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CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Proclamation 4935 of April 26, 1982

National Year of Disabled Persons

By the President of the United States of America

A Proclamation

The 1981 International Year of Disabled Persons, a celebration of the achievements and strengths of disabled persons the world over, has now concluded. In that Year, we were made aware of the many accomplishments of disabled people, and we rejoiced at the number of lives that were made richer and more productive through education, rehabilitation, and employment.

The impetus gained during this celebration must not be lost. We must seize the opportunities afforded by the International Year of Disabled Persons to increase our national awareness of what remains to be done in order to assure all disabled Americans full and active participation in our society.

I call upon my fellow citizens in both the public and private sectors to join in mutual efforts to pursue the long-term goals set forth during 1981.

NOW, THEREFORE, in keeping with the aims of Senate Joint Resolution 134, and in order to continue the momentum developed in the International Year of Disabled Persons, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the year 1982 as the "National Year of Disabled Persons."

IN WITNESS WHEREOF, I have hereunto set my hand this 26th. 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. 82-11735
Filed 4-27-82; 10:14 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority by the Secretary of Agriculture and General Offices of the Department; Local Search and Rescue Operations

AGENCY: Agriculture Department.
ACTION: Final rule.

SUMMARY: This document provides delegations of authority to the Assistant Secretary of Agriculture for Natural Resources and Environment and the Chief, Soil Conservation Service, to implement the Local Search and Rescue Operations of the Agriculture and Food Act of 1981.

EFFECTIVE DATE: April 28, 1982.

FOR FURTHER INFORMATION CONTACT: Wayne F. Maresch, Director, Administrative Services, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, Telephone: 202–447–5111.

SUPPLEMENTARY INFORMATION: The Agriculture and Food Act of 1981, Pub. L. 97–98, provides that the Secretary of Agriculture:

1. May assist in local search and rescue operations when requested by local public authorities.
2. Provide such assistance with Soil Conservation Service personnel, vehicles, communications equipment, and other equipment or materials that are available for such operations.
3. May provide such assistance in emergencies caused by tornadoes, fires, floods, snowstorms, earthquakes, and similar disasters.

The Secretary of Agriculture is delegating the authority for implementation and administration of local search and rescue operations authority to the Assistant Secretary for Natural Resources and Environment, and the Assistant Secretary is redelegating this authority to the Chief, Soil Conservation Service.

This rule relates to internal agency management and organization. Therefore, under the provisions of 5 U.S.C. 553, it is found that it is impractical and contrary to the public interest to give preliminary notice, engage in public rulemaking, or postpone the effective date until 30 days after publication in the **Federal Register**. Since this rule relates to internal agency management and organization, it is exempted from provisions of Executive Order 12291 and Secretary's Memorandum 1512–1.

List of Subjects in 7 CFR Part 2

Authority delegations (government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

1. Section 2.19 is amended by adding paragraph (f)(10) to read as follows:

§ 2.19 Delegations of authority to the Assistant Secretary for Natural Resources and Environment.

* * * * *

(f) * * *

(10) Administer the search and rescue operations authority under Pub. L. 97–98 (95 Stat. 1213).

* * * * *

Subpart G—Delegations of Authority by the Assistant Secretary for Natural Resources and Environment

§ 2.62 [Amended]

2. Section 2.62 is amended by adding paragraph (a)(12) to read as follows:

(a) * * *

(12) Administer the search and rescue operations authority under Pub. L. 97–98 (95 Stat 1213).

For Subpart C:
John R. Block,
Secretary of Agriculture.

Dated: April 12, 1982.

For Subpart G:
John B. Crowell, Jr.,
Assistant Secretary for Natural Resources and Environment.

Dated: April 12, 1982.

[FR Doc. 82–11479 Filed 4–27–82; 8:45 am]
BILLING CODE 3410–01–M

7 CFR Part 2

Revision of Delegations of Authority; Correction

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule; correction.

SUMMARY: This document corrects errors that were made in the delegations of authority to the Assistant Secretary for Marketing and Inspection Services, and the Administrators of the Agricultural Marketing Service and the Food Safety and Inspection Service in FR Doc. 81–28167, appearing in the **Federal Register** of September 30, 1981, (46 FR 47747).

EFFECTIVE DATE: April 28, 1982.

FOR FURTHER INFORMATION CONTACT: Robert Siegler, Deputy Assistant General Counsel, Office of the General Counsel, Department of Agriculture, Washington, D.C. 20250, (202) 447–6035.

SUPPLEMENTARY INFORMATION: In FR Doc. 81–28167, appearing in the **Federal Register** of September 30, 1981, the delegations of authority from the Secretary of Agriculture and General Officers of the Department were revised to reflect the establishment of new agencies and positions, the realignment of functions within the Department of Agriculture, and the assignment of new functions. The delegations of authority to the Assistant Secretary for Marketing and Inspection Services and the Administrators of the Agricultural Marketing Service and the Food Safety and Inspection Service did not, however, reflect the actual responsibilities assigned. The purpose of this document is to correct those errors and to reflect the actual responsibilities of the Administrators of the Agricultural Marketing Service and the Food Safety and Inspection Service which have been carried out notwithstanding the errors

contained in the document. Accordingly, the following corrections are made:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorgn. Plan No. 2 of 1953, unless otherwise noted.

2. On page 47747, column two, first full paragraph is corrected to read:

"It has further been determined that those functions relating to inspection and grading of dairy products, grading of meat and poultry products, standardization and inspection of fresh and processed fruit and vegetable products, and those functions authorized by the Egg Products Inspection Act, and by section 32 of the Act of August 24, 1935, as supplemented by the Act of June 28, 1937, and related legislation, formerly administered by the Food Safety and Quality Service are more logically associated with other marketing functions and, therefore, should be administered by the Agricultural Marketing Service. In connection with such alignment, the name of the Food Safety and Quality Service has been changed to the Food Safety and Inspection Service."

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

3. Item 5 on page 47749 which sets forth the amendatory language for § 2.17, and the text of paragraphs (a) and (g) of § 2.17 are corrected to read as follows:

Section 2.17 is amended by adding new paragraphs (a)(3) (xxxiii) through (a)(3) (xxxvii) and (f)(4), by redesignating paragraphs (g) and (h) as (h) and (i) respectively, by revising the heading, the introductory paragraph, and paragraph (i) as redesignated, and by adding a new paragraph (g) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Marketing and Inspection Services:

(a) *Related to agricultural marketing.*

* * *

(3) * * *

(xxxiii) Egg Products Inspection Act (21 U.S.C. 1031–1056).

(xxxiv) Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation, except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof.

(xxxv) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755).

(xxxvi) In carrying out the procurement functions in paragraphs (a)(3) (xxxiv) and (xxxv) of this section, the Assistant Secretary for Marketing and Inspection Services shall, to the extent practicable, use the commodity procurement, handling, payment and related services of the Agricultural Stabilization and Conservation Service.

(xxxvii) Act of May 23, 1980, regarding inspection of dairy products for export (21 U.S.C. 693).

* * * * *

(g) *Related to food safety and inspection.* (1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1624, 1626), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats, and other carnivora; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products.

(2) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470).

(ii) Federal Meat Inspection Act, as amended, and related legislation, excluding sections 12–14, and also excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–611, 615–624, 641–645, 661, 671–680, 691–692, 694–695).

(iii) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act.

(iv) Humane Slaughter Act (7 U.S.C. 1901–1906).

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

4. The amendatory language to § 2.50 appearing at page 47750 and text of § 2.50 appearing at pages 47750–47751 is corrected to read as follows:

Section 2.50 is amended by removing the words "and (e)" in paragraph (a) and adding in lieu thereof the words "and (i)", by removing paragraphs (a)(7) through (a)(10), and by adding new paragraphs (a)(3) (xxxiv) through (a)(3) (xxxviii) and (a)(7) to read as follows:

§ 2.50 Administrator, Agricultural Marketing Service.

(a) * * *

(3) * * *

(xxxiv) Egg Products Inspection Act (21 U.S.C. 1031–1056).

(xxxv) Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation, except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof.

(xxxvi) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755).

(xxxvii) In carrying out the procurement functions in paragraphs (a)(3) (xxxv) and (xxxvi) of this section, the Administrator, Agricultural Marketing Service shall, to the extent practicable, use the commodity procurement, handling, payment and related services of the Agricultural Stabilization and Conservation Service.

(xxxviii) Act of May 23, 1908, regarding inspection of dairy products for export (21 U.S.C. 693).

* * * * *

(7) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950 as amended (50 U.S.C. App. 2551 *et seq.*), relating to inspection of eggs and egg products.

* * * * *

5. The text of § 2.55 appearing at page 47751 is corrected to read as follows:

§ 2.55 Administrator, Food Safety and Inspection Service.

(a) *Delegations.* Pursuant to § 2.17 (g) and (i), the following delegations of authority are made by the Assistant Secretary for Marketing and Inspection Services to the Administrator, Food Safety and Inspection Service:

(1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1624, 1626), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats and other carnivora; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products.

(2) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470).

(ii) Federal Meat Inspection Act, as amended, and related legislation, excluding sections 12–14, and also excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–611, 615–624, 641–645, 661, 671–680, 691–692, 694–695).

(iii) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act.

(iv) Humane Slaughter Act (7 U.S.C. 1901–1906).

(v) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*), relating to wholesomeness of meat and poultry and products thereof.

For Subpart C:

Dated: April 20, 1982.

John R. Block,

Secretary of Agriculture.

For Subpart F:

Dated: April 20, 1982.

C. W. McMillan,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 82-11594 Filed 4-27-82; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 82-314]

Gypsy Moth Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the list of gypsy moth regulated areas (regulated areas are divided into high-risk areas and low-risk areas) under the Federal Gypsy Moth and Browntail Moth Quarantine and Regulations by (1) designating previously nonregulated areas in Vermont as gypsy moth high-risk areas; (2) by redesignating areas in Delaware, Maryland, New Jersey, New York, Pennsylvania, and Vermont from gypsy moth low-risk areas to gypsy moth high-risk area; (3) by designating previously nonregulated areas in California, Delaware, Maryland, Michigan, North Carolina, Ohio, Vermont, Virginia, West Virginia, and Wisconsin as gyspy moth low-risk areas; (4) by expanding previously designated gypsy moth low-risk areas in Illinois, Michigan, Oregon, and West Virginia; and (5) by deleting areas in North Carolina, Ohio, and Wisconsin from the list of gypsy moth regulated areas. The quarantine and regulations impose restrictions on the interstate movement of certain articles from gypsy moth high-risk areas and gypsy moth low-risk areas. The amendments are necessary as emergency measures in order to prevent the artificial spread interstate of gypsy moth and to delete unnecessary restrictions on the interstate movement of certain articles.

DATES: Effective date of this interim rule April 28, 1982. Written comments concerning this interim rule must be received on or before June 28, 1982.

ADDRESS: Written comments should be submitted to T. J. Lanier, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 635 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 635 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: T. J. Lanier, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 635 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Emergency Action

This interim rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been determined to be not a "major rule". Based on information compiled by the Department, it has been determined that this interim rule will have an annual effect on the economy of approximately $167,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause 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.

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this interim action. Due to the possibility that gypsy moths could be spread artificially interstate to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the Federal Register. Comments have been solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the Federal Register as soon as possible.

In addition, because of the need for immediate action, it is impracticable for the Department to follow the procedures established by Executive Order 12291.

For this rulemaking action, the Office of Management and Budget has waived their review process required by Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action affects the interstate movement of regulated articles from specified areas in the States of California, Delaware, Illinois, Maryland, Michigan, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Vermont, Virginia, West Virginia, and Wisconsin. Based on information

compiled by the U.S. Department of Agriculture it has been determined that there are many hundreds of small entities that move regulated articles interstate from such States and many thousands of small entities that move regulated articles interstate from other States. However, based on such information, it has been determined that only approximately 300 entities move regulated articles interstate from the specified areas affected by this action. Further, the annual overall economic impact from this action is estimated to be less than $167,000.

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a highly destructive pest of forest trees. The Gypsy Moth and Browntail Moth Quarantine and Regulations (7 CFR 301.45 *et seq.*) quarantine certain States because of the gypsy moth, and restrict the interstate movement from regulated areas of articles designated as regulated articles because of the gypsy moth. Such restrictions are necessary for the purpose of preventing the artificial spread of the gypsy moth.

Areas designated as gypsy moth regulated areas are areas in which a gypsy moth infestation has been found by an inspector, or areas which are necessary to regulate because of proximity to gypsy moth infestation or inseparability for quarantine enforcement purposes from infested localities. Regulated areas are divided into high-risk areas and low-risk areas. Under the regulations there is a basis for designating an area as a high-risk area when an inspector determines that regulated articles exist within or adjacent to an area where defoliation has occurred or where an inspector has reason to believe that 50 or more egg masses per acre of the gypsy moth are present. Low-risk areas are those portions of regulated areas that are not designated as high-risk areas.

Section 301.45–3 (a), (b), and (c) of the regulations imposes the following conditions on the movement of regulated articles:

"(a) A regulated article shall not be moved interstate from any high-risk area into or through any nonregulated area unless a certificate or permit has been issued and attached to such regulated article in accordance with §§ 301.45–4 and 301.45–7.

"(b) A regulated article shall not be moved interstate from any low-risk area into or through any nonregulated area when it is determined by an inspector that any life stage of the gypsy moth or browntail moth is on the regulated article, and the person in possession thereof has been so notified by an inspector, unless a certificate or permit has been issued and attached to such regulated articles in accordance with §§ 301.45–4 and 301.45–7.

"(c) A regulated article originating outside of any high-risk area, except any regulated article in any low-risk area determined by an inspector to present a hazard of spreading the gypsy moth or browntail moth pursuant to paragraph (b) of this section, may be moved interstate directly through any high-risk area without a certificate or permit, if the point of origin of the article is clearly indicated by shipping documents, their identity has been maintained, and they have been safeguarded against infestation while in any high-risk area."

These regulations are designed to restrict the interstate movement of regulated articles in those circumstances where there would be a significant risk of spread of the gypsy moth. A certificate or limited permit is authorized to be issued based on treatment of a regulated article or based on a determination that movement of a regulated article without treatment would not result in the spread of the gypsy moth.

Designation of Areas as High-Risk Areas

As an emergency measure, all of Grand Isle County in Vermont, which was previously an unregulated area, is designated as a gypsy moth high-risk area.

As an emergency measure the following areas in Delaware, Maryland, New Jersey, New York, Pennsylvania, and Vermont which were previously designated as gypsy moth low-risk areas are redesignated as gypsy moth high-risk areas:

Delaware

New Castle County. The entire county.

Maryland

Baltimore City. All areas within the city limits.

