that the owner or operator had liability insurance coverage required by the regulations.

The Agency received several significant comments in response to the interim final regulation which suggested that a certificate of insurance, like the endorsement, was a reasonable mechanism by which liability coverage could be demonstrated. A certificate is a statement obtained from the insurer certifying that it has issued insurance as described in the certificate. Unlike the endorsement, the certificate is not part of the insurance policy itself. Insurers suggested that the certificate of

insurance would enable them to develop policies and endorsements that serve broader needs of the insured rather than just the need for the insured to comply with the requirements of this regulation. In reviewing the practices of several other Federal agencies, EPA has found that those agencies require various forms of evidence of liability insurance: endorsements; certificates; endorsements *and* certificates; and "insurance forms" which are in effect certificates in that they do not include language that directly amends the policy.

The Agency concluded from its analysis of the issue that the certificate is a reasonable mechanism by which owners or operators can demonstrate liability coverage. Therefore under this revised interim final regulation the owner or operator is allowed the option of submitting a certificate of insurance that has the same provisions as the endorsement to demonstrate liability coverage. As with the endorsement, if a question arises about the adequacy of an owner's or operator's coverage, EPA can obtain and review the insurance policy. In addition the Agency intends to review a sample of policies to confirm their adequacy in satisfying the purpose of the regulation. Under the regulation, owners or operators must provide a copy of the policy to EPA upon request.

Allowing use of a certificate of insurance as evidence of insurance coverage was not part of the January 12, 1981, interim final regulation. However, the Agency believes this option should be available in the revised interim final rule because it provides adequate assurance of coverage and allows additional flexibility.

C. Changes In The Endorsement

This section describes revisions made to the January 12, 1981, endorsement following evaluation of comments. The new certificate of insurance has the same provisions as the endorsement and incorporates the changes described below.

1. *Extent of Coverage.* Some commenters said the wording of the endorsement raised major problems with respect to the extent of coverage required by the regulations. The January 12, 1981, regulations did not completely define the scope, conditions, and terms of coverage. However, the wording of the endorsement required the insurer to certify that the policy to which the endorsement was attached provides liability insurance "to the extent" such coverage was required by EPA's regulations. Commenters argued that since the regulations did not define precisely the extent of coverage required, the insurer was exposed to an uncertain extent of liability. This would, they said, seriously impair the insurance industry's willingness to provide the insurance coverage required by EPA's regulations.

The Agency recognizes the problems cited by the commenters and, in response, has revised the endorsement to read that the insurer certifies that the policy to which the endorsement is attached provides liability insurance "in connection with" an owner's or operator's obligations under EPA's regulations. The Agency did not intend to modify the contractual obligations arising from the insurance policies used to satisfy the liability requirement. This rewording eliminates the problem noted by the commenters.

Other commenters suggested that EPA adopt a set of specific standards for insurance, precisely defining the extent of coverage required for all hazardous waste management facilities. In response, the Agency has adopoted a more specific definition of the extent of coverage required by this regulation. The regulation now defines the bodily injury and property damage coverage required by this regulation to be the meaning given those terms by applicable State law. However, the terms do not include those liabilities which, consistent with standard industry practice, are excluded from coverage in liability policies for bodily injury and property damage. For example, the insurance policy need not cover injuries or damage caused by war, injuries covered by worker's compensation or disability benefits, or intentional injuries. This action not only provides a more precise definition of the extent of coverage required but also establishes a limitation on the exclusions which may be in a policy used to satisfy the liability requirement.

2. *Coverage of Deductibles.* A second major issue raised by commenters regarding the endorsement was its language relating to deductibles. The language was intended to ensure that the insurer would satisfy liabilities from accidents at a hazardous waste management facility on a first-dollar basis. This certification reduces the burden on the Agency of reviewing the level of the deductible in every policy and determining whether the insured is financially capable of paying claims within the deductible. The commenters suggested that this language could be construed to possibly negate normal policy provisions which defined the level and conditions of the risks assumed by the insurer under the policy. After reevaluating the endorsement, the Agency has eliminated wording that those commenters suggested would negate conditions, limitations, and exclusions contained in the policy. However, the owner or operator still must have insurance coverage on a first-dollar basis. The policy may allow reimbursement by the insured for any such payment within the deductible limits. This provision does not apply with respect to the amount of any deductible for which coverage is demonstrated through the financial test for liability coverage.

3. *Cancellation.* The Agency has been concerned that some insurance companies might cancel claims-made insurance policies upon discovery of an accidental occurrence at a policyholder's facility. (Claims-made policies provide coverage only for claims that are filed during the active life of the policy.) That could leave owners or operators without adequate coverage. To remedy this potential problem the January 12, 1981, regulations contained two provisions: (1) A requirement that coverage under a claims-made policy could not be cancelled or terminated for at least 120 days following an accidental occurrence covered by the policy and (2) a requirement that EPA be given 60 days' advance notice prior to any cancellation. The major problem associated with the 120-day requirement, according to the commenters, was that it effectively converted claims-made policies (commonly used for pollution liability insurance) into "occurrence-based" policies. The commenters contended that an insurer could not be certain that its exposure to liability under a claims-made policy would end on the policy's termination date and that if a new accident occurred during the 120-day period, a new period of 120 days could be triggered.

After reexamining the issue, the Agency agrees that the 120-day requirement creates the potential for open-ended liabilities on the part of the insurers. Such coverage would likely be very expensive if available at all. Because this could adversely affect the availability of insurance, the 120-day requirement has been eliminated. However, the requirement for 60 days' notice prior to cancellation has been retained. Even if an insurance company were to cancel its claims-made policy upon learning of an accidental occurrence at its insured's facility, injured parties would still have at least 60 days in which to make claims.

Some commenters urged EPA to allow cancellation upon a 10-day notice for nonpayment of premium, bankruptcy, or

debtor relief proceedings brought by or against an insured, or for failure to comply with applicable rules governing facility operations. The Agency recognizes the interest of insurers in limiting their exposure, but believes that 60 days' notice can be provided by most insurers and is necessary for adequate coverage of claims.

The original endorsement contained a cancellation provision which required that the policy be canceled when the endorsement was canceled. A commenter stated that this could cause cancellation of policy coverages other than those connected with the endorsement. The Agency decided to eliminate the requirement to avoid such cancellation. Under the revised cancellation provisions, the insurer may cancel the policy or only the endorsement after 60 days' notice to the Regional Administrator.

4. *Other Termination.* The Agency added a provision to the endorsement that the insurer agrees to notify the Agency at least 30 days prior to termination of the policy (for reasons other than cancellation). The notice will serve to alert the Regional Administrator of a potential gap in liability coverage.

D. Other Liability Issues

1. *Qualifications of Insurers.* The proposed liability requirements of May 19, 1980 (45 FR 33273), provided that owners or operators must obtain insurance from insurers licensed or eligible to insure in the jurisdiction where any of the owner's or operator's facilities are located. The Agency received comments to the effect that participation of insurers should not be so restricted. The Agency evaluated the issue and at that time concluded that is was preferable to leave out qualifications for insurers in order not to restrict the market and availability of insurance. The January 12, 1981, regulations, therefore, did not include qualifications for insurers. Several commenters on those regulations urged EPA to establish insurer qualifications.

Minimum qualifications would help assure the integrity of insurers whose policies are used by owners or operators to meet the liability requirements. Therefore today's regulations require owners or operators to obtain insurance from insurers licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States. These qualifications will assure that insurers are subject to some regulatory oversight by State insurance departments but will still permit broad participation in providing the insurance.

EPA invites public comment on additional or different qualifications for insurers. Qualifications for insurers have been recommended by the National Association of Insurance Commissioners. The NAIC recommended that the Agency adopt the following requirement:

"The Regional Administrator shall not accept insurance policies as complying with this section unless such policies are underwritten by an insurance institution which:

"(1) Is domiciled in the United States and authorized to transact the business of insurance as an admitted or nonadmitted insurer in the state where the insured facility is located, or

"(2) Is a captive insurer licensed under a state law authorizing the formation and operation of captive insurers, or

"(3) Is an alien insurer in good standing on the Non-Admitted Insurers Quarterly List published by the Non-Admitted Insurers Information Office of the National Association of Insurance Commissioners."

One commenter said that policies issued by "captive" insurance companies, which often provide necessary supplemental liability coverage for large, financially capable companies, should be accepted as conforming with the requirement. Another commenter urged EPA to accept policies issued by captive insurers domiciled outside the United States if the captive has a parent corporation in the United States to assume its liabilities. The qualifications adopted in today's regulation will not exclude captive insurance companies, whether domestic or foreign-based. Under these requirements, captive insurers may qualify by obtaining a license in one of the several States which currently license captive insurers or by becoming eligible or authorized as a surplus lines or excess insurer in States with standards for nonadmitted insurers.

One commenter said that the Agency should permit only those insurers with a rating of at least "A" in *Best's Insurance Reports* and a Best's financial size rating to issue policies used to satisfy the liability requirements.

EPA invites public comment on the qualifications suggested by the NAIC; on whether specific standards for captive insurers should be included; whether ratings by Best's should be used and, if so, what they should be; and any other aspect of qualifications for insurers.

2. *Availability of Insurance for Nonsudden Accidental Occurrences.* Many commenters were concerned that insurance for nonsudden, or gradual, accidental occurrences will either not be available or, if available, be too expensive, especially for smaller firms. As noted above, coverage for nonsudden accidental occurrences poses special problems to the insurance industry because of the magnitude of the potential risks and its lack of experience with those risks. Therefore the regulation provides for a 3-year phase-in period of the requirement for coverage of nonsudden accidental occurrences. Owners or operators with total sales or revenues of $10 million or more in the fiscal year preceding the effective date of the regulations will have to establish the coverage 6 months after the effective date; those with annual sales or revenues over $5 million but less than $10 million must have the coverage 18 months after the effective date; and all others have up to 30 months after the effective date to obtain nonsudden accidental coverage. The purpose of this phase-in is to encourage development of a broad market for such liability insurance by requiring larger firms which can more readily obtain the insurance to comply first. Smaller owners or operators have an additional 1 to 2 years to comply, during which availability of this insurance should increase further.

The insurance market for coverage of nonsudden accidental occurrences has recently responded to increasing demand and there are good indications that this market can be expected to expand considerably in the near-future. After carefully considering this issue, the Agency has concluded that insurance for nonsudden accidental occurrences as required by these regulations will be available in a competitive market. However, this conclusion is based upon an expected expansion in the number of firms providing insurance for nonsudden accidental occurrences. Consequently, EPA will continue to monitor the development of the market to ensure that the requirements of this regulation can be met.

Several details of the phase-in of the required coverage of nonsudden accidental occurrences have been changed or added since the January 12, 1981, regulations. Since some owners or operators may use the term "revenues" rather than "sales" on their income statements, both terms are now used in the regulations. To avoid confusion about whose sales or revenues are to be used when the owner and operator are different parties or if there is more than one owner or operator, the regulation now says the sales or revenues of the owner or operator with the largest sales or revenues in the fiscal year preceding

the effective date of the regulations will determine which of the three dates applies. This is consistent with the policy that the largest owners or operators should be required to have nonsudden coverage first in order to encourage market development. Compliance for a large owner or operator should not be delayed because it is associated with a smaller one. The revised regulations also specify that the total sales or revenues of the owner or operator must be considered, not only sales or revenues from hazardous waste management or particular locations.

The January 12, 1981, regulations did not contain a requirement that the owners or operators of surface impoundments, landfills, and land treatment facilities report to the Regional Administrator when they will be required to obtain coverage for nonsudden accidental occurrences. This information is not only important for monitoring compliance but also for obtaining a more accurate measure of the numbers of owners or operators that will be needing insurance coverage during each phase, in case adjustments need to be made in the phase-in schedule. A provision has therefore been added which requires owners or operators in the second two phases ($5 million to $10 million and "all others") to send a letter to the Regional Administrator, within 6 months of the effective date of this regulation, which states when they intend to obtain the required coverage.

One commenter said that not enough time was allowed for the owners or operators in the first phase to obtain coverage for nonsudden accidental occurrences. The commenter said the problem arises because 3 to 4 months are necessary to conduct engineering and underwriting surveys and because the accepted insurance industry practice is to complete assessments for new risks at least 60 days before the normal January or July renewal dates for many insurance policies. The 9-month period between promulgation of the revised requirements and the date by which the first group must have coverage for nonsudden accidental occurrences should be sufficient time to obtain these policies. As noted earlier, the market for this coverage is expanding. Also, several insurance companies have stated that policies covering nonsudden accidental occurrences are presently being written in only 4 to 8 weeks. Furthermore, a number of owners or operators in the first phase will be able to employ the financial test as a means of demonstrating all or part of the required coverage. The pressure on market capacity will therefore be mitigated by the availability of this alternative mechanism.

One commenter suggested that the phase-in requirement should be reversed because smaller owners or operators are more likely to need insurance policies to be able to adequately cover liabilities. However, in view of the limited availability of the insurance at present and the need to encourage market growth, it would be counter-productive to begin with those who may have the most difficulty in obtaining liability coverage.

3. *Required Amounts of Coverage and Variances.* Some commenters stated the minimum amounts of required coverage were unusually high for government mandated insurance and hence may cause some small owners or operators that are unable to afford the associated premium to close their facilities. Others commented that the $1 million/$2 million minimums for sudden accidental occurrences were too low. Other commenters suggested that the liability coverage be tailored to the degree and duration of risk at a facility and that the required minimum amounts of coverage be the same for sudden and nonsudden accidental coverage because claims for sudden accidental occurrences are not always less than those for nonsudden accidental occurrences.

Selecting the appropriate level of insurance coverage is a difficult task in the absence of actuarial data or experience with a regulated hazardous waste industry. EPA has compiled a record of many of the hazardous waste damage incidents that have occurred around the country. The quality of information on these incidents varies from complete reports of on-site investigations to abbreviated newspaper reports. The data on third-party damages is sparse, but that which is available shows that the coverage requirements of this regulation are adequate.

Despite the lack of significant third party damage awards in the past, a growing number of court suits are being filed and some request damages at levels much higher than those required by these regulations. If any of these suits are successful the potential third party damage costs associated with operating hazardous waste facilities could become much larger than currently available data shows. EPA will continue to monitor this situation and requests data pertaining to changing needs for liability coverage.

The January 12, 1981, regulations included a variance procedure whereby an owner or operator who demonstrated that the required liability coverage was inconsistent with the degree and duration of risks associated with his facility or facilities, could obtain a variance. Also, the Regional Administrator could increase the amounts of required coverage where risks warrant higher levels of coverage than that provided by the owner or operator. The Regional Administrator could also impose requirements for coverage of nonsudden accidental occurrences for facilities that are not surface impoundments, landfills, or land treatment facilities if such facilities were determined to pose risks of nonsudden accidental occurrences.

There was significant public comment on the variance procedures. Most commenters stated that the procedures were inadequate as they were too general and too discretionary. While there was support for the concept of a variance, commenters stated that the regulation should list specific criteria to be used by the Regional Administrator in making such decisions. Commenters said that in the absence of such criteria the variance was arbitrary and could result in inequitable treatment of owners or operators.

The Agency is simply not able at this time to establish specific standards for variances. Risk assessment of hazardous waste management facilities is a fairly new practice for insurers. There is not an extensive body of actuarial data on this subject. At this time it is not possible to establish standard criteria that could be relied on to account for the many diverse factors that need to be considered on a case-by-case basis.

Data is not available that would enable EPA to set forth in a national regulation the relationship between liability coverage requirements and factors such as type of waste, size of operation, method of treatment, storage or disposal, and proximity to population centers and groundwater and surface water supplies.

EPA agrees with the commenters' concerns that the variance procedure in its January 12, 1981, regulation is unworkable. Therefore, in a future document, EPA will propose to delete that procedure from the regulation. EPA will request comments on the proposal at that time and more importantly will request data and information that could be used to establish specific criteria for a workable variance procedure.

In the absence of a variance procedure all owners or operators will have to obtain liability coverage at the levels prescribed in the regulation. However, differences in risk at different

facilities should be reflected in the premiums for insurance policies with lower risk facilities paying less for the required coverage.

4. *Legal defense costs.* In the January 12, 1981, regulations, EPA required owners or operators to obtain liability insurance in specified amounts exclusive of legal defense costs. This was done because allowing defense costs to be included within the policy limits ("defense in limits") might severely restrict the amount of insurance coverage available to compensate third parties. Unusually large legal defense costs could result in a significant erosion in the compensation available. This is a special problem for liability suits arising out of the operation of hazardous waste management facilities, as this is an area opf expanding liability involving potentially complex issues related to causation and damage.

Some commenters objected to the requirement that the liability coverage exclude legal defense costs for several reasons. Some said that excluding legal defense costs is contrary to insurance industry practice. Others said that excluding legal defense costs from liability coverage would force premiums up, and discourage insurers from offering the required coverage. One commenter emphasized that the Agency should allow insurers to issue policies with defense in limits in order to increase the number of insurers willing to issue policies to hazardous waste management facilities. Another commenter suggested that the Agency require owners or operators to obtain insurance policies with liability coverage 25 percent greater than the amounts otherwise applicable in order to cover defense costs, but allow those policies to be written with defense in limits.

At the heart of the issue is the fact that because hazardous waste management facility insurance is a relatively new market with little claims history, it is not possible to estimate with a reasonable degree of certainty the legal defense costs associated with these policies. This is precisely why the current regulations retain the requirement that insurance policy limits exclude legal defense costs. High defense costs can erode the coverage amounts to the point where funds would not be available to pay third party damage costs.

EPA obtained comments from insurers that indicated they would be in a position to write policies which exclude legal defense costs. Others stated that this requirement is consistent with standard comprehensive general liability policies. Some expressed a preference for exclusion of legal defense costs in order to keep these policies consistent with other types of insurance on the market. Therefore the required coverage amounts are exclusive of defense costs.

5. *Period of Required Coverage.* The regulations of January 12, 1981, and the preceding proposals did not specify when an owner or operator was no longer required to assure liability coverage. Coverage in these regulations was for claims "arising from the operations" of facilities, but the period for which coverage was required was not clearly defined. Coverage should extend until closure because closure activities could give rise to an accident at the site. The present regulations therefore require that the owner or operator maintain liability coverage until certifications of closure, as specified in §§ 264.115 and 265.115, are received by the Regional Administrator.

6. *Submission of Policies.* The January 12, 1981, regulation required that owners or operators send copies of insurance policies used to comply with the liability requirements to the Regional Administrator. The purpose of this was to give EPA an opportunity to review the exclusions, terms, and conditions in these policies.

Several commenters pointed out that a review of all insurance policies would impose a substantial burden on the Agency, and requiring submission of policies would be burdensome to insurance companies and to owners or operators. The current regulations only require an owner or operator to submit a policy if requested to do so by EPA. The regulations now state that by the compliance date an owner or operator must only send a signed duplicate original of either the endorsement or certificate of insurance to EPA. The owner or operator must also send the policy at a later date if requested to do so by the Agency. In the endorsement and the certificate the insurer also agrees to submit a copy of the policy and all endorsements to EPA if requested.

7. *Definitions and Usage.* One commenter stated that the definitions of liability and insurance terms in §§ 264.141 and 265.141 are vague and do not correspond to conventional insurance definitions. Hence, this commenter recommended that EPA delete the definitions of these terms from the regulations.

Today's regulations provide general definitions of the coverage required of policies which can be used to satisfy these requirements. New definitions of "bodily injury" and "property damage" have been included to more explicitly define required coverage (see previous discussion on extent of coverage). The other definitions are intended to be consistent with common meanings. This is so stated in the regulations. The Agency will continue to consider specific suggestions on how the definitions can be improved.

Another commenter recommended that the Agency's intended meaning of the term "insurance policy" as used in the regulations should be in accordance with standard industry usage of the term. The regulations are intended to follow standard industry usage.

Another commenter stated that the regulations should not use the term "occurrence" as in "nonsudden accidental occurrence" because it implies that the policy covering the event must be an occurrence-based policy. In using the word "occurrence" the regulations did not intend to limit policies to occurrence-based policies. As indicated by the definition given for "accidental occurrence" in §§ 264.141 and 265.141, the term means "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured."

8. *Other Provisions of Subpart H Financial Requirements.* The liability coverage requirements are referred to in §§ 264.148 and 265.148 (Incapacity of Owners or Operators, Guarantors, or Financial Institutions), §§ 264,149 and 265.149 (Use of State-Required Mechanisms); and §§ 264.150 and 265.150 (State Assumption of Responsibility). These sections have relevance to the liability requirements as follows:

- Under §§ 264.148 and 265.148, if the insurer for the policy used to satisfy the liability requirements enters bankruptcy or has its authority to issue the policy revoked or suspended, the owner or operator will have to establish alternative liability coverage within 60 days after such an event.
- Under §§ 264.149 and 265.149, for a facility located in a State where EPA is administering the financial requirements but where the State has hazardous waste regulations that include requirements for liability coverage, an owner or operator may use State-required financial mechanisms to satisfy requirements of §§ 264.147 and 265.147 if the Regional Administrator determines that the State mechanisms are at least equivalent to mechanisms specified in these regulations.

Sections 264.150 and 265.150 provide that if a State assumes legal

responsibility for an owner's or operator's compliance with the liability requirements of these regulations or assures that funds will be available from State sources to cover the requirements, such assurances may be used to satisfy the liability requirements of §§ 264.147 or 265.147. EPA is not aware of any instance where this is being done or considered and therefore will propose in a future document to delete this provision as it applies to liability requirements. The Agency will request comments on the proposal at that time.

9. *Relation to CERCLA Provisions.* The Agency received comments on the relation between the liability requirements during operating life under RCRA and post-closure liability provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96–510 (CERCLA). One commenter pointed out that a 5-year gap in liability coverage may exist after a facility has closed but before the Post Closure Liability Trust Fund to be established under CERCLA assumes liability coverage.

EPA is not requiring liability coverage after closure because the availability of post-closure liability insurance is very limited at this time. The problem of liability coverage during the post-closure period is currently being examined in studies required by CERCLA. The Treasury Department is studying approaches based on private insurance. EPA is studying the adequacy of the Post-Closure Liability Trust Fund as specified in the present provisions of CERCLA.

Another commenter was concerned that the "strict liability" concept in CERCLA might adversely affect the development of an insurance market providing pollution liability coverage. EPA has not observed a specific effect on the pollution insurance market. As noted earlier, the market is currently expanding. This is probably due to a number of factors including anticipation of the RCRA liability requirements, current economic conditions, and demand resulting from increased concern about pollution risks. The CERCLA liability provisions as well as numerous damage incidents have probably contributed to this concern.

IV. Amendment to the State Program Authorization Requirements

A. Amendment to 40 CFR 123.129

Section 3006 of RCRA provides that States with "substantially equivalent" hazardous waste programs can be granted interim authorization to carry out their State programs "in lieu of" the Federal program in those States. Interim authorization is being granted in two phases: Phase I (corresponding to the Federal program promulgated on May 19, 1980) and Phase II (consisting of the procedures and standards for permitting hazardous waste management facilities). See 40 CFR Part 123, Subpart F as amended. 46 FR 8298 (January 26, 1981). Phase II will consist of several components, two of which have been announced to date. Component A covers storage facilities and Component B covers incinerators. EPA will announce a component for land disposal facilities in the future. In its January 26, 1981, notice of the content of Components A and B (46 FR 7964), EPA explained that States applying for Phase II Components A and B authorization must demonstrate substantial equivalence to certain Federal regulations, including the financial requirements in Subpart H of 40 CFR Parts 264 and 265.

On October 1, 1981, EPA announced that it was considering withdrawing the Federal liability insurance requirements and deferred the effective date of those requirements (see 46 FR 48197). Subsequentlly, a few States submitted draft applications to EPA for authorization of Components A and B without liability requirements. Because EPA was considering whether or not to withdraw the Federal liability insurance requirements, EPA informed such States that they could receive interim authorization for Components A and B without State liability insurance requirements. These States have relied on the Agency's representation and are developing final applications for such authorization. Therefore, EPA today is amending 40 CFR 123.129 to allow interim authorization of those States which have submitted draft applications to EPA prior to today's date without State liability requirements. However, such States must commit in their Memorandum of Agreement to adopt State liability coverage requirements substantially equivalent to those in Subpart H of 40 CFR Parts 264 and 265 as quickly as practicable but in no case later than the State's application for an additonal Component of Phase II interim authorization.

The liability coverage requirements are an important part of the assurance provided to the public by the RCRA regulator program. In view of their importance, EPA was reluctant to grant this exemption to any States since the liability requirements would not be in effect within those States. However, requiring those States which relied on the Agency's comments on their draft applications to make statutory or regulatory amendments at this time would cause substantial and unnecessary disruption in the authorization process. For that reason, EPA decided to limit this exemption to those States which have submitted their draft Phase II interim authorization applications to EPA by today's date.

B. Interim Final Promulgation

EPA believes that use of advance notice and comment procedures for the amendment to § 123.129 would be impracticable and contrary to the public interest, and therefore finds that good cause exists for adopting this change in interim final form (see 5 U.S.C 553(b)(B)). Delay in promulgating this amendment could cause significant harm to States which are applying for interim authorization. As noted above, because EPA was considering withdrawing its liability insurance requirements, EPA told a few States that they could receive interim authorization for Components A and B without State liability insurance requirements. Because those States have relied on EPA's statements, the Agency is amending the State authorization requirements to allow them to receive interim authorization in an orderly fashion. If today's amendment to § 123.129 were not promulgated as an interim final rule, those States which have proceeded expeditiously toward obtaining Phase II authorization and which in good faith relied on EPA representations about State program authorization requirements would be severely penalized. They would be forced to make statutory or regulatory amendments prior to receiving Phase II authorization and thus their authorizations could be delayed for many months.

Today's amendment to § 123.129 provides an exception for those States which requires them to adopt liability coverage requirements as quickly as possible, but allows them to receive interim authorization if they meet all of the other requirements of Part 123, Subpart F.

C. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. In addition, 5 U.S.C. 553(d) of the Administrative Procedure Act requires that substantive rules not become effective until at least 30 days after promulgation. A primary purpose of these requirements is to allow persons affected by the rulemaking sufficient lead time to prepare to comply with major new regulatory requirements. However, for

the amendment promulgated today, the Agency believes that delaying the effective date for any period of time would cause substantial and unnecessary disruption in the implementation of the State authorization process and thus would be contrary to the public interest.

As discussed above in the section on interim final promulgation, today's amendments relieve a restriction on certain States. Thus the affected States do not need lead time to comply with these amendments. Indeed, significant hardship to the affected States could result if the effective date of today's amendments were delayed. Consequently, the Agency finds good cause for making these amendments effective immediately upon promulgation.

V. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981) requires that EPA prepare a Regulatory Impact Analysis for each major rule. The Order defines a "major rule" as any regulation that is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or
- Significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These revised regulations are not "major" in themselves; rather, they are changes to existing regulations that will result in lower costs. Nevertheless, a Regulatory Impact Analysis of these requirements will be performed because they constitute a significant component of the body of RCRA regulations. The final analysis is scheduled to be completed in the spring of 1983, after the Agency determines how it will comply with Executive Order 12291 and publishes that guidance in the Federal Register.

Preliminary estimates of costs are as follows:

The annual cost of liability insurance for sudden accidental occurrences is estimated to average $1,500 per site for storage facilities and $3,000 per site for other types of facilities. The average annual cost of liability insurance for nonsudden accidental occurrences is estimated at $16,500 per site for landfills, surface impoundments, and land treatment facilities. These estimates are in pre-tax dollars. Some of the costs of liability insurance will be incurred in the absence of the regulations. For example, many existing facilities already have coverage for sudden accidental occurrences. At least half of total premium payments will go to compensating injured third parties; this portion of the insurance costs may be seen as transfer payments rather than as costs to society.

The annual cost of the financial test is estimated at $75–$100 per facility. This is the cost of preparing the required letter reporting financial data and the cost of the auditor's report. It is assumed that the user of the financial test will have several sites.

Of approximately 11,000 hazardous waste management facilities, about 2,600 are land disposal facilities that will ultimately be required to demonstrate liability coverage for nonsudden accidental occurrences under State or Federal RCRA program.

VI. Paperwork Reduction Act

Under the Federal Reports Act of 1942, as amended by the Paperwork Reduction Act of 1980, the Office of Management and Budget (OMB) reviews reporting requirements in regulations in order to minimize the reporting burden on respondents and the cost to government. EPA submitted an information collection report to OMB in March 1981 covering the financial responsibility mechanisms promulgated as interim final regulations on January 12, 1981.

The revised regulation promulgated today substantially reduces the reporting burden by requiring the owner or operator to submit only the endorsement or certificate of insurance rather than the entire policy. The revised regulation adds a requirement that owners or operators of surface impoundments, landfills, and land treatment facilities who have less than $10 million in sales or revenues must notify the Regional Administrator within 6 months after the effective date (to enable monitoring of the phase-in of the requirement for coverage of nonsudden accidental occurrences). However, this is a requirement for one-time reporting by the owner or operator. Under the Paperwork Reduction Act the information provisions in this rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approves them. A notice of that approval will be published in the Federal Register.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). This requirement applies to Federal regulations proposed after January 1, 1981. Such an analysis will be conducted in conjunction with the Regulatory Impact Analysis.

VIII. Supporting Documents

A background document was prepared for the regulations as promulgated January 12, 1981. The most significant issues raised by commenters on the January 12 regulations are discussed in this preamble. Responses to other comments are presented in a summary that has been included in the docket for these regulations. The financial test for liability coverage is the subject of a separate background document. The background documents are available for review in the EPA regional office libraries and at the EPA headquarters library, Room 2404 Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

EPA is also preparing guidance manuals on the financial requirements to assist owners or operators and regulatory officials and will make them available from EPA headquarters and the regional offices.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal.

List of Subjects in 40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Waste supply.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: April 9, 1982.

Anne M. Gorsuch,

Administrator.

For the reasons set out in the preamble, Title 40 CFR Parts 264, 265, and 123 are amended as set forth below:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Subpart H—Financial Requirements

a. Section 264.141 is revised to read as follows:

§ 264.141 Definitions of terms as used in this subpart.

(a) "Closure plan" means the plan for closure prepared in accordance with the requirements of § 264.112.

(b) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with §§ 264.142 (a), (b), and (c).

(c) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with §§ 264.144 (a), (b), and (c).

(d) "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) "Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of §§ 264.117–264.120.

(f) The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(g) In the liability insurance requirements the terms "bodily injury" and "property damage" shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Nonsudden accidental occurrence" means an occurrence which takes place over time and involves continuous or repeated exposure.

"Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

b. Section 264.147 is revised to read as follows:

§ 264.147 Liability requirements.

(a) *Coverage for sudden accidental occurrences.* An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated in one of three ways, as specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in § 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in § 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Regional Administrator, or Regional Administrators if the facilities are located in more than one Region. If requested by a Regional Administrator, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Regional Administrator at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in paragraph (f) of this section.

(3) An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance as these mechanisms are specified in this section. The amounts of coverage demonstrated must total at least the minimum amounts required by this paragraph.

(b) *Coverage for nonsudden accidental occurrences.* An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for

bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. This liability coverage may be demonstrated in one of three ways, as specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in § 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in § 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Regional Administrator, or Regional Administrators if the facilities are located in more than one Region. If requested by a Regional Administrator, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Regional Administrator at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in paragraph (f) of this section.

(3) An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance as these mechanisms are specified in this section. The amounts of coverage must total at least the minimum amounts required by this paragraph.

(4) For existing facilities, the required liability coverage for nonsudden accidental occurrences must be demonstrated by the dates listed below. The total sales or revenues of the owner or operator in all lines of business, in the fiscal year preceding the effective date of these regulations, will determine which of the dates applies. If the owner and operator of a facility are two different parties, or if there is more than one owner or operator, the sales or revenues of the owner or operator with the largest sales or revenues will determine the date by which the coverage must be demonstrated. The dates are as follows:

(i) For an owner or operator with sales or revenues totalling $10 million or more, 6 months after the effective date of these regulations.

(ii) For an owner or operator with sales or revenues greater than $5 million but less than $10 million, 18 months after the effective date of these regulations.

(iii) All other owners or operators, 30 months after the effective date of these regulations.

(c) *Request for variance.* If an owner or operator can demonstrate to the satisfaction of the Regional Administrator that the levels of financial responsibility required by paragraphs (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the Regional Administrator. The request for a variance must be submitted to the Regional Administrator as part of the application under § 122.25 of this Chapter for a facility that does not have a permit, or pursuant to the procedures for permit modification under § 124.5 of this Chapter for a facility that has a permit. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Regional Administrator's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Regional Administrator may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Regional Administrator to determine a level of financial responsibility other than that required by paragraph (a) or (b) of this section. Any request for a variance for a permitted facility will be treated as a request for a permit modification under §§ 122.15(a)(7)(iii) and § 124.5 of this Chapter.

(d) *Adjustments by the Regional Administrator.* If the Regional Administrator determines that the levels of financial responsibility required by paragraph (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Regional Administrator may adjust the level of financial responsibility required under paragraph (a) or (b) of this section as may be necessary to protect human health and the environment. This adjusted level will be based on the Regional Administrator's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Regional Administrator determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, he may require that an owner or operator of the facility comply with paragraph (b) of this section. An owner or operator must furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification under §§ 122.15(a)(7)(iii) and 124.5 of this Chapter.

(e) *Period of coverage.* An owner or operator must continuously provide liability coverage for a facility as required by this section until certifications of closure of the facility, as specified in § 264.115, are received by the Regional Administrator.