Carroll County. That portion of the county not designated as a high-risk area.

Cecil County. That portion of the county not designated as a high-risk area.

Frederick County. That portion of the county not designated as a high-risk area.

New Jersey

Hudson County. The entire county.

New York

Bronx County. The entire county.

Cayuga County. The towns of Genoa, Locke, Scipio, and Sterling.

Chemung County. The towns of Ashland, Baldwin, Big Flats, Catlin Chemung, Erin, Southport, and Van Etten.

Jefferson County. The town of Cape Vincent.

Kings County. The entire county.

Madison County. The town of Sullivan.

New York County. The entire county.

Oneida County. The towns of Deerfield, Lee, Marcy, Utica City, Vienna, and Western.

Oswego County. The towns of Constantia, Schroeppel, and Volney.

Queens County. The entire county.

Richmond County. The entire county.

Schenectady County. The entire county.

Schuyler County. The entire county.

Seneca County. The towns of Lodi, Romulus, and Varick.

Steuben County. The towns of Campbell, Caton, Corning, Corning City, Erwin, Hornby, Lindley, and Pulteney.

Yates County. The town of Jerusalem.

Pennsylvania

Bedford County. The entire county.

Cameron County. The entire county.

Fulton County. The entire county.

Somerset County. The entire county.

Tioga County. The entire county.

Vermont

Windsor County. The townships of Barnard, Bethel, Bridgewater, Hartford, Hartland, Norwich, Pomfret, Rochester, Royalton, Sharon, and Woodstark.

Also, as an emergency measure, the following area in Maryland previously designated as gypsy moth high-risk area is retained as gypsy moth high-risk area but is expanded as set forth below.

The area in Washington County in Maryland previously described as "that area bounded by a line beginning at a point where the Maryland-Pennsylvania State line and Washington-Frederick County line intersect; thence southerly along said county line to its intersection with Interstate Highway 70; thence northwesterly along Interstate Highway 70 to its intersection with State Route 66; thence northeasterly along State Route 66 to its intersection with State Route 64; thence northerly along State Route 64 to the Maryland-Pennsylvania State line; thence easterly along said line to the point of beginning." is retained as a gypsy moth high-risk area but is expanded and redescribed as the entire county.

Based on recent surveys, inspectors have determined with respect to all of the areas added to the list of gypsy moth

high-risk areas, that defoliation has occurred in these areas because of the gypsy moth or that there is reason to believe that 50 or more egg masses per acre of the gypsy moth are present in these areas. Also, regulated articles exist within or adjacent to these areas. Accordingly, there is a substantial risk of artificially spreading the gypsy moth by unrestricted interstate movement of such regulated articles. Therefore, as an emergency measure, it is necessary to designate such areas as gypsy moth high-risk areas and impose restrictions on the interstate movement of regulated articles from these areas in accordance with the regulations in order to prevent the artificial spread of the gypsy moth.

Designation of Areas as Low-Risk Areas

As an emergency measure, the following areas in California, Delaware, Maryland, Michigan, North Carolina, Ohio, Vermont, Virginia, West Virginia, and Wisconsin which were previously nonregulated areas are designated as gypsy moth low-risk areas:

California

Santa Barbara County. That portion of the county beginning at a point where U.S. Highway 101 and Lambert Road intersect; then north on Lambert Road to its end; then northerly along an imaginary line from the end of Lambert Road to the intersection of State Highway 192 and Ladera Lane; then north on said lane to its intersection with Bella Vista Drive; then due north along an imaginary line from said intersection to an imaginary point ½ mile north of and within the boundary line of the Los Padres National Forest; then westerly along an imaginary line which is ½ mile within the Los Padres National Forest boundary line to an imaginary point on Parma Creek ½ mile north of the intersection of Parma Creek and the Los Padres National Forest boundary line; then southerly along Parma Creek to its intersection with State Highway 192; then southeasterly along said highway to its intersection with State Highway 144; then southerly along said highway to its intersection with Salinas Street; then southeast on said street to U.S. Highway 101; then easterly on said highway to the point of beginning.

Delaware

Kent County. The entire county.
Sussex County. The entire county.

Maryland

Allegany County. The entire county.
Anne Arundel County. The entire county.
Caroline County. The entire county.
Dorchester County. The entire county.
Howard County. The entire county.
Kent County. The entire county.
Prince Georges County. The entire county.
Queen Annes County. The entire county.
Talbot County. The entire county.
Wicomico County. The entire county.
Worcester County. The entire county.

Michigan

Grand Traverse County. Sec. 36, T. 28 N., R. 11 W.
Muskegon County. Sec. 6 and 7, R. 16 W., T. 9 N., and sec. 1 and 2, R. 17 W., T. 9 N.
Ottawa County. Sec. 23, 24, 25 and 26, T. 7 N., R. 16 W.

North Carolina

Johnston County. That property known as the Lakeview KOA Campground on the southeast side of Interstate Highway 95 and located 0.5 mile from the junction of Interstate Highway 95 and U.S. Highway 70A.
Wake County. That area bounded by a line beginning at a point where Millbrook Road intersects Windy Hill Drive; then north on said drive to its intersection with Quail Ridge Road; then northeasterly on said road to its intersection with the powerline right-of-way; then southeasterly along said right-of-way to its intersection with Departure Drive; then south on said drive to its intersection with Millbrook Road; then northwesterly on said road to its intersection with Lacy Avenue; then southwesterly on said avenue to its intersection with 2nd Street; then northwesterly on said street to its intersection with Millbrook Road and Old Wake Forest Road; then westerly on Millbrook Road to the point of beginning.

Ohio

Belmont County. That portion of the county within the boundaries of Barkcamp State Park.
Columbiana County. That portion of the city of Salem and Perry Township bounded by a line beginning at a point where Painter Road and Brooklyn Avenue intersect, then south along Brooklyn Avenue to its intersection with 3rd Avenue, then west along 3rd Avenue to its intersection with Highland Avenue, then north along Highland Avenue to its intersection with Painter Road, then east along Painter Road to the point of beginning.
Cuyahoga County. That portion of the city of Bay Village bounded by a line beginning at a point where Osborn Road and Cahoon Road intersect, then south along Cahoon Road to its intersection with the N & W Railroad tracks, then west along said tracks to its intersection with Crocker Road, then north along said road to its intersection with Osborn Road, then east along Osborn Road to the point of beginning.
That portion of the city of Pepper Pike bounded by a line beginning at a point where Shaker Boulevard and SOM Center Road intersect, then south along said road to its intersection with Old Kingsman Road, then west along Old Kingsman Road to its intersection with Pinetree Road, then northwesterly along Pinetree Road to its intersection with South Woodland Road, then northwest along South Woodland Road to its intersection with Lander Road, then north along Lander Road to its intersection with Shaker Boulevard, then east along said Boulevard to the point of beginning.
That portion of the city of Solon bounded by a line beginning at a point where Cannon Road and SOM Center Road intersect, then south along SOM Center Road to its intersection with U.S. Highway 422, then northwest along said highway to its intersection with Cannon Road, then east along Cannon Road to the point of beginning.
Hamilton County. That portion of the county bounded by a line beginning at a point where Fields-Ertel Road and U.S. Highway 71 intersect, then southwest along said highway to its intersection with Snider Road, then north along said road to its intersection with Fields-Ertel Road, then east along Fields-Ertel Road to the point of beginning.
That portion of the city of Montgomery bounded by a line beginning at a point where Bromwell Avenue and the Montgomery city limits line intersect, then southeast and westerly along said line to its intersection with Weil Road, then northerly along said road to its intersection with Weller Road, then northerly along Weller road to its intersection with Tanager Woods Drive, the southeasterly along said drive to its intersection with Winthrop Drive, then easterly along said drive to its intersection with Bromwell Avenue, then northeasterly along said avenue to the point of beginning.
That portion of the county bounded by a line beginning at a point where U.S. Highway 275 and Eight Mile Road intersect, then southerly along said road to its intersection with U.S. Highway 52, then westerly along said highway to its intersection with Asbury Road, then northerly along said road to its intersection with U.S. Highway 275, then east on said highway to the point of beginning.

Jefferson County. That portion of the county within the boundaries of Jefferson State Park.

Lucas County. That portion of the city of Ottawa Hills bounded by a line beginning at a point where Indian Road and Sulphur Springs Road intersect, then southerly along Sulphur Spring Road to its intersection with Evergreen Road, then southwest along Evergreen Road to its intersection with the Ottawa River, then westerly along said river to an imaginary point due south of Inland Court, then due north along an imaginary line to the end of Inland Court, then northerly along Inland Court to its intersection with Westchester Road, then northerly along said road to its intersection with Forrest View Drive, then northeasterly along said drive to its intersection with Indian Road, then southeast along said road to the point of beginning.

Ottawa County. That portion of Catawba Island bounded by a line beginning at a point where Sloan Street and East Catawba Road intersect, then south along said road to its intersection with South Fairway Drive, then west along an imaginary line to the end of Weyhe Road, then west on Weyhe Road to its intersection with West Catawba Road, then north along West Catawba Road to its intersection with Sloan Street, then east along said street to the point of beginning.

Portage County. That portion of the county located on the north side of the Ohio Turnpike known as Portage Plaza.

Tuscarawas County. That portion of the city of Newcomerstown bounded by a line beginning at a point where County Road 221 and the Newcomerstown city limits line intersect, then easterly, southerly, and westerly along said line to its intersection with U.S. Highway 36, then westerly along said highway to its intersection with County Road 221, then northerly along said road to the point of beginning.

Vermont

Caledonia County. Towns of Burke, Lyndon, Newark, Sheffield, Stannard, and Sutton.

Essex County. Towns of Averill, Averys Gore, Bloomfield, Brighton, Brunswick, Canaan, East Haven, Ferndinand, Lemington, Norton, Warren Gore, and Warrens Grant.

Orleans County. The entire county.

Virginia

Fairfax County. That portion of the county beginning at a point where State Highway 603 intersects Deepwood Drive; then north on Deepwood Drive to its end; then due north on an imaginary line from the end of Deepwood Drive to the Potomac River shoreline; then westerly along said shoreline to the Colonial Pipeline Company's easement for a petroleum pipeline; then south along said easement to State Highway 603; then easterly on said highway to the point of beginning.

That portion of the county bounded by a line beginning at a point where the Dulles Airport Access Road and Interstate Highway 495 intersect; then east along said road to its intersection with State Highway 123; then southwesterly along said highway to its intersection with Interstate Highway 495; then north along Interstate Highway 495, to the point of beginning.

That portion of the county bounded by a line beginning at a point where State Highway 236 and Guinea Road intersect; then east along said highway to its intersection with Wakefield Drive; then south along said drive to its intersection with St. Ark Road; then west along said road to its intersection with Guinea Road; thence north along Guinea Road to the point of beginning.

That portion of the county bounded by a line beginning at a point where State Highway 236 and State Highway 649 intersect; then east along State Highway 236 to its intersection with State Highway 617; then southeast along State Highway 617 to its intersection with State Highway 620; then west along State Highway 620 to its intersection with State Highway 649; then northeast along State Highway 649 to the point of beginning.

That portion of the county bounded by a line beginning at a point where State Highway 640 (Sydenstricker Road) and Colgate Drive intersect; then northeast along said drive to its intersection with Hadlow Drive; then southeast along Hadlow Drive to its intersection with Dryburgh Court; then due northeast along an imaginary line from said intersection to Pohick Creek; then southeast along Pohick Creek to its intersection with Samos Court; then due west from said intersection along an imaginary line to Middle Valley Drive; then west along Middle Valley Drive to Goins Road; then west along Goins Road to its intersection with Gambrill Road; then south along Gambrill Road to its intersection with Middle Run Drive; then west along Middle Run Drive to its intersection with Newington Woods Drive, then north along Newington Woods Drive to the end; then due north along an imaginary line from the end of Newington Woods Drive to its intersection with Flemingwood Lane; then north along Flemingwood Lane to its intersection with State Highway 636; then east along said highway to its intersection with State Highway 640; then northwest along State Highway 640 to the point of beginning.

Fauquier County. Those properties owned by the Audrey B. Currier estate, and Andrea B. and Lavinia M. Currier, known as Kinloch Farms, located on the southeast and northwest side of State Highway 601 and west of State Highway 628, 1 mile, more or less, northeast of the intersection of State Highway 626 and 601.

Loudoun County. That portion of the county bounded by a line beginning at a point where U.S. Highway 15 intersects with State Highway 658; then southeast along State Highway 658 to its intersection with State Highway 662; then southeasterly along State Highway 662 to its intersection with State Highway 657; then due south from said intersection along an imaginary line to the Potomac River; then southerly along the Potomac River to its intersection with State Highway 655; then west along State Highway 655 to its intersection with U.S. Highway 15; then south along U.S. Highway 15 to its intersection with State Highway 748; then west along State Highway 748 to its end; then north along an imaginary line from the end of said highway to the intersection of State Highway 661 and State Highway 662; then northeast along State Highway 662 to its intersection with U.S. Highway 15; then north along U.S. Highway 15, to the point of beginning.

Lunenburg County. That portion of the county bounded by a line beginning at a point where State Highway 712 and Gills Creek intersect; then southeast along an imaginary line to its intersection with State Highway 687 and State Highway 628; then southwest along State Highway 628–687 to its intersection with State Highway 688; then southwest on State Highway 687 to an imaginary point 0.6 mile southwest of the intersection of State Highway 628–687 and State Highway 688; then west along an imaginary line from said imaginary point to the end of State Highway 698; then northwest along said highway to its intersection with State Highway 628; then northwest from said intersection along an imaginary line to the intersection of State Highway 712 and the Charlotte County-Lunenburg County Line; then northeast along State Highway 712 to the point of beginning.

West Virginia

Berkeley County. The entire county.

Morgan County. The entire county.

Wisconsin

Dane County. That portion of the city of Monona beginning at a point where Lake Monona shoreline and Winnequah

Road intersects; thence easterly on said road to its intersection with Schluter Road; thence northeasterly on said road to its intersection with Maywood Road; thence northeasterly along said road to its intersection with Greenway Road; thence east on said road to its intersection with Midmoor Road; thence northerly on said road to its intersection with Outlook Street; thence northwesterly on said street to its intersection with Lake Monona shoreline; thence southeasterly along said shoreline to the point of beginning.

Also, as an emergency measure, certain areas in Illinois, Michigan, Oregon, and West Virginia previously designated as gypsy moth low-risk areas are retained as gypsy moth low-risk areas but are expanded as set forth below.