(f) *Financial test for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1)(i) or (f)(1)(ii):

(i) The owner or operator must have:

(A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(B) Tangible net worth of at least $10 million; and

(C) Assets in the United States amounting to either: (*1*) at least 90 percent of his total assets; or (*2*) at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least $10 million; and

(C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(D) Assets in the United States amounting to either: (*1*) at least 90 percent of his total assets; or (*2*) at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in paragraph (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under paragraphs (a) and (b) of this section.

(3) To demonstrate that he meets this test, the owner or operator must submit the following three items to the Regional Administrator:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by §§ 264.143(f), 264.145(f), 265.143(e), and 265.145(e), and liability coverage, he must submit the letter specified in § 264.151(g) to cover both forms of financial responsibility; a separate letter as specified in § 264.151(f) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility must submit the items specified in paragraph (f)(3) of this section to the Regional Administrator at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain insurance for the entire amount of required liability coverage as specified in this section. Evidence of insurance must be submitted to the Regional Administrator within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The Regional Administrator may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (f)(3)(ii) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Regional Administrator will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in this section within 30 days after notification of disallowance.

c. Section 264.151 is amended by revising paragraph (g) and adding paragraphs (i) and (j) to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(g) A letter from the chief financial officer, as specified in §§ 264.147(f) or 265.147(f) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer (to demonstrate liability coverage or to demonstrate both liability coverage and assurance of closure or post-closure care).

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located.]

I am the chief financial officer of [owner's or operator's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in Subpart H of 40 CFR Parts 264 and 265.

[Fill out the following paragraph regarding facilities and liability coverage. For each facility, include its EPA Identification Number, name, and address.]

The owner or operator identified above is the owner or operator of the following facilities for which liability coverage is being demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265: ————.

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following four paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The owner or operator identified above owns or operates the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ————.

2. The owner or operator identified above guarantees, through the corporate guarantee specified in Subpart H of 40 CFR Parts 264 and 265, the closure and post-closure care of the following facilities owned or operated by its subsidiaries. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ————.

3. In States where EPA is not administering the financial requirements of Subpart H of 40 CFR Parts 264 and 265, this owner or operator is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: ————.

4. The owner or operator identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is *not* demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Subpart H of 40 CFR Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ————.

This owner or operator [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this owner or operator ends on [month, day]. The figures for the following items marked with an asterisk are derived from this owner's or operator's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in part A if you are using the financial test to demonstrate coverage *only* for the liability requirements.]

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of §§ 264.147 or 265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of §§ 264.147 or 265.147 are used.]

ALTERNATIVE I

1. Amount of annual aggregate liability coverage to be demonstrated	$————
*2. Current assets	$————
*3. Current liabilities	$————
4. Net working capital (line 2 minus line 3)	$————
*5. Tangible net worth	$————
*6. If less than 90% of assets are located in the U.S., give total U.S. assets	$————

	YES	NO
7. Is line 5 at least $10 million?	——	——
8. Is line 4 at least 6 times line 1?	——	——
9. Is line 5 at least 6 times line 1?	——	——
*10. Are at least 90% of assets located in the U.S.? If not, complete line 11.	——	——
11. Is line 6 at least 6 times line 1?	——	——

ALTERNATIVE II

1. Amount of annual aggregate liability coverage to be demonstrated	$————
2. Current bond rating of most recent issuance and name of rating service	$————
3. Date of issuance of bond	$————
4. Date of maturity of bond	$————
*5. Tangible net worth	$————
*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.)	$————

	YES	NO
7. Is line 5 at least $10 million?	——	——
8. Is line 5 at least 6 times line 1?	——	——
*9. Are at least 90% of assets located in the U.S.? If not, complete line 10.	——	——
10. Is line 6 at least 6 times line 1?	——	——

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage *and* closure or post-closure care.]

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(i) of §§ 264.143 or 264.145 and (f)(1)(i) of § 264.147 are used or if the criteria of paragraphs (e)(1)(i) of §§ 265.143 or 265.145 and (f)(1)(i) of § 265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(ii) of §§ 264.143 or 264.145 and (f)(1)(ii) of § 264.147 are used or if the criteria of paragraphs (e)(1)(ii) of §§ 265.143 or 265.145 and (f)(1)(ii) of § 265.147 are used.]

ALTERNATIVE I

1. Sum of current closure and post-closure cost estimates (total of *all* cost estimates listed above)	$————
2. Amount of annual aggregate liability coverage to be demonstrated	$————
3. Sum of lines 1 and 2	$————
*4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6)	$————

ALTERNATIVE I—Continued

*5. Tangible net worth	$————
*6. Net worth	$————
*7. Current assets	$————
*8. Current liabilities	$————
9. Net working capital (line 7 minus line 8)	$————
*10. The sum of net income plus depreciation, depletion, and amortization	$————
*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.)	$————

	YES	NO
12. Is line 5 at least $10 million?	——	——
13. Is line 5 at least 6 times line 3?	——	——
14. Is line 9 at least 6 times line 3?	——	——
*15. Are at least 90% of assets located in the U.S.? If not, complete line 16	——	——
16. Is line 11 at least 6 times line 3?	——	——
17. Is line 4 divided by line 6 less than 2.0?	——	——
18. Is line 10 divided by line 4 greater than 0.1?	——	——
19. Is line 7 divided by line 8 greater than 1.5?	——	——

ALTERNATIVE II

1. Sum or current closure and post-closure cost estimates (total of *all* cost estimates listed above)	$————
2. Amount of annual aggregate liability coverage to be demonstrated	$————
3. Sum of lines 1 and 2	$————
4. Current bond rating of most recent issuance and name of rating service	$————
5. Date of issuance of bond	$————
6. Date of maturity of bond	$————
*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line)	$————
*8 Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.)	$————

	YES	NO
9. Is line 7 at least $10 million?	——	——
10. Is line 7 at least 6 times line 3?	——	——
*11. Are at least 90% of assets located in the U.S.? If not, complete line 12	——	——
12. Is line 8 at least 6 times line 3?	——	——

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(g) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

* * * * *

(i) A hazardous waste facility liability endorsement as required in §§ 264.147 or 265.147 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Liability Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under 40 CFR 264.147 or 265.147. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 40 CFR 264.147(f) or 265.147(f).

(c) Whenever requested by a Regional Administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the Regional Administrator a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer or the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located.

Attached to and forming part of policy No. ——— issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this — day of ———, 19—. The effective date of said policy is — day of ———, 19—.

I hereby certify that the wording of this endorsement is identical to the wording specified in 40 CFR 264.151(i) as such regulation was constituted on the date first above written, and that the Insurer is

licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer]
[Type name]
[Title], Authorized Representive of [name of Insurer]
[Address of Representative]

(j) A certificate of liability insurance as required in §§ 264.147 or 265.147 must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Certificate of Liability Insurance

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under 40 CFR 264.147 or 265.147. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number ———, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 40 CFR 264.147(f) or 265.147(f).

(c) Whenever requested by a Regional Administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the Regional Administrator a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer or the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located.

I hereby certify that the wording of this instrument is identical to the wording specified in 40 CFR 264.151(j) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Subpart H—Financial Requirements

a. Section 265.141 is revised to read as follows:

§ 265.141 Definitions of terms as used in this subpart.

(a) "Closure plan" means the plan for closure prepared in accordance with the requirements of § 265.112.

(b) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with §§ 265.142 (a), (b), and (c).

(c) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with §§ 265.144 (a), (b), and (c).

(d) "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) "Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of §§ 265.117–265.120.

(f) The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Independently audited' refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(g) In the liability insurance requirements the terms "bodily injury" and "property damage" shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practice, are excluded from coverage in liability policies for bodily injury and property damage. The Agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Nonsudden accidental occurrence" means an occurrence which takes place over time and involves continuous or repeated exposure.

"Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

b. Section 265.147 is revised to read as follows:

§ 265.147 Liability requirements.

(a) *Coverage for sudden accidental occurrences.* By the effective date of these regulations, an owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated in one of three ways, as specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in § 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in § 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Regional Administrator, or Regional Administrator if the facilities are located in more than one Region. If requested by a Regional Administrator, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in paragraph (f) of this section.

(3) An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance as these mechanisms are specified in this section. The amounts of coverage demonstrated must total at least the minimum amounts required by this paragraph.

(b) *Coverage for nonsudden accidental occurrences.* An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily damage and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. This liability coverage may be demonstrated in one of three ways, as specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in § 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in § 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Regional Administrator, or Regional Administrators if the facilities are located in more than one Region. If requested by a Regional Administrator, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in paragraph (f) of this section.

(3) An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance as these mechanisms are specified in this section. The amounts of coverage must total at least the minimum amounts required by this paragraph.

(4) The required liability coverage for nonsudden accidental occurrences must be demonstrated by the dates listed below. The total sales or revenues of the owner or operator in all lines of business, in the fiscal year preceding the effective date of these regulations, will determine which of the dates applies. If the owner and operator of a facility are two different parties, or if there is more than one owner or operator, the sales or revenues of the owner or operator with the largest sales or revenues will determine the date by which the coverage must be demonstrated. The dates are as follows:

(i) For an owner or operator with sales or revenues totalling $10 million or more, 6 months after the effective date of these regulations.

(ii) For an owner or operator with sales or revenues greater than $5 million but less than $10 million, 18 months after the effective date of these regulations.

(iii) All other owners or operators, 30 months after the effective date of these regulations.

(5) By the date 6 months after the effective date of these regulations an owner or operator who is within either of the last two categories (paragraphs (b)(4)(ii) or (b)(4)(iii) of this section) must, unless he has demonstrated liability coverage for nonsudden accidental occurrences, send a letter to the Regional Administrator stating the date by which he plans to establish such coverage.

(c) *Request for variance.* If an owner or operator can demonstrate to the satisfaction of the Regional Administrator that the levels of financial responsibility required by paragraphs (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the Regional Administrator. The request for a variance must be submitted in writing to the Regional Administrator. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Regional Administrator's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Regional Administrator may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Regional Administrator to determine a level of financial responsibility other than that required by paragraphs (a) or (b) of this section. The Regional Administrator will process a variance request as if it were a permit modification request under

§ 122.15(a)(7)(iii) of this Chapter and subject to the procedures of § 124.5 of this Chapter. Notwithstanding any other provision, the Regional Administrator may hold a public hearing at his discretion or whenever he finds, on the basis of requests for a public hearing, a significant degree of pubic interest in a tentative decision to grant a variance.

(d) *Adjustments by the Regional Administrator.* If the Regional Administrator determines that the levels of financial responsibility required by paragraphs (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Regional Administrator may adjust the level of financial responsibility required under paragraphs (a) or (b) of this section as may be necessary to protect human health and the environment. This adjusted level will be based on the Regional Administrator's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Regional Administrator determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, he may require that an owner or operator of the facility comply with paragraph (b) of this section. An owner or operator must furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator requests to determine whether cause exists for such adjustments of level or type of coverage. The Regional Administrator will process an adjustment of the level of required coverage as if it were a permit modification under § 122.15(a)(7)(iii) of this Chapter and subject to the procedures of § 124.5 of this Chapter. Notwithstanding any other provision, the Regional Administrator may hold a public hearing at his discretion or whenever he finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to adjust the level or type of required coverage.

(e) *Period of coverage.* An owner or operator must continuously provide liability coverage for a facility as required by this section until certifications of closure of the facility, as specified in § 265.115, are received by the Regional Administrator.

(f) *Financial test for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1)(i) or (f)(1)(ii):

(i) The owner or operator must have:

(A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(B) Tangible net worth of at least $10 million; and

(C) Assets in the United States amounting to either: (*1*) At least 90 percent of his total assets; or (*2*) at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least $10 million; and

(C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(D) Assets in the United States amounting to either: (*1*) at least 90 percent of his total assets; or (*2*) at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in paragraph (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under paragraphs (a) and (b) of this section.

(3) To demonstrate that he meets this test, the owner or operator must submit the following three items to the Regional Administrator:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by §§ 264.143(f), 264.145(f), 265.143(e), and 265.145(e), *and* liability coverage, he must submit the letter specified in § 264.151(g) to cover both forms of financial responsibility; a separate letter as specified in § 264.151(f) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in paragraph (f)(3) of this section if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Regional Administrator of each Region in which the owner's or operator's facilities to be covered by the financial test are located. This letter from the chief financial officer must:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, the amount of liability coverage and, when applicable, current closure and post-closure cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in paragraph (f)(3) of this section; and

(vi) Certify that the year-end financial statements of the owner-or operator for such fiscal year will be audited by an independent certified public accountant.

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain

insurance for the entire amount of required liability coverage as specified in this section. Evidence of insurance must be submitted to the Regional Administrator within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The Regional Administrator may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (f)(3)(ii) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Regional Administrator will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in this section within 30 days after notification of disallowance.

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for Part 123 reads as follows:

Authority: Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300 (f) *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. In § 123.129, paragraph (a) is amended by designating existing paragraph (a) as (a)(1) and adding new paragraphs (a)(2) and (a)(3) to read as follows:

§ 123.129 Additional program requirements for interim authorization for phase II.

(a)(1) * * *

(2) The Administrator may authorize a State program for Phase II Components A or B, or both, even though the State program does not include liability coverage requirements, if (i) the State submitted a draft application for the component or components of Phase II interim authorization to EPA prior to [insert date of publication in the **Federal Register**], and (ii) the State commits in its Memorandum of Agreement to adopt State liability coverage requirements as quickly as practicable, but in no case later than the State's application for an additional component of Phase II interim authorization.

(3) Any State which receives interim authorization for Components A or B or both without liability coverage requirements, pursuant to paragraph (a)(2) of this section, may not receive an additional component of Phase II interim authorization unless it has liability coverage requirements in effect.

* * * * *

[FR Doc. 82-10431 Filed 4-15-82; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
April 16, 1982

Part VII

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Lead-Acid Battery Manufacture

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 1718-2]

Standards of Performance for New Stationary Sources; Lead-Acid Battery Manufacture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes standards of performance which limit atmospheric emissions of lead from new, modified, and reconstructed facilities at lead-acid battery plants. The standards implement Section 111 of the Clean Air Act, and are based on the Administrator's determination that lead-acid battery manufacturing facilities contribute significantly to air pollution, which may reasonably be anticipated to endanger public health or welfare. The intended effect of this regulation is to require new, modified, and reconstructed lead-acid battery manufacturing facilities to control lead emissions within the specified limits, which can be achieved through the use of the best demonstrated system of continuous emission reduction. A new reference method for determining compliance with lead standards is also promulgated.

EFFECTIVE DATE: April 16, 1982.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES:

Background Information Document. The Background Information Document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Lead-Acid Battery Manufacture, Background Information for Promulgated Standards," EPA-450/3-79-028b.

Docket. Docket No. OAQPS-79-1, containing supporting information used in developing the promulgated standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. A reaonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene W. Smith, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5624.

SUPPLEMENTARY INFORMATION:

The Standards

The promulgated standards will limit atmospheric lead emissions from new, modified, or reconstructed facilities at any lead-acid battery manufacturing plant which has the design capacity to produce in one day batteries which would contain, in total, an amount of lead equal to or greater than 5.9 Mg (6.5 tons). The facilities which are affected by the standards and the emission limits for these facilities are listed below:

Facility	Lead emission limit
Lead oxide production	5.0 mg/kg (0.010 lb/ton).
Grid casting	0.40 mg/dscm (0.00018 gr/dscf).
Paste mixing	1.00 mg/dscm (0.00044 gr/dscf).
Three-process operation	1.00 mg/dscm (0.00044 gr/dscf).
Lead reclamation	4.50 mg/dscm (0.00196 gr/dscf).
Other lead emitting operations.	1.00 mg/dscm (0.00044 gr/dscf).

The emission limit for lead oxide production is expressed in terms of lead emissions per kilogram of lead processed, while the limits for other facilities are expressed in terms of lead concentrations in exhaust air.

A standard of 0 percent opacity is promulgated for emissions from lead oxide production, grid casting, paste mixing, three process operation, and "other lead-emitting" facilities. A standard of 5 percent opacity is promulgated for lead reclamation facilities. The promulgated standards also require continuous monitoring of the pressure drop across any scrubber used to control emissions from an affected facility to help insure proper operation of the scrubber. Performance tests are required to determine compliance with the promulgated standards. A new reference method, Method 12, is to be used to measure the amount of lead in exhaust gases, and Method 9 is to be used to measure opacity. Process monitoring is required during all tests.

In the preamble to the proposed regulation, the decision by the Administrator not to propose standards for sulfuric acid mist emissions from the formation process was discussed. The public was specifically invited to submit comments with supporting data on this issue. Only one comment addressing this issue was received and, while the commenter suggested that acid mist emissions need EPA attention, no specific information was provided to refute the basis for the Administrator's decision not to regulate. Therefore, the Administrator does not plan to take any further action regarding acid mist emissions from lead-acid battery manufacture at this time. EPA is required to review new source performance standards four years from the date of promulgation, and if appropriate, revise them. The decision not to regulate acid mist emissions may be reconsidered at that time.

Summary of Environmental, Energy, and Economic Impacts

There are approximately 190 lead-acid battery manufacturing plants in the United States, of which about 100 have been estimated to have capacities above the small size cutoff. These plants are scattered throughout the country and are generally located in urban areas near the market for their batteries. Projections of the growth rate of the lead-acid battery manufacturing industry range from 3 to 5 percent per year over the next 5 years. Most of the projected increase in manufacturing capacity is expected to take place by the expansion of large plants (producing over 2000 batteries per day).

In general, States do not currently regulate atmospheric lead emissions from lead-acid battery plants. However, State implementation plan (SIP) particulate regulations generally require some control of these emissions. The average degree of control required by SIP regulations was used as a baseline for the assessment of the environmental and economic impacts of the new source performance standards for lead-acid battery manufacture. At some existing plants, emissions are controlled to a greater extent than is required by typical State particulate regulations. In addition, States are developing implementation plans to insure the attainment and maintenance of the national ambient air quality standard (NAAQS) for lead, which was promulgated in December 1977 (42 FR 63076). The State implementation plans for lead are expected to include regulations which will require more control of atmospheric lead emissions

than is currently required under typical State particulate regulations.

New facilities and facilities undergoing modification and reconstruction in the United States over the next 5 years would emit about 95 Mg (104 tons) of lead to the atmosphere in the fifth year, if their emissions were controlled only to the extent required by current State particulate regulations. The promulgated standards will reduce potential lead emissions from new, modified, and reconstructed facilities to about 3.1 Mg (3.4 tons) in the fifth year. The promulgated standards will also result in decreased nonlead particulate emissions from affected facilities, since equipment installed for the purpose of controlling lead-bearing particulate emissions will also control nonlead-bearing particulate emissions.

For a new or completely reconstructed plant using impingement scrubbing to control lead emissions from the grid casting and lead reclamation facilities and fabric filtration to control emissions from all other affected facilities, the fractional increase in the lead content of plant wastewater attributable to the standards will be about 0.6 percent. It is anticipated that, in early 1981, EPA's Office of Water and Waste Management will propose a regulation which would require zero lead discharge in the wastewater from grid casting and lead reclamation facilities. In order to achieve zero discharge from these facilities, scrubber effluent would have to be clarified and recycled. Although not directly attributable to the promulgated NSPS for air emissions, the costs of clarifying and recycling blowdown from scrubbers controlling grid casting and lead reclamation emissions has been considered in the development of the promulgated NSPS. The annualized cost of controlling water emissions from grid casting and lead reclamation facility scrubbers would be less than 1 percent of the costs attributable to the promulgated standards for a completely modified or reconstructed 2000 battery-per-day plant. The promulgated NSPS will not have a significant impact on emissions of solid waste.

The energy needed to operate control equipment required to meet the promulgated standards at a new plant will be approximately 2.7 percent of the total energy needed to run the plant. The incremental energy demand resulting from the application of the promulgated standards to new, modified, and reconstructed facilities over the next five years will be about 2.8 gigawatt hours of electricity in the fifth year. The fifth-year increase in demand for heat energy resulting from the promulgated standards will be about 50 PJ/yr (48×10^9 BTU/yr), or the equivalent of about 8.1 thousand barrels of oil per year.

The capital cost of the installed emission control equipment necessary to meet the promulgated standards on all new, modified, and reconstructed facilities during the first five years of the standards will be approximately $8.2 million. The total annualized cost of operating this equipment in the fifth year of the standards will be about $3.9 million.

These costs and energy and environmental impacts are considered reasonable, and are not expected to prevent or hinder expansion on the lead-acid battery manufacturing industry. Economic analysis indicates that, for plants with capacities larger than the small size cutoff, the costs attributable to the standards can be passed on with little effect on sales. The average incremental cost associated with the promulgated standards will be about 30¢ per battery. This is about 1.6 percent of the wholesale price of a battery.

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards recommended for proposal. This meeting was held September 27–28, 1977. The meeting was open to the public and each attendee was given ample opportunity to comment on the standards recommended for proposal. The standards were proposed in the **Federal Register** on January 14, 1980 (45 FR 2790). Public comments were solicited at that time and, when requested, copies of the Background Information Document (BID) were distributed to interested parties. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on February 13, 1980, at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given an opportunity to comment on the proposed standards. The public comment period extended from January 14, 1980 to March 14, 1980.

Twenty-one comment letters were received on the proposed standards of performance. These comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the standards which were proposed.

Significant Comments and Changes to the Proposed Regulation

Comments on the proposed standards were received from industry representatives, State air pollution control agencies, and two Federal agencies. Detailed discussion of these comments can be found in Volume II of the Background Information Document (BID). The major comments can be combined into the following areas: general, emission control technology, economic impact, legal considerations, test methods and monitoring, reporting and recordkeeping, and other considerations.

General

Facilities at any plant with a production capacity of less than 500 batteries per day (bpd) were exempted under the proposed standards. Some commenters felt that the number of batteries which can be produced at a plant was not the appropriate criterion on which to base the size cutoff. It was pointed out that lead-acid batteries are produced in a variety of sizes, and that emissions from battery production are probably related more to the amount of lead used to produce batteries than to the number of batteries produced.

These are considered to be reasonable comments. Economic impacts of standards as well as emissions are expected to be related to the amount of lead used in a particular battery production operation rather than to the number of batteries produced. At the time of proposal, it was estimated that odd-sized lead-acid batteries represented a very small share of the lead-acid battery market; however, the comments received on the proposed standards indicated that a significant number of odd-sized batteries are produced. Industrial lead-acid batteries, which can be as much as 50 times larger than automobile batteries, are estimated to represent about 7 percent of total U.S. lead-acid battery production.

Therefore, the small size cutoff for the promulgated regulation is expressed in terms of lead throughput. The promulgated standards will affect new, modified, and reconstructed facilities at any plant with the capacity to produce in one day batteries which would contain, in total, an amount of lead greater than or equal to 5.9 Mg (6.5 tons). This cutoff is equivalent to the 500 bpd cutoff for plants producing typical automobile batteries. The level is based on an average battery lead content of 11.8 kg (26 lb) of lead per battery.

One commenter questioned whether plant capacity is to be determined based

on the maximum demonstrated production rate or the estimated maximum production rate, for the purposes of the small size cutoff.

For the purposes of the small size cutoff, the parameter to be used to determine the production capacity of a plant is its design capacity. The design capacity is the maximum production capability of the plant and can be determined using the design specifications of the plant's component facililties, taking into account the facility with the smallest rated production capacity. The design capacity of a plant can be confirmed by checking production records. The figure cited as a plant's production capacity should not be less than the maximum production rate in the plant's records.

Several commenters felt that the 500 bpd cutoff should be raised to 2000 bpd. This contention was based on the fact that the Federal regulations which set minimum standards for State implementation plans (SIPs) for the lead national ambient air quality standard do not require ambient air quality monitoring or atmospheric dispersion analyses for plants smaller than 2000 bpd [40 CFR 51.80(a)(1) and 51.84(a)]. The commenters considered these cutoffs to be indicative of a decision by EPA that battery plants smaller than 2000 bpd are not material contributors to lead air pollution.

It should be noted that the Federal regulations to which the commenters referred only set minimum standards for a lead SIP. Also, as discussed in the Legal Considerations section of this preamble, the regulatory approach for NAAQS regulations promulgated under Section 109 of the Clean Air Act differs from that for standards of performance promulgated under Section 111 of the Act. The small size cutoff for the standards of performance for lead-acid battery manufacture is based on a thorough analysis of the economic impacts of these standards. The analysis indicated that the economic impact of standards on plants smaller than about 250 bpd could be severe, but showed that the economic impact would be reasonable for plants with capacities greater than or equal to 500 bpd. None of the commenters submitted information indicating that the ecomomic impact of standards might be severe for plants in the 500 to 2000 bpd size range. Therefore, although the small size cutoff is now expressed in terms of lead throughput rather than battery production, the level of the cutoff remains at the lead throughput capacity which corresponds to a production capacity of 500 bpd.

Several commenters contended that the proposal of a 0 percent opacity standard for all affected facilities was impractical. These commenters were concerned that emissions from facilities which emit fine particles would exceed 0 percent opacity. Also, some were concerned that emissions from facilities controlled by fabric filters would exceed 0 percent opacity during fabric filter cleaning. However, one commenter stated that the 0 percent opacity standard appears achievable for all affected facilities.

The 0 percent opacity standard for lead oxide manufacturing, grid casting, paste mixing, three-process operation and "other lead-emitting" facilities is considered reasonable. Lead oxide manufacturing, grid casting, paste mixing, and three-process operation facilities were observed by EPA to have emissions with 0 percent opacity for periods of 3 hours and 19 minutes, 7 hours and 16 minutes, 1 hour and 30 minutes, and 3 hours and 51 minutes, respectively. Under the promulgated standards, compliance with the opacity standard is to be determined by taking the average opacity over a 6-minute period, according to EPA Test Method 9, and rounding the average to the nearest whole percentage. The rounding procedure is specified in order to allow occasional brief emissions with opacities greater than 0 percent, which may occur during fabric filter cleaning. For grid casting, the observations were made at a facility controlled by an impingement scrubber. For lead oxide production and three-process operation facilities, the observation periods included fabric filter cleaning phases.

The opacity standard for lead reclamation has been changed to 5 percent in the promulgated standards. A standard of 0 percent opacity was originally proposed for lead reclamation, although emissions with opacities greater than 0 percent were observed from the facility tested by EPA. The 0 percent opacity standard was considered reasonable, because the facility tested by EPA was controlled by an impingement scrubber and the proposed emission limit for lead reclamation was based on transfer of fabric filtration technology. As noted in the CONTROL TECHNOLOGY discussion, the final emission limit for lead reclamation is based on the demonstrated emission reduction capabilities of the impingement scrubber on the facility tested by EPA. The final opacity standard of 5 percent is based on observations at this facility. Emissions from this facility were observed for 3 hours and 22 minutes. The highest 6-minute average opacity during the 3 hour 22 minute observation period was 4.8 percent. Therefore, the 5 percent opacity standard for lead reclamation is considered achievable.

Under the general provisions applicable to all new source performance standards, the operator of an affected facility may request the Administrator to determine the opacity of emissions from the affected facility during the initial performance test (40 CFR 60.11). If the Administrator finds that the affected facility is in compliance with the applicable standards for which performance tests are conducted, but fails to meet an applicable opacity standard, the operator of the facility may petition the Administrator to make an appropriate adjustment to the opacity standard for the facility.

Some commenters stated that EPA should establish a relationship between opacity and emissions before setting opacity standards.

Opacity limits are being promulgated in addition to mass emission limits because the Administrator believes that opacity limits provide the most effective and practical method for determining whether emission control equipment, necessary for a source to meet the mass emission limits, is continuously maintained and operated properly. It has not been the Administrator's position that a single, constantly invariant and precise correlation between opacity and mass emissions must be identified for each source under all conditions of operation. Such a correlation is unnecessary to the opacity standard, because the opacity standard is set at a level such that if the opacity standard is exceeded for a particular facility, one would expect that the applicable emission limitation will also be exceeded. Furthermore, as noted above, a mechanism is provided in the general provisions whereby the operator of a facility can request that a separate opacity standard be set for that facility if, during the initial performance test, the Administrator finds that the facility is in compliance with all other applicable standards but fails to meet the respective opacity standard.

One commenter felt that additional testing should be conducted before standards are promulgated. The commenter contended that the EPA data base is narrow, and that tests should be conducted to determine the variability of the efficiency of emission control devices.

The Administrator has determined that the data base developed by EPA provides adequate support for the

promulgated new source performance standards. The promulgated standards are based on tests of a total of eight facilities which have been determined by EPA to be well controlled and typical of facilities used in the industry. As noted by some commenters, EPA has not tested emissions from facilities producing maintenance-free or low-maintenance batteries or Barton lead oxide production facilities. Differences between such facilities and the facilities tested by EPA are discussed in detail below and in the Emission Control Technology section. These differences are not expected to have a significant effect on the controlled lead concentrations achievable using the emission control techniques tested by EPA. Commenters did not refer to nor is EPA aware of any other specific process variations which might influence emissions. The Agency has set the promulgated lead emission limits above the levels achieved in the EPA tests to allow solely for variations caused by factors that the Agency cannot identify at this time.

Some commenters stated that changes have occurred in the lead-acid battery manufacturing industry, which may influence emissions, since the EPA tests were conducted. The changes cited by the commenters were the production of maintenance-free and low-maintenance batteries, and the increasing of volumes of air ventilated from facilities in order to meet more stringent OSHA standards regulating in-plant lead levels.

The commenters briefly described the difference between maintenance-free or low-maintenance batteries and normal-maintenance batteries. The only substantial difference is that a calcium-lead alloy is used to make low-maintenance and maintenance-free batteries, while standard batteries are made using an antimonial lead alloy. This difference influences the grid casting and lead reclamation facilities, where molten lead is processed. The major change is in the makeup of the dross which must be removed from molten lead in these facilities. For grid casting, the calcium alloy also requires the use of soot as a mold release agent. For the antimonial lead alloy used in standard batteries, either soot or sodium silicate can be used.

The different makeup of dross in grid casting and lead reclamation facilities producing maintenance-free and low-maintenance batteries is not expected by EPA to cause noticeable differences in lead emissions between these facilities and facilities producing standard lead-acid batteries. The commenters did not give reasons why this difference might be expected to affect emissions and EPA is not aware of any. Dross consists of contaminants in the molten lead alloy which float to the surface and must periodically be removed. The presence of a dross layer has an impact on emissions, in that the dross layer serves to reduce fuming from the molten lead. However, this will occur regardless of the composition of the dross layer. Also, because the dross layer is made up chiefly of contaminants from the lead, the entrainment of dross particles in air exhausted from grid casting or lead reclamation facilities will not significiantly affect lead emissions. Thus, the effect of the dross layer composition on emissions is expected to be much less than the effects of process operation parameters, such as the frequency of dross removal and the temperature of the molten lead alloy.

The use of soot rather than sodium silicate as a mold release agent in grid casting will not affect uncontrolled lead emissions from this facility. However, the presence of entrained soot in uncontrolled grid casting emissions may require the use of scrubbers rather than fabric filters to control these emissions. This problem is discussed in detail in the EMISSION CONTROL TECHNOLOGY section.

The commenters stated that exhaust volumes for lead-acid battery facilities have been increased as a result of the revised OSHA standards. One commenter contended that this change will increase the concentration of uncontrolled emissions.

It is acknowledged that the exhaust volumes at the facilities tested by EPA may not have been sufficient for attainment of the 50 $\mu g/m^3$ OSHA in-plant lead concentration standard. At the time of the tests conducted by EPA the OSHA standard was 200 $\mu g/m^3$. Among the practices that plants can employ to meet the new standard are general plant maintenance, employee care, and local ventilation of in-plant lead emission sources. EPA recognizes that if ventilation rates significantly higher than those used at the facilities tested by EPA are used to meet the new OSHA standard, additional lead particles will be drawn into the exhaust streams. However, the exhaust volume increase will be greater than the lead weight increase by a margin sufficient not only to prevent an increase in the lead concentration in the exhaust, but actually to decrease that concentration. Also, the additional lead particles captured as a result of the higher exhaust volumes will consist mainly of large particles which are readily captured by control systems.

One commenter stated that there is a trend in the lead-acid battery manufacturing industry to the use of finer lead oxide in battery pastes in order to increase battery efficiency. The commenter also contended that this particle size change will influence the collection efficiency attainable with fabric filters.

Lead emissions from lead-acid battery manufacture are generated by two mechanisms. Lead oxide fumes are produced in welding, casting, and reclaiming operations, and to a certain extent in lead oxide production. Agglomerates of lead and lead oxide particles are emitted from operations involving the handling of lead oxide, lead oxide paste, and lead grids. The particles which are most difficult to capture are the fume particles. The emission rate and characteristics of the fume particles are not dependent on the size of the lead oxide particles used in battery pastes, but on the temperature of the lead during the operations from which they are emitted. For these reasons, trends in the industry to the use of smaller lead oxide particles are not expected to change the particle size distributions of emissions in such a way that collector performance will be affected.

Emission Control Technology

Some commenters thought that the proposed standards would have required the use of fabric filtration to control emissions.

The proposed standards would not have required that specific control technology be used for any affected facility, nor will the promulgated standards require specific control techniques. Rather, the standards set emissions limits which have been demonstrated to be achievable by the use of the best control systems considering costs, energy impacts, and nonair quality environmental impacts. The standards do not preclude the use of alternative control techniques, as long as the emissions limits are achieved.

The selection of fabric filtration as the best system of emission reduction for grid casting and lead reclamation facilities was criticized by a number of commenters. These facilities are normally uncontrolled or controlled by impingement scrubbers at existing plants. The commenters pointed out that only one grid casting facility in the United States is controlled by a fabric filtration system and that this system has been plagued by fires. They explained that the surfaces of exhaust ducts for grid casting and lead reclamation operations become coated

with hydrocarbons and other flammable materials. For grid casting, these include bits of cork from the molds, oils used for lubrication, and soot, which is often used as a mold release agent. For lead reclamation, hydrocarbons from plastic and other contaminants charged with lead scrap become entrained in exhaust gases and deposit on the walls of exhaust ducts. These materials are readily ignited by sparks which, the commenters contended, are unavoidable.

The commenters stated that fires started in the exhaust ducts will generally propagate to the control system. One commenter indicated that problems caused by such fires are not generally severe for scrubbers, but fires would cause serious damage and emissions excursions if fabric filters were used. The commenters stated that spark arresters would not solve the fire problem, because they too would become coated with flammable materials which would be ignited by sparks.

Apart from the problem of fires, commenters contended that contaminants present in the exhaust gases from grid casting and lead reclamation would cause frequent bag blinding if fabric filters were applied to these facilities. In addition to the materials listed above, sodium silicate, which is often used as a mold release agent for grid casting, was cited by the commenters as an extremely hygroscopic compound which would cause bag blinding. Commenters also felt that the EPA particle size and emissions test data did not support the contention made by EPA that a fabric filter could achieve 99 percent emission reduction for emissions from grid casting and lead reclamation.

The standards for grid casting and lead reclamation have been changed. Based on the information available when standards for lead-acid battery manufacture were proposed, EPA had concluded that fabric filtration could be used to control emissions from grid casting and lead reclamation, and that 99 percent collection efficiency could be attained. The proposed standards for grid casting and lead reclamation were based on tests of uncontrolled emissions from these facilities, and on fabric filter efficiencies demonstrated for the three-process operations facility and for other industries with emissions of similar character to those from lead-acid battery manufacture. The problem of bag blinding can be avoided by keeping the exhaust gases from these facilities at temperatures above their dew points. Also, it was thought that exhaust duct fires could be prevented by the use of spark arresters. In light of the point made by commenters that spark arresters would not prevent fires, EPA has concluded that the standards for grid casting and lead reclamation facilities should not be based on fabric filters.

The proposed emission limitations for grid casting and lead reclamation might be achieved using a high energy scrubber such as a venturi; however, because of the particle size of emissions from these facilities, a scrubber pressure drop of about 7.5 kPa (30 in. W.G.) would be required. The energy requirement to overcome this pressure drop is not considered reasonable for these facilities. The emissions limits for paste mixing, three-process operation, and other lead-emitting facilities are based on the application of fabric filters with average pressure drops of about 1.25 kPa (5 in. W.G.). Thus, the electricity requirement per unit volume of exhaust gas to operate venturi scrubbers for the grid casting and lead reclamation facilities would be roughly six times the electricity requirement per unit volume to control other plant exhausts. It is estimated that standards based on the application of impingement scrubbers rather than venturi scrubbers to grid casting and lead reclamation facilities will result in a 50 percent decrease in the total electricity necessary to comply with the NSPS while having only a slight effect on the emissions reduction attributable to the NSPS (from 97 percent reduction to 96.7 percent reduction from a typical new plant).

The Administrator has therefore determined that for the lead-acid battery manufacturing industry, impingement scrubbers operating at a pressure drop of about 1.25 kPa (5 in. W.G.) represent the best system of emission reduction considering costs, nonair quality health and environmental impact and energy requirements for grid casting and lead reclamation. Therefore, in the promulgated standards, the emissions limitations for grid casting and lead reclamation have been raised to levels which have been shown to be achievable in tests of impingement scrubbers controlling these facilities. This change represents a change from the regulatory alternative chosen for the proposed standards. The environmental, economic, and energy impacts of the alternative which has been chosen for the promulgated standards are discussed in both Volumes I and II of the BID.

EPA measured lead emissions from two grid casting facilities. One of these facilities was uncontrolled, and the other was controlled by an impingement scrubber. Average uncontrolled and controlled lead emissions from the scrubber controlled facility were 2.65 mg/dscm (11.6×10^{-4} gr/dscf) and 0.32 mg/dscm (1.4×10^{-4} gr/dscf), respectively. The promulgated standard for grid casting, 0.4 mg/dscm (1.76×10^{-4} gr/dscf), is based on the controlled lead emission rate for this facility. The facility is considered typical of grid casting facilities used in the lead-acid battery manufacturing industry. EPA is not aware of any process variations which would result in a significant increase in the emission concentration achievable using a scrubber control system. The Agency has set the promulgated lead emission limit above the level achieved in the EPA test to allow solely for variations caused by factors that the Agency cannot identify at this time.

Lead reclamation emissions were measured by EPA for a facility controlled by an impingement scrubber. Average lead concentrations in the inlet and outlet streams from the scrubber were 227 mg/dscm (990×10^{-4} gr/dscf) and 3.7 mg/dscm (16×10^{-4} gr/dscf). The standard for lead reclamation, 4.5 mg/dscm (19.8×10^{-4} gr/dscf), is based on the controlled emission rate measured for this facility. This facility is considered typical of lead reclamation facilities used in the lead-acid battery manufacturing industry. EPA is not aware of any process variations which would result in a significant increase in the emission concentration achievable using a scrubber control system. The Agency has set the promulgated lead emission limit above the level achieved in the EPA test to allow solely for variations caused by factors that the Agency cannot identify at this time.

Several commenters criticized the choice of fabric filtration as the best system of emission reduction for the entire paste mixing cycle. The paste mixing operation is a batch operation consisting of two phases: charging and mixing. The paste mixing facility is generally controlled by impingement scrubbing, although fabric filtration is often used to control exhaust from the charging phase. The commenters felt that if fabric filtration were to be used for the entire cycle, the moisture present in the exhaust during the mixing phase would cause bag blinding. Therefore, they requested that the emission limit for paste mixing be raised to a level achievable using impingement scrubbers.

If fabric filters are used to meet the emission limit, bag blinding can be

prevented by keeping paste mixer exhausts at temperatures above their dew points. The energy which would be required to heat the exhaust gases and the costs for providing insulation for ducts and fabric filters applied to paste mixing facilities were taken into consideration in the energy and economic analyses for the new source performance standards. These costs and energy requirements are considered reasonable. In addition, data submitted by one commenter show that the standard for paste mixing is achievable using impingement scrubbers. Tests were conducted of emissions from two scrubber controlled paste mixing facilities, using methods similar to Method 12. These tests indicated average controlled lead emissions of 0.04 mg/dscm (1.09×10^{-4} gr/dscf) and 0.07 mg/dscm (0.30×10^{-4} gr/dscf) for the two facilities. Both of these average concentrations are well below the 1 mg/dscm (4.4×10^{-4} gr/dscf) standard for paste mixing.

Some commenters contended that EPA test data did not adequately support the statement that 99 percent collection efficiency could be achieved for paste mixing emissions using fabric filter filtration. The commenters stated that fabric cleaning periods should be included in the calculation of fabric filter efficiency.

The standard for paste mixing is considered achievable. Emissions from a paste mixing facility were tested by EPA. The average uncontrolled lead concentration from this facility was 77.4 mg/dscm (338×10^{-4} gr/dscf). Thus, the promulgated regulation is expected to require about 98.7 percent control of lead emissions from paste mixing. EPA tests of a fabric filtration system controlling a three-process operation showed an average lead collection efficiency of 99.3 percent. This fabric filtration system underwent bag cleaning during testing. EPA tests and statements made by several commenters indicate that the particle size distribution for paste mixing emissions is similar to that for three-process operation emissions. Emissions from paste mixing are made up of lead oxide agglomerates, while emissions from three-process operation facilities are made up mainly of agglomerates with some other large particles and some fumes. Because of the absence of fumes in paste mixing emissions, emission reductions greater than those demonstrated for the three-process operation facility may be achievable for paste mixing facilities. The above data show that efficiencies greater than 98.7 percent can be achieved for paste mixing emissions.

In addition, EPA tests of a controlled paste mixing facility indicate that the 1 mg/dscm standard for paste mixing is achievable. As noted earlier, paste mixing is a batch process which can be divided into a charging phase and a mixing phase. Emission concentrations are highest during the charging phase. EPA conducted tests of a facility where paste mixing emissions were controlled by two separate systems. At this plant, paste mixing required a total of 21 to 24 minutes per batch. During the charging phase (the first 14 to 16 minutes of a cycle) exhaust from the paste mixer was ducted to a fabric filter which also controlled emissions from the grid slitting (separating) operation. During the mixing phase (the remainder of the cycle), paste mixer exhaust was ducted to an impingement scrubber which also controlled emissions from the grid casting operation. Uncontrolled or controlled emissions for the paste mixer alone were not tested. The average concentration of lead in emissions from the fabric filtration system used to control charging emissions was 1.3 mg/dscm (5.5×10^{-4} gr/dscf). The average lead content of exhaust from the scrubber used to control mixing emissions was 0.25 mg/dscm (1.1×10^{-4} gr/dscf). The minimum time specified in the standard for a test run, 60 minutes (§ 60.374(b)), exceeds the duration of a mixing cycle. Thus, the emission concentration used to determine compliance with the paste mixing standard would be the average of the emission concentrations from charging and mixing. The average lead concentration in controlled emissions from the facility discussed above was about 0.95 mg/dscm (4.2×10^{-4} gr/dscf) which is slightly below the proposed emission limit of 1 mg/dscm (4.4×10^{-4} gr/dscf). A lower average emission concentration could be achieved by using fabric filtration, generally a more efficient control technique than impingement scrubbing, to control emissions from all phases of paste mixing.

Also, as noted earlier, one commenter submitted data showing that the standard for paste mixing is achievable using impingement scrubbing to control emissions from the entire cycle.

Several commenters criticized the fact that the standard for lead oxide production is based on tests conducted at a ball mill lead oxide production facility, but will apply to Barton lead oxide production facilities as well as ball mill facilities. Some commenters stated that the particle size of the oxide to be collected depends on the type of lead oxide produced. One commenter stated that Barton facilities are more commonly used to produce lead oxide than ball mill facilities.

In both the ball mill process and the Barton process, all of the lead oxide product must be removed from an air stream. In the ball mill process, lead pigs or balls are tumbled in a mill, and the frictional heat generated by the tumbling action causes the formation of lead oxide. The lead oxide is removed from the mill by an air stream. In the Barton process, molten lead is atomized to form small droplets in an air stream. These droplets are then oxidized by the air around them.

EPA tests on a Barton process indicated that Barton and ball mill processes have similar air flow rates per unit production rate. Because these air streams carry all of the lead oxide produced, the concentrations of lead oxide in the two streams must also be similar. Data submitted by one commenter indicate that the percentage of fine particles in lead oxide produced by the Barton process is similar to the percentage of fine particles in lead oxide produced by the ball mill process. The similarities between the concentrations and particle size distributions of the oxide bearing air streams in the Barton and ball mill processes support EPA's contention that a similar level of emission control could be achieved for a Barton process as has been demonstrated for the ball mill process. It should be noted that the Agency has set the promulgated lead emission limit above the level achieved in the EPA test to allow solely for variations caused by factors that the Agency cannot identify at this time.

Some commenters felt that the standard for lead oxide production was too stringent. One commenter stated that the emission rate calculated for a lead-oxide production facility controlled by a cyclone and a fabric filter in series is higher than the standard for lead oxide production.

The emission limit for lead oxide production of 5 milligrams of lead per kilogram of lead processed is considered achievable. The limit is based on the results of a test of emissions from a ball mill lead oxide production facility with a fabric filter control system, which showed an average controlled emission rate of 4.2 mg/kg (8.4 lb/ton) for this facility. The comments on the lead oxide standard were based on calculation and not on emission testing. No reason was given why the calculations might be more reliable than the EPA test data or why the EPA test might not be

representative of the emission level achievable for a well controlled lead oxide production facility.

Several commenters stated that the emission limit for the three-process operation was not supported by the BID for the proposed standards. However, one commenter stated that the emission limit appears achievable.

The limit for the three-process operation is based on the results of EPA tests conducted at four plants where fabric filtration was used to control three-process operation emissions. Each of the sets of tests conducted by EPA showed average controlled lead concentrations below the promulgated limit. The limit was set above the levels shown to be achievable in the four EPA tests to allow solely for variations caused by factors that the agency cannot identify at this time. Therefore, the lead emission limit for the three-process operation facility is considered achievable.

Economic Impact

One commenter contended that new source performance standards would impose a substantial and burdensome cost on the lead-acid battery manufacturing industry. Another stated that battery sales have fallen by 25 percent in recent years.

The economic impacts of new source performance standards on the lead-acid battery manufacturing industry are analyzed and described in detail in Volumes I and II of the BID. These impacts are summarized in the section of this preamble entitled "SUMMARY OF ENVIRONMENTAL, ENERGY, AND ECONOMIC IMPACTS." The projected economic impacts are considered reasonable. The expected annualized cost of compliance with the promulgated standards at a typical affected plant is expected to be about 1.6 percent of the wholesale price of a battery; and the economic impact analysis indicates that this cost could be passed on with little effect on sales.

The promulgated standards are new source performance standards and will only affect new, modified, and reconstructed facilities. Existing facilities are not covered by the standards. The 25 percent drop in sales cited by the second commenter results from the recent decline in the production of domestic automobiles. The low sales, if they continue, would reduce growth in the production capacity of the industry. Hence, the number of new, modified, and reconstructed facilities would be reduced. Since the standards will affect only these facilities, the low sales should not increase the economic impact of the standards on the industry as a whole or on individual plants.

Several commenters contended that the cost of compliance with OSHA standards was not adequately addressed in Volume I of the BID. The commenters also felt that the OSHA standards would require higher ventilation rates than are currently needed, and would thus cause the costs of compliance with new source performance standards to be higher than the estimates made by EPA.

The OSHA compliance costs presented in Volume I are based on the capital and operating cost of controls which were expected to be required to meet the employee exposure standards of 200 $\mu g/m^3$ originally proposed by OSHA in 1975. The controls include employee care, general plant maintenance, and local ventilation of in-plant lead emission sources. On November 14, 1978, OSHA promulgated an employee exposure standard of 50 $\mu g/m^3$. However, the controls necessary to comply with this standard are expected to be similar to those which would have been necessary for the originally proposed 200 $\mu g/m^3$ standard. In addition, the economic impact projected for the OSHA standards in Volume I may be higher than the actual economic impact, because, in a number of cases, work practices may be used to achieve the OSHA standard in place of technological controls.

In volume I of the BID, the statement is made that a change in the OSHA standards could cause the control costs for the new source performance standards to increase substantially. However, in light of data obtained in recent investigations and discussed in Volume II of the BID, it is not expected that the change in OSHA standards will have a significant effect on the results of the economic impact analysis for the NSPS. The facility exhaust rates used to project the economic impacts of the NSPS were not based on the exhaust rates of facilities tested by EPA but were set at levels which would provide good ventilation for the facilities under consideration. These exhaust rates are higher than those which were used at typical lead-acid battery plants before the change in the OSHA standard, and are thought to be sufficient for compliance with the 50 $\mu g/m^3$ OSHA standard.

Environmental Impact

A number of commenters contended that, because lead-acid battery manufacturer accounts for a small percentage of total nationwide lead emissions, new source performance standards should not be set for this source category. One commenter cited data which indicate that lead emissions from lead-acid battery manufacturer accounted for only about 0.32 percent of industrial lead emissions or about 0.014 percent of total nationwide lead emissions in 1975.

It is acknowledged that lead-acid battery plants account for a relatively small share of total nationwide atmospheric lead emissions. In 1975, about 95 percent of U.S. lead emissions resulted from the production of alkyl lead gasoline additive, the burning of leaded gasoline, and the disposal of crankcase oil from vehicles which burn leaded gasoline. These emissions will be reduced substantially as the use of alkyl lead gasoline additives is curtailed. Another 1 percent of nationwide lead emissions is from mining and smelting operations, which are generally located in remote areas. However, lead-acid battery plants are generally located in urban areas, near the markets for their batteries. Ambient lead levels are already high in many of these places, often exceeding the NAAQS for lead. In light of the dangerous levels of lead in the ambient air surrounding many of the projected sites for new, modified, and reconstructed facilities, the Agency believes that additional emissions from lead-acid battery manufacture are significant. As a result, lead emissions from aggregated lead-acid battery manufacture, though smaller than emissions from some of the other sources, do contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Therefore, the Administrator considers the development of new source performance standards for this industry to be justified.

Several commenters recommended that the grid casting facility be removed from the list of affected facilities. According to EPA estimates, grid casting accounts for about 3.2 percent of overall uncontrolled battery plant lead emissions. The commenters stated that it is unreasonable to require sources to control facilities generating such a small percentage of total plant emissions.

Lead-acid battery plants are major lead emitters, and EPA dispersion calculations show that the ambient lead standard could be exceeded in the area around a plant which controls emissions to the extent required to meet typical SIP particulate regulations. Grid casting, while accounting for only about 5 percent of emissions for a plant with such controls, can be controlled with lead reclamation by available technology at a cost which is similar to the cost of controlling larger sources in

the plant. Of the 30¢ per battery cost impact of the standards for a typical plant, approximately 4¢ per battery can be attributed to grid casting control. Therefore, grid casting emissions are regulated under the promulgated standards.

Legal Considerations

Several commenters stated that, because a national ambient air quality standard for lead has been established, new source performance standards regulating lead emissions would be redundant and unnecessary.

It should be noted that the purposes of standards of performance for new sources promulgated under Section 111 of the Clean Air Act differ from the purposes of national ambient air quality standards, which are promulgated under Section 109 of the Act. National ambient air quality standards establish ambient pollutant concentration target ceilings which are to be attained and maintained for the protection of the public health or welfare.

New source performance standards promulgated under Section 111 of the Clean Air Act are not designed to achieve any specific air quality levels. Congress clearly intended that new source performance standards regulate Section 108 pollutants in addition to other air pollutants, since a key purpose of Section 111 is to establish nationally applicable emission limits for new sources, thus preventing any state from attracting industry by adopting lenient environmental standards. Congress expressed a number of other reasons for requiring the setting of new source performance standards. Because the national ambient air quality standards create air quality ceilings which are not to be exceeded, new source performance standards enhance the potential for long term growth. Also, new source performance standards may help achieve long-term cost savings by avoiding the need for expensive retrofitting when pollution ceilings may be reduced in the future. Finally, the standard-setting process should create incentives for improved technology. Therefore, because the purposes of ambient air quality standards are different from the purposes of new source performance standards, promulgation of an NSPS to control emissions from lead-acid battery plants of a pollutant for which there exists an NAAQS is neither redundant nor unnecessary.

Test Methods and Monitoring

Reference Method 12—A number of commenters felt that Reference Method 12 was cumbersome and recommended the development of a simpler screening method. The commenters stated that a battery plant may have as many as two dozen stacks and that, at an average cost of $6000 per stack test, the cost of testing an entire plant could be extremely high.

Because controlled emission levels for most facilities are expected to be near the emission limits for facilities affected by the regulation, a screening method less accurate than Method 12 would generally not be suitable for determining compliance with the lead-acid battery manufacture regulation. The cost of compliance testing using Method 12 was discussed in the BID for the proposed standards and is considered reasonable. For plants where a number of stacks must be tested, the per plant costs of conducting performance tests using Method 12 are not expected to be as high as the commenters anticipated. Although existing plants often have a large number of stacks, it is expected that for newly constructed, modified, or reconstructed plants or facilities emissions will be ducted to a small number of stacks. The estimate of $6,000 per stack for a compliance test applies only for plants where a small number of stacks are to be tested. For plants with a large number of stacks, the cost per stack could decrease significantly. In addition, the general provisions applicable to all new source performance standards allow for the use of an alternative method where the Administrator determines that the results would be adequate for indicating whether a specific source is in compliance [40 CFR 60.8(b)].

One commenter recommended that the minimum sampling time for Method 12 be extended. Another stated that the minimum sampling time for grid casting in the proposed regulation was too long.

For tests with Method 12, the mimimum amount of lead needed for good sample recovery and analysis is 100 μg. The mimimum sampling rates and times insure that enough lead will be collected. For grid casting, the minimum sampling time has been changed from 180 minutes, in the proposed regulation, to 60 minutes, in the promulgated action. The change reflects the alteration in the standard for grid casting.

Reference Method 9—Two commenters expressed concern that Method 9 is not accurate enough to be used to enforce a standard of 0 percent opacity. One commenter stated that it is difficult to discern the difference between 0 percent opacity and 1 percent opacity for a given reading.

No single reading is made to the nearest percent; rather, readings are to be recorded to the nearest 5 percent opacity and averaged over a period of 6 minutes (24 readings). For this regulation, the 6-minute average opacity figure is to be rounded to the nearest whole number. The opacity standard for lead-acid battery manufacture is based on opacity data taken for operating facilities.

Reporting and Recordkeeping

A number of commenters contended that the proposed pressure drop monitoring and recording requirement for control systems would not serve to insure proper operation and maintenance of fabric filters. The commenters pointed out that a leak in a fabric filter would not result in a measurable difference in the pressure drop across the filter. One commenter suggested that the pressure drop monitoring requirement be replaced by an opacity monitoring requirement. Another commenter suggested that the pressure drop requirement be replaced by a requirement of visible inspection of bags for leaks.

Based on the arguments presented by these commenters, it is agreed that proposed pressure monitoring requirement for fabric filters would not serve its intended purpose. This requirement has been eliminated. However, pressure drop is considered to be a good indicator of proper operation and maintenance for scrubbers. Therefore the pressure drop monitoring and recording requirement for scrubbers has been retained.

The pressure drop monitoring requirement for fabric filters has not been replaced by another monitoring requirement. The cost of opacity monitoring equipment may in some cases be comparable to the cost of emission control systems for lead-acid battery manufacturing facilities. This cost is considered unreasonable. Although periodic visual inspection of bags would provide an indication of bag integrity, visual inspection records would not be useful to the EPA in the enforcement of the promulgated standards.

A number of commenters stated that while pressure drop monitoring is useful for scrubbers, continuous recording of pressure drop would be unnecessary and expensive. Some commenters questioned whether a device which cyclically monitors the pressure drop across several emission control systems would be considered a continuous recorder for the systems. These commenters also asked how often such a recorder would have to monitor the pressure drop across a particular control

device to be considered a continuous recorder for that device. One commenter suggested the substitution of periodic manual recording of pressure drop for the continuous pressure drop recording requirement. Another commenter questioned the purpose of requiring pressure drop monitoring and recording without a requirement that action be taken at certain pressure drop levels.

The purpose of pressure drop recording requirements is to allow the verification by EPA that emission control systems are properly operated and maintained. The costs of pressure drop recording devices were analyzed and are considered reasonable. The sort of device that would satisfy the recording requirement has been clarified in the promulgated standards. It has been determined that for the purposes of these standards a device which records pressure drop at least every 15 minutes would accomplish the same purposes as a continuous pressure drop recorder. Manual pressure drop recording would not insure proper operation and maintenance of a control system.

Other Considerations

A number of commenters recommended that the definition of the paste mixing facility be expanded to include operations ancillary to paste mixing, such as lead oxide storage, conveying, weighing, and metering operations; paste handling and cooling operations; and plate pasting, takeoff, cooling, and drying operations. The commenters stated that paste mixing and operations ancillary to the paste mixing operation are generally interdependent, in that one operation is not run without the others. Also, emissions from paste mixing and ancillary operations are often ducted to the same control device. The commenters were concerned that a minor change made to a paste mixing machine could cause the machine to be affected by the promulgated standards under the reconstruction provisions applicable to all new source performance standards. They stated that the recommended change would avoid this possibility.

These comments are considered reasonable. The operations ancillary to paste mixing were not intended to be considered separate facilities; and the definition recommended by the commenters for the paste mixing facility is considered an appropriate definition. Therefore, the recommendation of the commenters has been adopted in the promulgated regulation. Because the emission limit which was proposed for paste mixing is identical to that which was proposed for operations ancillary to paste mixing ("other lead-emitting operations"), this change is not expected to affect the environmental impacts of the standards.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

The effective date of this regulation is April 16, 1982. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal (January 14, 1980).

As prescribed by Section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare and by proposal of the standards on January 14, 1980 (45 FR 2790). In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1)).

Although there may be emission control technology available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance because of costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act requires (or has the potential for requiring) the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emissions rate" for new or modified sources located in nonattainment areas, i.e., those areas where statutorily mandated health and welfare standards are being violated. In this respect, Section 173 of the Act requires that a new or modified source constructed in an area which exceeds the National Ambient Air Quality Standard (NAAQS) must reduce emissions to the level which reflects the "lowest achievable emission rate" (LAER), as defined in Section 171(3), for such category of source. The statute defines LAER as that rate of emission which reflects:

> (A) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
>
> (B) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event can the emission rate exceed any applicable new source performance standard (Sec. 171(3)).

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources (referred to in Section 169(1)) employ "best available control technology" (as defined in Section 169(3)) for all pollutants regulated under the Act. Best available control technology (BACT) must be determined on a case-by-case basis, taking energy, environmental and economic impacts, and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to Section 111 (or 112) of the Act.

In any event, State implementation plans (SIPs) approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of National Ambient Air Quality Standards designed to protect public health and welfare. For this purpose, SIPs must in some cases require greater emission reductions than

those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111 or those necessary to attain or maintain the NAAQS under Section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than EPA's standards of performance under Section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in the regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because: (1) The national annualized compliance costs, including capital charges resulting from the standards total less than $100 million; (2) the standards do not cause a major increase in prices or production costs; and (3) the standards do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for the promulgated regulations and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the promulgated standards to insure that the standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the background information document.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power-plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

Dated: April 9, 1982.

Note.—The regulation does not involve a "collection of information" as defined under the Paperwork Reduction Act of 1980. Therefore, the provisions of the Paperwork Reduction Act applicable to collections of information do not apply to this regulation.

Anne M. Gorsuch,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

40 CFR Part 60 is amended by adding a new Subpart KK and by adding a new reference method to Appendix A as follows:

1. A new subpart is added as follows:

Subpart KK—Standards of Performance for Lead-Acid Battery Manufacturing Plants

Sec.

60.370 Applicability and designation of affected facility.
60.371 Definitions.
60.372 Standards for lead.
60.373 Monitoring of emissions and operations.
60.374 Test methods and procedures.

Authority: Sec. 111, 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart KK—Standards of Performance for Lead-Acid Battery Manufacturing Plants

§ 60.370 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the affected facilities listed in paragraph (b) of this section at any lead-acid battery manufacturing plant that produces or has the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 5.9 Mg (6.5 tons).

(b) The provisions of this subpart are applicable to the following affected facilities used in the manufacture of lead-acid storage batteries:

(1) Grid casting facility.

(2) Paste mixing facility.

(3) Three-process operation facility.

(4) Lead oxide manufacturing facility.

(5) Lead reclamation facility.

(6) Other lead-emitting operations.

(c) Any facility under paragraph (b) of this section the construction or modification of which is commenced after January 14, 1980, is subject to the requirements of this subpart.

§ 60.371 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in Subpart A of this part.

(a) "Grid casting facility" means the facility which includes all lead melting pots and machines used for casting the grid used in battery manufacturing.

(b) "Lead-acid battery manufacturing plant" means any plant that produces a storage battery using lead and lead compounds for the plates and sulfuric acid for the electrolyte.

(c) "Lead oxide manufacturing facility" means a facility that produces lead oxide from lead, including product recovery.

(d) "Lead reclamation facility" means the facility that remelts lead scrap and casts it into lead ingots for use in the battery manufacturing process, and which is not a furnace affected under Subpart L of this part.

(e) "Other lead-emitting operation" means any lead-acid battery manufacturing plant operation from which lead emissions are collected and ducted to the atmosphere and which is not part of a grid casting, lead oxide manufacturing, lead reclamation, paste mixing, or three-process operation facility, or a furnace affected under Subpart L of this part.

(f) "Paste mixing facility" means the facility including lead oxide storage, conveying, weighing, metering, and charging operations; paste blending, handling, and cooling operations; and plate pasting, takeoff, cooling, and drying operations.

(g) "Three-process operation facility" means the facility including those processes involved with plate stacking, burning or strap casting, and assembly of elements into the battery case.

§ 60.372 Standards for lead.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere:

(1) From any grid casting facility any gases that contain lead in excess of 0.40 milligram of lead per dry standard cubic meter of exhaust (0.000176 gr/dscf).

(2) From any paste mixing facility any gases that contain in excess of 1.00 milligram of lead per dry standard cubic meter of exhaust (0.00044 gr/dscf).

(3) From any three-process operation facility any gases that contain in excess of 1.00 milligram of lead per dry

standard cubic meter of exhaust (0.00044 gr/dscf).

(4) From any lead oxide manufacturing facility any gases that contain in excess of 5.0 milligrams of lead per kilogram of lead feed (0.010 lb/ton).

(5) From any lead reclamation facility any gases that contain in excess of 4.50 milligrams of lead per dry standard cubic meter of exhaust (0.00198 gr/dscf).

(6) From any other lead-emitting operation any gases that contain in excess of 1.00 milligram per dry standard cubic meter of exhaust (0.00044 gr/dscf).

(7) From any affected facility other than a lead reclamation facility any gases with greater than 0 percent opacity (measured according to Method 9 and rounded to the nearest whole percentage).

(8) From any lead reclamation facility any gases with greater than 5 percent opacity (measured according to Method 9 and rounded to the nearest whole percentage).

(b) When two or more facilities at the same plant (except the lead oxide manufacturing facility) are ducted to a common control device, an equivalent standard for the total exhaust from the commonly controlled facilities shall be determined as follows:

$$S_e = \sum_{a=1}^{N} S_a(Q_{sd_a}/Q_{sd_T})$$

Where:

S_e = is the equivalent standard for the total exhaust stream.

S_a = is the actual standard for each exhaust stream ducted to the control device.

N = is the total number of exhaust streams ducted to the control device.

Q_{sd_a} = is the dry standard volumetric flow rate of the effluent gas stream from each facility ducted to the control device.

Q_{sd_T} = is the total dry standard volumetric flow rate of all effluent gas streams ducted to the control device.

§ 60.373 Monitoring of emissions and operations.

The owner or operator of any lead-acid battery manufacturing facility subject to the provisions of this subpart and controlled by a scrubbing system(s) shall install, calibrate, maintain, and operate a monitoring device(s) that measures and records the pressure drop across the scrubbing system(s) at least once every 15 minutes. The monitoring device shall have an accuracy of ±5 percent over its operating range.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.374 Test methods and procedures.

(a) Reference methods in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance according to § 60.8 as follows:

(1) Method 12 for the measurement of lead concentrations,

(2) Method 1 for sample and velocity traverses,

(3) Method 2 for velocity and volumetric flow rate, and

(4) Method 4 for stack gas moisture.

(b) For Method 12, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.85 dscm/h (0.53 dscf/min), except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the Administrator.

(c) When different operations in a three-process operation facility are ducted to separate control devices, the lead emission concentration from the facility shall be determined using the equation:

$$C_{PbT} = \sum_{a=1}^{N} (C_{Pb_a} Q_{sd_a}/Q_{sd_T})$$

Where:

C_{Pb_T} = is the facility emission concentration for the entire facility.

N = is the number of control devices to which separate operations in the facility are ducted.

C_{Pb_a} = is the emission concentration from each control device.

Q_{sd_a} = is the dry standards volumetric flow rate of the effluent gas stream from each control device.

Q_{sd_t} = is the total dry standard volumetric flow rate from all of the control devices.

(d) For lead oxide manufacturing facilities, the average lead feed rate to a facility, expressed in kilograms per hour, shall be determined for each test run as follows:

(1) Calculate the total amount of lead charged to the facility during the run by multiplying the number of lead pigs (ingots) charged during the run by the average mass of a pig in kilograms or by another suitable method.

(2) Divide the total amount of lead charged to the facility during the run by the duration of the run in hours.

(e) Lead emissions from lead oxide manufacturing facilities, expressed in milligrams per kilogram of lead charged, shall be determined using the following equation:

$$E_{Pb} = C_{Pb} Q_{sd}/F$$

Where:

E_{Pb} = is the lead emission rate from the facility in milligrams per kilogram of lead charged.

C_{Pb} = is the concentration of lead in the exhaust stream in milligrams per dry standard cubic meter as determined according to paragraph (a)(1) of this section.

Q_{sd} = is the dry standard volumetric flow rate in dry standard cubic meters per hour as determined according to paragraph (a)(3) of this section.

F = is the lead feed rate to the facility in kilograms per hour as determined according to paragraph (d) of this section.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

2. Appendix A to Part 60 is amended by adding new Reference Method 12 as follows:

Appendix A—Reference Methods

* * * * *

Method 12. Determination of Inorganic Lead Emissions From Stationary Sources

1. *Applicability and Principle.*

1.1 Applicability. This method applies to the determination of inorganic lead (Pb) emissions from specified stationary sources only.

1.2 Principle. Particulate and gaseous Pb emissions are withdrawn isokinetically from the source and collected on a filter and in dilute nitric acid. The collected samples are digested in acid solution and analyzed by atomic absorption spectrometry using an air acetylene flame.

2. *Range, Sensitivity, Precision, and Interferences.*

2.1 Range. For a minimum analytical accuracy of ±10 percent, the lower limit of the range is 100 μg. The upper limit can be considerably extended by dilution.

2.2 Analytical Sensitivity. Typical sensitivities for a 1-percent change in absorption (0.0044 absorbance units) are 0.2 and 0.5 μg Pb/ml for the 217.0 and 283.3 nm lines, respectively.