The area in DuPage County in Illinois previously described as "NE¼ sec. 30, T. 39 N., R. 10 E." is retained as a gypsy moth low-risk area but is expanded and redescribed as "SE¼ sec. 2, sec. 11, W½ sec. 12, NW¼ sec. 13, and N½ sec. 14, T. 38, R. 9 E.; secs 8, 9, 10, 11, 16, 17, 18, 19, 20, 29, and 30, T. 39 N., R. 10 E.; SW¼ sec. 5, S½ sec. 6, sec. 7, W½ sec. 8, NW¼ sec. 17 and N½ sec. 18, T. 38 N., R. 11 E.; and secs. 10, 11, 13, 14, 15, 16, 21, 22, and 23, T. 40 N., R. 11 E."

The area in Lake County in Illinois previously described as "NE¼ sec. 24, T. 43 N., R. 11 E.; and S½ sec. 36, T. 44 N., R. 10 E." is retained as a gypsy moth low-risk area but is expanded and redescribed as "SE¼ sec. 28, T. 43 N., R. 10 E.; SE¼ sec. 36, T. 44 N., R. 10 E.; NE¼ sec. 24, T. 45 N., R. 11 E.; and SW¼ sec. 6, T. 45 N., R. 11 E."

The area in Saginaw County in Michigan previously described as "Townships of Jonesfield and Tillabawassee" is retained as a gypsy moth low-risk area but is expanded and redescribed as "the entire county."

The area in Marion County in Oregon previously described as "That portion of the county in the city of Salem beginning at a point where State Highway 99E and Delaney Road intersect; then westerly on Delaney Road to Sunnyside Road; then north on Sunnyside Road to Hylo Road; then west on Hylo Road to Rainbow Drive; then north on Rainbow Drive to Reese Road; then west on Reese Road to Powell Creek; then northeasterly along Powell Creek to Battle Creek; then easterly along Battle Creek to its intersection with State Highway 99E; then southerly on State Highway 99E to the point of beginning." is retained as a gypsy moth low-risk area but is expanded and redescribed as "That portion of the city of Salem beginning at a point where Liberty Road S.E. intersects Salem Heights Avenue; then east along said avenue to Ratcliff Drive; then easterly along said drive to its intersection with Bluff Avenue; then due east from said intersection along an imaginary line to the Southern Pacific Railroad; then southeast along said railroad to its intersection with Madrona Avenue; then southwest along said avenue to its intersection with Strong Road; then southeast along said road to its intersection with Reed Road; then southwest along said road to its intersection with Battle Creek Road; then southeast along said road to its intersection with Boone Road; then east along said road to its intersection with Interstate Highway 5; then southerly along said highway to its intersection with Delaney Road; then westerly along said road to its intersection with Sunnyside Road; then north along said road to its intersection with Hylo Road; then west along said road to its intersection with Liberty Road; then north along said road to its intersection with Cole Road; then westerly along said road to its intersection with Moore Road; then northwesterly along said road to its intersection with Skyline Road; then northeast along said road to its intersection with Liberty Road; then northeast along said road to the point of the beginning."

The area in Jefferson County in West Virginia previously described as "That area bounded by a line beginning at the junction of the Potomac and Shenandoah Rivers; thence southwesterly along the Shenandoah River its southernmost junction with West Virginia/Virginia State Line; thence southeasterly and northerly along said line to its junction with the Potomac River; thence west along the Potomac River to the point of beginning." is retained as a gypsy moth low-risk area but is expanded and redescribed as "the entire county."

Based on recent surveys, inspectors have determined that infestations of gypsy moth occur in these areas designated as gypsy moth low-risk areas, but that these areas do not meet the criteria referred to above for gypsy moth high-risk areas.

As noted above, restrictions concerning the gypsy moth are imposed on movements of regulated articles from gypsy moth low-risk areas, only if it is determined by an inspector that any life stage of the gypsy moth is on the regulated article, and the person in possession thereof has been so notified by an inspector, unless a certificate or permit has been issued and attached to such regulated article in accordance with §§ 301.45–4 and 301.45–7 of the regulations. In this connection, it is necessary as an emergency measure to designate such areas as gypsy moth low-risk areas in order to advise persons of the likelihood that inspectors would conduct inspections in such areas and that based on their findings of life stages of gypsy moth, restrictions could apply to the movement of regulated articles from such areas.

Deletion of Areas From List of Regulated Areas

Prior to the effective date of this document, an area in Avery County, North Carolina, described as "That area bounded by a line beginning at a point where County Road 1143 intersects State Highway 194, thence northwesterly along said road to its intersection with County Road 1149, thence northerly along said road to its intersection with County Road 1150, thence northerly and northeasterly along said road to its intersection with County Road 1151, thence northerly along said road to its junction with State Highway 194, thence northerly and westerly along said highway to its intersection with County Road 1500, thence northerly and easterly along said road to its intersection with County Road 1501, thence southerly and southeasterly along said road for 1 mile, thence along a line projected due east to its intersection with the Linville River, thence southerly, westerly and northwesterly along said river to a point where it flows adjacent to State Highway 194, from that point on State Highway 194, thence northerly and easterly along said highway to the point of beginning." an area in Ottawa County, Ohio, described as "That portion of Catawba Island Township bounded on the east by State Route #53, on the south by Cemetery Road and Colony Club Drive, and on the north and west by Lake Erie." and an area in Outagamie County, Wisconsin, described as "That portion of the city of Appleton beginning at a point where Arlington Street intersects Newberry Street; thence south on Arlington Street to its intersection with Bluebird Lane; thence west on Bluebird Lane to its junction with an imaginary straight line projected across the golf course and west on said imaginary line to its junction with Lawe Street; thence north on Lawe Street to its intersection with College Avenue; thence west on College Avenue to its junction with Newberry Street; thence west on Newberry Street to the point of beginning." were designated as gypsy moth low-risk areas. Based on treatments with insecticides and subsequent negative surveys in accordance with the quarantine and regulations, it has been

determined that the gypsy moth no longer occurs in these areas. Accordingly, there is no basis to continue listing such areas as regulated areas for the purpose of preventing the artificial spread of gypsy moth. Therefore, as an emergency measure, it is necessary to delete these areas from the list of regulated areas in order to delete unnecessary restrictions on the movement of gypsy moth regulated articles.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Quarantine, Transportation, Gypsy moth.

PART 301—DOMESTIC QUARANTINE NOTICES

Under the circumstances referred to above, § 301.45–2a(a) of the gypsy moth and browntail moth quarantine and regulations (7 CFR 301.45–2a(a)) is revised to read as follows:

§ 301.45–2a Regulated areas; high-risk and low-risk areas.

(a) The areas described below are designated as gypsy moth regulated areas, and such regulated areas are divided into high-risk areas or low-risk areas as follows:

Arkansas

(1) *High-risk area.*
Fulton County. Secs. 25, 28, 35, and 36, T. 20 N., R. 5 W.
(2) *Low-risk area.* None.

California

(1) *High-risk area.* None.
(2) *Low-risk area.*
Orange County. That area within San Juan Capistrano bounded on the north by Ortega Highway, on the south by Calle Arroyo, on the east by Aveneda Siega, and on the west by Calle Del Campo.
Santa Barbara County. That portion of the county beginning at a point where U.S. Highway 101 and Lambert Road intersect; then north on Lambert Road to its end; then northerly along an imaginary line from the end of Lambert Road to the intersection of State Highway 192 and Ladera Lane; then north on said lane to its intersection with Bella Vista Drive; then due north along an imaginary line from said intersection to an imaginary point ½ mile north of and within the boundary line of the Los Padres National Forest; then westerly along an imaginary line which is ½ mile within the Los Padres National Forest boundary line to an imaginary point on Parma Creek ½ mile north of the intersection of Parma Creek and the Los Padres National Forest boundary line; then southerly along Parma Creek to its intersection with State Highway 192; then southeasterly along said highway to its intersection with State Highway 144; then southerly along said highway to its intersection with Salinas Street; then southeast on said street to U.S. Highway 101; then easterly on said highway to the point of beginning.

Connecticut

(1) *High-risk area.* The entire State.
(2) *Low-risk area.* None.

Delaware

(1) *High-risk area.*
New Castle County. The entire county.
(2) *Low-risk area.*
Kent County. The entire county.
Sussex County. The entire county.

Illinois

(1) *High-risk area.* None.
(2) *Low-risk area.*
DuPage County. SE¼ sec. 2, sec. 11, W½ sec. 12, NW¼ sec. 13, and N½ sec. 14, T. 38 N., R. 9 E.; secs. 8, 9, 10, 11, 16, 17, 18, 19, 20, 29, and 30, T. 39 N., R. 10 E.; SW¼ sec. 5, S½ sec. 6, sec. 7, W½ sec. 8, NW¼ sec. 17 and N½ sec. 18, T. 38 N., R. 11 E.; and secs. 10, 11, 13, 14, 15, 16, 21, 22, and 23, T. 40 N., R. 11 E.
Lake County. SE¼ sec. 28, T. 43 N., R. 10 E.; SE¼ sec. 36, T. 44 N., R. 10 E.; NE¼ sec. 24, T. 45 N., R. 11 E.; and SW¼ sec. 6, T. 45 N., R. 11 E.
McHenry County. That area within the city limits of McHenry which begins at the point where Willow Lane intersects Meadow Lane; thence east along Willow Lane to its end; thence 924 feet along an imaginary projected line to a point due north of Industrial Road; thence south from said point 396 feet to where Industrial Road begins; thence along Industrial Road to State Road 120; thence southeasterly along said road to Front Royal Avenue; thence southwesterly along Front Royal Avenue to Summerset Mall Street; thence south 528 feet along Summerset Mall Street to its end; thence southeasterly 132 feet along an imaginary projected line to the intersection of said line with Woods Lane; thence along Woods Lane to Crystal Lake Road; thence southwesterly to where Crystal Lake Road intersects Hanley Street; thence northwesterly along Hanley Street to Front Royal Avenue; thence southwesterly along Front Royal Avenue to Ashley Drive; thence along Ashley Drive to Chesterfield Drive; thence northwesterly along Chesterfield Drive to Oakwood Drive; thence north on Oakwood Drive to Bonner Drive; thence southeasterly along Bonner Drive to Meadow Lane; thence north on Meadow Lane to Willow Lane, to the point of beginning.

Maine

(1) *High-risk area.*
Androscoggin County. The entire county.
Cumberland County. The entire county.
Franklin County. The townships of Avon, Carthage, Chesterville, Farmington, Industry, Jay, New Sharon, New Vineyard, Perkins, Strong, Temple, Washington, Weld, and Wilton.
Hancock County. The entire county.
Kennebec County. The entire county.
Knox County. The entire county.
Lincoln County. The entire county.
Oxford County. The townships of Albany, Batchelders Grant, Bethel, Brownfield, Buckfield, Canton, Denmark, Dixfield, Fryeburg, Greenwood, Hanover, Hartford, Hebron, Hiram, Lovell, Mason Plantation, Mexico, Milton Plantation, Norway, Oxford, Paris, Peru, Porter, Rumford, Stoneham, Stow, Sumner, Sweden, Waterford, and Woodstock.
Penobscot County. The townships of Alton, Argyle, Bangor City, Bradford, Bradley, Brewer City, Carmel, Charleston, Clifton, Corinna, Cornith, Dexter, Dixmont, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Plantation, Greenbush, Greenfield, Hampden, Hermon, Holden, Howland, Hudson, Kenduskeag, La Grange, Levant, Lincoln, Lowell, Mattamiscontis, Maxfield, Milford, Newburgh, Newport, Old Town City, Orono, Orrington, Pasadumkeag, Plymouth, Stetson, Summit, Veazie-Eddington, and 1 ND.
Piscataquis County. The townships of Atkinson, Medford, Milo, and Orneville.
Sagadahoc County. The entire county.
Somerset County. The townships of Anson, Athens, Cambridge, Canaan, Cornville, Detroit, Embden, Fairfield, Harmony, Hartland, Madison, Mercer, New Portland, Norridgewock, Palmyra, Pittsfield, Ripley, Skowhegan, Smithfield, Solon, St. Albans, and Starks.
Waldo County. The entire county.
Washington County. The townships of Addison, Beals, Beddington, Centerville, Cherryfield, Columbia, Columbia Falls, Crawford, Deblois, East-Machias, Harrington, Jonesboro, Jonesport, Machias, Machiasport, Marshfield, Milbridge, Northfield, Rogue Bluffs, Steuben, Wesley, Whitneyville, 5 ND, 18 ED, 18 MD, 19 ED, 19 MD, 24 MD, 25 MD, 26 ED, 27 ED, 29 MD, 30 MD, 31 MD, 36 MD, 37 MD, 42 MD, and 43 MD.
York County. The entire county.
(2) *Low-risk area.*
Franklin County. The townships of Crockertown, Dallas Plantation, Freeman, Jerusalem, Kingfield, Madrid, Mount Abraham, Phillips, Rangeley Plantation, Redington, Salem, Sandy River Plantation, 6, E, and D.
Oxford County. The townships of Andover, Andover North, Andover West, Byron, Gilead, Grafton, Magalloway Plantation, Newry, Richardsontown, Riley, Roxbury, Upton, C, and C Surplus.
Piscataquis County. The townships of Abbott, Dover-Foxcroft, Guilford, Kingsbury Plantation, Parkman, Sangeville, Sebec, and Wellington.
Somerset County. The townships of Bingham, Brighton Plantation, Concord Plantation, Highland Plantation, Lexington Plantation, Mayfield, Moscow, and Pleasant Ridge Plantation.

Maryland

(1) *High-risk area.*
Baltimore City. The entire city.
Baltimore County. The entire county.
Carroll County. The entire county.
Cecil County. The entire county.
Frederick County. The entire county.
Harford County. The entire county.
Washington County. The entire county.
(2) *Low-risk area.*
Allegany County. The entire county.
Anne Arundel County. The entire county.
Caroline County. The entire county.
Dorchester County. The entire county.
Howard County. The entire county.
Kent County. The entire county.

Montgomery County. The entire county.
Prince Georges County. The entire county.
Queen Annes County. The entire county.
Talbot County. The entire county.
Wicomico County. The entire county.
Worcester County. The entire county.

Massachusetts

(1) *High-risk area.* The entire State.
(2) *Low-risk area.* None.