2.3 Precision. The within-laboratory precision, as measured by the coefficient of variation ranges from 0.2 to 9.5 percent relative to a run-mean concentration. These values were based on tests conducted at a gray iron foundry, a lead storage battery manufacturing plant, a secondary lead smelter, and a lead recovery furnace of an alkyl lead manufacturing plant. The concentrations encountered during these tests ranged from 0.61 to 123.3 mg Pb/m³.

2.4 Interferences. Sample matrix effects may interfere with the analysis for Pb by flame atomic absorption. If this interference is suspected, the analyst may confirm the presence of these matrix effects and frequently eliminate the interference by using the Method of Standard Additions.

High concentrations of copper may interfere with the analysis of Pb at 217.0 nm. This interference can be avoided by analyzing the samples at 283.3 nm.

3. *Apparatus.*

3.1 Sampling Train. A schematic of the sampling train is shown in Figure 12–1; it is similar to the Method 5 train. The sampling train consists of the following components:

3.1.1 Probe Nozzle, Probe Liner, Pitot Tube, Differential Pressure Gauge, Filter Holder, Filter Heating System, Metering System, Barometer, and Gas Density Determination Equipment. Same as Method 5, Sections 2.1.1 to 2.1.6 and 2.1.8 to 2.1.10, respectively.

3.1.2 Impingers. Four impingers connected in series with leak-free ground glass fittings or any similar leak-free noncontaminating fittings. For the first, third, and fourth impingers, use the Greenburg-Smith design, modified by replacing the tip with a 1.3 cm (½ in.) ID glass tube extending to about 1.3 cm (½ in.) from the bottom of the flask. For the second impinger, use the Greenburg-Smith design with the standard tip. Place a thermometer, capable of measuring temperature to within 1°C (2°F) at the outlet of the fourth impinger for monitoring purposes.

BILLING CODE 6560-50-M

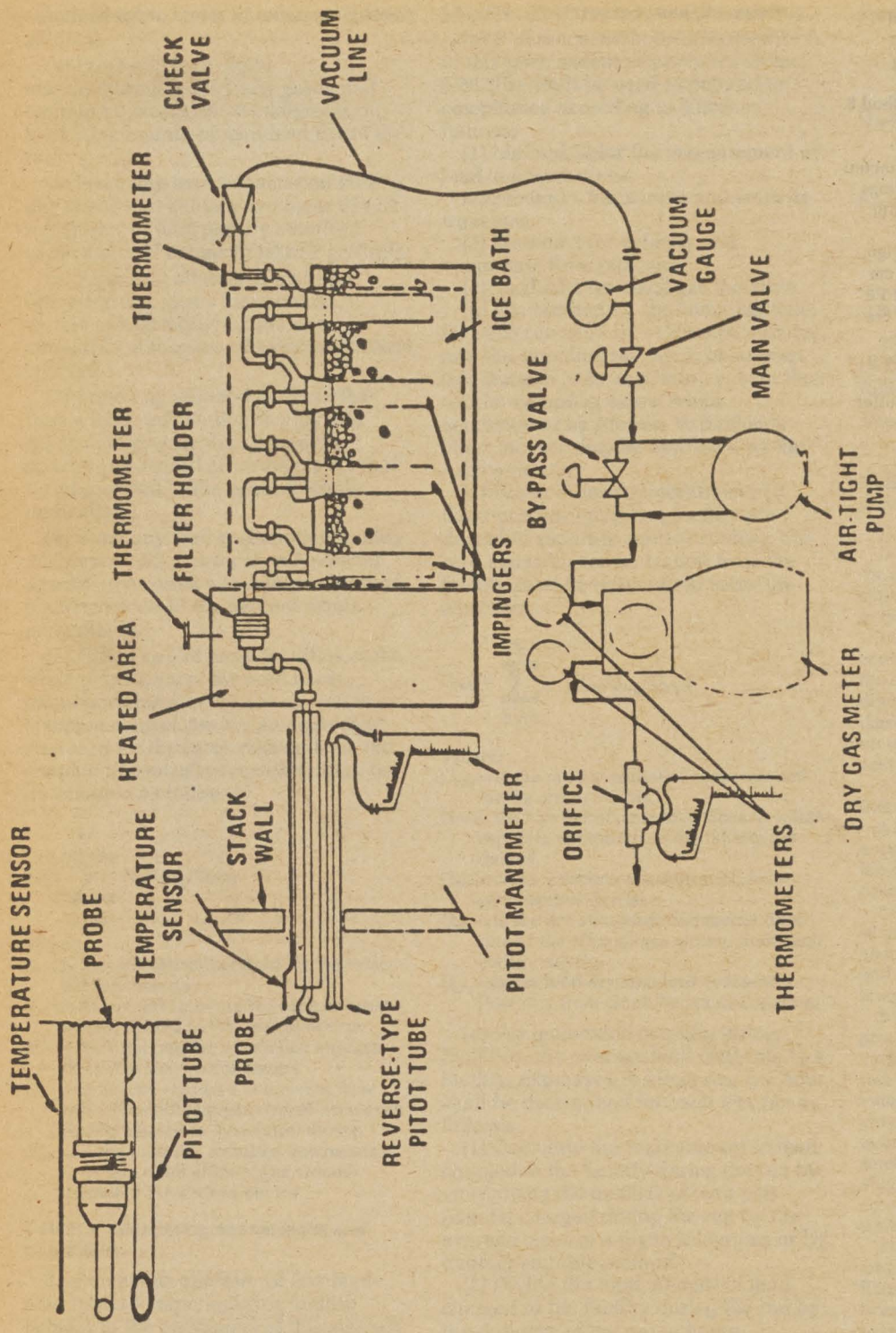


Figure 12-1. Inorganic lead sampling train.

BILLING CODE 6560-50-C

3.2 Sample Recovery. The following items are needed:

3.2.1 Probe-Liner and Probe-Nozzle Brushes, Petri Dishes, Plastic Storage Containers, and Funnel and Rubber Policeman. Same as Method 5, Sections 2.2.1, 2.2.4, 2.2.6, and 2.2.7, respectively.

3.2.2 Wash Bottles. Glass (2).

3.2.3 Sample Storage Containers. Chemically resistant, borosilicate glass bottles, for 0.1 nitric acid (HNO_3) impinger and probe solutions and washes, 1000-ml. Use screw-cap liners that are either rubber-backed Teflon* or leak-free and resistant to chemical attack by 0.1 N HNO_3. (Narrow mouth glass bottles have been found to be less prone to leakage.)

3.2.4 Graduated Cylinder and/or Balance. To measure condensed water to within 2 ml or 1 g. Use a graduated cylinder that has a minimum capacity of 500 ml, and subdivisions no greater than 5 ml. (Most laboratory balances are capable of weighing to the nearest 0.5 g or less.)

3.2.5 Funnel. Glass, to aid in sample recovery.

3.3 Analysis. The following equipment is needed:

3.3.1 Atomic Absorption Spectrophotometer. With lead hollow cathode lamp and burner for air/acetylene flame.

3.3.2 Hot Plate.

3.3.3 Erlenmeyer Flasks. 125-ml, 24/40 $.

3.3.4 Membrane Filters. Millipore SCWPO 4700 or equivalent.

3.3.5 Filtration Apparatus. Millipore vacuum filtration unit, or equivalent, for use with the above membrane filter.

3.3.6 Volumetric Flasks. 100-ml, 250-ml, and 1000-ml.

4. *Reagents.*

4.1 Sampling. The reagents used in sampling are as follows:

4.1.1 Filter. Gelman Spectro Grade, Reeve Angel 934 AH, MSA 1106 BH, all with lot assay for Pb, or other high-purity glass fiber filters, without organic binder, exhibiting at least 99.95 percent efficiency (<0.05 percent penetration) on 0.3 micron dioctyl phthalate smoke particles. Conduct the filter efficiency test using ASTM Standard Method D 2986–71 or use test data from the supplier's quality control program.

4.1.2 Silica Gel, Crushed Ice, and Stopcock Grease. Same as Method 5, Section 3.1.2, 3.1.4, and 3.1.5, respectively.

4.1.3 Water. Deionized distilled, to conform to ASTM Specification D 1193–74, Type 3. If high concentrations of organic matter are not expected to be present, the analyst may delete the potassium permanganate test for oxidizable organic matter.

4.1.4 Nitric Acid, 0.1 N. Dilute 6.5 ml of concentrated HNO_3 to 1 liter with deionized distilled water. (It may be desirable to run blanks before field use to eliminate a high blank on test samples.)

4.2 Pretest Preparation. 6 N HNO_3 is needed. Dilute 390 ml of concentrated HNO_3 to 1 liter with deionized distilled water.

*Mention of trade names or specific products does not constitute endorsement by the U.S. Environmental Protection Agency.

4.3 Sample Recovery. 0.1 N HNO_3 (same as 4.1.4 above) is needed for sample recovery.

4.4 Analysis. The following reagents are needed for analysis (use ACS reagent grade chemicals or equivalent, unless otherwise specified):

4.4.1 Water. Same as 4.1.3 above.

4.4.2 Nitric Acid. Concentrated.

4.4.3 Nitric Acid, 50 percent (V/V). Dilute 500 ml of concentrated HNO_3 to 1 liter with deionized distilled water.

4.4.4 Stock Lead Standard Solution, 1000 μg Pb/ml. Dissolve 0.1598 g of lead nitrate [$Pb(NO_3)_2$] in about 60 ml of deionized distilled water, add 2 ml concentrated HNO_3, and dilute to 100 ml with deionized distilled water.

4.4.5 Working Lead Standards. Pipet 0.0, 1.0, 2.0, 3.0, 4.0, and 5.0 ml of the stock lead standard solution (4.4.4) into 250-ml volumetric flasks. Add 5 ml of concentrated HNO_3 to each flask and dilute to volume with deionized distilled water. These working standards contain 0.0, 4.0, 8.0, 12.0, 16.0, and 20.0 μg Pb/ml, respectively. Prepare, as needed, additional standards at other concentrations in a similar manner.

4.4.6 Air. Suitable quality for atomic absorption analysis.

4.4.7 Acetylene. Suitable quality for atomic absorption analysis.

4.4.8 Hydrogen Peroxide, 3 percent (V/V). Dilute 10 ml of 30 percent H_2O_2 to 100 ml with deionized distilled water.

5. *Procedure.*

5.1 Sampling. The complexity of this method is such that, in order to obtain reliable results, testers should be trained and experienced with the test procedures.

5.1.1 Pretest Preparation. Follow the same general procedure given in Method 5, Section 4.1.1, except the filter need not be weighed.

5.1.2 Preliminary Determinations. Follow the same general procedure given in Method 5, Section 4.1.2.

5.1.3 Preparation of Collection Train. Follow the same general procedure given in Method 5, Section 4.1.3, except place 100 ml of 0.1 HNO_3 in each of the first two impingers, leave the third impinger empty, and transfer approximately 200 to 300 g of preweighed silica gel from its container to the fourth impinger. Set up the train as shown in Figure 12–1.

5.1.4 Leak-Check Procedures. Follow the general leak-check procedures given in Method 5, Sections 4.1.4.1. (Pretest Leak-Check), 4.1.4.2 (Leak-Checks During the Sample Run), and 4.1.4.3 (Post-Test Leak-Check).

5.1.5 Sampling Train Operation. Follow the same general procedure given in Method 5, Section 4.1.5. For each run, record the data required on a data sheet such as the one shown in EPA Method 5, Figure 5–2.

5.1.6 Calculation of Percent Isokinetic. Same as Method 5, Section 4.1.6.

5.2 *Sample Recovery.* Begin proper cleanup procedure as soon as the probe is removed from the stack at the end of the sampling period.

Allow the probe to cool. When it can be safely handled, wipe off all external particulate matter near the tip of the probe nozzle and place a cap over it. Do not cap off the probe tip tightly while the sampling train is cooling down as this would create a vacuum in the filter holder, thus drawing liquid from the impingers into the filter.

Before moving the sampling train to the cleanup site, remove the probe from the sapling train, wipe off the silicone grease, and cap the open outlet of the probe. Be careful not to lose any condensate that might be present. Wipe off the silicone grease from the glassware inlet where the probe was fastened and cap the inlet. Remove the umbilical cord from the last impinger and cap the impinger. The tester may use ground-glass stoppers, plastic caps, or serum caps to close these openings.

Transfer the probe and filter-impinger assembly to a cleanup area, which is clean and protected from the wind so that the chances of contaminating or losing the sample are minimized.

Inspect the train prior to and during disassembly and note any abnormal conditions. Treat the samples as follows:

5.2.1 *Container No. 1* (Filter). Carefully remove the filter from the filter holder and place it in its identified petri dish container. If it is necessary to fold the filter, do so such that the sample-exposed side is inside the fold. Carefully transfer to the petri dish any visible sample matter and/or filter fibers that adhere to the filter holder gasket by using a dry Nylon bristle brush and/or a sharp-edged blade. Seal the container.

5.2.2 *Container No. 2* (Probe). Taking care that dust on the outside of the probe or other exterior surfaces does not get into the sample, quantitatively recover sample matter or any condensate from the probe nozzle, probe fitting, probe liner, and front half of the filter holder by washing these components with 0.1 N HNO_3 and placing the wash into a glass sample storage container. Measure and record (to the nearest 2-ml) the total amount of 0.1 N HNO_3 used for each rinse. Perform the 0.1 N HNO^3 rinses as follows:

Carefully remove the probe nozzle and rinse the inside surfaces with 0.1 N HNO^3 from a wash bottle while brushing with a stainless steel, Nylon-bristle brush. Brush until the 0.1 N HNO_3 rinse shows no visible particles, then make a final rinse of the inside surface.

Brush and rinse with 0.1 N HNO_3 the inside parts of the Swagelok fitting in a similar way until no visible particles remain.

Rinse the probe liner with 0.1 N HNO_3. While rotating the probe so that all inside surfaces will be rinsed with 0.1 N HNO_3, tilt the probe and squirt 0.1 N HNO_3 into its upper end. Let the 0.1 N HNO_3 drain from the lower end into the sample container. The tester may use a glass funnel to aid in transferring liquid washes to the container. Follow the rinse with a probe brush. Hold the probe in an inclined position, squirt 0.1 N HNO_3 into the upper end of the probe as the probe brush is being pushed with a twisting action through the probe; hold the sample container underneath the lower end of the probe and catch any 0.1 N HNO_3 and sample matter that is brushed from the probe. Run the brush through the probe three times or more until no visible sample matter is carried out with the 0.1 N HNO_3 and none remains on the probe liner on visual inspection. With

stainless steel or other metal probes, run the brush through in the above prescribed manner at least six times, since metal probes have small crevices in which sample matter can be entrapped. Rinse the brush with 0.1 N HNO_3 and quantitatively collect these washings in the sample container. After the brushing make a final rinse of the probe as described above.

It is recommended that two people clean the probe to minimize loss of sample. Between sampling runs, keep brushes clean and protected from contamination.

After insuring that all joints are wiped clean of silicone grease, brush and rinse with 0.1 N HNO_3 the inside of the front half of the filter holder. Brush and rinse each suface three times or more, if needed, to remove visible sample matter. Make a final rinse of the brush and filter holder. After all 0.1 N HNO_3 washings and sample matter are collected in the sample container, tighten the lid on the sample container so that the fluid will not leak out when it is shipped to the laboratory. Mark the height of the fluid level to determine whether leakage occurs during transport. Label the container to clearly identify its contents.

5.2.3 *Container No. 3* (Silica Gel). Check the color of the indicating silica gel to determine if it has been completely spent and make a notation of its condition. Transfer the silica gel from the fourth impinger to the original container and seal. The tester may use a funnel to pour the silica gel and a rubber policeman to remove the silica gel from the impinger. It is not necessary to remove the small amount of particles that may adhere to the walls and are difficult to remove. Since the gain in weight is to be used for moisture calculations, do not use any water or other liquids to transfer the silica gel. If a balance is available in the field, the tester may follow procedure for Container No. 3 under Section 5.4 (Analysis).

5.2.4 *Container No. 4* (Impingers). Due to the large quantity of liquid involved, the tester may place the impinger solutions in several containers. Clean each of the first three impingers and connecting glassware in the following manner:

1. Wipe the impinger ball joints free of silicone grease and cap the joints.

2. Rotate and agitate each impinger, so that the impinger contents might serve as a rinse solution.

3. Transfer the contents of the impingers to a 500-ml graduated cylinder. Remove the outlet ball joint cap and drain the contents through this opening. Do not separate the impinger parts (inner and outer tubes) while transferring their contents to the cylinder. Measure the liquid volume to within ±2 ml. Alternatively, determine the weight of the liquid to within ±0.5 g. Record in the log the volume or weight of the liquid present, along with a notation of any color or film observed in the impinger catch. The liquid volume or weight is needed, along with the silica gel data, to calculate the stack gas moisture content (see Method 5, Figure 5–3).

4. Transfer the contents to Container No. 4.

5. Note: In steps 5 and 6 below, measure and record the total amount of 0.1 N HNO_3 used for rinsing. Pour approximately 30 ml of 0.1 N HNO_3 into each of the first three impingers and agitate the impingers. Drain the 0.1 N HNO_3 through the outlet arm of each impinger into Container No. 4. Repeat this operation a second time; inspect the impingers for any abnormal conditions.

6. Wipe the ball joints of the glassware connecting the impingers free of silicone grease and rinse each piece of glassware twice with 0.1 N HNO_3; transfer this rinse into Container No. 4. (*Do not rinse or brush the glass-fritted filter support.*) Mark the height of the fluid level to determine whether leakage occurs during transport. Label the container to clearly identify its contents.

5.2.5 Blanks. Save 200 ml of the 0.1 N HNO_3 used for sampling and cleanup as a blank. Take the solution directly from the bottle being used and place into a glass sample container labeled "0.1 N HNO_3 blank."

5.3 Sample Preparation.

5.3.1 *Container No. 1* (Filter). Cut the filter into strips and transfer the strips and all loose particulate matter into a 125-ml Erlenmeyer flask. Rinse the petri dish with 10 ml of 50 percent HNO_3 to insure a quantitative transfer and add to the flask. (Note: If the total volume required in Section 5.3.3 is expected to exceed 80 ml, use a 250-ml Erlenmeyer flask in place of the 125-ml flask.)

5.3.2 *Containers No. 2 and No. 4* (Probe and Impingers). (Check the liquid level in Containers No. 2 and/or No. 4 and confirm as to whether or not leakage occurred during transport; note observation on the analysis sheet. If a noticeable amount of leakage had occurred, either void the sample or take steps, subject to the approval of the Administrator, to adjust the final results.) Combine the contents of Containers No. 2 and No. 4 and take to dryness on a hot plate.

5.3.3 Sample Extraction for lead. Based on the approximate stack gas particulate concentration and the total volume of stack gas sampled, estimate the total weight of particulate sample collected. Then transfer the residue from Containers No. 2 and No. 4 to the 125-ml Erlenmeyer flask that contains the filter using rubber policeman and 10 ml of 50 percent HNO_3 for every 100 mg of sample collected in the train or a minimum of 30 ml of 50 percent HNO_3 whichever is larger.

Place the Erlenmeyer flask on a hot plate and heat with periodic stirring for 30 min at a temperature just below boiling. If the sample volume falls below 15 ml, add more 50 percent HNO_3. Add 10 ml of 3 percent H_2O_2 and continue heating for 10 min. Add 50 ml of hot (80°C) deionized distilled water and heat for 20 min. Remove the flask from the hot plate and allow to cool. Filter the sample through a Millipore membrane filter or equivalent and transfer the filtrate to a 250-ml volumetric flask. Dilute to volume with deionized distilled water.

5.3.4 Filter Blank. Determine a filter blank using two filters from each lot of filters used in the sampling train. Cut each filter into strips and place each filter in a separate 125-ml Erlenmeyer flask. Add 15 ml of 50 percent HNO_3 and treat as described in Section 5.3.3 using 10 ml of 3 percent H_2O_2 and 50 ml of hot, deionized distilled water. Filter and dilute to a toal volume of 100 ml using deionized distilled water.

5.3.5 0.1 N HNO_3 Blank. Take the entire 200 ml of 0.1 N HNO_3 to dryness on a steam bath, add 15 ml of 50 percent HNO_3, and treat as described in Section 5.3.3 using 10 ml of 3 percent H_2O_2 and 50 ml of hot, deionized distilled water. Dilute to a total volume of 100 ml using deionized distilled water.

5.4 Analysis.

5.4.1 Lead Determination. Calibrate the spectrophotometer as described in Section 6.2 and determine the absorbance for each source sample, the filter blank, and 0.1 N HNO_3 blank. Analyze each sample three times in this manner. Make appropriate dilutions, as required, to bring all sample Pb concentrations into the linear absorbance range of the spectrophotometer.

If the Pb concentration of a sample is at the low end of the calibration curve and high accuracy is required, the sample can be taken to dryness on a hot plate and the residue dissolved in the appropriate volume of water to bring it into the optimum range of the calibration curve.

5.4.2 Mandatory Check for Matrix Effects on the Lead Results. The analysis for Pb by atomic absorption is sensitive to the chemical compositon and to the physical properties (viscosity, pH) of the sample (matrix effects). Since the Pb procedure described here will be applied to many different sources, many sample matrices will be encountered. Thus, check (mandatory) at least one sample from each source using the Method of Additions to ascertain that the chemical composition and physical properties of the sample did not cause erroneous analytical results.

Three acceptable "Method of Additions" procedures are described in the General Procedure Section of the Perkin Elmer Corporation Manual (see Citation 9.1). If the results of the Method of Additions procedure on the source sample do not agree within 5 percent of the value obtained by the conventional atomic absorption analysis, then the tester must reanalyze all samples from the source using the Method of Additions procedure.

5.4.3 *Container No. 3* (Silica Gel). The tester may conduct this step in the field. Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g; record this weight.

6. *Calibration.*

Maintain a laboratory log of all calibrations.

6.1 Sampling Train Calibration. Calibrate the sampling train components according to the indicated sections of Method 5: Probe Nozzle (Section 5.1); Pitot Tube (Section 5.2); Metering System (Section 5.3); Probe Heater (Section 5.4); Temperature Gauges (Section 5.5); Leak-Check of the Metering System (Section 5.6); and Barometer (Section 5.7).

6.2 Spectrophotometer. Measure the absorbance of the standard solutions using the instrument settings recommended by the spectrophotometer manufacturer. Repeat until good agreement (±3 percent) is obtained between two consecutive readings. Plot the absorbance (y-axis) versus concentration in μg Pb/ml (x-axis). Draw or compute a straight line through the linear portion of the curve. Do not force the calibration curve through zero, but if the curve does not pass through the origin or at least lie closer to the origin than ±0.003

absorbance units, check for incorrectly prepared standards and for curvature in the calibration curve.

To determine stability of the calibration curve, run a blank and a standard after every five samples and recalibrate, as necessary.

7. *Calculations.*

7.1 Dry Gas Volume. Using the data from this test, calculate $V_{m(std)}$, the total volume of dry gas metered corrected to standard conditions (20°C and 760 mm Hg), by using Equation 5–1 of Method 5. If necessary, adjust $V_{m(std)}$ for leakages as outlined in Section 6.3 of Method 5. See the field data sheet for the average dry gas meter temperature and average orifice pressure drop.

7.2 Volume of Water Vapor and Moisture Content. Using data obtained in this test and Equations 5–2 and 5–3 of Method 5, calculate the volume of water vapor $V_{m(std)}$) and the moisture content B_{ws} of the stack gas.

7.3 Total Lead in Source Sample. For each source sample correct the average absorbance for the contribution of the filter blank and the 0.1 N HNO_3 blank. Use the calibration curve and this corrected absorbance to determine the μg Pb concentration in the sample aspirated into the spectrophotometer. Calculate the total Pb content $C°_{Pb}$ (in μg) in the original source sample; correct for all the dilutions that were made to bring the Pb concentration of the sample into the linear range of the spectrophotometer.

7.4 Lead Concentration. Calculate the stack gas Pb concentration C_{Pb} in mg/dscm as follows:

$$C_{Pb} = K \frac{C°_{Pb}}{V_{m(std)}}$$

Where:

K = 0.001 mg/μg for metric units.

= 2.205 lb/μg for English units.

7.5 Isokinetic Variation and Acceptable Results. Same as Method 5, Sections 6.11 and 6.12, respectively. To calculate v_s, the average stack gas velocity, use Equation 2–9 of Method 2 and the data from this field test.

8. *Alternative Test Methods for Inorganic Lead.*

8.1 Simultaneous Determination of Particulate and Lead Emissions. The tester may use Method 5 to simultaneously determine Pb provided that (1) he uses acetone to remove particulate from the probe and inside of the filter holder as specified by Method 5, (2) he uses 0.1 N HNO_3 in the impingers, (3) he uses a glass fiber filter with a low Pb background, and (4) he treats and analyzes the entire train contents, including the impingers, for Pb as described in Section 5 of this method.

8.2 Filter Location. The tester may use a filter between the third and fourth impinger provided that he includes the filter in the analysis for Pb.

8.3 In-stack Filter. The tester may use an in-stack filter provided that (1) he uses a glass-lined probe and at least two impingers, each containing 100 ml of 0.1 N HNO_3, after the in-stack filter and (2) he recovers and analyzes the probe and impinger contents for Pb. Recover sample from the nozzle with acetone if a particulate analysis is to be made.

9. *Bibliography*

9.1 Perkin Elmer Corporation. Analytical Methods for Atomic Absorption Spectrophotometry. Norwalk, Connecticut. September 1976.

9.2 American Society for Testing and Materials. Annual Book of ASTM Standards. Part 31; Water, Atmospheric Analysis. Philadelphia, Pa. 1974. p. 40–42.

9.3 Klein, R. and C. Hach. Standard Additions—Uses and Limitations in Spectrophotometric Analysis. *Amer. Lab.* 9:21–27. 1977.

9.4 Mitchell, W.J. and M.R. Midgett. Determining Inorganic and Alkyl Lead Emissions from Stationary Sources. U.S. Environmental Protection Agency, Emission Monitoring and Support Laboratory. Research Triangle Park, N.C. (Presented at National APCA Meeting. Houston. June 26, 1978).

9.5 Same as Method 5, Citations 2 to 5 and 7 of Section 7.

* * * * *

(Secs. 111, 114, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7414, and 7601(a)))

[FR Doc. 82-10481 Filed 4-15-82; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
April 16, 1982

Part VIII

Environmental Protection Agency

Phosphate Rock Plants; Standards of Performance for New Stationary Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 1782-1]

Standards of Performance for New Stationary Sources; Phosphate Rock Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for phosphate rock plants were proposed in the **Federal Register** on September 21, 1979 (44 FR 54970). This action finalizes standards of performance for phosphate rock plants. These standards implement the Clean Air Act and are based on the Administrator's determination that emissions from phosphate rock plants contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of the standards is to require the application of the best demonstrated systems of continuous emission reduction to new, modified, or reconstructed phosphate rock dryers, calciners, grinders, and ground rock storage and handling systems at phosphate rock plants. The designated best demonstrated systems of continuous emission reduction were determined considering costs and nonair quality health and environmental and energy impacts.

EFFECTIVE DATE: April 16, 1982.

Judicial Review: Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: Background Information Document. The background information documents for the proposed and final standards are available on request from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777 or (FTS) 629-2777 or (FTS) 629-2777. Please refer to "Phosphate Rock Plants, Background Information for Proposed Standards, Volume I," (EPA-450/3-79-017) and/or "Phosphate Rock Plants, Background Information for Promulgated Standards, Volume II" (EPA-450/3-79-017b).

Docket. Docket No. OAQPS-79-6, containing all supporting information used by EPA in developing the standards, is available for inspection and copying during normal business hours Monday through Friday at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: John D. Crenshaw, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-5624 or (FTS) 629-5624.

SUPPLEMENTARY INFORMATION:

Background

Standards of performance for new, reconstructed or modified phosphate rock plants were proposed on September 21, 1979. The proposed standards would have limited particulate emissions to 0.02 kilogram (kg) per megagram (Mg) of feed rock (0.04 lb/ton) from dryers, 0.055 kg/Mg (0.11 lb/ton) from calciners and 0.006 kg/Mg (0.012 lb/ton) from grinders. Visible emission limits for these affected facilities were proposed at zero percent opacity. A zero percent opacity limit was also proposed for ground rock handling and storage systems.

During the public comment period, a total of 16 comment letters were received. Several commenters questioned the proposed emission limits. They argued that the particulate and opacity limits for both dryers and calciners were too stringent. After reviewing these comments, EPA concluded that the data base supporting the proposed standards was incomplete because it was not representative of all combinations of control conditions that are likely to recur. EPA requested and received emission source test data from both the industrial commenters and several State air pollution control agencies. Based on this additional data, several changes were made to the proposed standards. The most significant changes were a relaxation of the particulate emission limits for calciners processing unbeneficiated rock and for dryers. The opacity limits for both dryers and calciners were also revised.

Other changes were to exclude from the standards facilities with a production capacity less than 3.6 Mg/hr (4.0 ton/hr) and to exempt ground rock storage and handling systems from the continuous monitoring requirements. Several wording and definition changes were made to clarify the applicability of the promulgated standards.

Standards of Performance

The promulgated standards apply to new, modified, or reconstructed phosphate rock dryers, calciners, grinders, and ground rock handling and storage facilities at phosphate rock plants with a maximum production rate greater than 3.6 megagrams of rock per hour (4 tons/hr). The promulgated standards will limit emissions of particulate matter to 0.03 kilogram (kg) per megagram (Mg) of rock feed (0.06 lb/ton) from phosphate rock dryers, 0.12 kg/Mg (0.23 lb/ton) from phosphate rock calciners processing unbeneficiated rock or blends of beneficiated and unbeneficiated rock, 0.055 kg/Mg (0.11 lb/ton) from phosphate rock calciners processing beneficiated rock, and 0.006 kg/Mg (0.012 lb/ton) from phosphate rock grinders. Opacity levels from grinders and ground rock storage and handling systems are limited to zero percent. Opacity levels from dryers and calciners are limited to no more than 10 percent.

The emission limits are based on the performance of baghouses or high energy venturi scrubbers. Electrostatic precipitators (ESP) are also capable of meeting the standards. However, because of the higher cost of ESP control on phosphate rock applications, ESP's were not designated as a basis for the standard.

Compliance with the mass emission limits is to be determined by source test (EPA Method 5). Continuous monitoring equipment will be required for dryers, calciners, and grinders. However, when scrubbers are used for emission control, continuous opacity monitors would not be required. Instead, the pressure drop of the scrubber and the liquid supply pressure will be monitored as indicators of the scrubber performance.

Environmental, Energy, and Economic Impacts

The promulgated standards would reduce particulate emissions from phosphate rock plants by about 99 percent from the levels that would occur with no emission control, and by about 91 percent from the levels allowed by typical State standards. These reductions would reduce nationwide particulate emissions allowed by State Implementation Plan (SIP) regulations by about 14,100 Mg (15,600 tons) per year in 1985. However, the level of control existing on many affected sources is already more stringent than that required by SIP regulations. For example, many existing grinder facilities

are controlled by baghouses to prevent the loss of valuable product rock. As a result, the actual emission reduction resulting from implementation of the standard will be less than 14,100 Mg (15,600 tons). The standards will cause a reduction in particulate matter emissions from the level which would occur with typical existing industry control practices of about 3,300 megagrams (3,600 tons) in 1985 and 5,100 megagrams (5,600 tons) in 1990.

None of the alternative control technologies required by these standards (baghouse, scrubber) would result in significant adverse environmental impacts. If scrubbers are used to meet the requirements of the standard, there would be a small increase in solid waste disposal and water pollution. However, the incremental increase (over the prevailing controls) of solid materials and wastewaters produced during control of emissions is insignificant in comparison with the large volume of such wastes generated by production processes. Baghouse technology is marginally more environmentally acceptable than other control alternatives because it generates no liquid effluents.

Compliance with the promulgated standards will require additional electrical energy above that required at the SIP level of control. The incremental increase in energy will depend on the type of control system that is selected. If high-energy venturi scrubbers are used, the total process energy requirements will increase by 8 percent above the energy required at the existing SIP level of control. The incremental energy increase above the SIP level would be 5 percent with baghouses.

The costs of operating control equipment that would be needed to attain the promulgated standards were estimated using model plants. Phosphate rock plants are concentrated primarily in Florida, North Carolina, Idaho, Wyoming, Utah and Montana. Phosphate rock deposits in North Carolina and Florida consist of a consolidated mass of phosphate pebbles and clays normally occurring below the water table. Western deposits consist of hard rock. Because of these processing differences, costs were presented separately for eastern and western plants. A typical Florida plant was selected as representative of eastern facilities. The control costs per ton of production are typically lower for eastern plants because they have a larger capacity than western plants.

The annualized cost of installing and operating prevailing controls used to meet existing State standards at typical eastern phosphate rock plants is estimated at $0.35 per megagram. The additional cost of employing control technology to meet the promulgated standards at a new eastern plant is estimated at $0.02/megagram when using baghouses and $0.07/megagram for scrubbers.

The annualized control cost of existing SIP standards at a typical new western plant is $0.87/megagram. The additional cost of using control technology to meet the promulgated standards at new western plants is estimated at $0.08/megagram for baghouse control and $0.28/megagram for scrubbers.

The incremental cost of the promulgated standards above SIP control costs will have negligible impacts on the profitability of the plant and the future growth of the phosphate rock industry. By the year 1985, compliance with the standards would increase the industry cost of production of phosphate rock by 0.1 percent (baghouse controls) to 0.2 percent (scrubber controls) above the cost to meet existing SIP regulations. A more detailed discussion of the economic analysis is discussed in the Background Information Document for Proposed Standards, Volume I.