Michigan

(1) *High-risk* area.
Isabella County. Sec. 33, T. 13 N., R. 4 W.; and sec. 35, T. 14 N., R. 6 W.
(2) *Low-risk area.*
Bay County. Township of Williams.
Berrien County. Sec. 1 and 2, T. 3 S., R. 18 W.
Clare County. Townships of Garfield, Grant, Sheridan, and Surrey.
Grand Traverse County. Sec. 36, T. 28 N., R. 11 W.
Gratiot County. Townships of Arcada, Bethany, Emerson, Hamilton, LaFayette, Newark, New Haven, North Star, Pine River, Seville, Sumner, and Wheeler.
Isabella County. Entire county *except* sec. 33, T. 13 N., R. 4 W.; and sec. 35, T. 14 N., R. 6 W.
Kalamazoo County. Sec. 1 and 2, T. 1 S., R. 11 W.
Kent County. Sec. 27, T. 5 N., R. 10 W.
Mecosta County. Townships of Millbrook, Sheridan, and Wheatland.
Midland County. Townships of Greendale, Homer, Ingersoll, Jasper, Lee, Midland, Mount Haley, and Porter.
Montcalm County. Township of Belvidere, Cato, Chrystal, Day, Douglas, Evergreen, Ferris, Home, Richland, and Sidney.
Muskegon County. Sec. 6 and 7, R. 16 W., T. 9 N., and sec. 1 and 2, R. 17 W., T. 9 N.
Oakland County. Sec. 16 and 21, T. 2 N., R. 10 E.
Ottawa County. Secs. 23, 24, 25, and 26, T. 7 N., R. 16 W.
Saginaw County. The entire county.
Wayne County. Sec. 1, T. 1 S., R. 9 E.

Nebraska

(1) *High-risk area.* None
(2) *Low-risk area.*
Lancaster County. SE¼ sec 1, E½ sec. 12, NE¼ sec. 13, T. 10 N., R. 5 E., and S½ sec. 6, sec 7, N½ sec 18, T. 10 N., R. 6 E.

New Hampshire

(1) *High-risk area.*
Belknap County. The entire county.
Carroll County. The entire county.
Cheshire County. The entire county.
Grafton County. The entire county.
Hillsboro County. The entire county.
Merrimack County. The entire county.
Rockingham County. The entire county.
Strafford County. The entire county.
Sullivan County. The entire county.
(2) *Low-risk area.*
Coos County. The entire county.

New Jersey

(1) *High-risk area.* The entire State.
(2) *Low-risk area.* None.

New York

(1) *High-risk area.*
Albany County. The entire county.
Bronx County. The entire county.
Broome County. The entire county.
Cayuga County. The towns of Genoa, Locke, Scipio, and Sterling.
Chemung County. The entire county.
Chenango County. The towns of Afton, Bainbridge, Coventry, German, Green, Guilford, McDonough, New Berlin, North Norwich, Norwich, Oxford, Pharsalia, Pitcher, Plymouth, Preston, Smithville, and the city of Norwich.
Clinton County. The entire county.
Columbia County. The entire county.
Cortland County. The towns of Cincinnatus, Cortlandville, Freetown, Hartford, Lapeer, Marathon, Solon, Taylor, Virgil, Willet, and the city of Cortland.
Delaware County. The entire county.
Dutchess County. The entire county.
Essex County. The entire county.
Franklin County. The entire county.
Fulton County. The entire county.
Greene County. The entire county.
Jefferson County. Town of Cape Vincent.
Kings County. The entire county.
Madison County. The town of Sullivan.
Monroe County. The towns of Brighton, Henrietta, Irondequoit, Perinton, Pittsford, and Webster.
Montgomery County. The entire county.
Nassau County. The entire county.
New York County. The entire county.
Oneida County. The towns of Deerfield, Lee Marcy, Rome City, Utica City, Vienna, and Western.
Orange County. The entire county.
Otsego County. The entire county.
Oswego County. The towns of Constantia, Schroeppel, and Volney.
Putnam County. The entire county.
Queens County. The entire county.
Rensselaer County. The entire county.
Richmond County. The entire county.
Rockland County. The entire county.
Saratoga County. The entire county.
Schenectady County. The entire county.
Schoharie County. The entire county.
Schuyler County. The entire county.
Seneca County. The towns of Lodi, Romulus, and Varick.
St. Lawrence County. The towns of Brasher, Hopkinson, Lawrence, Louisville, Massena, Norfolk, and Stockholm.
Steuben County. The towns of Campbell, Caton, Corning, Corning City, Erwin, Hornby, Lindley, and Pulteney.
Suffolk County. The entire county.
Sullivan County. The entire county.
Tioga County. The entire county.
Tompkins County. The entire county.
Ulster County. The entire county.
Warren County. The entire county.
Washington County. The entire county.
Westchester County. The entire county.
Yates County. The town of Jerusalem.
(2) *Low-risk area.*
Allegany County. The entire county.
Cattaraugus County. The entire county.
Cayuga County. The entire county *except* the towns of Genoa, Locke, Scipio, and Sterling.
Chautauqua County. The entire county.
Chenango County. The towns of Columbus, Lincklaen, Otselie, Smyrna, and Sherburne.
Cortland County. The towns of Cuyler, Homer, Preble, Scott, and Truxton.
Erie County. The entire county.
Genesee County. The entire county.
Hamilton County. The entire county.
Herkimer County. The entire county.
Jefferson County. The entire county *except* the town of Cape Vincent.
Lewis County. The entire county.
Livingston County. The entire county.
Madison County. The entire county *except* the town of Sullivan.
Monroe County. The towns of Chile, Clarkson, Gates, Greece, Hamlin, Mendon, Ogden, Parma, Riga, Rochester City, Rush, Sweden, and Wheatland.
Niagara County. The entire county.
Oneida County. The entire county *except* the towns of Deerfield, Lee, Marcy, Rome City, Utica City, Vienna, and Western.
Onondaga County. The entire county.
Ontario County. The entire county.
Orleans County. The entire county.
Oswego County. The entire county *except* the towns of Constantia, Schroeppel, and Volney.
Seneca County. The entire county *except* the towns of Lodi, Romulus, and Varick.
Steuben County. The entire county *except* the towns of Campbell, Caton, Corning, Corning City, Erwin, Hornby, Lindley, and Pulteney.
St. Lawrence County. The entire county *except* the towns of Brasher, Hopkinson, Lawrence, Louisville, Massena, Norfolk, and Stockholm.
Wayne County. The entire county.
Wyoming County. The entire county.
Yates County. The entire county *except* the town of Jerusalem.

North Carolina

(1) *High-risk area.* None.
(2) *Low-risk area.*
Johnston County. That property known as the Lakeview KOA Campground on the southeast side of Interstate Highway 95 and located 0.5 mile from the junction of Interstate Highway 95 and U.S. Highway 70A.
Wake County. That area bounded by a line beginning at a point where Millbrook Road intersects Windy Hill Drive; then north on said drive to its intersection with Quail Ridge Road; then northeasterly on said road to its intersection with the powerline right-of-way; then southeasterly along said right-of-way to its intersection with Departure Drive; then south on said drive to its intersection with Millbrook Road; then northwesterly on said road to its intersection with Lacy Avenue; then southwesterly on said avenue to its intersection with 2nd Street; then northwesterly on said street to its intersection with Millbrook Road and Old Wake Forest Road; then westerly on Millbrook Road to the point of beginning.

Ohio

(1) *High-risk area.* None.
(2) *Low-risk area.*
Belmont County. That portion of the county within the boundaries of Barkcamp State Park.
Columbiana County. That portion of the city of Salem and Perry Township bounded by a line beginning at a point where Painter Road and Brooklyn Avenue intersect, then south along Brooklyn Avenue to its

intersection with 3rd Avenue, then west along 3rd Avenue to its intersection with Highland Avenue, then north along Highland Avenue to its intersection with Painter Road, then east along Painter Road to the point of beginning.

Cuyahoga County. That portion of the city of Bay Village bounded by a line beginning at a point where Osborn Road and Cahoon Road intersect, then south along Cahoon Road to its intersection with the N & W Railroad tracks, then west along said tracks to its intersection with Crocker Road, then north along said road to its intersection with Osborn Road, then east along Osborn Road to the point of beginning.

That portion of the city of Pepper Pike bounded by a line beginning at a point where Shaker Boulevard and SOM Center Road intersect, then south along said road to its intersection with Old Kingsman Road, then west along Old Kingsman Road to its intersection with Pinetree Road, and northwesterly along Pinetree Road to its intersection with South Woodland Road, then northwest along South Woodland Road to its intersection with Lander Road, then north along Lander Road to its intersection with Shaker Boulevard, then east along said boulevard to the point of beginning.

That portion of the city of Solon bounded by a line beginning at a point where Cannon Road and SOM Center Road intersect, then south along SOM Center Road to its intersection with U.S. Highway 422, then northwest along said highway to its intersection with Cannon Road, then east along Cannon Road to the point of beginning.

Hamilton County. That portion of the county bounded by a line beginning at a point where Fields-Ertel Road and U.S. Highway 71 intersect, then southwest along said highway to its intersection with Snider Road, then north along said road to its intersection with Fields-Ertel Road, then east along Fields-Ertel Road to the point of beginning.

That portion of the city of Montgomery bounded by a line beginning at a point where Bromwell Avenue and the Montgomery City limits line intersect, then southeast and westerly along said line to its intersection with Weil Road, then northerly along said road to its intersection with Weller Road, then northerly along Weller Road to its intersection with Tanager Woods Drive, then southeasterly along said drive to its intersection with Winthrop Drive, then easterly along said drive to its intersection with Bromwell Avenue, then northeasterly along said avenue to the point of beginning.

That portion of the county bounded by a line beginning at a point where U.S. Highway 275 and Eight Mile Road intersect, then southerly along said road to its intersection with U.S. Highway 52, then westerly along said highway to its intersection with Asbury Road, then northerly along said road to its intersection with U.S. Highway 275, then east on said highway to the point of beginning.

Jefferson County. That portion of the county within the boundaries of Jefferson State Park.

Lucas County. That portion of the city of Ottawa Hills bounded by a line beginning at a point where Indian Road and Sulphur Springs Road intersect, then southerly along Sulphur Spring Road to its intersection with Evergreen Road, then southwest along Evergreen Road to its intersection with the Ottawa River, then westerly along said river to an imaginary point due south of Inland Court, then due north along an imaginary line to the end of Inland Court, then northerly along Inland Court to its intersection with Westchester Road, then northerly along said road to its intersection with Forrest View Drive, then northeasterly along said drive to its intersection with Indian Road, then southeast along said road to the point of beginning.

Ottawa County. That portion of Catawba Island bounded by a line beginning at a point where Sloan Street and East Catawba Road intersect, then south along said road to its intersection with South Fairway Drive, then west along an imaginary line to the end of Weyhe Road, then west on Weyhe Road to its intersection with West Catawba Road, then north along West Catawba Road to its intersection with Sloan Street, then east along said street to the point of beginning.

Portage County. That portion of the county located on the north side of the Ohio Turnpike known as Portage Plaza.

Stark County. That portion of Lake Township bounded on the south by State Route 619, on the east by Mogadore Road, on the north by Pontius Road, and on the west by Cleveland Avenue.

Tuscarawas County. That portion of the city of Newcomerstown bounded by a line beginning at a point where County Road 221 and the Newcomerstown city limits line intersect, then easterly, southerly, and westerly along said line to its intersection with U.S. Highway 36, then westerly along said highway to its intersection with County Road 221, then northerly along said road to the point of beginning.

Oregon

(1) *High-risk area.* None.

(2) *Low-risk area.*

Marion County. That portion of the city of Salem beginning at a point where Liberty Road S.E. intersects Salem Heights Avenue; then east along said avenue to Ratcliff Drive; then easterly along said drive to its intersection with Bluff Avenue; then due east from said intersection along an imaginary line to the Southern Pacific Railroad; then southeast along said railroad to its intersection with Madrona Avenue; then southwest along said avenue to its intersection with Strong Road; then southeast along said road to its intersection with Reed Road; then southwest along said road to its intersection with Battle Creek Road; then southeast along said road to its intersection with Boone Road; then east along said road to its intersection with Interstate Highway 5; then southerly along said highway to its intersection with Delaney Road; then westerly along said road to its intersection with Sunnyside Road; then north along said road to its intersection with Hylo Road; then west along said road to its intersection with Liberty Road; then north along said road to its intersection with Cole Road; then westerly along said road to its intersection with Moore Road; then northwesterly along said road to its intersection with Skyline Road; then northeast along said road to its intersection with Liberty Road; then northeast along said road to the point of beginning.

Pennsylvania

(1) *High-risk area.*

Adams County. The entire county.
Bedford County. The entire county.
Berks County. The entire county.
Blair County. The entire county.
Bradford County. The entire county.
Bucks County. The entire county.
Cambria County. The entire county.
Cameron County. The entire county.
Carbon County. The entire county.
Centre County. The entire county.
Chester County. The entire county.
Clearfield County. The entire county.
Clinton County. The entire county.
Columbia County. The entire county.
Cumberland County. The entire county.
Dauphin County. The entire county.
Delaware County. The entire county.
Elk County. The entire county.
Franklin County. The entire county.
Fulton County. The entire county.
Huntingdon County. The entire county.
Juniata County. The entire county.
Lackawanna County. The entire county.
Lancaster County. The entire county.
Lebanon County. The entire county.
Lehigh County. The entire county.
Luzerne County. The entire county.
Lycoming County. The entire county.
Mifflin County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Montour County. The entire county.
Northampton County. The entire county.
Northumberland County. The entire county.
Perry County. The entire county.
Philadelphia County. The entire county.
Pike County. The entire county.
Schuylkill County. The entire county.
Somerset County. The entire county.
Snyder County. The entire county.
Sullivan County. The entire county.
Susquehanna County. The entire county.
Tioga County. The entire county.
Union County. The entire county.
Wayne County. The entire county.
Wyoming County. The entire county.
York County. The entire county.

(2) *Low-risk area.* Counties not designated as high-risk area.

Rhode Island

(1) *High-risk area.* The entire State.

(2) *Low-risk area.* None.

Vermont

(1) *High-risk area.*

Addison County. The entire county.
Bennington County. The entire county.
Chittenden County. The entire county.
Franklin County. The entire county.
Grand Isle County. The entire county.
Rutland County. The entire county.
Windham County. The entire county.
Windsor County. The entire county.

(2) *Low-risk area.*

Caledonia County. The entire county.
Essex County. The entire county.
Lamoille County. The entire county.

Orange County. The entire county.
Orleans County. The entire county.
Washington County. The entire county.

Virginia

(1) *High-risk area.* None.
(2) *Low-risk area.*

Fairfax County. That portion of the county beginning at point where State Highway 603 intersects Deepwood Drive; then north on Deepwood Drive to its end; then due north on an imaginary line from the end of Deepwood Drive to the Potomac River shoreline; then westerly along said shoreline to the Colonial Pipeline Company's easement for a petroleum pipeline; then south along said easement to State Highway 603; then easterly on said highway to the point of beginning.

That portion of the county bounded by a line beginning at a point where the Dulles Airport Access Road and Interstate Highway 495 intersect; then east along said road to its intersection with State Highway 123; then southwesterly along said highway to its intersection with Interstate Highway 495; then north along Interstate Highway 495, to the point of beginning.