Public Participation

In accordance with Section 117 of the Clean Air Act, proposal of the standards was preceded by consultation with appropriate advisory committees, independent experts, industry representatives, and Federal departments and agencies. The proposed standards were published in the **Federal Register** on September 21, 1979, with a request for public comment. The public comment period was extended to February 15, 1980, to allow interested persons to obtain and review the proposed standards and the background information document for proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on October 25, 1979, at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given the opportunity to comment on the proposed standards.

Significant Comments and Changes to the Proposed Regulations

Many comment letters received by EPA contained multiple comments. A detailed discussion of these comments and EPA's responses to them are presented in the Background Information for Promulgated Standards, Volume II. The most significant comments and changes made to the proposed standards have been grouped according to topic and are discussed below.

General

Several commenters were concerned with the applicability of the proposed standards. They questioned whether the standard was intended to apply to mining operations, elemental phosphorus plants, and ground rock transfer facilities at fertilizer plants.

The promulgated standard is not intended to apply to crushing or mining, beneficiation, thermal defluorination, elemental phosphorus production or ground rock handling at fertilizer plants. The standards are intended to apply to new, reconstructed, or modified phosphate rock dryers, calciners, grinders, and ground rock storage and handling systems at phosphate rock plants. There have been several wording and definition changes in the standards to clarify the applicability of the promulgated standards.

Several commenters questioned the need for a standard since some existing facilities were not causing ambient air quality violations.

The purpose of new source performance standards is not limited to ensuring compliance with ambient air quality standards. The primary purpose of new source performance standards is to prevent future air pollution problems and to prevent costly retrofits of control equipment that might result from such problems. New source performance standards will require the uniform application of control requirements nationwide and will prevent unfair competition between States for industrial development based on varying environmental regulations.

As required by Section III of the Clean Air Act, the Administrator has published a list of categories of sources which contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (Section III(b)(1)(A)), and for which new source performance standards will therefore be developed (40 CFR 60.16, 44 FR 49222, August 21, 1979). The proposed list was published in the **Federal Register** with a request for public comment. After review of the comments, the list was published on August 21, 1979. The sources on this list were selected and ranked according to an established screening procedure. Phosphate rock plants ranked according to an established screening procedure. Phosphate rock plants ranked 16th in priority of the 59 sources on the list. In the Administrator's judgment the

revised estimate of emissions for this category of sources still justifies the conclusion that it contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

Environmental Impact

Several commenters questioned the need for a standard because they felt the environmental benefits presented with the original proposal were exaggerated. The commenters felt that the emission reductions resulting from implementation of the standard were exaggerated because they were based on outdated and excessive production forecasts. These commenters argued that EPA should use the most recent production estimates from the Bureau of Mines. In addition, several commenters pointed out that existing sources were controlled at a more stringent level than actually required by existing State Implementation Plan regulations, which reduces the projected air quality improvement resulting from implementation of the standard.

EPA has reevaluated the environmental benefits presented with the original proposal. The reevaluation of environmental benefits as presented in Section 2.1.2 of the "Background Information for Promulgated Standards, Volume II" indicates a significant decrease in the environmental benefits of the standards. However, in the Administrator's judgement, the revised estimates of environmental benefits still justify the implementation of the standards.

The environmental impacts presented with the original proposal were based on an expected 5-percent annual increase in production. This expected increase was based on actual yearly production figures for 1950 compared to those projected for 1980. The projected production was based on data from the Bureau of Mines (1971). However, annual phosphate rock production has been fluctuating recently. Therefore, the most recent Bureau of Mines (1979) production forecast data were obtained to more accurately project the impact of the standards.

These Bureau of Mines production forecast data show that U.S. phosphate rock production will increase from 47.0 million megagrams in 1977 to 64.0 million megagrams in 1986, with a decrease to 56.0 million megagrams in 1995. With the routine replacement of existing equipment, approximately 23.3 million megagrams of phosphate rock production will be subject to the promulgated standards by 1985. This figure was used as the basis for the environmental benefits presented in this notice in "Environmental, Energy and Economic Impacts".

A lower size cutoff was requested to exclude from the standards small pilot scale and laboratory facilities used for testing and research. Economic analysis, presented in the "Background Information for Promulgated Standards," indicates that emissions from facilities with low production capacities are relatively small and the cost of controlling these emissions is excessive. The Administrator, therefore, has determined that an exemption for small facilities is appropriate. The promulgated standards apply only to plants with a production capacity greater than 3.6 megagrams per hour (4 tons/hr). This capacity is representative of the upper limit of the size range for testing and research facilities. There are no existing production facilities with capacities less than 3.6 mg/hr (4.0 tons/hr).

Particulate Emission Limits

Several commenters indicated that the proposed particulate matter emission limits for phosphate rock dryers and calciners were too stringent to be achieved on a continuous basis. The commenters contended that the proposed emission limits from dryers and calciners were not based on the performance of control systems operating on worst case particulate emission conditions. One of the problems cited was that the Agency's data base was outdated. In order to evaluate the comments, EPA requested source test data from the industrial commenters. In cases where the commenters could not supply data to support their position, EPA solicited data from State air pollution control agencies. The evaluation of the revised data base indicated that the proposed emission limits for dryers and calciners could not be achieved continuously under all operating conditions which are likely to recur. Therefore, the emission limits for both calciners and dryers have been revised.

The major variables that have the potential to affect emission levels from phosphate rock dryers and calciners are the type of feed rock and the type of fuel. Industrial experience indicated that the most important variable affecting particulate matter emission levels from dryers and calciners is the feed rock characteristics. With residual oil or coal firing, the process rock will account for greater than 80 and 90 percent of the uncontrolled emissions from dryers and calciners, respectively. Feed rock varies from mine site to mine site. Rock types vary from coarse pebbles to fine concentrates with many blends of rock between these extremes. Surface properties, organic content, level of beneficiation, and residence time in the processing unit vary with rock type. Beneficiation removes fines and increases the average particle size of emissions. Smaller average particle size causes the most difficult control situations. Therefore, beneficiation reduces emission levels. Increased residence time increases the volume of air per unit of rock and, therefore, increases the emission rate per unit of rock. These variations can effect both the particulate matter emission levels and the particle size distribution of the emissions. Florida coarse pebble rock and unbeneficiated Western rock are the least beneficiated and have longest unit residence times. As a result, they have the smallest average particle size and highest emission levels of all the phosphate rock types. Unbeneficiated Western rock, which has a slightly higher percentage of fines and smaller average particle size than coarse pebble, is the most difficult control case.

The four combustion fuels used in dryers and calciners are natural gas, distillate and residual oil, and coal. The particulate matter emissions resulting from the combustion of natural gas and distillate oil are insignificant, and will not affect particulate emission levels or the designated best control equipment performance. However, the combustion of both residual oil and coal produces significant amounts of particulate matter. Although coal usually produces a greater mass of particulate matter, residual oil combustion produces a smaller average particle size that is more difficult to control. An analysis of control device performance indicates that particulate levels after control would be higher with residual oil firing than with coal firing. Therefore, the Administrator has determined that residual oil-fired units represent the most adverse control situation with respect to fuel.

The data base of worst-case conditions for dryers consisted of five source tests from two dryer facilities processing coarse pebble rock and firing residual oil. Because dryers are not used in conjunction with unbeneficiated Western rock, these data represent the most adverse control conditions for dryers. An evaluation of the performance of a high energy venturi scrubber on these sources indicated an achievable emission limit of 0.03 kg/Mg (0.06 lb/ton). Therefore, the particulate matter emission limit for phosphate rock dryers had been revised from the proposed 0.02 kg/Mg (0.04 lb/ton) to 0.03 kg/Mg (0.06 lb/ton).

Additional source test data were acquired for calciners processing unbeneficiated Western rock. The data acquired were from the only existing facility calcining unbeneficiated Western rock. The data were from a natural gas-fired calciner controlled with a high energy wet scrubber. During the tests used as the basis for the emission limit, the calciner was processing a blend of unbeneficiated and beneficiated rock. The highest controlled emission level during the tests was 0.11 kg/Mg (0.21 lb/ton). The analysis of the tests indicated that this controlled emission level is representative of the highest level that would occur with any mix of beneficiated and unbeneficiated rock.[1] Although this unit is processing the worst-case rock type, there is a potential for residual oil or coal firing of new units. An analysis of the impacts of residual oil and firing indicate that residual oil would have the greater impact on controlled emission levels. The analysis indicated that residual oil firing could increase controlled emissions by about 0.01 kg/Mg (0.02 lb/ton). Therefore, a particulate matter emission limit of 0.12 kg/Mg (0.23 lb/ton) has been added to the standards for calciners processing unbeneficiated rock or blends of beneficiated and unbeneficiated rock. Calciners processing blends with a small percentage of unbeneficiated rock could probably comply with the proposed emission limit of 0.055 kg/Mg (0.11 lb/ton). However, existing data are insufficient to determine a precise relationship between emission level and blend ratios. The promulgated emission limit, therefore, applies to all mixtures of unbeneficiated and beneficiated rock.

Because the majority of new calciners will process beneficiated rock only, an emission limit for calciners based solely on unbeneficiated rock would allow new sources processing beneficiated rock to comply with the emission limits with less than the best demonstrated control systems. Therefore, the originally proposed particulate emission limit of 0.055 kg/Mg (0.11 lb/ton) is retained for facilities calcining beneficiated rock. The potential impacts of residual oil or coal firing are accounted for in this emission limit.

A comment was also made that the particulate matter emission limits could not be achieved continuously because it would require continuous operation of the control equipment at the maximum performance level. As required by the Clean Air Act, the promulgated particulate matter emission limits are based on the performance of the best available control equipment on the worst case uncontrolled emission levels. The best control systems have been demonstrated to be continuously effective. Therefore, there should be no problems achieving the standards if the control equipment is properly maintained and operated. The costs of operation and maintenance were included in the economic analysis of the standards and were concluded to be reasonable.

Opacity Standard

Several commenters questioned the need for opacity standards since particulate matter emissions were also subjected to mass emission limits.

Opacity limits are included in the standards to lower compliance costs and simplify enforcement procedures. Effective enforcement includes initial demonstration of compliance and routine evaluation of control equipment operation and maintenance. Compliance with particulate mass emission limits can only be demonstrated with EPA Method 5 performance tests. However, Method 5 tests are too expensive and maintenance of emission control equipment, which is the key factor in continuous compliance with the emission limit. In contrast, EPA Method 9 opacity tests are quicker, simpler, and less expensive than EPA Method 5. Therefore, opacity limits have been adopted in the standards as an effective tool to assure proper operation and maintenance of control equipment. See Clean Air Act, Section 302(k). The promulgated opacity limits have been set at levels no more restrictive than the particulate mass emission limits to ensure that any observed violations of the opacity standards accurately indicate a violation of the particulate mass emission limits. In addition the United States Court of Appeals for the District of Columbia Circuit has specifically upheld the use of opacity standards to aid in controlling mass emission under NSPS. "Portland Cement Association v. Train," 513F. 2d 506, 508 (1975).

In criticizing the opacity limits, several commenters recommended that the opacity limits for dryers and calciners should be set at 5- or 10-percent opacity. EPA has reevaluated the proposed opacity standards, considering the revisions in the particulate emission limits, and has revised the opacity limits for phosphate rock dryers and calciners to 10 percent.

Typically, visible emission standards are based on opacity observations collected simultaneously with the particulate emission tests on which the mass emission limits are based. In this case, the source test data that were used as the basis for the revised dryer and calciner particulate limits did not contain corresponding opactiy data. In the absence of corresponding opacity data, the visible emission limits for dryers and calciners were based on engineering evaluations.

The evaluations involved the use of opacity observations from an ESP-controlled phosphate rock dryer and an empirical correlation between particle concentration and opacity. Although ESP's are not designated as a basis for this standard, the visible emissions from this unit are characteristic of any dryer or calciner with a similar particle concentration. The correlation of concentration and opacity was taken from an EPA study of an asphalt aggregate dryer.[2] The use of the asphalt study was judged reasonable because asphalt aggregate dryers, phospate rock dryers, and phospate rock calciners have similar outlet particulate concentrations and particle size distributions.

The observed opacity from the ESP-controlled dryer was 7.7 percent. This level was corrected to 6 percent to adjust for an over-designed stack. Particulate mass emissions were 0.02 kg/Mg (0.039 lb/ton) at the time of the opacity observations, with a corresponding particulate concentration of 0.023 g/m^3 (0.010 gr/acf). The emission test used as the basis for the promulgated particulate emission limit of 0.03 kg/Mg (0.06 lb./ton) for phosphate rock dryers had a corresponding particulate concentration of 0.037 g/m^3 (0.016 gr/acf). The asphalt correlation was used to estimate the impact of a 0.006 gr/acf increase on a base of 6 percent opacity. Based on this approach the opacity level expected at 0.037 g/m^3 (0.016 gr/acf) would be approximately 7 percent. Allowing for a safety margin in the calculations, the opacity limit for dryers was set at 10 percent.

The particulate concentration used as the basis for the mass emission limit for calciners processing unbeneficiated rock was 0.06 g/m^3 (0.025 gr/acf). Based on the same approach used for dryers, the expected opacity at this concentration would be appoximately 8 percent. The particulate concentration used as the basis for the mass emission limit for

[1] Phosphate Rock Plants. Background Information for Promulgated Standards. Volume II. EPA-450/3-79-017b. p. 2-20.

[2] In-Stack Transmissometer Measurement of Particulate Opacity and Mass Concentration. U.S. Environmental Protection Agency. Publication No. EPA-650/2-74-120. November 1974. p. 34-35.

calciners processing beneficiated rock was 0.073 g/m³ (0.032 gr/acf). However, this unit was controlled by a 3.0 kPa (12 inches of water) pressure drop venturi scrubber. If the pressure drop is increased to the designated best level of control at 7.5 kPa (30 inches of water), the particulate concentration should be reduced to 0.23 g/m³ (0.010 gr/acf). At this concentration an opacity level of approximately 6 percent would be expected. Allowing for a safety margin in the calculations, a 10 percent opacity standard was set for calciners processing either beneficiated or unbeneficiated rock.

Although the opacity limits for calciners and dryers have been revised, the proposed zero percent opacity limit has been retained for grinders and ground rock storage and handling systems. Several commenters criticized the concept of zero percent opacity. They contended that any deviation of opacity above zero percent would cause the average for the observation period to exceed zero percent and would prevent compliance with the standards.

The zero percent opacity limit for grinders and ground rock storage and handling systems was retained because all data base opacity observations of well-controlled sources had zero percent opacity. Method 9 procedures can allow some visible emissions during a demonstration of compliance with the zero percent limit. Opacity readings are recorded every 15 seconds for 6 minutes (24 readings). These readings are recorded in 5 percent increments (i.e., 0, 5, 10, etc.). The arithmetic average of the 24 readings rounded off to the nearest whole number (i.e., 0.4 would be rounded off to 0) is the value of opacity used for determining compliance with the opacity standards. Consequently, a zero percent opacity standard does not necessarily mean there are never any visible emissions. It means either that visible emissions during a 6-minute period are insufficient to cause a certified observer to record them as 5 percent opacity, or that the average of the twenty-four 15-second readings is calculated to be less than 0.5 percent. Therefore, although emissions released to the atmosphere from a grinder or ground rock handling and storage system may be visible to a certified observer, at some time during the observation period, the source may still be found in compliance with the zero percent opacity standard.

The commenters also requested that the standards contain site-specific relief from the opacity limits in situations where particulate emission limits were being achieved while opacity limits were violated. Such a provision is not necessary. In specific cases where it can be demonstrated that the opacity standards are being violated while the particulate mass emission limits are being met, provisions for individual review and site-specific relief are included in the general provisions to these regulations (40 CFR 60.11(e)).

Continuous Monitoring

Several comments indicated a misunderstanding of the purpose and requirements for continuous monitoring equipment. The commenters felt that the purpose of the continuous monitors was to demonstrate compliance with the opacity limits. They indicated that continuous opacity monitors could not be used to accurately determine compliance with the opacity limits.

Continuous opacity monitors are not intended for demonstration of compliance with opacity or particulate matter standards. Only EPA Reference Methods can be used to demonstrate compliance. The purpose of continuous monitoring at phosphate rock plants is to ensure that emission control equipment is properly maintained and operated continuously. Continuous monitoring equipment has been demonstrated to be accurate, reliable, and suitable for purposes of monitoring excess emissions. Without continuous monitoring requirements there would be no incentive for the proper operation and maintenance of emission control equipment except during performance testing. Further, the United States Court of Appeals for the District of Columbia Circuit has specifically upheld the use of continuous opacity monitors in "National Lime Association v. EPA," 627 F. 2d 416, 450–451 (1980).

A comment was made that the proposed requirement for continuous monitoring equipment on ground rock storage and handling systems was unreasonable. The commenter pointed out that transfer points on ground rock handling systems were often controlled by small baghouses which were far less expensive than continuous monitoring equipment.

The requirement of continuous monitoring equipment on ground rock handling and storage systems has been reconsidered and has been determined to be unnecessary. The design of ground rock storage and handling systems vary greatly from plant to plant. Therefore, no typical handling and storage system can be defined. Most of the potential emissions from storage and handling systems are fugitive in nature and can be prevented by proper operation and maintenance. Because of the fugitive nature of emissions, it is difficult to define or predict specific emission points and emission control equipment requirements. Therefore, storage and handling systems are subject only to visible emission limits, compliance with which can be routinely demonstrated with Method 9. The annualized cost of a typical opacity monitoring system is about $12,500 per year (1978). The absolute costs of continuous monitoring systems is considered excessive relative to the control costs. Therefore, the requirement for continuous opacity monitors on ground rock storage and handling systems has been deleted.

Two commenters stated that an opacity averaging period of 6 minutes with overlapping time intervals would produce an excessively large and useless volume of paperwork.

The 6-minute opacity averaging periods required of continuous opacity monitors are discrete successive 6-minute periods and are not composed of overlapping time intervals. The general provisions (40 CFR 60.13(e)(i)) state that continuous opacity monitors shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle for data recording for each successive 6-minute period. Therefore, the volume of data produced will not be as large as stated by the commenters.

Emission Control Technology

Several commenters questioned the designation of baghouses as best available control technology. The commenters stated that no baghouses are in current use on existing dryers or calciners, and that technological problems associated with high temperatures and moisture blinding of bags would limit their use.

EPA agrees that there are no baghouses currently in use on phosphate rock dryers or calciners. However, baghouses have been installed and are operating effectively on similar applications, including kaolin rotary kiln dryers and asphalt aggregate dryers. The control conditions in these applications are more severe than those typically occurring with phosphate rock dryers or calciners. Baghouse manufacturers have stated that baghouses could be applied successfully to dryers and calciners. Design and operational procedures are available which prevent high temperature damage and moisture blinding. These include insulation of the baghouse and duct work, high temperature bags and preheating of the unit before cold start-

up.[3] Furthermore, baghouses are not the only technique that can be used to comply with the promulgated emission limits. If an operator believes that due to site-specific circumstances, there is economic risk in using a baghouse, then a high energy venturi scrubber can be used to comply with the standards.

The comment was made that Volume I of the BID should not have contained ESPs as a control technique because it was stated in Volume I that ESPs were not the best demonstrated system, although they are equally efficient as baghouses and high-energy venturi scrubbers. The commenters further questioned EPA's judgment that ESPs were equally as efficient as baghouses or high-energy venturi scrubbers on dryers and calciners. The commenters felt that the source test data base did not support this judgment, and ESPs should not be used as a basis for the standards.

Alternative particulate control equipment options with control efficiency levels in the range of, or above, existing controls for phosphate rock plants are baghouses, venturi scrubbers, and ESPs. Therefore, ESPs were analyzed in Volume I as a control alternative. The level of control required by the standards is estimated to be approximately 99.3 percent when processing the worst-case rock types. EPA agrees that the source tests of ESPs presented in the BID, Volume I, do not achieve this level of control. The ESPs tested achieved efficiencies in the range of 93 to 99 percent efficiency. However, ESP efficiency is a direct function of the collector plate area to gas volume ratio. By increasing the collector plate area of the tested ESPs, the efficiency can be increased to 99.3 percent. The economic evaluation of ESPs presented in Volume I of the BID presented the cost of ESPs at the increased plate area to gas volume ratio necessary to achieve 99.3 percent control. Because the cost of ESPs is primarily a function of collector plate area, the larger plate area results in significantly higher costs. The annualized costs of an ESP on a model dryer or calciner are 2 to 2.5 times higher than high-energy venturi scrubber or baghouse costs on the same source. Because of these higher costs, ESPs were not designated as a basis for the standards. The promulgated emission limits are based on the performance of high-energy venturi scrubbers and baghouses.

[3] Phosphate Rock Plants. Background Information for Promulgated Standards. Volume II. EPA-450/3-79-017b. p. 2-26, 27.

Economic Impact

Several commenters stated that the costs to control dryers and calciners to the required level were underestimated, because the costs were based on typical uncontrolled emission rates rather than worst case uncontrolled emission rates. The promulgated emission limits represent the level of control achievable with the best demonstrated control systems on worst case emission conditions. The available control options which are capable of achieving the promulgated emission limits are baghouses and high energy venturi scrubbers. The reevaluation of worst case emission levels caused a revision in the achievable emission limits for dryers and calciners processing unbeneficiated rock. These revisions were caused by changes in the inlet loadings and particle size distributions to the control device. However, there was no change in the design or operating parameters of the designated best emission control systems. Therefore, there is no change in the costs of the control alternatives from those presented in the analysis for the proposed standard.

Other commenters stated that the control cost estimates should be higher for Western plants since unbeneficiated Western rock contains a higher percentage of fines. Unbeneficiated Western rock does have a typically higher percentage of fines than Eastern rock. However, the analysis of control costs for the proposed standard included the economic analysis of a typical Western plant. The economic analysis of the standards presented in Chapter 7 of the "Background Information for Proposed Standards, Volume I," indicates that, while control costs may be higher for Western plants, the control costs are not excessive.

The commenters also felt that control costs for Western plants were underestimated because no phosphate rock dryer had been costed for the typical model Western plant. EPA also agrees that the addition of a dryer to a model Western rock processing facility will result in increased annual control costs for typical Western plants. However, existing SIP regulations already require dryer emissions control usually achieved with wet scrubbers. Based on industrial comments, industry would probably install high-energy venturi scrubbers as a means of complying with the promulgated standards. With implementation of the promulgated standards, there would be no significant increase in installation costs, because scrubber installation costs do not vary significantly at different efficiency levels. There would, however, be an increase in operating costs for the higher energy venturi scrubber. For a typical 160-ton/hr dryer, the increased annualized cost of the promulgated standard above the existing level of control would be approximately $0.06 (1978) per megagram ($0.07/ton) of product rock. The price of phosphate rock under the promulgated standard would increase from $24.53 per megagram ($22.25/ton) to $24.61 per megagram ($22.32/ton) in 1978 dollars. Therefore, there would be no significant change in the economic impact of the promulgated standard with the addition of a dryer facility at a Western plant.

The commenters also questioned the costs of applying a baghouse to phospate rock dryers or calciners. The commenters stated that an auxiliary heat source would be necessary to maintain the required temperature differential necessary to prevent condensation of moisture on the bags. An auxiliary heat source for baghouses on phosphate rock dryers and calciners was not costed or addressed because it should be unnecessary. The temperature differential necessary to prevent condensation can be maintained by properly insulating the baghouse and all ductwork to prevent heat loss. During start-up, the baghouse can be heated to operating temperature by operating the burners at low fire with no rock in the dryer or calciner. Baghouses are operating on similar applications such as asphalt dryers and kaolin dryers without auxiliary heat sources.

The commenters also argued that baghouse costs for calciners had been underestimated because the air flow that was costed for the model facility was too low. However, as pointed out in Volume I of the BID, calciner air flows for typical 45.4 Mg/hr (50 ton/hr) units range from 850 to 1,700 standard m^3/min (30,000–60,000 scfm). At a typical exhaust temperature of 120° C, these figures would present an air flow range of 1,160 to 2,310 actual m^3/min (40,800 to 81,600 acfm). The air volume costed for the model calciner facility was 2,930 actual m^3/min (103,460 acfm) for a 54 Mg/hr (60 ton/hr) unit. Therefore, the air flow costed is representative of the upper range of air flows and does not cause an underestimation of control costs.

Commenters also questioned the cost effectiveness of continuous monitoring equipment. They felt that the costs associated with continuous monitoring had not been adequately evaluated. The cost to purchase, install, operate, and maintain continuous opacity monitoring

equipment was addressed and evaluated during the development of the standards. The annualized cost of a typical continuous opacity monitoring system is about $12,500 (1978 dollars) per year. This cost is relatively minor compared to the annualized cost of the emission control equipment required by the promulgated standard (about 4.2 percent of a venturi scrubber on a 145-Mg/hr dryer) and was concluded to be reasonable.

The comment was also made that the control costs required by the standard were underestimated because the costs required to install, calibrate, maintain, and operate a device for measuring phosphate rock mass feed to the emission sources were not included in the control costs.

The cost of rock feed rate (by weight) measurement equipment was addressed and considered during the economic analysis of the standards. Rock feed measuring equipment is normally utilized at phosphate rock plants to measure production process feed rates and is not solely a part of control requirements. The installed cost of rock feed measurement equipment is about $14,000 (1978) for a facility processing 135 megagrams per hour (150 tons/hr) of rock, and has an annualized cost of about $3,500 (1978) per year. These costs are insignificant (about 1.1 percent of the annualized cost of a venturi scrubber on a 145/Mg/hr dryer) when compared to the control equipment costs of the same facility.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of the rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect the degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and nonair-quality health, environmental impact, and energy requirements) the Administrator determines has been adequately demonstrated.

Althought there may be emission control technology available that can reduce emissions below those levels required to comply with the standards of performance, this technology might not be selected as the basis of standards of performance because of the costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act requires (or has the potential for requiring) the imposition of a more stringent emission standard in several situations. For example, applicable costs do not play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources located in nonattainment areas (i.e., those areas where statutorily mandated health and welfare standards are being violated). In this respect, Section 173 of the Act requires that new or modified sources constructed in an area which violates the National Ambient Air Quality Standards (NAAQS) must reduce emissions to a level that reflects the "lowest achievable emission rate" (LAER), as defined in Section 171(3), for such category of source. The statute defines LAER as that rate of emissions based on the following, whichever is more stringent:

(A) The most stringent emission limitation contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or,

(B) The most stringent emission limitation achieved in practice by such class or category of source.

In no event can the emission rate exceed any applicable new source performance standard (Section 171(3)).

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources (referred to in Section 169(1)) employ "best available control technology" (as defined in Section 169(3)) for all pollutants regulated under the Act. Best available control technology (BACT) must be determined on a case-by-case basis, taking energy, environmental, and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to Section 111 (or 112) of the Act.

In all events, State Implementation Plans (SIPS) approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of National Ambient Air Quality Standards (NAAQS) designed to protect public health and welfare. For this purpose, SIPs must in some cases require greater emission reductions than those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111, or those necessary to attain or maintain the NAAQS under Section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than EPA's standards of performance under Section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

EPA will review this regulation 4 years from the date of promulgation. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because: (1) The national annualized compliance costs, including capital charges resulting from the standards total less than $100 million; (2) the standards do not cause a major increase in prices or production costs; and (3) the standards do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. The docket is available for public inspection at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

Although no regulatory impact analysis is required, an economic impact assessment of alternative emission standards has been prepared, as required under Section 317 of the Clean Air Act, and is included in the

"Background Information Document for Proposal for Phosphate Rock Plants, Volume I." EPA considered all the information in the economic impact analysis in assessing the cost of the standard.

In addition to economics, the cost effectiveness of alternative standards was evaluated in order to determine the least costly way to reduce emissions and to assure that the controls required by this rule are reasonable relative to other regulations for particulate matter. The cost per ton of pollutant removed was computed for each process affected by the standard, both on an average and incremental basis. The incremental cost ranged from $51 to $235 per ton of particulate removed, which compares favorably with particulate matter control at other industrial sources where costs typically range up to $1,000 per ton and in certain cases may exceed $2,000 per ton. Additional detail on this analysis can be found in the docket.

The information collection activity contained in this Final Rule is not covered by the Paperwork Reduction Act (PRA) because there are fewer than ten respondents.

List of Subjects in 40 CFR Part 60:

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

Dated: April 9, 1982.

Anne M. Gorsuch,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

40 CFR Part 60 is amended by adding a new subpart as follows:

Subpart NN—Standards of Performance for Phosphate Rock Plants

Sec.

60.400 Applicability and designation of affected facility.
60.401 Definitions.
60.402 Standard for particulate matter.
60.403 Monitoring of emissions and operations.
60.404 Test methods and procedures.

Authority: Secs. 111 and 301(a) of the Clean Air Act, as amended, (42 U.S.C. 7411, 7601(a)), and additional authority as noted below:

Subpart NN—Standards of Performance for Phosphate Rock Plants

§ 60.400 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the following affected facilities used in phosphate rock plants which have a maximum plant production capacity greater than 3.6 megagrams per hour (4 tons/hr): dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorus production.

(b) Any facility under paragraph (a) of this section which commences construction, modification, or reconstruction after September 21, 1979, is subject to the requirements of this part.

§ 60.401 Definitions.

(a) "Phosphate rock plant" means any plant which produces or prepares phosphate rock product by any or all of the following processes: Mining, beneficiation, crushing, screening, cleaning, drying, calcining, and grinding.

(b) "Phosphate rock feed" means all material entering the process unit including, moisture and extraneous material as well as the following ore minerals: Fluorapatite, hydroxylapatite, chlorapatite, and carbonateapatite.

(c) "Dryer" means a unit in which the moisture content of phosphate rock is reduced by contact with a heated gas stream.

(d) "Calciner" means a unit in which the moisture and organic matter of phosphate rock is reduced within a combustion chamber.

(e) "Grinder" means a unit which is used to pulverize dry phosphate rock to the final product size used in the manufacture of phosphate fertilizer and does not include crushing devices used in mining.

(f) "Ground phosphate rock handling and storage system" means a system which is used for the conveyance and storage of ground phosphate rock from grinders at phosphate rock plants.

(g) "Beneficiation" means the process of washing the rock to remove impurities or to separate size fractions.

§ 60.402 Standard for particulate matter.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere:

(1) From any phosphate rock dryer any gases which:

(i) Contain particulate matter in excess of 0.030 kilogram per megagram of phosphate rock feed (0.06 lb/ton), or

(ii) Exhibit greater than 10-percent opacity.

(2) From any phosphate rock calciner processing unbeneficiated rock or blends of beneficiated and unbeneficiated rock, any gases which:

(i) Contains particulate matter in excess of 0.12 kilogram per megagram of phosphate rock feed (0.23 lb/ton), or

(ii) Exhibit greater than 10-percent opacity.

(3) From any phosphate rock calciner processing beneficiated rock any gases which:

(i) Contain particulate matter in excess of 0.055 kilogram per megagram of phosphate rock feed (0.11 lb/ton), or

(ii) Exhibit greater than 10-percent opacity.

(4) From any phosphate rock grinder any gases which:

(i) Contain particulate matter in excess of 0.006 kilogram per megagram of phosphate rock feed (0.012 lb/ton), or

(ii) Exhibit greater than zero-percent opacity.

(5) From any ground phosphate rock handling and storage system any gases which exhibit greater than zero-percent opacity.

§ 60.403 Monitoring of emissions and operations.

(a) Any owner or operator subject to the provisions of this subpart shall install, calibrate, maintain, and operate a continuous monitoring system, except as provided in paragraphs (b) and (c) of this section, to monitor and record the opacity of the gases discharged into the atmosphere from any phosphate rock dryer, calciner, or grinder. The span of this system shall be set at 40-percent opacity.

(b) For ground phosphate rock storage and handling systems, continuous monitoring systems for measuring opacity are not required.

(c) The owner or operator of any affected phosphate rock facility using a wet scrubbing emission control device shall not be subject to the requirements in paragraph (a) of this section, but shall install, calibrate, maintain, and operate the following continuous monitoring devices:

(1) A monitoring device for the continuous measurement of the pressure loss of the gas stream through the scrubber. The monitoring device must be certified by the manufacturer to be accurate within ±250 pascals (±1 inch water) gauge pressure.

(2) A monitoring device for the continuous measurement of the

scrubbing liquid supply pressure to the control device. The monitoring device must be accurate within ±5 percent of design scrubbing liquid supply pressure.

(d) For the purpose of conducting a performance test under § 60.8, the owner or operator of any phosphate rock plant subject to the provisions of this subpart shall install, calibrate, maintain, and operate a device for measuring the phosphate rock feed to any affected dryer, calciner, or grinder. The measuring device used must be accurate to within ±5 percent of the mass rate over its operating range.

(e) For the purpose of reports required under § 60.7(c), periods of excess emissions that shall be reported are defined as all 6-minute periods during which the average opacity of the plume from any phosphate rock dryer, calciner, or grinder subject to paragraph (a) of this section exceeds the applicable opacity limit.

(f) Any owner or operator subject to the requirements under paragraph (c) of this section shall report for each calendar quarter all measurement results that are less than 90 percent of the average levels maintained during the most recent performance test conducted under § 60.8 in which the affected facility demonstrated compliance with the standard under § 60.402.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414))

§ 60.404 Test methods and procedures.

(a) Reference methods in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance with § 60.402 as follows:

(1) Method 5 for the measurement of particulate matter and associated moisture content,

(2) Method 1 for sample and velocity traverses,

(3) Method 2 for velocity and volumetric flow rates,

(4) Method 3 for gas analysis, and

(5) Method 9 for the measurement of the opacity of emissions.