That portion of the county bounded by a line beginning at a point where State Highway 236 and Guinea Road intersect; then east along said highway to its intersection with Wakefield Drive; then south along said drive to its intersection with St. Ark Road; then west along said road to its intersection with Guinea Road; thence north along Guinea Road to the point of beginning.

That portion of the county bounded by a line beginning at a point where State Highway 236 and State Highway 649 intersect; then east along State Highway 236 to its intersection with State Highway 617; then southeast along State Highway 617 to its intersection with State Highway 620; then west along State Highway 620 to its intersection with State Highway 649; then northeast along State Highway 649 to the point of beginning.

That portion of the county bounded by a line beginning at a point where State Highway 640 (Sydenstricker Road) and Colgate Drive intersect; then northeast along said drive to its intersection with Hadlow Drive; then southeast along Hadlow Drive to its intersection with Dryburgh Court; then due northeast along an imaginary line from said intersection to Pohick Creek; then southeast along Pohick Creek to its intersection with Samos Court; then due west from said intersection along an imaginary line to Middle Valley Drive; then west along Middle Valley Drive to Goins Road; then west along Goins Road to its intersection with Gambrill Road; then south along Gambrill Road to its intersection with Middle Run Drive; then west along Middle Run Drive to its intersection with Newington Woods Drive, then north along Newington Woods Drive to the end; then due north along an imaginary line from the end of Newington Woods Drive to its intersection with Flemingwood Lane; then north along Flemingwood Lane to its intersection with State Highway 636; then east along said highway to its intersection with State Highway 640; then northwest along State Highway 640 to the point of beginning.

Fauquier County. Those properties owned by the Audrey B. Currier estate, and Andrea B. and Lavinia M. Currier, known as Kinloch Farms, located on the southeast and northwest side of State Highway 601 and west of State Highway 628; 1 mile, more or less, northeast of the intersection of State Highway 626 and 601.

Floyd County. That area bounded by a line beginning at the junction of State Highways 8 and 750; thence southwesterly along State Highway 750 to its westernmost junction with State Highway 738; thence northwesterly along State Highway 738 to its junction with State Highway 737; thence southwesterly along State Highway 737 to its junction with State Highway 739; thence southeasterly along State Highway 739 to its junction with State Highway 730; thence easterly along State Highway 730 to its junction with State Highway 705; thence northeasterly along State Highway 705 to its junction with State Highway 8; thence northwesterly along State Highway 8 to the point of origin.

Loudoun County. That portion of the county bounded by a line beginning at a point where U.S. Highway 15 intersects with State Highway 658; then southeast along State Highway 658 to its intersection with State Highway 662; then southeasterly along State Highway 662 to its intersection with State Highway 657; then due south from said intersection along an imaginary line to the Potomac River; then southerly along the Potomac River to its intersection with State Highway 655; then west along State Highway 655 to its intersection with U.S. Highway 15; then south along U.S. Highway 15 to its intersection with State Highway 748; then west along State Highway 748 to its end; then north along an imaginary line from the end of said highway to the intersection of State Highway 661 and State Highway 662; then northeast along State Highway 662 to its intersection with U.S. Highway 15; then north along U.S. Highway 15, to the point of beginning.

Lunenburg County. That portion of the county bounded by a line beginning at a point where State Highway 712 and Gills Creek intersect; then southeast along an imaginary line to its intersection with State Highway 687 and State Highway 628; then southwest along State Highway 628–687 to its intersection with State Highway 688; then southwest on State Highway 687 to an imaginary point 0.6 mile southwest of the intersection of State Highway 628–687 and State Highway 688; then west along an imaginary line from said imaginary point to the end of State Highway 698; then northwest along said highway to its intersection with State Highway 628; then northwest from said intersection along an imaginary line to the intersection of State Highway 712 and the Charlotte County-Lunenburg County Line; then northeast along State Highway 712 to the point of beginning.

Washington

(1) *High-risk area.* None.
(2) *Low-risk area.*

King County. That area within the University District of the city of Seattle beginning at a point where Interstate 5 intersects N.E. 75th Street, then easterly on N.E. 75th Street to its intersection with N.E. 35th Avenue, then south on N.E. 35th Avenue to its end, then due south from the end of N.E. 35th Avenue on an imaginary line to Union Bay shoreline, then westerly along Union Bay shoreline to Portage Bay shoreline, then westerly along Portage Bay shoreline to its intersection with Interstate 5, then north on Interstate 5 to the point of beginning.

That area within the city of Mercer Island beginning at a point where Sunset Highway intersects Lake Washington shoreline at the Lacey V. Murrow Memorial Bridge, then northerly, easterly, and southerly along the Lake Washington shoreline to its intersection with S.E. 44th Street, then due west from said intersection along an imaginary line to Lake Washington shoreline on the west side of Mercer Island, then northerly along said shoreline to the point of beginning.

That area within the city of Seattle bounded by a line beginning at a point where State Highway 509 and State Highway 99 intersect, then south along State Highway 509 to its intersection with S.W. 105th Street, then due west along an imaginary line from said intersection to Puget Sound shoreline, then northerly along said shoreline to its intersection with S.W. Juneau Street, then east along S.W. Juneau Street to its intersection with 16th Avenue SW, then due east from said intersection along an imaginary line to State Highway 99, then south along State Highway 99 to the point of beginning.

Clark County. That area bounded by a line beginning at a point where Interstate 5 intersects N.W. 179th Street, then southerly along Interstate 5 to its intersection with N.W. 78th Street, then west on said street to its end, then due west along an imaginary line from the end of N.W. 78th Street to the Columbia River, then northerly along said river to an imaginary point which is due west from the intersection of N.W. 179th Street and N.W. 41st Avenue, and then due east from said imaginary point along an imaginary line to the intersection of N.W. 179th Street and N.W. 41st Avenue, then west along N.W. 179th Street to the point of beginning

West Virginia

(1) *High-risk area.* None.
(2) *Low-risk area.*
Berkeley County. The entire county.
Jefferson County. The entire county.
Morgan County. The entire county.

Wisconsin

(1) *High-risk area.* None.
(2) *Low-risk area.*

Dane County. That portion of the city of Monona beginning at a point where Lake Monona shoreline and Winnequah Road intersects; thence easterly on said road to its intersection with Schluter Road; thence northeasterly on said road to its intersection with Maywood Road; thence northeasterly along said road to its intersection with Greenway Road; thence east on said road to its intersection with Midmoor Road; thence northerly on said road to its intersection with Outlook Street; thence northwesterly on said street to its intersection with Lake Monona shoreline; thence southeasterly along said shoreline to the point of beginning.

Waukesha County. N½ Sec. 2, and NE¼ Sec. 3, T. 7 N., R. 17 E; SE¼ Sec. 34, and S½ Sec. 35, T. 8 N, R. 17 E.

(Secs. 8 and 9, 37 Stat. 318, as amended, secs. 105 and 106, 71 Stat. 32, 33; (7 U.S.C. 161, 162, 150dd, 150ee); 37 FR 28464, 28477, as amended; 38 FR 19141)

Done at Washington, D.C., this 22d day of April 1982.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 82-11595 Filed 4-27-82; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Delegations of Authority; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule; correction.

SUMMARY: This document corrects the legal citation and text in final regulations, published November 19, 1981 (46 FR 56775), implementing the revised delegations of authority of the powers and duties of service officers as it relates to the General Counsel.

EFFECTIVE DATE: April 28, 1982.

FOR FURTHER INFORMATION CONTACT:

For General Information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

For Specific Information: Eloise Rosas, General Attorney, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, Telephone: (202) 633-2517.

SUPPLEMENTARY INFORMATION: The last sentence in 8 CFR 103.1(e) is corrected because the regulation it cites, 28 CFR 16.23(b)(2)(iii), has been replaced by 28 CFR 16.24, and the authority of the General Counsel is limited to production and disclosure within the confines of federal proceedings only.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

In § 103.1, paragraph (e) is corrected to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(e) *General Counsel.* The General Counsel advises on legal matters, the Commissioner and his staff, the Attorney General, the Associate Attorney General, the Solicitor General, and other officers of the Department of Justice, and other officers of other Departments of the Government. The General Counsel prepares legislative reports, and assists in litigation, including the preparation of activities of the regional counsels and the appellate trial attorneys. Acting through the regional counsels, the General Counsel oversees the professional activities of all Service attorneys assigned to field offices. The General Counsel makes recommendations to the Associate Attorney General, or other designated Department of Justice officials, on all personnel matters involving Service attorneys, including attorney discipline, which require the final action or approval of the Associate Attorney General, or other designated Department of Justice officials. The General Counsel is authorized to perform the functions conferred upon the Commissioner with respect to the production or disclosure in federal proceedings as provided in 28 CFR 16.24(a).

* * * * *

(Sec. 103, 66 Stat. (8 U.S.C. 1103))

Dated: April 22, 1982.

Alan C. Nelson,

Commissioner of Immigration and Naturalization.

[FR Doc. 82-11528 Filed 4-27-82; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R-0400]

Membership of State Banking Institutions in the Federal Reserve System; Technical Amendment

AGENCY: Federal Reserve System.

ACTION: Technical amendment.

SUMMARY: Section 208.8(d), footnote 6a of Regulation H (12 CFR 208.8(d) is amended to conform a citation in the footnote with regulatory changes adopted by the Board.

EFFECTIVE DATE: April 22, 1982.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Beverly A. Belcamino, Attorney (202/452-3623), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: In 1979, the Board revised its regulations dealing with the foreign operations of member banks (Regulations M, 12 CFR Part 213) and foreign investment by bank holding companies (sections 225.4(f) of Regulation Y, 12 CFR 225.4(f)). These regulations have been combined in a comprehensive regulations entitled "International Banking Operations" and designated as Regulation K (12 CFR Part 211).

Section 208.8(d), footnote 6a continues to cite Regulation M in reference to a definition that presently appears in § 211.3(b) of Regulation K (12 CFR 211.3). Consequently the Board has amended footnote 6a to conform with this regulatory change. Because this amendment is technical in nature, the Board for good cause finds that the notice, public procedure, and deferral of effective date provisions of 5 U.S.C. 553 (b) and (d) with regard to this action are unnecessary and contrary to the public interest.

List of Subjects in 12 CFR Part 208

Banks, banking; Federal reserve system; Reporting requirements; Securities.

Pursuant to its authority under section 9 of the Federal Reserve Act (12 U.S.C. 321–338), the Board amends Regulation H by revising footnote 6a to read as follows:

[6a] As defined, "standby letter of credit" would not include (1) commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer and which do not "guaranty" payment of a money obligation or (2) a guaranty or similar obligation issued by a foreign branch in accordance with and subject to the limitations of Regulation K.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors, April 22, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-11489 Filed 4-27-82; 8:45 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Interpretive Ruling and Policy Statement; Payout Priorities of an Involuntarily Liquidating Federal Credit Union

AGENCY: National Credit Union Administration.

ACTION: Statement of interpretation and policy.

SUMMARY: Under the Bankruptcy Reform Act of 1978 the NCUA Board is no longer constrained to payout along lines provided under Federal bankruptcy laws. Instead, the Board can rely on its own statutory authority in establishing the payout priorities for involuntarily liquidating Federal credit unions. This document sets forth the Administration's position with respect to the priority of payments made to creditors of involuntarily liquidated Federal credit unions.

EFFECTIVE DATE: June 25, 1982.

ADDRESS: National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Steven R. Bisker, Senior Attorney, at the above address. Telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION: The NCUA's policy on involuntary liquidation payout priorities is contained in its former manual, *Liquidation and Payout Procedure Under Title II, Federal Credit Union Act,* August/1975, NCUA 9700. Page 15 of that manual provides the following order of payouts:

"a. Secured creditors [it is clarified in later paragraphs that secured creditors are satisfied up to the value of their collateral before priority comes into play];

b. Costs and expenses of liquidation;

c. Wages due employees of the FCU;

d. Costs and expenses incurred by creditors in successfully opposing release of the FCU from certain debts;

e. Taxes legally due and owing to the United States or any State or subdivision thereof;

f. Debts owing and due to the United States, including NCUA;

g. General creditors and secured creditors to the extent that their claims exceed their security interest; and

h. Members to the extent of uninsured shares and the NCUSIF."

The priority of payments was established, for the most part, based upon the "old" Bankruptcy Act. Up until the enactment of the Bankruptcy Reform Act of 1978 ("Bankruptcy Code") it was not clear as to whether or not a Federal credit union involuntarily liquidation was subject to the Federal bankruptcy laws. This issue was clarified in section 109(b)(2) of the Bankruptcy Code wherein credit unions (both Federal and State) are specifically excluded from liquidation under the Federal Bankruptcy Code because they are institutions for which an alternate provision is made for their liquidation under various State or Federal regulatory laws.

The applicable provision of Federal law relating to the liquidation and payout of a Federal credit union is section 207(a)(2) of the FCU Act (12 U.S.C. 1787(a)(2). *See also,* section 207(a)(3) and section 120(b)(4) of the FCU Act (12 U.S.C. 1787(a)(3) and 1766(b)(4)). Section 207(a)(2) states in pertinent part that:

> * * * The Board [NCUA Board] as such liquidating agent shall pay to itself for its own account such portion of the amounts realized from such liquidation as it shall be entitled to receive on account of its subrogation to the claims of members, and it shall pay to members and other creditors the net amounts available for distribution to them * * *

In light of the new Bankruptcy Code, the NCUA Board is no longer constrained to payout along the lines provided under that law. Instead, it is now clear that the Board can rely on the authorities cited above in establishing the payout priorities for involuntarily liquidating Federal credit unions. In a recent General Accounting Office report it was suggested that the order of payout be adjusted such that the National Credit Union Share Insurance Fund, the source of the funds used in the initial payout by the Board to insured credit union members, would not continue to absorb as much of the losses as it has up to this point.

The Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), parts of which Title II of the FCU Act was fashioned after, contains a similar provision to section 207(a)(2). *See,* 12 U.S.C. 1821(d). The courts have interpreted that provision as entitling the Federal Deposit Insurance Corporation, after it has paid depositors their insured deposits, to share pro rata in the assets of a liquidating bank with depositors having deposits in excess of insured amounts, and other creditors, based on the respective amount of their claims. Applying that interpretation to section 207(a)(2), the current payout priority would be changed and the NCUSIF, uninsured members, general (unsecured) creditors, and secured creditors, to the extent that their claims exceed their security interest, would take ratably. It is the intent of the NCUA Board, in approving the publication of this interpretive ruling, to make such a change to the payout priority.

Rather than categorize separate classes of unsecured creditors as was previously done, the Board will not treat all such creditors the same, except where Federal law (statutory or common law) provides certain creditors with a preference in priority. It is the Board's policy that unless this payout priority is otherwise preempted or modified by Federal law, it shall be the one in effect for Federal credit unions.

It should be noted that certain monies owed by a Federal credit union to third parties would fall outside the payout priorities and, therefore, such monies would be paid out before any payments were made under the priority schedule. Principally, this would include monies received by an FCU on behalf of a third party, for example, monies received upon the sale of money orders and travelers' checks. These funds were never intended to become part of the FCU's general funds. Instead, a trust relationship is established between the third party and the FCU.

This change in NCUA policy will also affect the liquidation payout of federally insured state chartered credit unions. As provided in section 207(d) of the FCU Act (12 U.S.C. 1787(d)):

> * * * In the case of any other closed insured credit union, the Board shall not make any payment to any member until the right of the Board to be subrogated to the rights of such member on the same basis as provided in the case of a closed Federal credit union shall have been recognized * * *. The rights of members and other creditors of any state-chartered credit union shall be determined in accordance with applicable provisions of State law.

The Board interprets this section as requiring that the Board receive the same payout priority for its subrogation rights for federally insured state credit unions as it does for Federal credit unions. However, depending upon state law the rights of members (essentially only uninsured members) and creditors may be different than that described in this ruling for uninsured members and creditors of FCU's. In no event will state law apply where the rights provided to members and creditors cause them to receive a higher priority vis-a-vis the NCUSIF than is noted in this ruling.

Lastly, the Board recognizes that many lenders have previously made loans or extended lines of credit based upon the former payout priority. To the extent that such loans were consumated, or advances under a line or credit were made, before the effective date of this ruling, such creditors will have the same priority as existed before this ruling, in the event of a liquidation and payout. However, in the event that a new advance is made after the effective date of this ruling, the entire loan balance (not simply the new advance) will be subject to this ruling.

IRPS 82–2

The payout priority for the liabilities of an involuntarily liquidating Federal credit union is as follows:

First. Secured creditors up to the value of their collateral.

Second. Costs and expenses of liquidation.

Third. Unsecured creditors, secured creditors to the extent that their claims exceed their security interest, members to the extent of uninsured shares, and the National Credit Union Administration Share Insurance Fund.

By the National Credit Union Administration Board on April 21, 1982.

Beatrix D. Fields,

Acting Secretary of the Board.

[FR Doc. 82-11528 Filed 4-27-82; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

Administrative Authority and Policy

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This Amendment revises the National Aeronautics and Space Administration's Small Business Policy (14 CFR Part 1204, Subpart 4), by establishing a separate office of Small and Disadvantaged Business Utilization which is responsible for the development, supervision and coordination of the NASA Small Business Program.

DATE: April 28, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene D. Rosen, (202) 755-2288.

SUPPLEMENTARY INFORMATION: The Small Business Act of 1953 (15 U.S.C. 644) as amended by Pub. L. 95-507, Section 221, requires that each Federal agency having procurement powers establish an office known as "Office of Small and Disadvantaged Business Utilization." This office reports directly to the Deputy Administrator and is responsible for the administration of those programs designed to assist small business, disadvantaged business firms (minority business), women's business enterprise, and labor surplus area firms.

Since this action is administrative in nature and does not affect the existing regulations, notice and public procedures are not required.

List of Subjects in 14 CFR Part 1204

Airports, Authority delegations (Government agencies), Federal buildings, facilities, and real estate, Government contracts, Government procurement, Intergovernmental relations, Security measures, Small businesses.

14 CFR Part 1204 is amended by revising Subpart 4 to read as follows:

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

* * * * *

Subpart 4—Small Business Policy

Sec.

Authority: Small Business Act of 1953 (15 U.S.C. 637) as amended by Pub. L. 95-507, Section 221.

Subpart 4—Small Business Policy

§ 1204.400 Scope of subpart.

This subpart establishes the small business policy and program of the National Aeronautics and Space Administration (NASA).

§ 1204.401 Policy.

(a) Consistent with the requirements of the Small Business Act (15 U.S.C. 631-650), as amended, and the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(b)(5)), it is the policy of NASA to place a fair proportion of its total purchases and contracts with small business concerns.

(b) In carrying out the NASA procurement program, the primary consideration shall be that of securing contract performance, including obtaining deliveries of required items or services at the time, in the quantity and of the quality prescribed. In the area of research and development contracts, the general policy of NASA is to award such contracts to those organizations determined by responsible personnel to have a high degree of competence in the specific branch of science or technology required for the successful conduct of the work. It is in the interest of the civilian space program that the number of firms engaged in research and development work for NASA be expanded and that there be an increase in the extent of participation in such work by competent small business firms.

§ 1204.402 Responsibility.

(a) *Office of Small and Disadvantaged Business Utilization.* The Director, Office of Small and Disadvantaged Business Utilization, NASA Headquarters, is responsible for the development, supervision and coordination of the NASA Small Business Program. The Director is also responsible for formulating policy and procedures relating to small business, and representing NASA before other government agencies on matters primarily affecting small business.

(b) *NASA field installations.* The head of each NASA field installation will designate a qualified individual in the procurement office as a "small business specialist," to provide a central point of contact to which small business concerns may direct inquiries concerning participation in the NASA procurement program, or secure assistance in submitting bids or proposals as well as performance of contracts. Where the head of a field installation considers that the volume of procurement at the installation does not warrant a full-time small business specialist, he/she may assign such duties to qualified procurement personnel on a part-time basis. NASA field installations shall establish and maintain liaison with the Small Business Administration representative or the appropriate Small Business Administration Regional Office in matters relating to field procurement activities.

§ 1204.403 General requirements.

(a) All proposed procurement transactions in excess of $2,500 shall be examined by small business specialists prior to issuance of bids or requests for proposals to determine suitability for small business participation or set-aside.

(b) The appropriate office of the Small Business Administration shall be informed of proposed procurements estimated to exceed $10,000.

(c) Bidders' list shall be maintained on a current basis and reviewed to assure that small business firms are given an equitable opportunity to participate in those procurements suitable for performance by such firms.

(d) NASA small business personnel shall acquire descriptive data, brochures, or other information concerning small business firms which appear competent to perform research and development work in fields in which NASA is interested and furnish such information to technical personnel. The Small Business Advisor at Headquarters and the small business specialists at NASA field installations shall assist and consult with NASA technical personnel in the analysis of such information, in arranging field inspection of facilities in making appointments for technical personnel with representatives of small business firms, and obtaining from other agencies appraisals of work performed by such firms.

(e) In accordance with Pub. L. 95-507, NASA will require contractors having

contracts in excess of $1,000,000 for the construction of any public facility, and in excess of $500,000 for all other contracts, and of such nature as to afford opportunities for subcontracting in substantial amounts, to establish and conduct small business subcontracting programs. Such programs will be periodically reviewed by NASA small business representatives to evaluate their adequacy.

(f) NASA will encourage competent small business concerns to submit unsolicited proposals for research and development work in areas within NASA's responsibility, which may lead to contracts for such work. The formation of contractor pools or joint ventures to perform research and development work will also be encouraged.

(g) NASA small business personnel will disseminate to small business concerns information concerning inventions for which NASA holds patents on behalf of the United States and under which it is NASA policy to grant licenses.

(h) Small business participation in NASA procurement shall be accurately measured, recorded, and publicized.

James M. Beggs,
Administrator.
April 7, 1982.

[FR Doc. 82-11480 Filed 4-27-82; 8:45 am]
BILLING CODE 7510-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Miscellaneous Rules; Service of Documents in Commission Proceedings

CFR Correction

In the January 1, 1982 revision of Title 16, Parts 0–149 of the Code of Federal Regulations, the introductory paragraph of § 4.4(a)(1) appears incorrectly. In § 4.4(a)(1), the introductory paragraph appearing on page 74 should read as follows:

"(a) *By the Commission.* Service of complaints, initial decisions, final orders, and other processes of the Commission under 15 U.S.C. 45 may be effected as follows:".

BILLING CODE 1505-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1030

Standards of Conduct

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing rules to govern disciplinary actions concerning postemployment conflicts of interest. These regulations establish procedures for determining alleged violations of the Ethics in Government Act. At the direction of the Commission, its General Counsel may conduct an investigation of allegedly improper conduct. The Commission may then issue an order to show cause against the alleged violator, who may request a trial-type hearing.

EFFECTIVE DATE: May 28, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492–6980.

SUPPLEMENTARY INFORMATION: These rules provide a mechanism for Commission enforcement of the postemployment conflicts of interest standards of the Ethics in Government Act, 18 U.S.C. 207. At the discretion of the Commission, its General Counsel will conduct a nonpublic investigation of an alleged violation of the Act by a former employee. If the Commission then determines that reasonable cause exists to believe that the former employee violated 18 U.S.C. 207, the Commission may issue an order requiring the former employee to show cause why disciplinary sanctions should not be imposed. The former employee would then have the right to be heard at a trial-type hearing conducted by an Administrative Law Judge in accordance with the Commission's adjudicative procedures. At the close of the hearing, the ALJ will issue an initial decision that could then be appealed to the Commission. The sanctions that may be imposed include reprimand, suspension from practice before the Commission, or prohibiting the former employee from communicating with the Commission with the intent to influence it for a period not to exceed five years.

These rules were published as a proposal on October 30, 1981, 46 FR 53677. No comments were received. These final rules are the same as the proposed rules except for the title of § 1030.213, which has been revised to more succinctly and accurately describe the substance of the section.

List of Subjects in 16 CFR Part 1030

Conflict of interests.

Accordingly, Part 1030 is amended by revising Subpart L to read as follows:

PART 1030—EMPLOYEE STANDARDS OF CONDUCT

* * * * *

Subpart L—Disciplinary Actions Concerning Postemployment Conflict of Interest

Sec.

Authority: 18 U.S.C. 207(j).

Subpart L—Disciplinary Actions Concerning Postemployment Conflict of Interest

§ 1030.1201 Scope and applicability.

These regulations establish procedures for investigating and determining alleged violations of 18 U.S.C. 207 (a), (b) and (c) (Postemployment restrictions applicable to federal employees) or regulations issued by the Office of Personnel Management set forth in 5 CFR Part 737, reflecting the joint views of the Office of Government Ethics and the Department of Justice as to the requirements of 18 U.S.C. 207.

§ 1030.1202 Nonpublic proceedings.

Any investigation or proceedings held under this subpart shall be nonpublic unless the respondent specifically requests otherwise, except to the extent required by the Freedom of Information Act (5 U.S.C. 552) or by the Government in the Sunshine Act (5 U.S.C. 552b). However, the presiding official's initial decision and any final decision of the Commission shall be placed on the public record, except that other information may be designated *in*

camera in accordance with § 1025.45 of the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR 1025.45.

§ 1030.1203 Initiation of investigations.

(a) Investigations under this subpart may be initiated upon the submission by any person of a written statement to the Secretary of the Commission setting forth sufficient information to indicate a possible violation of 18 U.S.C. 207 or by the Commission on its own initiative when a possible violation is indicated by information within the Commission's possession.

(b) At the direction of the Commission, the General Counsel, or his or her designee, shall investigate any alleged violation of 18 U.S.C. 207.

§ 1030.1204 Referral to the Office of Government Ethics and to the Department of Justice.

(a) The General Counsel shall make a preliminary determination of whether the matter appears frivolous and, if not, shall expeditiously transmit any available information to the Director of the Office of Government Ethics and to the Criminal Division, Department of Justice.

(b) Unless the Department of Justice communicates to the Commission that it does not intend to initiate criminal prosecution, the General Counsel shall coordinate any investigation or proceeding under this subpart with the Department of Justice in order to avoid prejudicing criminal proceedings.

§ 1030.1205 Conduct of investigation.

The General Counsel may in connection with an investigation under this Subpart administer oaths pursuant to section 27(b)(2) of the Consumer Product Safety Act, 15 U.S.C. § 2076(b)(2) and may recommend that the Commission issue subpoenas to compel testimony and the production of evidence pursuant to section 27(b) (3) and (4) of the Consumer Product Safety Act, 15 U.S.C. 2076(b) (3) and (4).

§ 1030.1206 Disposition.

(a) Upon the conclusion of an investigation under this subpart, the General Counsel shall forward to the Commission a summary of the facts disclosed by the investigation along with a recommendation as to whether the Commission should issue an order to show cause pursuant to § 1030.1207.

(b) When the former government employees involved is an attorney, the General Counsel shall also recommend whether the matter should be referred to the disciplinary committee of the bar(s) of which the attorney is a member.

§ 1030.1207 Order to show cause.

(a) Upon a Commission determination that there exists reasonable cause to believe a former government employee has violated 18 U.S.C. 207, the Commission may issue an order requiring the former employee to show cause why sanctions should not be imposed.

(b) The show cause order shall contain (1) the statutory provisions alleged to have been violated and a clear and concise description of the acts of the former employee that are alleged to constitute the violation; (2) notice of the respondent's right to submit an answer and request a hearing, and the time and manner in which the request is to be made; and (3) a statement of the sanctions that may be imposed pursuant to § 1030.1217 of this subpart.

(c) Subsequent to the issuance of an order to show cause, any communications to or from the Commission or any member of the Commission shall be governed by the ex parte provisions of § 1025.68 of the Commission's Rules of Practice for Adjudicative Procedures, 16 CFR 1025.68.

§ 1030.1208 Answer and request for a hearing.

(a) An answer and request for a hearing must be filed with the Secretary of the Commission within thirty (30) days after service of the order to show cause.

(b) In the absence of good cause shown, failure to file an answer and request for a hearing within the specified time limit (1) will be deemed a waiver of the respondent's right to contest the allegations of the show cause order or request a hearing and (2) shall authorize the Commission to find the facts to be as alleged in the show cause order and to enter a final decision providing for the imposition of such sanctions specified in § 1030.1217 as the Commission deems appropriate.

(c) An answer shall contain (1) a concise statement of the facts or law constituting each ground of defense and (2) specific admission, denial, or explanation of each fact alleged in the show cause order or, if the respondent is without knowledge thereof, a statement to that effect. Any allegations of a complaint not answered in this manner will be deemed admitted.

(d) A hearing shall be deemed waived as to any facts in the show cause order that are specifically admitted or deemed to be admitted as a result of respondent's failure to deny them. Those portions of respondent's answer, together with the show cause order, will provide a record basis for initial decision by the Administrative Law Judge or for final decision by the Commission.

(e) If all material factual allegations of the show cause order are specifically admitted or have been deemed admitted in accordance with paragraph (c) of this Section, the Commission will decide the matter on the basis of the allegations set forth in the show cause order and respondent's answer.