(b) For Method 5, the sampling time for each run shall be at least 60 minutes and have a minimum sampled volume of 0.84 dscm (30 dscf). However, shorter sampling times and smaller sample volumes, when necessitated by process variables or other factors, may be approved by the Administrator.

(c) For each run, the average phosphate rock feed rate in megagrams per hour shall be determined using a device meeting the requirements of § 60.403(d).

(d) For each run, emissions expressed in kilograms per megagram of phosphate rock feed shall be determined using the following equation:

$$E = \frac{[CsQs]10^{-6}}{M}$$

where, E = Emissions of particulates in kg/Mg of phosphate rock feed.

Cs = Concentration of particulates in mg/dscm as measured by Method 5.

Qs = Volumetric flow rate in dscm/hr as determined by Method 2.

10^{-6} = Conversion factor for milligrams to kilograms.

M = Average phosphate rock feed rate in mg/hr.

Note.—The reporting and recordkeeping requirements in this section are not subject to Section 3507 of the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, because these requirements are expected to apply to fewer than 10 persons by 1985.

(Sec. 114, Clean Air Act, as amended, (42 U.S.C. 7414))

[FR Doc. 82-10475 Filed 4-15-82; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
April 16, 1982

Part IX

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Programs; Roads and Subsidence Control and Concurrent Surface and Underground Mining Operations; Proposed Rules

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Programs; Roads

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

ACTION: Proposed rules.

SUMMARY: The Office of Surface Mining (OSM) is proposing new rules governing roads under the Surface Mining Control and Reclamation Act of 1977 (the Act). These rules would replace the three-class system of road identification in the suspended rules, designating roads, instead, as either primary or ancillary. The rules would define primary and ancillary roads and set different standards for each. Two options are proposed for primary roads. Option 1 would set performance standards and design criteria. Option 2 would set performance standards only, but as with Option 1 would require regulatory authorities, operators and engineers to ensure that roads are designed in such a way that the performance standards will be met. Ancillary roads, which infrequently used roads, would be subject to performance standards without design criteria.

DATES:

Written comments: Accepted until 5 p.m. (eastern time) on May 17, 1982.

Public hearings: Held on request only, on May 13, 1982, at 4:00 p.m. (local), except that the hearing in Washington, D.C., will start at 9:00 a.m.

Public meetings: Scheduled on request only.

ADDRESSES:

Written comments: Hand-deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR 14–05), Room 5315, 1100 L Street, NW., Washington, D.C.; or *mail* to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR 14.05), Room 5315L, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Public hearings: Washington, D.C.—Department of the Interior Auditorium, 18th and C Streets, NW.; Denver, Colo.—Brooks Tower, 2d Floor Conference Room, 1020 15th Street, and Pittsburgh, Pa.—1000 Liberty Ave, Room 2102.

Public meetings: OSM offices in Washington, D.C.; Charleston, W. VA.; Knoxville, Tenn.; Indianapolis, Ind.; and Denver, Colo.

FOR FURTHER INFORMATION CONTACT: Jose R. del Rio, Division of Engineering Analysis, Office of Surface Miing, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; 202–343–4022.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures.
II. Background.
III. Discussion of Proposed Rules.
IV. Procedural Matters.

I. Public Commenting Procedures

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "Addresses"). Comments received after the time indicated under "Dates" or at locations other than Washington, D.C., will not necessarily be considered or be included in the Administrative Record for the final rulemaking.

Public Hearings

Persons wishing to comment at the public hearings should contact the person listed under "For Further Information Contact" by the close of business three working days before the date of the hearing. If no one requests to comment at a public hearing at a particular location by that date, the hearing will not be held. If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

Public hearings will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment, and persons present in the audience who wish to comment, have been heard.

Public Meetings

Persons wishing to mee with OSM representatives to discuss these proposed rules may request a meeting at any of the OSM offices listed in "Addresses" by contacting the person listed under "For Further Information Contact."

All such meetings are open are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record room (1100 L St.). A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

Section 701(28)(B) of the Surface Mining Control and Reclamation Act (the Act), 30 U.S.C. 1201 *et seq.*, defines "surface coal mining operations" to include roads used for access to the mine site or for hauling coal. Thus, such roads must meet the general performance standards for surface coal mining operations set forth in Sections 515 and 516 of the Act and 30 CFR Subchapter K. For instance, Section 515(b) (4) of the Act specifically requires the operator to conduct operations in a manner which will stabilize surface areas to effectively control erosion. Section 515(b) (10)(B)(i) of the Act requires the operator to conduct surface coal mining operations in a manner which will control or prevent additional contributions of suspended solids to streamflow or runoff outside the permit areas, using the best technology currently available. In addition, under Sections 515(b)(17) and (18) and 516(b)(10) of the Act, Roads must be constructed and maintained to "control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property * * *" and must not be constructed so close to stream beds or drainage channels as to "seriously alter" the normal flow of water.

Coal mine roads have long been identified as being responsible for much of the watershed disturbances associated with surface mining operations. Also, abandoned roads associated with surface mining are known to contribute substantially to stream sedimentation, thus affecting the water quality flowing from mined watersheds. Studies have shown that roads constitute approximately 10 percent of the total area directly disturbed by surface mining operations, and in some areas the land area disturbed by roads actually exceeds the area disturbed by the mine (Grim and Hill, 1974). Mine roads are a major source of sediment and can result in rates of erosion in the range of 2000 times that of unmined watersheds. The major factors contributing to soil loss from roads are poor location, improper construction, poor maintenance practices and inadequate stabilization of cut and fill slopes (U.S. Environmental Protection Agency, 1976).

Proposed permanent program rules pertaining to road location, construction, and restoration were first published in the **Federal Register** on September 18, 1978 (43 FR 41881–41883). In addition to performance standards, the proposal contained specific design criteria and standards deemed necessary to ensure environmental protection and successful reclamation. In response to comments received on these rules proposed on September 18, 1978, and in an attempt to clarify the proposed rules and add flexibility, a road classification system (Classes I, II, III) was developed and included within the final permanent program rules (30 CFR 816.150–816.176 and 817.150–817.176) as published March 13, 1979 (44 FR 14902). The expanded classification system was believed to cover every type of road needed in a mining operation with an appropriate set of design criteria. "Road" was also defined in § 701.5, March 13, 1979 (44 FR 15320).

Soon after the permanent program rules were promulgated, the Pennsylvania Coal Miners Association and the National Coal Association/ American Mining Congress filed a suit in the U.S. District Court for the District of Columbia charging that the road classification system in the final rules was an extensive revision of the proposed rules which the public could not have foreseen based on the proposed rule and that the public notice was therefore inadequate. The District Court ruled in favor of the Pennsylvania Coal Miners Association and the National Coal Association/American Mining Congress by remanding the rules (§§ 816.150–816.176 and 817.150–817.176) back to OSM for further consideration. *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, Slip op. at 32–36 (D. D.C. May 16, 1980). As a result of the court decision OSM suspended its permanent program rules for roads (45 FR 51547, August 4, 1980). Thus, there are no permanent program rules for roads in effect.

The suspended §§ 816.150–816.176 and existing § 816.180 are essentially the same as suspended §§ 817.150–817.176 and existing § 817.180. The only difference is that §§ 816.150–816.180 refer to surface mining and §§ 817.150–817.180 refer to underground mining. Under this proposal, Part 816 would be essentially the same as Part 817. To simplify this preamble, OSM will discuss changes to § 816.150–816.180 with the understanding that the discussion will also apply to proposed § 817.150.–817.180.

OSM in formally circulated drafts of these proposed rules prior ot this publication and references to commenters in this document relate to comments received on those earlier drafts.

III. Discussion of Proposed Rules

A. Definition of Primary and Ancillary Roads

This proposal would delete the three-class system for categorizing roads set in the suspended rules and introduce instead rules to designate roads as either primary or ancillary.

The basic distinction between these two types of roads is the frequency of use. The primary road would be frequently used or in continuous use throughout the life of the mine or for a substantial period of time. Ancillary roads, on the other hand, would be used infrequently or for a special reason for a short time, such as roads into exploration areas, water treatment facilities, and maintenance areas.

A proposed revision to the definition of roads in § 701.5 was published January 4, 1982 (47 FR 41 *et seq.*) proposing to delete the three-class system for roads and make other editorial changes in the existing definition. Proposed definitions of primary and ancillary roads in this proposal would be added to that definition.

The potential for environmental damage from roads subject to continuous use is generally recognized. The same conditions and potential for damage do exist with the smaller, less used road; however, the potential severity and risk of harm are considerably less, and such roads may not warrant the degree of engineering design input and expense required by larger, busier facilities. Consequently, OSM is proposing to include roads to less used facilities as ancillary roads subject only to performance standards under § 816.180-*Other transportation facilities*-and thus allow maximum flexibility for design, construction and maintenance.

For primary roads, OSM is consideraing two alternative approaches to ensuring that environmental protection is afforded in keeping with the intent of the Act. One approach (Option 1) would establish performance standards for primary roads coupled with minimum design criteria known to assure proper performance through testing and past practice. This option would essentially be the same as the suspended rules for Class I roads. As in the suspended rules, and engineer would have to certify that the design and construction or reconstruction of such roads is in accordance with §§ 816.150.–816.15.

A second approach (Option 2) is the establishment of performance standards for primary roads coupled with a requirement of certification by a qualified registered professional engineer that acceptable engineering criteria have been incorporated in the design and construction in order to ensure compliance.

Since promulgation of the now suspended rules, there have been many opportunities for discussion and comment form the public. Some of the public advocated general performance standards and were concerned that prescription of both design criteria and performance standards creates rules that are rigid and insensitive to varying conditions with a resulting loss of design flexibility. Others advocated both minimum design criteria and performance standards and were concerned that reliance on performance standards alone would undermine enforcement and thus would not be in keeping with the intent of the Act. OSM believes that either approach can be effective in enforcing compliance with environmental standards. Consequently, the two optional proposals for primary roads are presented for review and comment. The optional approaches are offered for clarity and differentation between concepts only. It is anticipated that one of these alternative approaches would be selected or combined into a final proposed rule after comments are received and evulated.

Even if Option 2 is selected, OSM would continue to encourage adherence to tested and recognized design criteria. OSM is compiling abstracts of publications related to the design, construction and reclamation of roads. This material will be placed in the technical reference file of the Administrative Record.

A decision not to use design criteria in the rules for primary roads should not be construed as reflecting on the validity of these standards. These criteria have been developed and tested by long-standing experience, study and observation, and should be considered valid and prudent for use in ensuring environmental performance in most situations.

Section 516(b)(10) of the Act requires the Secretary to consider the differences between surface and underground mining in promulgating rules. However, OSM does not believe there are any differences between roads for surface mines and roads for underground mines. Both options for the primary roads rules contain the same proposed requirements

for roads related to underground mines (Part 817) as for roads on surface mines (Part 816).

B. Primary Roads

Option 1

This option would contain both performance standards and specific design criteria for primary roads. It closely parallels §§ 816.150–816.156 of the suspended rules which governed Class I roads except for certain proposed variations, which are discussed below. In addition, editorial changes would be made to clarify the rules and to reflect the use of the primary/ancillary road distinction instead of the three-class system. The term "Class I road" would be replaced by the term "primary road." The discussion in the preamble to the suspended rules, 44 FR 15245–60 and 15277–8 (March 13, 1979) is also adopted insofar as it is consistent with this proposal.

Suspended § 816.150, with a new heading, *Primary roads: General,* would remain essentially unchanged in the proposed rule except for paragraph (d)(2), which would be removed.

Paragraph (d)(2) had required that the road design incorporate the demand for mobility and travel efficiency, based on geometric criteria, both horizontal and vertical, appropriate for the anticipated volume of traffic and weight and speed of vehicles. This provision would not be included in these proposed rules. OSM considers it unnecessary to explicitly state such a requirement because it is standard engineering practice.

Suspended § 816.151, with a new heading, *Primary roads: Location,* would be essentially unchanged in the proposed rule.

Suspended § 816.152, with a new heading, *Primary roads: Design and construction,* would remain essentially unchanged in the proposed rule except for paragraphs (d)(5–6).

Section 816.152(d)(5) required that in building the layers of embankments, loads of material must be leveled as placed "and kept smooth." This last phrase would not be included in the proposed rule. OSM considers it poor construction practice to place fill on a smooth surface as opposed to a rough surface.

In addition, the requirement in paragraph (d)(5) that compacting and layering be continued until no horizontal movement of the material is visible would not be contained in the proposed rule. OSM believes that requirement need not be explicitly stated, as it is standard engineering practice.

Suspended § 816.152(d)(6) provided that no lift could be placed on a layer of an embankment under construction until the design density is achieved throughout the layer. The proposed rule would not contain this language. OSM believes that the requirement is undesirable when using certain compaction equipment, such as sheep's foot rollers, where integrating the surface of successive layers is important and can be accomplished without separate scarification of each layer.

Suspended § 816.153 remains essentially unchanged in the proposed rule except for paragraph (c)(2)(v). Paragraph (c)(2)(v) provided that culverts for road surface drainage may be designed to carry less than the peak runoff from a 10-year, 24-hour precipitation event "if the ditch will not overtop and will remain stable." The proposed rule would allow such a design "if the ditch has been designed to contain the flood stage" and will remain stable. This change is designed to make the regulation easier to understand.

The remaining rules covered under this optional approach for primary roads, proposed §§ 816.154–816.156, would be essentially unchanged from the suspended rules.

Sections 816.160–816.176 would be removed for both Option 1 and Option 2 as these sections specified requirements under the three-class system which would be deleted in favor of designating roads either primary or ancillary.

Option 2

This proposal would contain the performance standards for primary roads and eliminate the specific design criteria (§§ 816.151–816.156) for primary roads. It would also allow operators using engineers qualified by experience in road construction to select the method of ensuring that the environmental performance standards are met. The State regulatory authorities, which have the responsibility to approve the design, are encouraged to include minimum design criteria within the framework of their rules where deemed necessary.

As previously stated, abandoned roads are known to contribute substantially to stream sedimentation, thus seriously affecting the water quality flowing from mined watersheds. Roads act as concentration points for surface runoff and unless drainage facilities are properly and regularly maintained they will cease to function properly and contribute heavily to erosion and sedimentation.

Proposed § 816.150(a) would require that primary roads be designed and maintained to control or prevent property damage, erosion, siltation, air pollution attendant to erosion, damage to fish and wildlife, and contributions of suspended solids to streams and runoff; neither cause nor contribute to violations of water quality standards; minimize harm to water; and refrain from significantly altering the flow of water in streambeds or drainage channels. These proposed requirements are taken directly from Sections 515(b)(17), 515(b)(10)(B)(i), 515(b)(10), and 515(b)(18) and 516 of the Act.

Proposed § 816.150(b) would require that road design and construction incorporate design criteria approved by the regulatory authority and be certified by a qualified registered professional engineer as meeting the performance standards. This is proposed to ensure that the performance standards will be met.

Proposed § 816.150(c) would require that primary roads, throughout their existence, meet the design criteria approved by the regulatory authority as is required by Section 515(b)(17) of the Act.

Proposed § 816.150(d) would require that unless a primary road is to be kept for the postmining land use, it must be reclaimed by closing it to vehicles, removing bridges and culverts, restoring the natural drainage patterns, reshaping the slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain, and revegetating.

The remaining suspended § 816.151–816.156, which contained design criteria for primary roads, would be deleted under Option 2. Suspended §§ 816.160–816.176, which contained performance standards and design criteria for Class II and Class III roads, would also be deleted.

Some States have statutes which prohibit their rules from being more stringent than OSM's, resulting in concern that lack of design criteria in the OSM rules will preclude the inclusion of design criteria in State regulations. OSM does not believe that the use of design criteria by a State in its rules would necessarily be more stringent than Option 2 of these proposed rules. Under this proposal, the regulatory authority is required to impose design criteria on roads, either by rules or on a site-by-site basis with an engineer's certification.

Some commenters on the early draft of these proposals expressed concern that under Option 2 OSM would be abdicating oversight of design criteria and construction to professional engineers who allegedly accept the flexibility but not the responsibility. All

States have laws that govern the professional engineer-client relationship and the responsibility for accurate information. Such problems should be controllable under these State laws.

Some commenters have expressed concern that the lack of design criteria would undermine the enforcement of performance standards and that enforcement would be difficult because inspectors are not sufficiently trained in engineering matters to question the construction procedures. Design criteria and engineering input would be evaluated during the permit review process by those States which do not have design criteria in their regulations. Sufficient information is required as part of the permit submission under Parts 780 and 784 of this chapter to enable regulatory authorities to make engineering evaluations and decisions on the planned construction and operational phases. The approved permit then becomes the basis for enforcement, and it should not require engineering expertise on the part of trained enforcement personnel to check adherence to the plan.

Some commenters were concerned that lack of design criteria within the body of the rules would be contrary to the purpose and intent of the Act and threaten its integrity and substantive performance standards and goals. This concern seems unfounded, as the proposal would only shift more responsibility to the regulatory authority and engineers to ensure compliance with the performance standards through incorporation of accepted, effective design criteria. This proposal would allow flexibility which may be needed for specific situations, yet would require utilization of accepted criteria or justifications for deviations which are subject to engineering evaluations during the permit review process.

C. Ancillary Roads

Performance standards for ancillary roads would be covered by a proposed amendment of existing § 816.180—*Other transportation facilities.* This section, which governs such facilities as railroad loops and aerial tramways, would be revised to include ancillary roads. Paragraph (a)(1) would also be revised to require that erosion, siltation and the air pollution attendant to erosion be controlled or *prevented,* whereas the existing rule does not explicitly cover air pollution and uses a "control and *minimize*" standard. The proposed language would more closely follow the language of Section 515(b)(17) of the Act, and is not intended to be a substantive change.

Paragraph (a)(2), (a)(3), and (a)(4) would remain essentially unchanged. Proposed Paragraph (a)(5) would require that harm to water be *minimized,* while the existing rule requires that it be *controlled* and minimized. This proposed language would follow the language of Section 515(b)(10) of the Act, and is not intended as a substantive change.

Proposed paragraph (a)(7) would require that property damage be prevented *or controlled,* while the existing rule requires that it be prevented. This proposed language would follow the language of Section 515(b)(1) of the Act.

Proposed paragraph (a)(6) would add the requirement that the operator not significantly alter the normal flow of water in streambeds or drainage channels. This requirement is based on Section 515(b)(18) of the Act.

Also, additional performance standards regarding the design, construction or reconstruction, maintenance and reclamation of ancillary roads and other transportation facilities would be added to existing § 816.180 in new paragraphs (b), (c) and (d). These performance standards would be similar to those for primary roads in § 816.150(b)(1), (c) and (d). The reader is referred to that section for further discussion of proposed paragraphs (b), (c) and (d) of § 816.180.

D. Coal Exploration Roads

In a separate rulemaking OSM is proposing to revise existing § 815.15, which contains performance standards for coal exploration roads. The separate rulemaking will propose to incorporte the standards in this proposal.

E. Reference Materials

Reference materials used to develop these proposed rules are as follows:

Grim, E.C., and Hill, R.D., 1974, Environmental protection in surface mining of coal: U.S. Environmental Protection Agency, EPA 670/2–74–093, pp. 2 and 16.

U.S. Environmental Protection Agency, 1976, Erosion and sediment control—Surface mining in the Eastern United States: EPA 625/3–76–006, Vol. 1, Planning, pp. 7–9.

American Association of State Highway and Transportation Officials (AASHTO). 1978. Standard specifications for transportation materials and methods of sampling and testing. Part I, Specifications. Part II, Methods of sampling and testing. American Association of State Highway and Transportation Officials, Washington, D.C. Part I, 828 pp.; Part II, 998 pp.

IV. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has examined these proposed rules according to the criteria of Executive Order 12291 (February 17, 1981). OSM has determined that these are not major rules and do not require a regulatory impact analysis because they would impose only minor costs on the coal industry and coal consumers. In addition, Option 2 of the proposed rules would emphasize the use of performance standards instead of design criteria, which would allow operators to utilize the most cost effective means of achieving the performance standards. The design criteria of Option 1 would provide procedures to meet the performance standards and would not change the findings under Executive Order 12291.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* that these rules would not have a significant economic impact on a substantial number of small entities. The funds a small operator would have to invest in the construction of the road to comply with these proposed rules would only be minimally increased over what would normally be spent to insure efficient transportation and minimal vehicle damage. The cost of the road would be defrayed by less maintenance costs for the road and vehicles. The operator would also avoid losses from a shutdown of operations due to impassable roads.

Paperwork Reduction Act

The information collection requirements in existing 30 CFR Parts 816 and 817 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned new clearance numbers 1029–0047 and 1029–0048 on April, 1981. This approval was identified in notes at the introduction to 30 CFR Parts 816 and 817 under the old number RO 618 and RO 619 (all under No. B–190462). OSM would delete those notes and codify the OMB approvals under the new §§ 816.10 and 817.10.

The information collection requirements for Option 1 can be found in §§ 816.150(d) and 817.150(d). Under Option 2 the information requirements are contained in §§ 816.150(b)(2), 816.152(d)(13), 817.150(b)(2) and 817.152(d)(13). OSM requests comments on the necessity and burden of these requirements.

The information required by these sections would be used by the

regulatory authority in monitoring and inspecting surface and underground mining activities to ensure that they are conducted in a manner which preserves and enhances environmental and other values of the Act. This information required by 30 CFR Parts 816 and 817 is mandatory.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) on this proposed rule and has made an interim finding that it would not significantly affect the quality of the human environment. The draft EA is on file in the OSM Administrative Record at the address listed in the "Addresses" section of this preamble. A final EA will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule. OSM also is preparing an EA of the cumulative impacts on the human environment of this rulemaking and related rulemakings under the Act. This cumulative EA also will be completed before this rule is made final.

List of Subjects in 30 CFR Part 701

Coal mining, Surface mining, Underground mining.

List of Subjects in 30 CFR Parts 816 and 817

Coal mining, Environmental protection, Reporting requirements, Surface mining.

Accordingly, it is proposed to amend 30 CFR Parts 701, 816 and 817 as set forth herein.

Dated: March 31, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 701—PERMANENT REGULATORY PROGRAM

1. In § 701.5 new paragraphs (a) and (b) are added to the definition of road to read as follows:

§ 701.5 Definitions.

* * * * *

Road * * *

(a) Primary road means a road frequently used for access, coal hauling and other purposes for substantial periods of time.

(b) Ancillary road means a road that is used infrequently and for short periods of time.

* * * * *

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS-SURFACE MINING ACTIVITIES

Option 1 for § 816.150

2. Section 816.150 is revised to read as follows:

§ 816.150 Primary roads: General.

(a) Each person who conducts surface mining activities shall design, construct or reconstruct, use, and maintain primary roads and restore the area to meet the requirements of §§ 816.151–816.156 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(b) To the extent possible using the best technology currently available, primary roads are not to cause damage to fish, wildlife, and related environmental values or cause contributions of suspended solids to streamflow or to runoff outside the permit area. However, in no event are such contributions to be in excess of limitations of State or Federal law.

(c) All primary roads are to be removed and the affected land regraded and revegetated in accordance with the requirements of Section 816.156 unless—

(1) Retention of the road is part of the approved postmining land use or is approved as necessary to control erosion adequately;

(2) The necessary maintenance is assured; and

(3) All drainage is controlled according to § 816.153.

(d) The design and construction or reconstruction of primary roads are to be certified by a qualified registered professional engineer in accordance with §§ 816.151–816.154. Alternative design specifications may be used only after approval by the regulatory authority when the qualified registered professional engineer demonstrates that the alternative design specifications will result in performance equal to or better than that resulting from primary roads complying with §§ 816.151–816.154.

Option 2 for § 816.150

3. Section 816.150 is revised as follows:

§ 816.150 Primary roads: General.

(a) Each person who conducts surface mining activities shall design, construct, reconstruct, use, maintain and restore primary roads so as to comply with the following:

(1) Control or prevent erosion, siltation and the air pollution attendant to erosion;

(2) Control or prevent damage to fish, wildlife or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow, or runoff outside the permit area;

(4) Neither cause nor contribute, directly or indirectly, to the violation of State or Federal water quality standards applicable to receiving waters;

(5) Minimize diminution or degradation of water quality or quantity;

(6) Refrain from significantly altering the normal flow of water in streambeds or drainage channels; and

(7) Prevent or control damage to public or private property.

(b) Primary roads are to be designed and constructed or reconstructed to—

(1) Incorporate recognized engineering minimum design criteria approved or established by the regulatory authority for environmental protection and safety, and appropriate for the planned duration and use; and

(2) Be certified by a qualified registered professional engineer as meeting performance standards requirements.

(c) Primary roads are to be maintained to meet the approved design criteria throughout the life of the road.

(d) A primary road is to be reclaimed immediately after it is no longer needed for operations, unless the road is to be retained for use under the approved postmining land use. The operator shall complete the following to reclaim the road:

(1) Close the road to vehicular traffic;

(2) Remove all bridges and culverts;

(3) Restore the natural drainage patterns;

(4) Reshape all cut and fill slopes to be compatible with postmining land use and to complement the drainage pattern of the surrounding terrain; and

(5) Revegetate disturbed surfaces in accordance with §§ 816.111–816.116.

Option 1 for § 816.151

4. Section 816.151 is revised to read as follows:

§ 816.151 Primary roads: Location.

(a) Primary roads are to be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(b) No part of any primary road is to be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority.

(c) Stream fords are to be prohibited unless they are specifically approved by the regulatory authority as temporary

routes during periods of construction. The fords are not to adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings are to be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of § 816.153.

(d) Primary roads are to be located to minimize downstream sedimentation and flooding.

Option 2 for § 816.151

§ 816.151 [Removed]

5. Section 816.151 is removed.

Option 1 for § 816.152

6. Section 816.152 is revised to read as follows:

§ 816.152 Primary roads: Design and construction.

Primary roads are to be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance:

(a) *Vertical alinement.* Except where lesser grades are necessary to control site-specific conditions, maximum road grades are to be as follows:

(1) The overall grade is not to exceed 10h:1v (10 percent).

(2) The maximum pitch grade is not to exceed 6.5h:1v (15 percent).

(3) There is not to be more than 300 feet of pitch grade exceeding 10 percent within any consecutive 1,000 feet of primary road, and in no case is there to be any pitch grade over 15 percent.

(b) *Horizontal alinement.* The horizontal alinement for a primary road is to be as consistent with the existing topography as possible, and the alinement is required to meet the performance standards of §§ 816.150–816.156. The alinement is to be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles using the road. Horizontal and vertical alinement are to be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(c) *Road cuts.* (1) cut slopes are not to be steeper than specifically authorized by the regulatory authority, which shall not authorize slopes steeper than 1.5H:1v in unconsolidated materials or 0.25h:1v in rock, except that steeper slopes may be specifically authorized by the regulatory authority if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(2) Topsoil or other material suitable under § 816.22 is to be placed on all cut slopes of 1.5h:1v or flatter to aid in establishing vegetation and to minimize erosion. Topsoil depth is to be adequate to support vegetation necessary to control erosion.

(3) Temporary erosion control measures are to be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(d) *Road embankments.* Embankment sections are to be constructed in accordance with the following provisions:

(1) All vegetative material and topsoil are to be removed from the embankment foundation during construction to increase stability, and no vegetative material or topsoil is to be placed beneath or in any primary road embankment.

(2) Where an embankment is to be placed on side slopes exceeding 5h:1v (20 percent), the existing ground is to be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway is to be a minimum of 10 feet in width and extend a minimum of 2 feet below the toe of the fill.

(3) Material, containing by volume less than 25 percent rocks larger than 6 inches in greatest dimension, is to be spread in successive uniform layers not exceeding 12 inches in thickness before compaction.

(4) Where the material for an embankment consists of large-size rocks, or fragmented material that makes placing it in 12-inch layers impossible under paragraph (d)(3) of this section, the embankment is to be constructed in uniform layers the thickness of the approximate average size of the rocks used, not to exceed 36 inches in thickness. Rock is not to be dumped in final position, but is to be distributed by blading or dozing in a manner that ensures proper placement in the embankment, so that voids, pockets, and bridging are reduced to a minimum. The final layer of the embankment shall meet the requirements of paragraph (d)(3) of this section.

(5) Each layer of the embankment is to be completed, leveled, and compacted before the succeeding layer is placed. Loads of material are to be leveled as placed. The successive layers are to be compacted evenly over the entire width of the embankment.

(6) Embankment layers are to be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles using the road. In selecting the structural characteristics of the embankment, consideration is to be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment to be used. A structure and foundation analysis is to be performed to establish design standards for embankment stability appropriate to the site. Publications of the American Association of State Highway and Traffic Officers (AASHTO), including AASHTO T–99, T–180, T–91, and the modified AASHTO test, or other specifications generally recognized by transportation engineers as adequate for design of highway embankments, are to be used to determine the degree of compaction required, on the basis of soil type and the anticipated volume of traffic and weight and speed of vehicles using the road. The compaction effort shall be adequate to achieve the degree of compaction required. AASHTO specifications such as T–99, T–180, the modified AASHTO test, or other comparable specifications approved by the regulatory authority are to be used as guidelines for determination of the maximum dry density for granular materials.

(7) Material is to be placed in an embankment only when its moisture content is within acceptable levels to achieve design compaction.

(8) Embankment slopes are not to be steeper than 2h:1v. Slopes may be steeper than 2h:1v, not to exceed 1.35h:1v, when the embankment material is a minimum of 85 percent rock and it has been demonstrated to the regulatory authority that embankment stability will be achieved. Where rock embankments are to be constructed, they are to meet the requirements of paragraph (d)(4) of this section.

(9) The minimum safety factor for all embankments is to be 1.25, or such higher factor as the regulatory authority may specify.

(10) The road surface is to be sloped toward the ditch line at a minimum rate of one-quarter inch per foot of surface width, or crowned at a minimum rate of one-quarter inch per foot of surface width as measured from the centerline of the road.

(11) All material used in embankments is to be suitable for use under paragraphs (d)(1)–(8) of this section. The material is to be reasonably free of organic material, coal and coal blossom, frozen materials, wet or peat material, natural soils containing organic matter, or any other material considered unsuitable by the regulatory authority for use in embankment construction.

(12) Excess or unsuitable material from excavations, as defined in paragraph (d)(11) of this section, is to be disposed of in accordance with § 816.71. Acid- or toxic-forming material is to be disposed of in accordance with §§ 816.48, 816.81, and 816.103.

(13) Acid-producing materials are to be permitted for constructing embankments for only those primary roads constructed or reconstructed on coal processing waste banks and only if it has been demonstrated to the regulatory authority that no additional acid will leave the confines of the coal processing waste bank. In no case is acid-bearing refuse material to be used outside the confines of the coal processing waste bank. Restoration of the road is to be in accordance with the requirements of §§ 816.103–86.117.

(14) Topsoil or other material suitable under § 816.22 is to be placed on all embankment slopes of 1.5h:1v or flatter to aid in establishing vegetation and to minimize erosion. Topsoil material depth is to be adequate to support vegetation and to prevent erosion.

(15) Temporary erosion control measures are to be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established.

(e) *Topsoil removal.* Before initiation of construction or reconstruction of a primary road, topsoil and other materials, as determined under § 816.22, are to be removed from the design roadbed, shoulders, and surface where associated structures are placed, and are to be stored in accordance with § 816.23.

Option 2 for § 816.152

§ 816.152 [Removed]

7. Section 816.152 is removed.

Option 1 for § 816.153

8. Section 816.153 is revised to read as follows:

§ 816.153 Primary roads: Drainage.

(a) *General.* (1) Each primary road is to be designed, constructed or reconstructed, and maintained to have adequate drainage, using structures such as, but not limited to, ditches, cross drains, and ditch relief drains. The water-control system is to be disigned to safely pass the peak runoff from a 10-year, 24-hour precipitation event or a greater event if required by the regulatory authority.

(2) Sediment control is to comply with §§ 816.42 and 816.45.

(3) Vegetation is to be not cleared for more than the width necessary for road and associated ditch construction, to serve traffic needs and for utilities.

(b) *Ditches.* (1) A ditch is to be provided on both sides of a through-cut and on the inside shoulder of a cut-and-fill section. Water is to be intercepted before reaching a switchback or large fill and drained safely away according to this section. Water from a fill or switchback is to be released below the fill, through conduits or in riprapped channels, and is not to be discharged onto the fill. Drainage ditches are to be placed at the toe of all cut slopes formed by the construction of roads.

(2) On flat sections of primary roads where rolling topography is insufficient to provide natural ditch drainage, the road grade is to be undulated to provide for free flow of water in the ditch section. Road sections may be constructed to elevate the road surface above the original ground surface to facilitate drainage.

(c) *Culverts and bridges.* (1)(i) Culverts with an end area of 35 square feet or less are to be designed to safely pass the 10-year, 24-hour precipitation event without a head of water at the entrance. Culverts with an end area greater than 35 square feet, and bridges with spans of 30 feet or less, are to be designed to safely pass the 20-year, 24-hour precipitation event. Bridges with spans of more than 30 feet are to be designed to safely pass the 100-year, 24 hour precipitation event or a larger event as specified by the regulatory authority.

(ii) Drainage pipes and culverts are to be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(iii) Trash racks and debris basins are to be installed in the drainage ditches where debris from the drainage area could impair the functions of drainage and sediment-control structures.

(iv) All culverts are to be covered by compacted fill to a minimum depth of 1 foot.