§ 1030.1209 Presiding official.

(a) Upon the receipt of an anwer and request for a hearing, the Secretary shall refer the matter to an Administrative Law Judge, under Title 5, United States Code, section 3105, to preside over the hearing and shall notify the respondent and the General Counsel, or his or her designee, as to the person selected.

(b) The powers and duties of the presiding official shall be as set forth in § 1025.42 of the Commission's Rules of Practice for Adjudicatory Proceedings, 16 CFR 1025.42.

§ 1030.1210 Scheduling of hearing.

The presiding official shall fix the date, time and place of the hearing. The hearing shall not be scheduled earlier than fifteen days after receipt of the respondent's answer and request for a hearing. In fixing the time, date and place of the hearing, the presiding official shall give due regard to the respondent's need for adequate time to prepare a defense and for expeditious resolution of allegations that may be damaging to his or her reputation.

§ 1030.1211 Prehearing procedures; motions; interlocutory appeals; summary decision; discovery; compulsory process.

Because of the nature of the issues involved in proceedings under this subpart the Commission anticipates that extensive motions, prehearing proceedings and discovery will not be required in most cases. For this reason, detailed procedures will not be established under this subpart. However, to the extent deemed warranted by the presiding official, prehearing conferences, motions, interlocutory appeals, summary decisions, discovery and compulsory process shall be permitted and shall be governed, where appropriate, by the provisions set forth in the Commission's Rules of Practice for Adjudicatory Proceedings, 16 CFR Part 1025.

§ 1030.1212 Hearing rights of respondent.

In any hearing under this subpart, the respondent shall have the right (a) to be represented by counsel; (b) to present and cross-examine witnesses and to submit evidence; (c) to present

objections, motions, and arguments, oral or written; and (d) to obtain a transcript of the proceedings on request.

§ 1030.1213 Hearing procedures; burden of proof.

(a) Sections 1025.43, 1025.45, 1025.46, 1025.47 of the Commission's Rules of Practice for Adjudicatory Proceedings shall govern respectively, the receipt and objections to admissibility of evidence, *in camera* orders, the submission and consideration of proposed findings of fact and conclusions of law, and the transcript of the hearing, except that a copy of the hearing transcript shall be provided to the respondent.

(b) The General Counsel has the burden of establishing, by a preponderance of the evidence on the record as a whole, the allegations stated in the order to show cause.

§ 1030.1214 Initial decision.

Section 1025.51 of the Commission's Rules of Practice for Adjudicative Proceedings shall govern the initial decision in proceedings under this subpart, except that the determination of the Administrative Law Judge must be supported by a preponderance of the evidence.

§ 1030.1215 Review of initial decision.

Appeals from the initial decision of the Administrative Law Judge or review by the Commission in the absence of an appeal shall be governed by §§ 1025.52, 1025.53 and 1025.54 of the Commission's Rules of Practice for Adjudicative Proceedings.

§ 1030.1216 Commission decision and reconsideration.

The Commission's decision and any reconsideration or reopening of the proceeding shall be governed by §§ 1025.55, 1025.56 and 1025.58 of the Commission's Rules of Practice for Adjudicative Proceedings.

§ 1030.1217 Sanctions.

In the case of any respondent who fails to request a hearing after receiving adequate notice of the allegations pursuant to § 1030.1207 or who is found in the Commission's final decision to have violated 18 U.S.C. 207(a), (b), or (c), the Commission may order such disciplinary action as it deems warranted, including: (a) reprimand; (b) suspension from participating in a particular matter or matters before the Commission; or (c) prohibiting the respondent from making, with the intent to influence, any formal or informal appearance before, or any oral or written communication to, the Commission or its staff on any matter or business on behalf of any other person (except the United States) for a period not to exceed five (5) years.

§ 1030.1218 Judicial review.

A respondent against whom the Commission has issued an order imposing disciplinary action under this Part may seek judicial review of the Commission's determination in an appropriate United States district court by filing a petition for such review within sixty (60) days of receipt of notice of the Commission's final decision.

Dated: April 21, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 82-11523 Filed 4-27-82; 8:45 am]

BILLING CODE 6355-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 9H5 230/R70A; PH-FRL-2028-8]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency; Oxyfluorfen; Correction

Correction

In FR Doc. 82-880 appearing on page 1385 in the issue of Wednesday, January 13, 1982, the heading of the document incorrectly cited "40 CFR Part 193". It should have cited "21 CFR Part 193".

BILLING CODE 1505-01-M

40 CFR Part 180

[PP 2F2592/R431; PH-FRL-2108-6]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Dimethylformamide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the solvent dimethylformamide (DMF) in or on the raw agricultural commodities almonds and apples. This regulation to allow the presence of residues of DMF in or on the commodities when applied in formulations of the fungicide triforine in the absence of tolerances establishing maximum permissible levels of the residues of DMF in or on the commodities was requested by EM Industries, Inc.

EFFECTIVE DATE: Effective on April 28, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of December 16, 1981 (46 FR 61319) which announced that EM Industries, 5 Skyline Dr., Hawthorne, NY 10523, had submitted a pesticide petition (PP 2F2592) to the EPA. The petition proposed that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, amend 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for residues of the solvent dimethylformamide (DMF) in or on the raw agricultural commodities almonds and apples when used in formulations of the fungicide triforine (*N,N*-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)] bis [formamide]).

No comments were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the exemption from the requirement of a tolerance included a subacute mouse feeding study and a subacute rat feeding study. The no-observed-effect level (NOEL) determined from the subacute mouse feeding study is 540 parts per million (ppm) based on finding congested liver volumes at higher levels.

An adequate analytical method (gas chromatography with flame ionization detector) is available for enforcement purposes.

The residues of DMF and its metabolites from the proposed use pattern are not expected to exceed 0.1 ppm in or on almonds and apples and 1.0 ppm in or on almond hulls.

No actions are currently pending against the use of DMF as an inert ingredient in pesticide formulations. Other considerations in establishing this exemption from the requirement of a tolerance include the establishment of a tolerance for triforine in or on apples (PP 2F2600/R423) which appears elsewhere

in this issue of the Federal Register. A petition (PP 2F2590) to establish tolerances for residues of triforine in or on almonds and almond hulls is pending before the Agency.

The pesticide is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought, and it is concluded that the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before May 28, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Effective on: April 28, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 12, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.1046(a) is revised to read as follows:

§ 180.1046 Dimethylformamide; exemption from the requirement of a tolerance.

(a) Residues of dimethylformamide are exempted from the requirement of a tolerance when used in accordance with good agricultural practices in formulations with the fungicide triforine (*N,N*-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)] bis [formamide]) if such formulations contain not more than 30 percent dimethylformamide in or on the following raw agricultural commodities:

Commodities
Almonds
Apples
Apricots
Bell peppers
Blueberries
Cantaloupes
Cherries
Cranberries
Cucumbers
Eggplants
Nectarines
Peaches
Plums
Prunes, fresh
Strawberries
Watermelons

* * * * *

[FR Doc. 82-11022 Filed 4-27-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 2F2591/R430; PH-FRL-2108-7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; N-Methylpyrrolidone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the pesticide chemical *N*-methylpyrrolidone in or on the raw agricultural commodities almonds and apples. This regulation to allow the presence of residues of the pesticide in or on these commodites when applied in formulations of the fungicide triforine in the absence of tolerances establishing maximum permissible levels for residues of *N*-methylpyrrolidone in or on these commodities was requested by EM Industries, Inc.

EFFECTIVE DATE: Effective on April 28, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm 3708, 401 M St., SW., Washington D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of December 16, 1981 (46 FR 61319) which announced that EM Industries, 5 Skyline Dr., Hawthorne, NY 10523, had submitted a pesticide petition (PP 2F2591) to the EPA. The petition proposed that the Administrator, pursuant to section 408(e) of the Federal, Food, Drug, and Cosmetic Act, amend 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for residues of the pesticide *N*-methylpyrrolidone in or on the raw agricultural commodities almonds and apples when used in formulations of the fungicide triforine (*N,N*-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)] bis [formamide]).

No comments were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the exemption from the requirement of a tolerance included a subacute mouse feeding study and a subacute rat feeding study. The no-observed-effect level (NOEL) determined from a 90-day dog feeding study is 1,000 parts per million (ppm) based on the findings of increased platelet counts in males.

An adequate analytical method (gas chromatography with a flame ionization detector) is available for enforcement purposes.

The residues of *N*-methylpyrrolidone and its metabolites from the proposed use pattern are not expected to exceed 0.1 ppm in or on almonds and apples and 1.0 ppm in or on almond hulls.

No actions are currently pending against the use of *N*-methylpyrrolidone as an inert ingredient in pesticide formulations. Other considerations in establishing this exemption from the requirement of a tolerance include the establishment of a tolerance for triforine in or on apples (PP 2F2600/R423) which appears elsewhere in this issue of the Federal Register. A petition to establish a tolerance for residues of triforine in or on almonds and almond hulls (PP 2F2590) is pending before the Agency.

The pesticide is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought, and it is concluded that the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before May 28, 1982, file written objections with the

Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Effective on: April 28, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

Dated: April 12, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.1047 is revised to read as follows:

§ 180.1047 N-Methylpyrrolidone; exemption from the requirement of a tolerance.

Residues of *N*-methylpyrrolidone are exmpted from the requirement of a tolerance when used in accordance with good agricultural practices in formulations with fungicide triforine (*N,N*-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)] bis [formamide]) if such formulations contain not more than 30 percent *N*-methylpyrrolidone in or on the following raw agricultural commodities:

Commodities

Almonds
Apples
Apricots
Bell peppers
Blueberries
Cantaloupes
Cherries
Cranberries
Cucumbers
Eggplants
Nectarines
Peaches
Plums
Prunes, fresh
Strawberries
Watermelons

[FR Doc. 82-11021 Filed 4-27-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 2F2600/R423; PH-FRL-2108-5]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Triforine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide triforine in or on the raw agricultural commodity apples. This regulation to establish the maximum permissible level for residues of fungicide in or on the commodity was requested by EM Industries, Inc.

EFFECTIVE DATE: Effective on April 28, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of February 17, 1982 (47 FR 6991) which announced that EM Industries, Inc., 5 Skyline Dr., Hawthorne, NY 10523, had submitted a pesticide petition (PP 2F2600) to the EPA. The petition proposed that a tolerance be established for residues of the fungicide triforine (*N,N*-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)] bis [formamide]) in or on the raw agricultural commodity apples at 0.01 part per million (ppm).

No comments were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the proposed tolerance included: A 2-year dog feeding study with a no-observed-effect level (NOEL) of 100 ppm; a 2-year rat feeding study with a NOEL of 625 ppm, with no oncogenic effect at 3,125 ppm; an 18-month mouse feeding study (negative for oncogenicity at 750 ppm, teratology and fetotoxicity effects at 800 ppm); two rat metabolism studies (satisfactory to determine major metabolites); a 3-generation rat reproduction study with a NOEL of 2,500 ppm; mutagenicity (negative, male dominant lethal mouse test); and a 60-day dog feeding study with a NOEL of 100 ppm.

Based on the dog feeding study, the NOEL is 100 ppm or 2.5 milligrams (mg)/kilogram (kg) of body weight (bw). Using a 100-fold safety factor, the acceptable daily intake (ADI) is calculated to be 0.025 mg/kg of body weight/day and the maximum permissible intake (MPI) is 1.5 mg/day for a 60-kg person. This tolerance will result in a maximum theoretical exposure of 0.03 percent of the ADI.

Previously established and proposed tolerances have a theoretical maximum residue contribution of 0.186 mg/day in a 1.5-kg diet or 12.42 percent of the ADI.

There are no reasonable expectations for residues occurring in eggs, milk, meat, or poultry as delineated in 40 CFR 180.6(a)(3). Other considerations in the registration of triforine include the exemption from the requirement of a tolerance for residues of the solvents *N*-methylpyrrolidone (PP 2F2591/R430) and dimethylformamide (PP 2F2592/R431) used in the formulated product when applied to apples and almonds which appear elsewhere in this issue of the Federal Register.

There are no actions pending against continued registration of the pesticide. The nature of the residues for the fungicide are adequately understood and an adequate analytical method (gas chromatography with an electron capture detector) is available for enforcement purposes.

The fungicide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the amendment to 40 CFR 180.382 will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before May 28, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the

hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: April 28, 1982.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 12, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.382 is amended by adding and alphabetically inserting the raw agricultural commodity apples to read as follows:

§ 180.382 Triforine; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Apples	0.01
* * * * *	

[FR Doc. 82-11023 Filed 4-27-82; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 47, No. 82
Wednesday, April 28, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Teletherapy Room Radiation Monitors and Inspection and Servicing of Teletherapy Machines

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing amendments to its regulations applicable to NRC teletherapy licensees that are intended to ensure prior warning to the operator in the event of a malfunction of a teletherapy source exposure mechanism and to ensure adequate inspection and servicing of the teletherapy machine. The amendments under consideration would require:

1. The installation of radiation monitors in teletherapy rooms;
2. The use of portable survey instruments whenever the permanent radiation monitors are inoperable; and
3. The inspection and servicing of all teletherapy machines to assure proper functioning of the source exposure mechanism, during source replacement or at intervals not to exceed five years, whichever comes first.

DATE: Comment period expires June 28, 1982. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of the comments on the proposed amendments may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Alan K. Roecklein, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (phone 301–443–5970).

SUPPLEMENTARY INFORMATION: In May 1980, the Office of Nuclear Material Safety and Safeguards issued orders to all NRC teletherapy licensees requiring the installation of teletherapy room radiation monitors and the use of portable radiation survey meters when the installed monitors are inoperable. In 1972 the NRC established a standard teletherapy license condition requiring inspection and servicing of all teletherapy machines to assure proper functioning of the source exposure mechanisms at time of source replacement or every five years, whichever comes first, and requiring that a record of the inspection and servicing be kept on file for review by the Commission's Office of Inspection and Enforcement. These actions were intended to provide early warning of, and to help prevent, potentially serious over-exposures of teletherapy operators and patients in the event that the source exposure mechanism failed.

The radioactive sources contained in teletherapy units produce radiation fields on the order of hundreds of rads per minute in areas accessible to patients or operators. An undetected exposed source could result in overexposures of patients or operating personnel in a short period of time. Teletherapy units are designed with reliable source handling components. In spite of careful design the NRC is aware of a number of teletherapy equipment malfunctions that had the potential for causing serious overexposures. the proposed rule changes described in the summary are intended to provide greater assurance that teletherapy equipment malfunctions do not occur and that they will be detected before serious injury can occur.

It is the Commission's intent to codify the previously described orders and license condition so that they are uniformly applicable to existing licensees and new applicants.