(v) Culverts are to be designed, installed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

(2) Cross drains are to be installed in accordance with the following:

(i) Unless otherwise authorized or required under paragraphs (c)(2) (ii) or (iii) of this section, culvert spacing is not to exceed—

(A) 1,000 feet on grades of 0 to 3 percent,

(B) 800 feet on grades of 3 to 6 percent,

(C) 500 feet on grades of 6 to 10 percent, and

(D) 300 feet on grades of 10 percent or greater.

(ii) Culverts at closer intervals than the maximum in paragraph (c)(2)(i) of this section are to be installed if required by the regulatory authority as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages.

(iii) Culverts may be constructed at greater intervals than the maximum indicated in paragraph (c)(2)(i) of this section if authorized by the regulatory authority upon a finding that greater spacing will not increase erosion.

(iv) Culverts are to cross the road at not less than a 30 degree angle downgrade.

(v) Culverts may be designed to carry less than the peak runoff from a 10-year, 24-hour precipitation event if the ditch has been designed to contain the flood stage and remain stable.

(vi) The inlet end is to be protected by a rock headwall or other material approved by the regulatory authority as adequate protection against erosion of the headwall. The water is to be discharged below the toe of the fill through conduits or in riprapped channels and is not to be discharged onto the fill.

(d) *Natural drainage.* Natural channel drainageways are not to be altered or relocated for road construction or reconstruction without the prior approval of the regulatory authority in accordance with § 816.41. The regulatory authority may approve alterations and relocations only if the following provisions are met:

(1) The natural channel drainage is not blocked;

(2) No significant damage will occur to the hydrologic balance; and

(3) There will be no adverse impact on adjoining landowners.

(e) *Stream crossings.* Drainage structures are to be required for stream channel crossings. Drainage structures are not to affect the normal flow or gradient of the stream or adversely affect fish migration and aquatic habitat or related environmental values.

Option 2 for § 816.153

§ 816.153 [Removed]

9. Section 816.153 is removed.

Option 1 for § 816.154

10. Section 816.154 is revised to read as follows:

§ 816.154 Primary roads: Surfacing.

(a) Primary roads are to be surfaced with rock, crushed gravel, asphalt, or other material approved by the regulatory authority as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles using the road.

(b) Acid- or toxic-forming substances are not to be used in road surfacing.

Option 2 for § 816.154

§ 816.154 [Removed]

11. Section 816.154 is removed.

Option 1 for § 816.155

12. Section 816.155 is revised to read as follows:

§ 816.155 Primary roads: Maintenance.

(a) Primary roads are to be maintained in such a manner that the required or approved design standards are met throughout the life of the entire transportation facility including surface, shoulders, parking and side areas, approach structures, erosion control devices, cut-and-fill sections, and such traffic control devices as are necessary for safe and efficient use of the road.

(b) Primary road maintenance includes repairs to the road surface, blading, filling potholes, and adding replacement gravel or asphalt. It includes revegetating, brush removal, watering for dust control, and minor reconstruction of road segments as necessary.

(c) Primary roads damaged by catastrophic events, such as floods or earthquakes, are not to be used until reconstruction of damaged road elements. The reconstruction is to be completed as soon as practicable after the damage has occurred.

Option 2 for § 816.155

§ 816.155 [Removed]

13. Section 816.155 is removed.

Option 1 for § 816.156

14. Section 816.156 is revised to read as follows:

§ 816.156 Primary roads: Restoration.

(a) A primary road is to be reclaimed immediately after the road is no longer needed for operations, reclamation, or monitoring unless the regulatory authority approves retention of the road as suitable for approved postmining land use. The operator shall complete the following to reclaim the road:

(1) Close the road to vehicular traffic;

(2) Restore the natural drainage patterns;

(3) Remove all bridges and culverts;

(4) Rip, plow and scarify the roadbeds;

(5) Round or reduce and shape fill slopes to conform the site to adjacent terrain and to meet natural drainage restoration standards;

(6) Shape cut slopes to blend with the natural contour;

(7) Construct cross drains, dikes, and water bars to minimize erosion.

(8) Construct terraces as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and

(9) Cover road surfaces with topsoil in accordance with § 816.24(b) and revegetate in accordance with §§ 816.111–816.116.

(b) Unless otherwise authorized by the regulatory authority, all road surfacing materials are to be removed, hauled or conveyed, and disposed of under § 816.89.

Option 2 for § 816.156

§ 816.156 [Removed]

15. Section 816.156 is removed.

§§ 816.160–816.166; 816.170–816.176 [Removed].

16. Sections 816.160, 816.161, 816.162, 816.163 816.164, 816.165, 816.166, 816.170, 816.171, 816.172, 816.173, 816.174, 816.175, and 816.176 are removed.

17. Section 816.180 is revised to read as follows:

§ 816.180 Ancillary roads and other transportation facilities.

(a) Each person who conducts surface mining activities shall design, construct, reconstruct, use, maintain and restore ancillary roads, railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways or other transportation facilities so as to comply with the following:

(1) Control or prevent erosion, siltation and the air pollution attendant to erosion;

(2) Control or prevent damage to fish, wildlife or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause nor contribute, directly or indirectly, to the violation of State or Federal water quality standards applicable to receiving waters;

(5) Minimize diminution or degradation of water quality or quantity;

(6) Refrain from significantly altering the normal flow of water in streambeds or drainage channels; and

(7) Prevent or control damage to public or private property.

(b) The design and construction or reconstruction of ancillary roads, railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways or other transportation facilities shall incorporate recognized engineering minimum design criteria approved by or established by the regulatory authority for environmental protection and safety, and appropriate for the plannned duration of use.

(c) All ancillary roads and other transportation facilities are to be maintained to meet the approved design criteria throughout the life of the facility.

(d) An ancillary road or other transportation facility is to be reclaimed immediately after it is no longer needed for operations. The operator shall complete the following to reclaim the road or facility:

(1) Close the road or facility to traffic;

(2) Remove all bridges and culverts;

(3) Restore the natural drainage patterns;

(4) Reshape all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain;

(5) Revegetate disturbed surfaces in accordance with §§ 816.111–816.116.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

Option 1 for § 817.150

18. Section 817.150 is revised to read as follows:

§ 817.150 Primary roads: General.

(a) Each person who conducts underground mining activities shall design, construct or reconstruct, use, and maintain primary roads and restore the area to meet the requirements of §§ 817.151–817–156 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(b) To the extent possible using the best technology currently available, primary roads are not to cause damage to fish, wildlife, and related environmental values or cause contributions of suspended solids to streamflow or to runoff outside the permit area. However, in no event are such contributions to be in excess of limitations of State or Federal law.

(c) All primary roads are to be removed and the affected land regraded and revegetated in accordance with the requirements of § 817.156 unless—

(1) Retention of the road is part of the approved postmining land use or is approved as necessary to control erosion adequately;

(2) The necessary maintenance is assured; and

(3) All drainage is controlled according to § 817.153.

(d) The design and construction or reconstruction of primary roads are to be certified by a qualifying registered professional engineer in accordance with §§ 817.151–817.154. Alternative design specifications may be used only after approval by the regulatory

authority when the qualified registered professional engineer demonstrates that the alternative design specifications will result in performance equal to or better than that resulting from primary roads complying with §§ 817.151–817.154.

Option 2 for § 817.150

19. Section 817.150 is revised to read as follows:

§ 817.150 Primary roads: General.

(a) Each person who conducts underground mining activities shall design, construct, reconstruct, use, maintain and restore primary roads so as to comply with the following:

(1) Control or prevent erosion, siltation and the air pollution attendant to erosion;

(2) Control or prevent damage to fish, wildlife or their habitat and related environmental values;

(3) Control or prevent additional contribution of suspended solids to stream flow, or runoff outside the permit area;

(4) Neither cause nor contribute, directly or indirectly, to the violation of State or Federal water quality standards applicable to receiving waters;

(5) Minimize diminution or degradation of water quality or quantity;

(6) Refrain from significantly altering the normal flow of water in streambeds or drainage channels; and

(7) Prevent or control damage to public or private property.

(b) Primary roads are to be designed and constructed or reconstructed to—

(1) Incorporate recognized engineering minimum design criteria approved or established by the regulatory authority for environmental protection and safety, and appropriate for the planned duration and use; and

(2) Be certified by a qualified registered professional engineer as meeting performance standards requirements.

(c) Primary roads are to be maintained to meet the approved design criteria throughout the life of the road.

(d) A primary road is to be reclaimed immediately after it is no longer needed for operations unless the road is to be retained for use under the approved postmining land use. The operator shall complete the following to reclaim the road:

(1) Close the road to vehicular traffic;

(2) Remove all bridges and culverts;

(3) Restore the natural drainage patterns;

(4) Reshape all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain; and

(5) Revegetate disturbed surfaces in accordance with §§ 817.111–817.116.

Option 1 for § 817.151

20. Section 817.151 is revised to read as follows:

§ 817.151 Primary roads: Location.

(a) Primary roads are to be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(b) No part of any primary road is to be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority.

(c) Stream fords are to be prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of construction. The fords are not to adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings are to be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of § 817.153.

(d) Primary roads are to be located to minimize downstream sedimentation and flooding.

Option 2 for § 817.151

§ 817.151 [Removed]

21. Section 817.151 is removed.

Option 1 for § 817.152

22. Section 817.152 is revised to read as follows:

§ 817.152 Primary roads: Design and construction.

Primary roads are to be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance:

(a) *Vertical alinement.* Except where lesser grades are necessary to control site-specific conditions, maximum road grades are to be as follows:

(1) The overall grade is not to exceed 10h:1v (10 percent).

(2) The maximum pitch grade is not to exceed 6.5h:1v (15 percent).

(3) There is not to be more than 300 feet of pitch grade exceeding 10 percent within any consecutive 1,000 feet of primary road, and in no case is there to be any pitch grade over 15 percent.

(b) *Horizontal alinement.* The horizontal alinement for a primary road is to be as consistent with the existing topography as possible, and the alinement is required to meet the performance standards of §§ 817.150–817.156. The alinement is to be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles using the road. Horizontal and vertical alinements are to be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(c) *Road cuts.* (1) Cuts slopes are not to be steeper than specifically authorized by the regulatory authority, which shall not authorize slopes steeper than 1.5h:1v in unconsolidated materials or 0.25h:1v in rock, except that steeper slopes may be specifically authorized by the regulatory authority if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(2) Topsoil or other material suitable under § 817.22 is to be placed on all cut slopes of 1.5h:1v or flatter to aid in establishing vegetation and to minimize erosion. Topsoil depth is to be adequate to support vegetation necessary to control erosion.

(3) Temporary erosion control measures are to be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(d) *Road embankments.* Embankment sections are to be constructed in accordance with the following provisions:

(1) All vegetative material and topsoil are to be removed from the embankment foundation during construction to increase stability, and no vegetative material or topsoil is to be placed beneath or in any primary road embankment.

(2) Where an embankment is to be placed on side slopes exceeding 5h:1v (20 percent), the existing ground is to be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway is to be a minimum of 10 feet in width and extend a minimum of 2 feet below the toe of the fill.

(3) Material, containing by volume less than 25 percent rocks larger than 6 inches in greatest dimension, is to be spread in successive uniform layers not exceeding 12 inches in thickness before compaction.

(4) Where the material for an embankment consists of large-size rocks, or fragmented material that makes placing it in 12-inch layers impossible under paragraph (d)(3) of this section, the embankment is to be constructed in uniform layers the thickness of the approximate average size of the rocks used, not to exceed 36 inches in thickness. Rock is not to be dumped in final position, but is to be distributed by blading or dozing in a manner that ensures proper placement in the embankment, so that voids, pockets, and bridging are reduced to a minimum. The final layer of the embankment shall meet the requirements of paragraph (d)(3) of this section.

(5) Each layer of the embankment is to be completed, leveled, and compacted before the succeeding layer is placed. Loads of material are to be leveled as placed. The successive layers are to be compacted evenly over the entire width of the embankment.

(6) Embankment layers are to be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles using the road. In selecting the structural characteristics of the embankment, consideration is to be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment used. A structure and foundation analysis is to be performed to establish design standards for embankment stability appropriate to the site. Publications of the American Association of State Highway and Traffic Officers (AASHTO), including AASHTO T–99, T–180, T–91, and the modified AASHTO test, or other specifications generally recognized by transportation engineers as adequate for design of highway embankments, are to be used to determine the degree of compaction required, on the basis of soil type and the anticipated volume of traffic and weight and speed of vehicles using the road. The compaction effort shall be adequate to achieve the degree of compaction required. AASHTO

specifications such as T–99, T–180, the modified AASHTO test, or other comparable specifications approved by the regulatory authority are to be used as guidelines for the determination of the maximum dry density for granular materials.

(7) Material is to be placed in an embankment only when its moisture content is within acceptable levels to achieve design compaction.

(8) Embankment slopes are not to be steeper than 2h:1v. Slopes may be steeper than 2h:1v, not to exceed 1.35h:lv, when the embankment material is a minimum of 85 percent rock and it has been demonstrated to the regulatory authority that embankment stability will be achieved. Where rock embankments are to be constructed, they are to meet the requirements of paragraph (d)(4) of this section.

(9) The minimum safety factor for all embankments is to be 1.25, or such higher factor as the regulatory authority may specify.

(10) The road surface is to be sloped toward the ditch line at a minimum rate of one-quarter inch per foot of surface width, or crowned at a minimun rate of one-quarter inch per foot of surface width as measured from the centerline of the road.

(11) All material used in embankments is to be suitable for use under paragraphs (d)(1)-(8) of this section. The material is to be reasonably free of organic material, coal and coal blossom, frozen materials, wet or peat material, natural soils containing organic matter, or any other material considered unsuitable by the regulatory authority for use in embankment construction.

(12) Excess of unsuitable material from excavations, as defined in paragraph (d)(11) of this section, is to be disposed of in accordance with § 817.71. Acid- or toxic-forming materials are to be disposed of in accordance with §§ 817.48, 817.81, and 817.103.

(13) Acid-producing materials are to be permitted for constructing embankments for only those primary roads constructed or reconstructed on coal processing waste banks and only if it has been demonstrated to the regualtory authority that no additional acid will leave the confines of the coal processing waste bank. In no case is acid-bearing refuse material to be used outside the confines of the coal processing waste bank. Restoration of the road is to be in accordance with the requirements of §§ 817.103–817.117.

(14) Topsoil or other matieral suitable under § 817.22 is to be placed on all embankment slopes of 1.5h:1v or flatter to aid in establishing vegetation and to minimize erosion. Topsoil material depth is to be adequate to support vegetation and to prevent erosion.

(15) Temporary erosion control measures are to be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established.

(e) *Topsoil removal.* Before initiation of construction or reconstruction of a primary road, topsoil and other materials, as determined under § 817.22, are to be removed from the design roadbed, shoulders, and surface where associated structures will be placed, and are to be stored in accordance with § 817.23.

Option 2 for § 817.152

§ 817.152 [Removed]

23. Section 817.152 is removed.

Option 1 for § 817.153

24. Section 817.153 is revised to read as follows:

§ 817.153 Primary roads: Drainage.

(a) *General.* (1) Each primary road is to be disigned, constructed or reconstructed, and maintained to have adequate drainage, using structures such as, but not limited to, ditches, cross drains, and ditch relief drains. The water-control system is to be designed to safely pass the peak runoff from a 10-year, 24-hour precipitation event or a greater event if required by the regulatory authority.

(2) Sediment control is to comply with §§ 817.42 and 817.45.

(3) Vegetation is not be cleared for more than the width necessary for road and associated ditch construction to serve traffic needs and for utilities.

(b) *Ditches.* (1) A ditch is to be provided on both sides of a through-cut and on the inside shoulder of a cut-and-fill section. Water is to be intercepted before reaching a switchback or large fill and drained safely away according to this section. Water from a fill or switchback is to be released below the fill, through conduits or in riprapped channels, and is not to be discharged onto the fill. Drainage ditches are to be placed at the toe of all cut slopes formed by the construction of roads.

(2) On flat sections of primary roads where rolling topography is insufficient to provide natural ditch drainage, the road grade is to be undulated to provide for free flow of water in the ditch section. Road sections may be constructed to elevate the road surface above the original ground surface to facilitate drainage.

(c) *Culverts and bridges.* (1)(i) Culverts with an end area of 35 square feet or less are to be designed to safely pass the 10-year, 24-hour precipitation event without a head of water at the entrance. Culverts with an end area greater than 35 square feet, and bridges with spans of 30 feet or less, are to be disigned to safely pass the 20-year, 24-hour precipitation event. Bridges with spans of more than 30 feet are to be designed to safely pass the 100-year, 24-hour precipitation event or a larger event as specified by the regulatory authority.

(ii) Drainage pipes and culverts are to be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(iii) Trash racks and debris basins are to be installed in the drainage ditches where debris from the drainage area could impair the functions of drainage and sediment-control structures.

(iv) All culverts are to be covered by compacted fill to a minimum depth of 1 foot.

(v) Culverts are to be designed, installed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

(2) Cross drains are to be installed in accordance with the following:

(i) Unless otherwise authorized or required under paragraphs (c)(2)(ii) or (iii) of this section, culvert spacing is not to exceed—

(A) 1,000 feet on grades of 0 to 3 percent,

(B) 800 feet on grades of 3 to 6 percent,

(C) 500 feet on grades of 6 to 10 percent, and

(D) 300 feet on grades of 10 percent or greater.

(ii) Culverts at closer intervals than the maximum in paragraph (c)(2)(i) of this section are to be installed if required by the regulatory authority as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages.

(iii) Culverts may be constructed at greater intervals than the maximum indicated in paragraph (c)(2)(i) of this section if authorized by the regulatory authority upon a finding that greater spacing will not increase erosion.

(iv) Culverts are to cross the road at not less than a 30 degree angle downgrade.

(v) Culverts may be designed to carry less than the peak runoff from a 10-year, 24-hour precipitation event if the ditch had been designed to contain the flood stage and remain stable.

(vi) The inlet end is to be protected by a rock headwall or other material approved by the regulatory authority as adequate protection against erosion of the headwall. The water is to be

discharged below the toe of the fill through conduits or in riprapped channels and is not to be discharged onto the fill.

(d) *Natural drainage.* Natural channel drainageways are not to be altered or relocated for road construction or reconstruction without the prior approval of the regulatory authority in accordance with § 817.41. The regulatory authority may approve alterations and relocations only if the following provisions are met:

(1) The natural channel drainage is not blocked;

(2) No significant damage will occur to the hydrologic balance; and

(3) There will be no adverse impact on adjoining landowners.

(e) *Stream crossings.* Drainage structures are to be required for stream channel crossings. Drainage structures are not to affect the normal flow or gradient of the stream or adversely affect fish migration and aquatic habitat or related environmental values.

Option 2 for § 817.153

§ 817.153 [Removed]

25. Section 817.153 is removed.

Option 1 for § 817.154

26. Section 817.154 is revised to read as follows:

§ 817.154 Primary roads: Surfacing.

(a) Primary roads are to be surfaced with rock, crushed gravel, asphalt, or other material approved by the regulatory authority as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles using the road.

(b) Acid- or toxic-forming substances are not to be used in road surfacing.

Option 2 for § 817.154

§ 817.154 [Removed]

27. Section 817.154 is removed.

Option 1 for § 817.155

28. Section 817.155 is revised to read as follows:

§ 817.155 Primary roads: Maintenance.

(a) Primary roads are to be maintained in such a manner that the required or approved design standards are met throughout the life of the entire transportation facility including surface, shoulders, parking and side areas, approach structures, erosion control devices, cut-and-fill sections, and such traffic control devices as are necessary for safe and efficient use of the road.

(b) Primary road maintenance includes repairs to the road surface, blading, filling potholes, and adding replacement gravel or asphalt. It includes revegetating, brush removal, watering for dust control, and minor reconstruction of road segments as necessary.

(c) Primary roads damaged by catastrophic events, such as floods or earthquakes, are not to be used until reconstruction of damaged road elements. The reconstruction is to be completed as soon as practicable after the damage has occurred.

Option 2 for § 817.155

§ 817.155 [Removed]

29. Section 817.155 is removed.

Option 1 for § 817.156

30. Section 817.156 is revised to read as follows:

§ 817.156 Primary roads: Restoration.

(a) A primary road is to be reclaimed immediately after the road is no longer needed for operations, reclamation or monitoring unless the regulatory authority approves retention of the road as suitable for the approved postmining land use. The operator shall complete the following to reclaim the road:

(1) Close the road to vehicular traffic;

(2) Restore the natural drainage patterns;

(3) Remove all bridges and culverts;

(4) Rip, plow and scarify the roadbeds;

(5) Round or reduce and shape fill slopes to conform the site to adjacent terrain and to meet natural drainage restoration standards;

(6) Shape cut slopes to blend with the natural contour;

(7) Construct cross drains, dikes, and water bars to minimize erosion.

(8) Construct terraces as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and

(9) Cover road surfaces with topsoil in accordance with § 817.24(b) and revegetate in accordance with §§ 817.111–817.116.

(b) Unless otherwise authorized by the regulatory authority, all road surfacing materials are to be removed, hauled or conveyed, and disposed of under § 817.89.

Option 2 for § 817.156

§ 817.156 [Removed]

31. Section 817.156 is removed.

§§ 817.160–817.166, 817.170–817.176 [Removed]

32. Sections 817.160, 817.161, 817.162, 817.163, 817.164, 817.165, 817.166, 817.170, 817.171, 817.172, 817.173, 817.174, 817.175 and 817.176 are removed.

33. Section 817.180 is revised to read as follows:

§ 817.180 Ancillary roads and other transportation facilities.

(a) Each person who conducts underground mining activities shall design, construct, reconstruct, use, maintain and restore ancillary roads, railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways or other transportation facilities so as to comply with the following:

(1) Control or prevent erosion, siltation and the air pollution attendant to erosion;

(2) Control or prevent damage to fish, wildlife or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause nor contribute, directly or indirectly, to the violation of State or Federal water quality standards applicable to receiving waters;

(5) Minimize diminution or degradation of water quality or quantity;

(6) Refrain from significantly altering the normal flow of water in streambeds or drainage channels; and

(7) Prevent or control damage to public or private property.

(b) The design, and construction or reconstruction of ancillary roads, railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways or other transportation facilities shall incorporate recognized engineering minimum design criteria approved by or established by the regulatory authority for environmental protection and safety, and appropriate for the planned duration of use.

(c) All ancillary roads and other transportation facilities are to be maintained to meet the approved design criteria throughout the life of the facility.

(d) An ancillary road or other transportation facility is to be reclaimed immediately after it is no longer needed for operations. The operator shall complete the following to reclaim the road or facility:

(1) Close the road or facility to traffic;

(2) Remove all bridges and culverts;

(3) Restore the natural drainage patterns;

(4) Reshape all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain;

(5) Revegetate disturbed surfaces in accordance with §§ 817.111–817.116.

(Pub. L. 95–87, 30 U.S.C. 5201 *et seq.*)

[FR Doc. 82-10470 Filed 4-15-82; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Parts 784, 785, 816, 817, and 818

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program: Subsidence Control and Concurrent Surface and Underground Mining Operations

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

ACTION: Proposed rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to revise the subsidence control plan rule and the rules requiring protection from underground mining operations causing subsidence. This rulemaking is needed in order to eliminate unnecessary detail required in the current rules.

The need to provide significant information in a plan if subsidence is not expected would be eliminated. Notice to surface owners where subsidence is not expected would also be eliminated. Notice would only be required where subsidence is expected. The performance standards for measures to protect surface features would remain essentially unchanged, but provisions in the rules would be rearranged. The proposed rulemaking would also revise the rules for the granting of a variance from the requirement of reclamation as contemporaneously as possible for concurrent surface and underground mining oprations and remove duplicative parts. The special permanent program performance standard part for concurrent operations would be removed because its provisions are covered in the remaining rules. Additional changes would be made to clarify the rules and add cross-references.

DATES:

Written comments: Accepted until 5 p.m. (eastern time) on May 17, 1982.

Public hearings: Held on request only, on May 13, 1982, at 9:00 a.m. (local).

Public meetings: Scheduled on request only.

ADDRESSES:

Written comments: Hand-deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR 14.04), Room 5315, 1100 L Street NW., Washington, D.C.; or *mail* to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR 14.04), Room 5315L, 1951 Constitution Avenue NW., Washington, D.C. 20240.

Public hearings: Washington, D.C.—Department of the Interior Auditorium, 18th and C Streets NW.; Pittsburgh, Pa.—William S. Moorhead Federal Building, Room 2102, 1000 Liberty Avenue; and Denver, Colo.—Brooks Tower, 2d Floor Conference Room, 1020 15th Street.

Public meetings: OSM offices in Washington, D.C.; Charleston, W. Va.; Knoxville, Tenn.; Indianapolis, Ind.; Pittsburgh, Pa.; and Denver, Colo.

FOR FURTHER INFORMATION CONTACT:

Public hearings and information: C. Y. Chen or Richard Nalbandian, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; 202–343–4022 or 343–5261, respectively.

Public meetings: Jose del Rio, 202–343–4022.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures.
II. Background.
III. Discussion of Proposed Subsidence Control Rules.
IV. Discussion of Proposed Concurrent Surface and Underground Mining Rules.
V. Procedural Matters.

I. Public Commenting Procedures

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "Addresses"). Comments received after the time indicated under "Dates" or at locations other than Washington, D.C., will not necessarily be considered or be included in the Administrative Record for the final rulemaking.

Public Hearings

Persons wishing to comment at the public hearings should contact the person listed under "For Further Information Contact" by the close of business three working days before the date of the hearing. If no one requests to comment at a public hearing at a particular location by that date, the hearing will not be held. If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record. Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

Public hearings will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment, and persons present in the audience who wish to comment, have been heard.

Public Meetings

Persons wishing to meet with OSM representatives to discuss these proposed rules may request a meeting at any of the OSM offices listed in "Addresses" by contacting the person listed under "For Further Information Contact."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record room (1100 L St.). A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

On March 13, 1979, OSM promulgated permanent program rules (44 FR 14902) as required by section 501(b) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, 30 CFR 817.121, 817.122, 817.124, and 817.126 of the permanent program rules pertain to subsidence control at underground coal mines, while § 784.20 pertains to the subsidence control plan required as a part of the permit application. These rules implement Sections 516(b)(1), (7), and (11) and (c) of the Act. 30 CFR 785.18, 816.79, 816.100, 817.100, and Part 818 of the permanent program rules pertain to the variance from the contemporaneous reclamation requirement and the minimum distance between surface and underground mines where concurrent surface and underground mining operations will be conducted. These rules implement Sections 515(b) (12) and (16) of the Act. This proposed rule revision would eliminate duplication and increase flexibility in the rules.

III. Discussion of Proposed Subsidence Control Rules

A. Subsidence Control Plan Requirements—Section 784.20 (Amendment 1)

Pursuant to this proposal, § 784.20 would be substantially rewritten and shortened. The result would be the elimination of the uncertainty and ambiguity of whether or not a subsidence control plan is required for any particular underground mining operation.

The proposed rule would require a general subsidence control plan for every underground mining operation and sets out its required elements. The general plan would have to be included in the permit application originally submitted for the operation under the permanent regulatory program. A detailed followup subsidence control plan would then have to be submitted and approved by the regulatory authority for a particular area prior to the date when underground mining operations proceed in that area. This two-stage process recognizes that underground mining operations are commonly carried out over extensive periods of time and that detailed information on the physical conditions encountered will be gathered and refinement of the underground operations plan will occur as the mining operations proceed. As a result the operator would not necessarily have the best data for developing the subsidence control plan for the entire mine at the time of the original permit application. The proposed rule would provide the operator and the regulatory authority with the flexibility to recognize this fact and would allow a later submittal and review of the detailed subsidence control plan based upon the overall plan and sequence of mining.

The content requirements for a subsidence control plan contained in the existing rule would be incorporated generally in the revised rule with the following exceptions.

The present rule requires a survey which identifies structures and renewable resource lands which would be materially damaged if subsidence occurs. The proposed revision does not use the term "renewable resource lands." Instead, in § 784.20(a) the survey would identify surface features, surface land uses, and surface structures and facilities such as buildings, roads, dams, powerlines, and pipelines which, if subsidence occurred, would likely be materially damaged or, if damaged, would endanger the public health and safety.

The subsidence control provisions are intended to protect the health and safety of the public, minimize damage to the environment, and protect the rights of landowners by reducing material damage to the land surface as well as by maintaining the value and potential of the land. The use of the term "renewable resource land" extends the subsidence control plan to aquifers and other underground waters, as well as to features on the land surface. Under the proposed rule, the subsidence control plan would be directed primarily to the consideration of surface impacts and not related underground impacts. The OSM is aware that underground mining and related fracturing of the geologic structure overlying a mine can result in disruptions to ground-water resources and that these changes may have a surface impact. However, it is felt that these impacts are more appropriately considered in the context of the performance standards for protection of the hydrologic balance. The subsidence control plan would, however, continue to give special consideration to the protection of any aquifers that serve as a significant water source for any public water supply system, since such impacts would be considered of special significance in relation to the surface uses of the land.

"Renewable resource lands" also includes areas of agricultural or silvicultural production of food and fiber and grazingland. Specific reference to these land uses is not deemed necessary as part of the subsidence control plan. Information on surficial land uses is provided under the requirements of § 783.22 of this chapter and would be included in the general plan. Deletion of specific reference to "renewable resource lands" in the subsidence control plan is intended to indicate that all uses of the surface should be given consideration with respect to protection from subsidence damage, and not just agricultural or silvicultural lands and grazinglands.

The present § 784.20(b) requires that the subsidence control plan contain a description of measures to be taken to prevent subsidence, both underground and on the surface. The listing in § 784.20(b) (2) and (3) is deemed unnecessary as the measures listed are in the nature of examples and would therefore be deleted from the proposed rule. *See* the preamble discussion to the existing permanent program rule (44 FR 15075, March 13, 1979).

The required mitigation measures of § 784.20(c) would be eliminated from the proposed § 784.20, because they are also in the nature of examples, as discussed in the preamble to the existing rule (44 FR 15074–76, March 13, 1979). However, they would be retained in the proposed performance standards, § 817.121(c) (see discussion below).

Proposed § 784.20(b)(5) still would require, in areas of expected subsidence, that the subsidence control plan include a detailed description of the mitigative or remedial measures to be taken in accordance with § 817.121.

Present § 784.20(d) requires a description of measures to determine the degree of material damage in those instances where structures and/or renewable resource lands exist and may suffer material damage from subsidence. This section would be deleted from the proposed rule. It is anticipated that an appropriate means of determining the degree of subsidence related damage and/or appropriate mitigative or remedial measures is implicit in the performance standards requirements of § 817.121. A separate submittal detailing methods for evaluating such damage is not deemed necessary. Therefore, the requirement would be deleted to reduce the reporting burden on the operator.

As rewritten, the proposed rule would require, in paragraph (a), a general plan for subsidence control which must be included in the original permit application for the mine, and in paragraph (b), a detailed subsidence control plan which must be submitted and approved prior to the date when underground operations would proceed into a particular area. Paragraph (c) of the proposed rule would continue the concept of the existing rule that a waiver from the detailed subsidence control plan requirements may be granted if no material damage or diminution of value or foreseeable use of the land could be caused by subsidence. The proposed rule would not, however, provide for a waiver from the general plan requirement of paragraph (a), since this information would be necessary to determine if a waiver from the detailed plan is appropriate.

Under proposed paragraph (a), a general plan for subsidence control would be required, which would include four elements: (1) A survey of the surface features of lands potentially impacted, (2) a general description of the technique of coal removal, (3) the location and extent of areas in which planned subsidence is projected, and those areas in which measures will be taken to prevent or minimize subsidence and related damage, and (4) a schedule for submittal of the required detailed subsidence control plans.

The objective of proposed paragraph (a)(1) is to provide the regulatory authority with the necessary information to identify those features or facilities that may be materially damaged if subsidence is to occur, and those features that may result in a diminution of the value or the foreseeable use of the land due to subsidence. The survey as proposed would specifically require the operator to provide information related to any aquifers that serve as a public water supply and any facilities or structures

that, if damaged, may pose a danger to the public health and safety.

Proposed paragraph (a)(2) is intended to identify the general type of mining technique to be used. This information will provide a basis for the determination of whether the operation will utilize planned subsidence or if it will be designed to prevent or minimize subsidence and related damage.

Proposed paragraph (a)(3) acknowledges the special provision made in Section 516(b)(1) of the Act for mining methods that incorporate planned subsidence. While the proposed rule continues to require a subsidence control plan for areas of planned subsidence, it is anticipated that the detailed description of mining techniques and physical conditions required under such circumstances would be less and of a different nature than for the situation where subsidence would be prevented or minimized. The information required in paragraph (a)(3) would also indicate where the operator would include technologically and economically feasible measures to prevent material damage due to subsidence.

Paragraph (a)(4) of the proposed rule would require the operator to include, in the permit application, a schedule for submission of a detailed subsidence control plan or plans which are not included in the original permit application. It would also require that the operator receive approval for such a plan prior to proceeding with mining operations into the area covered by it.

Under proposed paragraph (b) the operator would provide a detailed subsidence control plan consisting of at least five elements. Three of these elements are (1) a map of the projected underground mine workings, (2) a description of the physical conditions encountered in the mine which will affect the likelihood of subsidence and subsidence related damage, and (3) a detailed description of the mining techniques and subsidence control measures that will be used to prevent and minimize subsidence. They are intended to provide the necessary information for the regulatory authority to evaluate the operator's estimate of the anticipated extent of expected subsidence, and to determine whether the operator's plan is in compliance with the performance standards of § 817.121. Two other elements are (4) a projection with supporting analyses of the extent of any expected subsidence, and (5) a description of the measures to be taken to mitigate or remedy any damage that may occur due to subsidence. These will indicate the adequacy of the operator's proposed subsidence control plan and will also demonstrate compliance with the performance standards of § 817.121.

Proposed paragraph (b)(6) would be included to provide specific information for the regulatory authority to evaluate if the operator is planning to use the room and pillar method of mining. This information must be included to satisfy the requirements of proposed paragraph (b)(3) on mining techniques and subsidence control measures, but would provide more guidance to the operator on the specific information required.

B. Subsidence Control Requirements—Section 817.121 (Amendments 6 and 7)

Section 817.121 would provide all the requirements for subsidence control. In several paragraphs of the proposed rule, the phrase "person who conducts underground mining activities" used in the existing rule would be replaced with the term "underground mine operator" to more clearly define responsibility and shorten wording.

Paragraph (a) would be changed to more closely track the language in Section 516(b)(1) of the Act with no substantive change. The second sentence of the existing paragraph (a) would be eliminated. This sentence provides that planned subsidence is to be considered as a type of mining technique which may be used to prevent subsidence from causing material damage. While this sentence was not originally intended to prohibit the use of planned subsidence, OSM has found that it occasionally has been interpreted as a prohibition of such subsidence. Section 516(b)(1) of the Act, however, excepts planned subsidence from the requirement to prevent subsidence. The proposed rule would clearly allow planned subsidence. This is consistent with the House committee report on Pub. L. 95–87 which indicates, in a discussion of Section 516(b)(1), that the measures available for subsidence control should include: "causing subsidence to occur at a predictable time and in a relatively uniform and predictable manner. This specifically allows for the uses of longwall and other mining techniques which completely remove the coal." (H. Rept. 95–218, 95th Cong., 1st sess., p. 126 (1977)).

The OSM does not intend to prohibit planned subsidence; however, OSM does not believe that Congress intended operations that cause subsidence which result in material damage to the surface or a diminution in the value of the land or its foreseeable use, to be exempt from the Act's environmental performance requirements. Thus, proposed § 817.121(c) would require that the operator adopt appropriate measures to mitigate or remedy any damage that does occur as result of subsidence.

Paragraph (b) of § 817.121 would be changed from the "person engaged in underground mining activities" to "the underground mine operator" as the one responsible for adhering to the approved subsidence control plan. The last sentence would be rephrased to reduce wording. No change in effect is proposed. The proposed rule would consolidate the requirements of existing §§ 817.124 and 817.126 into the requirements of § 817.121. This consolidation would streamline the rules and eliminate excess verbiage. It is not intended as a substantive change.

Existing § 817.124(a) would be deleted since it is a repetition of proposed § 817.121(b) which would require the underground mine operator to comply with the subsidence control plan. The general requirement of preventative and mitigative measures being taken would be retained.

The existing paragraphs (b) and (c) of § 817.124 establish alternatives of either restoring or replacing property damaged by subsidence (paragraph (b)(1)), purchasing the damaged structure and restoring the land (paragraph (b)(2)), or purchasing a prepaid insurance policy in an amount equal to the projected diminution in property value or by another approved means of compensation should subsidence occur (paragraph (c)).

The existing subsidence control plan rule, § 784.20(c), lists substantially the same alternatives and requires the operator to indicate which of these measures is to be chosen as a remedy for the property owner should subsidence occur. To eliminate this duplication the statement of the alternative measures for remedying the damage caused by subsidence is proposed to be deleted from § 784.20 (see discussion of this section, above) and retained in this proposed rule as § 817.121(c)(1), (2), and (3). The operator would indicate in the plan which measures would be adopted if subsidence were expected to occur. Those measures must then be implemented or the operator would be in violation of the permit. With the retention of the same provision in the subsidence rule, removal of the alternative remedy measures from § 784.20 would not result in any less protection to property or property owners affected by subsidence. The ultimate responsibility of the operator to restore any damaged property or to pay money damages would be retained in proposed § 817.121(c) to make it clear that the operator has such an obligation

regardless of whether a subsidence control plan has been submitted or approved. Existing paragraph (c) of § 817.124 would be renumbered § 817.121(c)(3) and would change the phrase "indemnify every person with an interest" to "indemnifying every person owning an interest." The phrase identifies the person to be covered by the insurance policy. Current § 784.20(c)(4), which is to be deleted, indicates that it is the surface owner who is to be the beneficiary of the insurance. The wording of proposed § 817.121(c)(3) would make this clear.

Section 817.126 would be incorporated in proposed § 817.121(d)–(f) and rearranged and shortened. The requirements of existing § 817.126(a), (b), and (c) would be combined to form the proposed paragraph (d), which would also be reworded slightly to specify that the subsidence control plan is the basis for the regulatory authority's decision instead of the nonspecific "detailed subsurface information" of the present paragraph (a).

The rewording reflects Section 516(c) of the Act and elaborates further on the prevention of imminent danger to the inhabitants of urbanized areas, cities, towns, or communities by providing protection for facilities generally used by the public. The present rule in § 817.126(c) protects public buildings against underground mining either beneath or in close proximity to them. The proposed revision in § 817.121(d) would extend to public facilities and private facilities generally used by members of the public, not just to public buildings. Proposed § 817.121(d) would also indicate that the regulatory authority may prohibit underground mining under or adjacent to, or may limit the percentage of coal extraction in the vicinity of such features or facilities if necessary to minimize the potential for material damage to such features or facilities or to protect the public health and safety.

Proposed § 817.121(e) would repeat the last sentence of existing § 817.126(a) which requires operators to correct damage and prevent further damage and would extend applicability of the damage correction to the features and facilities identified in proposed paragraph (d). A new provision is proposed to be added in paragraph (e) to ensure modification of the subsidence control plan to reflect changes that may be incorporated to prevent further damage to features and facilities protected under paragraph (d). Provision would be made allowing the regulatory authority to suspend the mining operation in underground sections that affect these features until the subsidence control plan is modified to reflect a change in planned practices.

The existing § 816.126(d) would be retained in proposed § 817.121(f), and the wording would be changed slightly to more closely parallel Section 516(c) of the Act.

Section 817.122

OSM is proposing to make the notice requirement of § 817.122 applicable only when there is expected subsidence. To require notice when there will be no subsidence (due to the preventive measures the operator is required to take) is considered unnecessary and burdensome. Therefore, notification would be required only when the underground operation will result in subsidence. The 6-month advance notice provision would be retained; the persons to be notified of the impending mining would remain the same; and the essential contents of the notification would remain unchanged, except that existing paragraph (c) would be deleted to avoid unnecessary duplication, since "measures to be taken to prevent or control adverse surface effects" must be included in the subsidence control plan, which must be approved by the regulatory authority and is open to public inspection. Rather, the notification would be required to include a statement of the location or locations where the operator's subsidence control plan may be inspected. The general wording of the section would also be revised for simplicity.

IV. Discussion of Proposed Concurrent Surface and Underground Mining Rules

Part 818 of Title 30 of the Code of Federal Regulations provides special permanent program performance standards for concurrent surface and underground mining and implements Sections 515(b) (12) and (16) of the Act. Section 515(b)(12) of the Act sets the minimum interval between surface and underground mines at 500 feet unless a lesser interval is approved jointly by the agencies responsible for surface mine regulation and the health and safety of underground miners. The second statutory requirement provides for variance procedures to delay contemporaneous reclamation when surface and underground operations are to be conducted concurrently or sequentially. Rules implementing these statutory provisions occur in companion sections of the permitting requirements under Subchapter G, Part 785, and in Subchapter K performance requirements under Parts 816 and 817 and the special performance requirements under Part 818.

Section 785.18 (Amendment 2)

Section 785.18, which contains permitting provisions, would be slightly revised and retained as part of the permitting process for combined surface and underground operations. Section 785.18(b) would be deleted as unnecessary and the succeeding sections renumbered accordingly.

In existing § 785.18 (c)(4) and (d)(6), due to the proposed deletion of Part 818, discussed below, the reference to "30 CFR Part 818" would be changed to "§ 816.79 of this chapter." An editorial change would be made to existing Paragraphs (c)(7) and (d)(7) of § 785.18 to add the phrase "of this chapter" after the citation of the rule at §§ 816.71–816.74. In existing § 785.18(d)(9)(ii), which specifies the conditions for the issuance of the variance, the wording would be simplified and the reference to Part 818 would be deleted. Finally, the wording of existing § 785.18(d)(9)(iii), which specifies another condition for issuance of the variance so that a detailed schedule for compliance is included in the permit, would be reworded and the reference to Part 818 deleted.

Section 816.79 (Amendment 3)

Section 816.79(a) would be retained as introductory text in proposed § 816.79 to provide for the 500-foot distance between operations to assure protection of underground operations. The provision for joint approval by the regulatory authority, the Mine Safety and Health Administration, and the State mine health and safety agency of a lesser distance between operations that appears in § 818.15 would be retained in proposed § 816.79(a). The existing § 816.79(b) would be deleted because it is unclear and the protection of disturbed surface areas has been provided in greater detail elsewhere in Subchapter K of the rules.

Sections 816.100 and 817.100 (Amendments 4 and 5)

Sections 816.100 and 817.100 would be revised to make it clear that variances from the contemporaneous reclamation requirements are permissible under Sections 515(b) (12) and (16) of the Act and § 785.18 of the rules.

Part 818 (Amendment 9)

In order to reduce the length and repetitiveness of the rules while retaining the same level of protection in concurrent operations, Part 818 would be deleted. Deletion of Part 818 would

not result in lesser protection afforded the environment or greater risk to miners' health and safety because its provisions would be covered in the remaining rules. The first two sections of Part 818 are general provisions on "scope" and "objective" which establish no substantive requirements. Their deletion would have no effect. The provisions in § 818.11 on applicability limit a variance to a specific area or areas designated within the permit and state that it is only for a period as long as necessary to facilitate underground mining. These provisions would be covered by the terms of the variance granted under § 785.18. Section 818.13, compliance with variance terms, states the obvious—that compliance with the terms of the variance is required. The burden already is on the applicant to meet the requirements of § 785.18 for granting a variance. Failure to comply would result in enforcement action being taken pursuant to Part 843. The requirements of § 818.15 are largely found in § 816.79. The latter section contains the standards for the regulatory authorities jointly allowing for surface coal mining closer than 500 feet from an active or abandoned underground mine. However, the provision in the first sentence of § 818.15(a) for a 500-foot barrier pillar of coal being maintained between surface and underground mining in any one coal seam is not found in § 816.79; only the 500-foot distance is found there. Nevertheless, a 500-foot barrier pillar of coal in any one seam is the same distance, that is, 500 feet, so that there would be no actual change in the standard if § 818.15(a) were deleted. The provisions in § 818.15 (b) and (c) are self-evident in the regulatory authorities' joint approval of mining at lesser distances.

V. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has examined these proposed rules according to the criteria of Executive Order 12291 (February 17, 1981). OSM has determined that these are not major rules and do not require a regulatory impact analysis because they will impose only minor costs on the coal industry and coal consumers. In addition, the proposed rules emphasize the use of performance standards instead of design criteria, which will allow operators to utilize the most cost-effective means of achieving the performance standards.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that these rules will not have a significant economic impact on a substantial number of small entities. The proposed rules will allow small coal operators increased flexibility in meeting performance standards and should especially ease the regulatory burden on small coal operators in Appalachia.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) on this proposed rule and has made an interim finding that it would not significantly affect the quality of the human environment. The draft EA is on file in the OSM Administrative Record at the address listed in the "Addresses" section of this preamble. A final EA will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule. OSM also is preparing an EA of the cumulative impacts on the human environment of this rulemaking and related rulemakings under the Act. This cumulative EA also will be completed before this rule is made final.

Federal Paperwork Reduction Act

The information collection requirements in existing 30 CFR 784.20 and 785.18(c) were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned new clearance numbers 1029–0039 and 1029–0040 on April 1, 1981. This approval ws identified in "Notes" at the introduction to 30 CFR Parts 784 and 785 under the old numbers R0609 and R0610 (all under No. B–190462). OSM will delete those "Notes" and codify the OMB approvals under the new §§ 784.10 and 785.10 in a separate rulemaking. OSM is requesting OMB approval of the information collection requirements being proposed for §§ 784.20 and 785.18(b) and will codify the OMB approvals when the final rules are promulgated.

The information required by §§ 784.20 and 785.18(b) will be used by the regulatory authority in monitoring and inspecting surface and underground mining activities to ensure that they are conducted in a manner which preserves and enhance environmental and other values of the Act. This information required by §§ 784.20 and 785.18(b) is mandatory.

List of Subjects in 30 CFR

Part 784

Coal mining, Reporting requirements, Underground mining.

Part 785

Coal mining, Reporting requirements, Surface mining, Underground mining.

Part 816

Coal mining, Environmental protection, Reporting requirements, Surface mining.

Parts 817 and 818

Coal mining; Environmental protection, Reporting requirements, Underground mining.

Accordingly, Parts 784, 785, 816, 817, and 818 of Title 30 Subchapters G and K of the Code of Federal Regulations are proposed to be amended as set forth herein.

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that these rules will not have a significant economic impact on a substantial number of small entities. The proposed regulations will allow small coal operators increased flexibility in meeting performance standards and should especially ease the regulatory burden on small coal operators in Appalachia.

OSM has prepared a draft environmental assessment (EA) on this rule that reaches an interim conclusion that this rule should not significantly affect the quality of the human environment. The draft EA is on file in the OSM Administrative Records Office at the address listed in the "Addresses" section of the preamble. A final EA will be completed before issuance of the final rule. OSM may determine at a later date that this rulemaking and related rulemakings under Pub. L. 95–87 have cumulative effects on the environment. At that time, OSM will prepare any further environmental analysis required by the National Environmental Policy Act.

Dated: April 8, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary of the Interior.

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

1. Section 784.20 is revised to read as follows:

§ 784.20 Subsidence control plan.

(a) Each application shall include a general subsidence control plan which includes the following:

(1) A survey that identifies surface features; surface land uses; surface structures and facilities, such as buildings, roads, dams, powerlines, and pipelines; any aquifers that serve as a significant water source for a public water supply system and that may be materially damaged if subsidence were to occur; and any facilities or structures

that, if damaged, may endanger the public health and safety.

(2) A general description of the technique of coal removal, such as longwall, room and pillar, pillar removal, hydraulic mining, or other extraction methods.

(3) The location and extent of areas in which planned subsidence is projected, and those areas in which measures will be taken to prevent or minimize subsidence and related damage.

(4) A schedule setting forth the dates that detailed subsidence control plans, if not submitted with the general plan, will be submitted to the regulatory authority. The detailed subsidence control plan shall be approved, in writing, by the regulatory authority before underground operations begin in an area.

(b) Each detailed subsidence control plan shall include the following:

(1) A map of projected underground mine workings.

(2) A description of the physical conditions, such as depth of cover, seam thickness, lithology, and other geologic and hydrologic conditions, which affect the likelihood or extent of subsidence and subsidence related damage.

(3) A detailed description of the mining techniques that will be used and measures that will be taken to prevent or minimize subsidence and subsidence related damage.

(4) A statement with supporting analyses providing a projection of the vertical and areal extent of any expected subsidence and a description of the areas in which no subsidence is expected. The supporting analyses shall include the bases for the projection with appropriate data and calculations.

(5) A description of the measures to be taken, in accordance with § 817.121, to mitigate or remedy any material damage or diminution in value or foreseeable use that may occur due to expected subsidence.

(6) If room and pillar mining is the method used, the description required by paragraph (b)(3) of this section shall include, at a minimum, a description of the pillar and entry sizes, configuration, and approximate locations; extraction ratios; and other information required by the regulatory authority.

(c) The regulatory authority may waive the requirement for the detailed subsidence control plan of paragraph (b) of this section if the survey required by paragraph (a)(1) of this section demonstrates, and the regulatory authority determines, that no material damage or diminution of value or foreseeable use of the land could be caused by subsidence.

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

2. Section 785.18 is amended by revising paragraph (a), removing paragraph (b), redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, and revising the newly redesignated paragraphs (b)(4), (b)(7), (c)(6), (c)(7), and (c)(9) (ii), and (iii) to read as follows:

§ 785.18 Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining operations.

(a) *Scope.* This section applies to any person who conducts or intends to conduct combined surface mining activities and underground mining activities, where a variance is requested from the contemporaneous reclamation requirements of § 816.100 of this chapter.

(b) * * *

(4) Show how the activities will comply with § 816.79 of this chapter and other applicable requirements of the regulatory program;

* * * * *

(7) Show how offsite storage of spoil will be conducted to comply with the requirements of the Act, §§ 816.71–816.74 of this chapter, and the regulatory program.

(c) * * *

(6) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of § 816.79 of this chapter and the regulatory program;

(7) Provisions for offsite storage of spoil will comply with the requirements of Section 515(b)(22) of the Act, §§ 816.71–816.74 of this chapter, and the regulatory program;

* * * * *

(9) * * *

(ii) Identifying the applicable provisions of Section 515(b) of the Act, Part 816 of this chapter, and the regulatory program; and

(iii) Providing a detailed schedule for compliance with the above provisions.

* * * * *

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

3. Section 816.79 is revised to read as follows:

§ 816.79 Protection of undergoing mining.

No surface coal mining activities shall be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that—

(a) The nature, timing, and sequence of the operations are jointly approved by the regulatory authority, the Mine Safety and Health Administration, and the State agency, if any, responsible for the safety of mine workers; and

(b) The activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

4. Section 816.100 is revised to read as follows:

§ 816.100 Contemporaneous reclamation.

Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining issued under § 785.18 of this chapter.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

5. Section 817.100 is revised to read as follows:

§ 817.100 Contemporaneous reclamation.

Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all areas affected by surface operations shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining issued under § 785.18 of this chapter.

6. Section 817.121 is revised to read as follows:

§ 817.121 Subsidence control.

(a) The underground mine operator shall either (1) adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or (2) adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this part shall be construed to prohibit the standard method of room and pillar mining.

(b) The underground mine operator shall comply with all provisions of the approved subsidence control plan

prepared pursuant to § 784.20 of this chapter.

(c) The underground mine operator shall correct any material damage caused to surface facilities or to the reasonably foreseeable use of surface lands or any lessening of value of such surface lands by—

(1) Restoring, rehabilitating, or removing and replacing each damaged structure, feature, or value, promptly after the damage is suffered, to the condition it would be in if no subsidence had occurred and restoring the land to a condition capable of supporting reasonably foreseeable uses it was capable of supporting before subsidence;

(2) Purchasing the damaged structure or feature for its fair market, presubsidence value and promptly after subsidence occurs, to the extent technologically and economically feasible, restoring the land surface to a condition capable of supporting the purchased structure, and other foreseeable uses it was capable of supporting before mining. Nothing in this paragraph shall be deemed to grant or authorize an exercise of the power of condemnation or the right of eminent domain by any operator; or

(3) Compensating the owner of any surface structure in the full amount of the diminution in value resulting from subsidence by purchase prior to mining of a noncancellable, premium prepaid insurance policy or other means approved by the regulatory authority as assuring before mining begins that payment will occur; indemnifying every person owning an interest in the surface for all damages suffered as a result of the subsidence; and, to the extent technologically and economically feasible, fully restoring the land to a condition capable of maintaining reasonably foreseeable uses which it could support before subsidence.

(d) Underground mining activities shall not be conducted beneath or adjacent to (1) public buildings and facilities, (2) private facilities gernerally used by members of the public, such as churches, schools, and hospitals, (3) bodies of water, such as perennial streams and major impoundments with a storage capacity of 20 acre-feet or more, or (4) any aquifer that serves as a significant water source for any public water supply system, unless the subsidence control plan demonstrates that subsidence will not cause material damage or reduce the reasonably foreseeable use of such features or facilities. The regulatory authority may prohibit underground mining under or adjacent to, or may limit the percentage of coal extraction in the vicinity of, such features or facilities to minimize the potential for material damage to such features or facilities or to protect the public health and safety.

(e) If subsidence causes material damage to any of the features or facilities covered by paragraph (d) of this section, the underground mine operator shall take measures to remedy the damage and to prevent additional damage. If such damage occurs, the regulatory authority may suspend further mining until the subsidence control plan is modified to ensure prevention of further adverse effects.

(f) The regulatory authority shall suspend underground coal mining operations under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

7. Section 817.122 is revised to read as follows:

§ 817.122 Subsidence control: Public notice.

At least 6 months prior to mining, the underground mine operator shall mail a notification to all owners and occupants of surface property and structures above the area of expected subsidence. The notification shall incude, at a minimum, identification of specific areas in which mining will take place; dates that specific areas will be undermined; and the location or locations where the operator's subsidence control plan may be examined.

§ 817.124 and 817.126 [Removed]

8. Sections 817.124 and 817.126 are removed.

PART 818 SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—CONCURRENT SURFACE AND UNDERGROUND MINING [REMOVED]

9. Part 818 is removed.

(Pub. L. 95–87; 30 U.S.C. Section 1201 *et seq.*)

[FR Doc.–82–10499 Filed 4–15–82; 8:45 am]

BILLING CODE 4310–05–M

Reader Aids

Federal Register

Vol. 47, No. 74

Friday, April 16, 1982

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235
United States Government Manual	523-5230

SERVICES

Agency services	523-4534
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

13757-14130.....1
14131-14474.....2
14475-14666.....5
14667-14884.....6
14885-15090.....7
15091-15308.....8
15309-15556.....9
15557-15760.....12
15761-16000.....13
16001-16160.....14
16161-16310.....15
16311-16610.....16

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

51.....15210

3 CFR

Proclamations:

4916.....14475
4917.....14477
4918.....14667
4919.....14669
4920.....14670
4921.....14673
4922.....14885
4923.....14887
4924.....14889
4925.....15091
4926.....15761
4927.....16001
4929.....16313

Executive orders:

July 2, 1910 (Revoked in part by PLO 6230).....14157
May 14, 1920 (Revoked in part by PLO 6320).....14157
11896 (Amended by E.O. 12357).....15093
12065 (Revoked by EO 12356, effective August 1, 1982).....14874
12336 (Amended by E.O. 12355).....14479
12355.....14479
12356.....14874
12356 (correction).....15557
12357.....15093
12358.....16311

5 CFR

890.....14868
1201.....15309

Proposed Rules:

412.....16341
890.....15996

7 CFR

1.....15559
2.....15559
210.....14131, 14134, 15978
215.....14131, 14134
220.....14131, 14134
225.....15309
230.....14134
235.....14134
240.....15978
245.....14134
250.....15978
253.....14135
331.....14891
418.....14675
600.....14683
729.....15966
905.....16005
907.....13757, 15095, 16161
908.....15095
910.....14137, 15310, 16315
925.....15095
1032.....16315
1093.....13757
1423.....15310
1425.....15763
1427.....15764
1468.....15096
1472.....16161
1900.....13758
2003.....15560

Proposed Rules:

210.....15342
210.....15342
246.....15348
272.....14160
273.....14160
274.....14160
284.....15346
331.....14915
413.....14915
426.....13826
1007.....14919
1822.....15589
1944.....15589

9 CFR

92.....15097

Proposed Rules:

78.....13827
166.....16534
319.....14168
381.....14168

10 CFR

Ch. II.....13767
2.....16005
20.....16162
50.....15569
60.....13774
72.....13774
81.....13774
417.....16166
455.....15765
500.....15311
501.....15311
503.....15311

Proposed Rules:

35.....15798
50.....15801
430.....14424
795.....14490

11 CFR

110.....15098

12 CFR

29.....13775

204.....14481
208.....14684
217.....14483
225.....14684
265.....16169
525.....16316
526.....13776
544.....13776, 16170
545.....13776
555.....13776
561.....13776
563.....13776
564.....13776
1204.....14690, 15098

Proposed Rules:
Ch. I.....16033
Ch. II.....13827
210.....15349
618.....13834

13 CFR

305.....15101

14 CFR

39.....13784–13788, 15102, 15569–15576
67.....16298
71.....13789, 13790, 15103–15106, 15577–15579, 16170, 16171
75.....16171
97.....14485
205.....16172
373.....16006
399.....14892
1204.....14893, 15767

Proposed Rules:
Ch. I.....14014
Ch. V.....14923
39.....15600
45.....14128
71.....13834, 13835, 15601
75.....15143
217.....15350
221.....15144
241.....15350
296.....15144
297.....15144

15 CFR

359.....14692
368.....15106
369.....15106
370.....15106
371.....14695, 15106
372.....14695, 15106
373.....15106
374.....15106
375.....15106
376.....15106
377.....15106
379.....15106
385.....15106
386.....15106
387.....15106
388.....15106
389.....15106
390.....15106
806.....14138, 15579

16 CFR

1306.....14366

Proposed Rules:
1405.....14420
1406.....14711
1500.....16041

17 CFR

140.....16173

Proposed Rules:
190.....16187
230.....16043
240.....16043
270.....16341

18 CFR

271.....15315–15317
357.....16317

Proposed Rules:
271.....14490–14492, 15353–15356, 15805, 15806
290.....13836

19 CFR

Proposed Rules:
Ch. I.....16033
134.....14493
201.....13791
210.....13791

20 CFR

Ch. VI.....14696
404.....13792, 14894
416.....13792, 15319
676.....15988

Proposed Rules:
404.....15602
416.....15602

21 CFR

5.....16010, 16318
73.....16319
74.....14138
81.....14137, 14138
82.....14138
176.....14697
177.....14697, 14697
178.....14700, 16319
193.....14894, 14895
430.....15767
436.....15767
440.....15767
444.....16320
452.....15326
510.....14148, 14700, 15327
520.....14148, 14149, 14701, 15327, 15328, 15770
522.....14148, 14149, 14702, 14703, 15327, 15328
524.....15771, 16320
526.....15772
540.....14148, 14150, 16320
556.....15770
558.....14148, 14149, 14151, 14700, 14703, 14704, 15773, 16320
561.....14896–14898, 16011
640.....15329
884.....14705

Proposed Rules:
Ch. I.....14464
168.....15357

22 CFR

42.....15773

23 CFR

625.....13794
626.....13794
1205.....15116
1252.....15116

Proposed Rules:
Ch. I.....14014
Ch. II.....14014

24 CFR

58.....15750
200.....14487
570.....15290
571.....16321

Proposed Rules:
201.....14712
203.....14495, 14713
204.....14713
213.....14713
220.....14713
221.....14713
222.....14713
226.....14713
227.....14713
233.....14713
234.....14713
235.....14713
237.....14713
240.....14713

25 CFR

700.....15774

26 CFR

1.....15122
5c.....15330

Proposed Rules:
Ch. I.....16033

27 CFR

Proposed Rules:
Ch. I.....16033
5.....16187

28 CFR

24.....15774

29 CFR

Subtitle A.....14696, 14706
Ch. XVII.....14696, 14706
1405.....15779
2619.....15780
2645.....14899

Proposed Rules:
Ch. XIV.....15807
1910.....14169, 14716, 15358, 16348
1918a.....14716

30 CFR

Ch. I.....14696, 14706
251.....15781
916.....16012
936.....14152

Proposed Rules:
250.....16349
701.....16152, 16592
715.....16349
716.....15605
780.....16349
784.....16604
785.....15605, 16152, 16604
816.....16152, 16349, 16592, 16604
817.....16152, 16349, 16592, 16604
818.....16604
824.....16152
826.....16152
850.....16349
913.....16046
917.....15605
920.....13836
931.....16188
936.....14170
938.....15368
943.....14170

31 CFR

Proposed Rules:
51.....16033

32 CFR

56.....15122
199.....16014, 16321
213.....14899

Proposed Rules:
505.....14925

33 CFR

3.....13796
81.....13798
84.....15135
85.....15135
86.....15135
87.....16173
88.....16174
89.....13800
100.....16176
117.....15136
165.....13802, 16177
402.....13803
403.....13803

Proposed Rules:
Ch. I.....14014
Ch. IV.....14014
100.....15144
110.....15145
117.....13838, 15146, 16188
175.....15606
181.....15606
207.....16046
401.....13838

34 CFR

630.....15582
655.....14112
656.....14112
657.....14112
658.....14112
660.....14112
730.....15582

35 CFR

Proposed Rules:
133.....16360

36 CFR

72.....15137
223.....16178

Proposed Rules:
7.....16047, 16048

38 CFR

1.....16322
36.....15137

Proposed Rules:
36.....14172

39 CFR

Proposed Rules:
10.....14862
111.....14862

233 14862

40 CFR

52 ..... 14707, 15140, 15579–15587, 15782–15795, 16015–16018, 16324–16331
60 ..... 16564, 16582
81 ..... 15587, 16333
86 ..... 14904, 16182, 16334
122 15304
123 ..... 15307, 16544
124 15304
162 16020
180 ..... 14905–14910, 16019–16022
201 14709
256 14910–14912
264 ..... 15032, 16544
265 ..... 15032, 16544

Proposed Rules:

Ch. I 15702
52 ..... 15147, 15368, 15609, 15810–15814, 16361
65 14177
81 15815
122 ..... 15147, 15368, 15369, 16049
123 ..... 14925, 14926, 15147, 15369, 15609, 16049
124 ..... 15147, 15369, 16049
146 ..... 15147, 15369, 16049
180 ..... 16050, 16051

41 CFR

Ch. 1 16335
Ch. 7 14914
Ch. 60 14696
Ch. 101 15141
4–1 16335
8–1 15332
8–3 15332
8–95 15333
101–43 15797

Proposed Rules:

Ch. 12 14014

42 CFR

405 16339
441 16339

Proposed Rules:

421 15370

43 CFR

1820 14487

Public Land Orders:

6153 14157
6230 14157
6231 14158

Proposed Rules:

44 CFR

64 16023–1627

Proposed Rules:

64 13806
67 15373
302A 14500
2800 15284
2880 15286

45 CFR

302 16027
303 16027
400 16183

Proposed Rules:

Ch. XI 14734
5 15610

46 CFR

31 15210
32 15210
33 15210
35 15210
37 15210
38 15210
63 15210
71 15210
75 15210
76 15210
77 15210
78 15210
79 15210
92 15210
94 15210
96 15210
97 15210
99 15210
110 15210
111 15210
112 15210
113 15210
161 15210
190 15210
192 15210
196 15210
401 13808
510 16030
530 14709

Proposed Rules:

Ch. I 14014, 15147
Ch. III 14014
56 13838
58 13838
502 14734

47 CFR

0 ..... 15333, 16031
1 15333
2 13809
22 14710
67 15142
73 ..... 13812–13816, 15334–15336
81 15333
83 15333
87 15333
90 ..... 14489, 15337, 15588

Proposed Rules:

67 15374
73 ..... 13839–13844, 14177, 15376–15379, 16052
90 16052
95 14178
97 14197

48 CFR

Proposed Rules:

35 16189
42 16189

49 CFR

171 13816
173 ..... 13816, 16183
178 ..... 13816, 16183
192 13818
630 13825
1005 14710
1008 14710
1031 16186
1047 15142
1051 14710

Proposed Rules:

Subtitle A 14014
Ch. I 14014
Ch. II 14014
Ch. III 14014
Ch. IV 14014
Ch. V 14014
Ch. VI 14014
171 16286
172 16286
222 16189
525 14501
531 14501
533 14501
537 14501
555 14501
556 14501
569 14501
571 ..... 13845, 14501, 15612
573 14501
574 14501
575 14501
576 14501
577 14501
580 14501
581 14501

50 CFR

611 15341
640 15588
651 14158
652 14158
656 15341
657 15341
671 16339

Proposed Rules:

20 15614
23 ..... 14472, 14664
83 14739
285 14501

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.

List of Public Laws

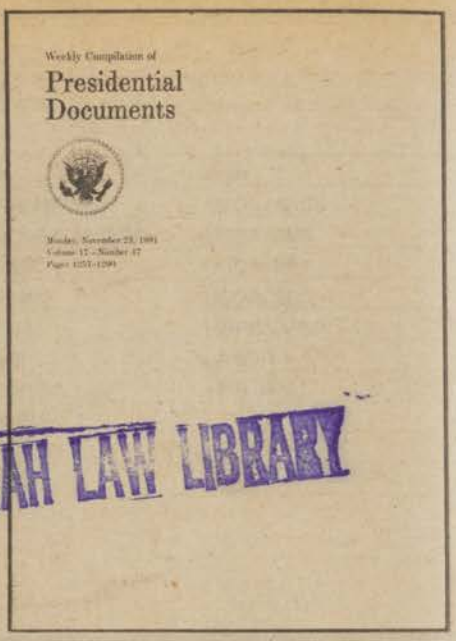
Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing April 15, 1982

The authentic text behind the news . . .

The Weekly Compilation of **PRESIDENTIAL DOCUMENTS**

Administration of Ronald Reagan



MULTNOMAH LAW LIBRARY

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published quarterly, semiannually, and annually. Other features include lists of acts approved by the President and of nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by Office of the Federal Register, National Archives and Records Service, General Services Administration

---

SUBSCRIPTION ORDER FORM

ENTER MY SUBSCRIPTION FOR 1 YEAR TO: WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)

@$35.00 Domestic; @$43.75 Foreign.
@$79.00 if Domestic first-class mailing is desired.

PLEASE PRINT OR TYPE

Name—First, Last

Company name or additional address line

Street address

City State ZIP Code

(or Country)

☐ Remittance Enclosed (Make checks payable to Superintendent of Documents)

☐ Charge to my Deposit Account No.....

MAIL ORDER FORM TO:
Superintendent of Documents
Government Printing Office
Washington, D.C. 20402