Paperwork Reduction Act Statement

This proposed rule is being submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980 (Pub. L. 96–511) since it codifies a recordkeeping requirement.

Regulatory Flexibility Statement

The Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), became effective January 1, 1981. The Act establishes as a goal that agencies try, consistent with the objectives of rules and applicable statutes, to fit regulatory and informational requirements to the size of businesses being regulated. To assure that this is done, an agency proposing a rule is required to (a) prepare an initial regulatory flexibility analysis of the proposed rule if the rule will have a "significant economic impact on a substantial number of small entities," or (b) certify that the rule will not have such an impact.

Based on the information available at this time, and in accordance with the Regulatory Flexibility Act, the Commission hereby certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. About 440 teletherapy licensees are regulated by the NRC. Fewer than 1% of these can qualify as small entities for the purposes of the Regulatory Flexibility Act applying the standards contained in 13 CFR Part 121, Small Business Size Standards. All but a few of the teletherapy licensees are hospitals and the Small Business Administration defines small hospitals as having fewer than 150 beds. A check on 104 of NRC teletherapy licensees showed that all of them had more than 150 beds.

The NRC believes that all teletherapy licensees have already installed monitoring equipment and have portable survey instruments available in compliance with the 1980 orders. The cost of an installed monitor and survey instrument is approximately one thousand to fifteen hundred dollars. The approximate cost of a teletherapy unit exceeds one hundred thousand dollars. Annual revenue generated by a teletherapy unit is on the order of 200,000 dollars. Costs for the inspection, servicing, and recordkeeping requirements will be proportional to the number of units owned by the licensee. An estimate of cost is less than 500 dollars per year per teletherapy unit. Thus the Commission believes that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The gains in patient and operator protection will significantly outweigh the economic impact on licensees. Accordingly, as provided by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Any small business entity subject to this regulation which determines that because of its size, it is likely to bear disproportionate adverse economic impact, should inform the Commission of this in a comment that provides the following information:

(a) The licensee's size in terms of annual receipts, number of employees, number of patient beds and annual number of teletheraphy procedures;

(b) How the proposed regulations would result in a significant economic burden upon the licensee as compared to larger licensees;

(c) How the proposed regulations could be modified to take into account the differing needs of capabilities of the commenter;

(d) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation were modified as suggested by the commenter; and

(e) How the regulation, modified as suggested in (c) above would still adequately protect the public health and safety.

List of Subjects in 10 CFR Part 35

Byproduct material, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 35 is contemplated.

PART 35—HUMAN USES OF BYPRODUCT MATERIAL

1. The authority citation for Part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended; (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended by Pub. L. 94–79, 89 Stat. 413 (42 U.S.C. 5841).

For the purposes of section 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 35.2, 35.14 (b), (e) and (f), 35.21(a), 35.22(a), 35.24, and 35.31 (b) and (c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 35.14(b)(5) (ii), (iii) and (v) and (f)(2), 35.25 and 35.31(d) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 35.25 [Redesignated as § 35.27]

2. The present § 35.25 is redesignated § 35.27.

3. A new § 35.25 is added to read as follows:

§ 35.25 Requirements to install a permanent radiation monitor in teletherapy rooms and to use portable survey instruments.

(a) Each licensee authorized under § 35.13 to use teletherapy units for treating humans shall install a permanent radiation monitor in each teletherapy room for continuous monitoring of beam status.

(b) Each radiation monitor must be capable of providing visible notice of a teletherapy malfunction that may result in an exposed or partially exposed source. The visible indicator of high radiation levels must be located so as to be observable by a person entering the room and during operation of the unit.

(c) Each radiation monitor must be equipped with an emergency power supply separate from the power supply to the teletherapy unit. This emergency power supply may be a battery system.

(d) Each radiation monitor must be tested for proper operation each day before the teletherapy unit is used for treatment of patients.

(e) If a radiation monitor is inoperable for any reason, any person entering the teletherapy room shall use a portable survey instrument to monitor for any malfunction of the source exposure mechanism that may have resulted in an exposed or partially exposed source.

4. A new § 35.26 is added to read as follows:

§ 35.26 Inspection and servicing of the source exposure mechanism.

(a) The licensee shall cause each teletherapy machine used to treat humans to be fully inspected and serviced during source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(b) Inspection and servicing of the teletherapy machine shall be performed by persons specifically authorized to do so by the Commission or an Agreement State.

5. In redesignated § 35.27 the introductory text and paragraph (a) are revised to read as follows.

§ 35.27 Records.

The licensee shall maintain, for inspection by the Commission, records of the measurements, tests, corrective actions, inspection and servicing of the teletherapy machine, and instrument calibration made under §§ 35.21 through 35.26 and records of the licensee's evaluation of the qualified expert's training and experience made under § 35.24.

(a) The following records must be preserved for five years after completion of the full calibration or inspection and servicing:

(1) Full calibration measurements reports made under § 35.21.

(2) Records of calibration of the instruments used to make these measurements under § 35.23.

(3) Records of inspection and servicing of the teletherapy machine under § 35.26.

* * * * *

Dated at Washington, D.C., this 22d day of April 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82–11589 Filed 4–27–82; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Parts 211, 221, 231, 250, and 270

Procedures for Mineral Royalty Reporting of and Paying on Leases on Federal Lands, Outer Continental Shelf (OCS) Lands, and Indian Lands

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed procedure and request for public comment.

SUMMARY: As successor to the U.S. Geological Survey (USGS) in the matter of all royalty minerals business, the Minerals Management Service (MMS) is proposing to develop and implement an alternate, voluntary reporting and paying procedure for minerals royalties due from leases on Federal lands, Outer Continental Shelf (OCS) lands, and Indian lands. Royalties are due from most Federal, OCS, and Indian leases on the last day of the month following the production month, as specified contractually by the Federal Government. Some payors claim that they are frequently unable to gather the data necessary to compute and pay royalties on time, and that this inability unfairly subjects them to the assessment of late charges when they are unable to pay on time.

However, industry generally schedules payments of royalties for private minerals leases to fall due on the last day of the second month following the production month. This industry practice allows payors 2 months to

gather, from various sources, the complex production and sales data needed to accurately compute and pay the royalties that are due to private lessors.

Therefore, MMS is proposing to implement a procedure that would allow payors to report and pay royalties on the last day of the second month following the production month.

DATE: Written comments on this notice must be received on or before May 28, 1982.

ADDRESS: Written comments may be mailed or delivered to Mr. Raymond A. Hicks, Chief, Branch of Rules and Procedures for Royalty Management, Minerals Management Service, 12203 Sunrise Valley Drive, Room 6A220, Mail Stop 660, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Hicks, Chief, Branch of Rules and Procedures for Royalty Management, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 660, Reston, Virginia 22091, (703) 860–7311.

SUPPLEMENTARY INFORMATION:

The royalties for most Federal, OCS, and Indian minerals leases are due contractually on the last day of the month following the month of production. Lessees/operators/payors of such royalties allege that this schedule does not allow sufficient time for gathering the complex production and sales data needed to compute and remit royalty payments by the date due. These allegations were received as comments to the Interim Rulemaking as published (45 FR 84762; December 23, 1980), which requires a late-payment charge to be assessed for late or underpayments.

In contrast, lessees/operators/payors of private minerals leases generally make royalty payments on the last day of the second month following the production month. This industry practice allows payors a 2-month period in which to collect and process multisourced data generated by numerous and diverse transporters, processors, and purchasers.

Many payors of Federal, OCS, and Indian royalties assert that their production data are also multisourced and equally constrained by external circumstances. Thus, they claim that they are often not able to compute, report, and pay royalties on time under the present 1-month Federal payment requirement. They further assert that this subjects them unfairly to delinquency assessments since the Federal Government must charge for late payments.

The seriousness of the problem described above makes it desirable and in the public interest to develop an alternate procedure by which (1) the Federal Government and the Indians regularly receive royalty monies when legally due, and which (2) gives the minerals industry the option of a voluntary 2-month reporting and paying plan that will reduce late payments and allow more flexibility in accurately reporting and paying amounts due. This procedure would also significantly reduce the number of adjustments that payors must currently make to their production and sales reports.

For these reasons, the Minerals Management Service is proposing a voluntary procedure that would allow payors who elect this alternate 2-month payment plan to make an initial estimated royalty payment for each lease (or sub-lease) at the end of the first 1-month period after the end of the applicable production month. That estimated payment must be in an amount sufficient to cover the probable royalty liability. This would allow payors to then use the following 1-month for gathering the supporting data needed to accurately report and pay.

Under this plan, an estimated royalty payment will be made, like regular royalties for each lease or (sub-lease), on or before the last day of the month following the production month. That estimated payment shall remain at the same amount unless it has to be adjusted, upward or downward, in accordance with the procedures established for this voluntary reporting and paying plan. The payor would be required to maintain an estimated payment for each lease or sub-lease in an amount sufficient to satisfy the monthly royalty actually coming due. Moreover, if the estimated payment(s) were to fall below 95 percent of the royalty liability to which it applied, MMS could require the payor to increase the amount(s). The payor could also increase or decrease his estimated payment(s) in anticipation of sales, production, and price fluctuations.

In order to avoid the assessment of late-payment charges on Federal and OCS leases, the aggregate amounts of all of the estimated payments applicable thereto must always equal or exceed the actual royalty due in total from the paying company. To avoid assessment of late-payment charges on Indian leases, the estimated payment at the individual lease level must always equal or exceed the actual royalty due for that lease. MMS will maintain separate Federal and Indian estimated payment accounts. These accounts will not be combined to determinme whether estimated payments made by a company are sufficient to cover the actual royalty liability of that payor company. The example presented below illustrates the 2-month reporting and paying cycle.

Alternate Procedure for Royalty Reporting and Paying on a Lease

	Production month	Estimated royalty payment	Actual royalty paid for production
January is the first production month for which the procedure is used.	January	NA	NA.
The estimated royalty payment for January is made on or before February 28 (29).	February	$3,000	NA.
Each time an *actual* report and payment are remitted the estimated royalty payment becomes the new estimate for the next production month.	March	3,000	For January $2,988.
	April	3,000	For February $2,965.
	May	3,000	For March $2,994.
An additional $200 is paid at the end of June to increase the amount of the estimate covering May and June production.	June	3,000 +200	For May $3,082.[1] For June $3,091.[1]
	July	3,200	

[1] A late-payment charge would be assessed for each of these 2 months because the amount of the actual liability exceeded the estimated royalty payment for the Federal or OCS lease. However, if the payor has made estimated royalty payments on all his federally-issued leases that in the aggregate equal or exceed the amount due in total, no late-payment charge would be assessed.

NOTE.—A late-payment charge would be assessed for each of these same months if the amount of the actual liability exceeded the estimated royalty payment on any Indian lease (or sub-lease).

Checks and any other royalty payments made by payors opting for the alternate 2-month cycle would be remitted in the same manner as for royalties presently paid for Federal, OCS, and Indian minerals lease production on the 1-month reporting and paying cycle. Estimated royalty payments would be distributed to the Federal Government and to the Indians in the same way as is currently prescribed.

This proposed procedure would supplement the existing royalty reporting/paying requirements that specify that royalty payments must be received by the last day of the month following production. It is recognized, however, that the optional payment procedure proposed in this notice may necessitate other procedural changes.

MMS therefore requests comments and suggestions for procedural streamlining as well as any comments

on the practicality of this proposed procedure. The notice to propose an alternate procedure for lessees/operators/payors of Federal, OCS, and Indian royalties is set forth below. The following is the text of the Alternate Procedure for Royalty Reporting and Paying.

List of Subjects in 30 CFR Parts 211, 221, 231, 250, 270

Mineral royalties.

Alternate Procedure for Royalty Reporting and Paying

The Director of the Minerals Management Service (MMS) has the authority to prescribe the manner in which royalty payments are remitted to the Federal Government and to the Indians in accordance with the pertinent provisions of the minerals operating regulations (30 CFR Parts 211, 221, 231, 250, 270) and the terms of the minerals leases and contracts issued pursuant to the Mineral Leasing Act, the Act of February 25, 1920 (30 U.S.C. 181 et seq.); the Acquired Lands Leasing Act of August 7, 1947 (30 U.S.C. 351 et seq.); the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.); the Outer Continental Shelf Lands Act (43 U.S.C. 1301 et seq.); the Allotted Lands Leasing Act of 1909 (25 U.S.C. 396); the Tribal Lands Leasing Act of 1938 (25 U.S.C. 396a); and Executive Order 12291 (46 FR 13193).

A voluntary, royalty payment method for payors of most minerals commodities is provided herein. *This method is made available to each payor as an option to the existing prescribed contractual payment method at the time that MMS transfers that payor's lease(s) accounts from the field accounting offices to the Accounting Center in Denver, Colorado.*

All payors choosing this alternate, voluntary payment will be required to remit an initial estimated on time, royalty payment for each specific lease (or sub-lease) account. For a payor converting a given lease (or sub-lease) from the regular 1-month payment schedule to the 2-month schedule, the initial estimated royalty would be paid as regularly due. That is, the estimated royalty payment would be remitted at the end of the first month after the end of the production month. On or before the last day of the following month, the report and actual royalty payment would be due, thus completing the 2-month schedule. Late-payment charges would only apply to the amount the estimated royalty failed to cover.

A payor who elects to use the 2-month report/pay method would be expected to use that method for all leases. Ordinarily this 2-month method will apply for 1-year periods (12 consecutive production months) once elected by the payor. Once an estimated payment has been made, the payor need only increase or decrease the amount if price changes or his production forecasting warrants a change. However, the Deputy Director for Royalty Management or his designee reserves the right to review and change the amount required for any estimated royalty payment if it regularly falls below 95 percent of actual royalties due or if certain commodities or contracts warrant exception handling.

Procedures for this voluntary method are:

1. When MMS notifies a payor that his lease(s) (or sub-lease(s)) accounting records are being transferred to Denver, that payor may advise the Accounting Center that he wishes to use the voluntary 2-month report and pay plan.

2. The Accounting Center will then provide the payor with the instruction and format necessary for making such estimated payments. The payor will be responsible for calculating the estimated royalty amount due on a lease-by-lease basis for all his leases once he has elected to place them on the 2-month report/pay schedule.

3. A payor who elects this 2-month report/pay schedule can begin using it for the production month in which MMS transfers accounting for his leases to Denver. On this schedule, the initial estimated royalty payment(s) is thus due on the last day of the month after that production month. If the first estimated royalty payment is made later, because the 2-month schedule is elected later, the first reportable production month in the 2-month cycle becomes whatever month immediately precedes the month in which the estimated royalty payment is received in Denver.

Payor participation in this voluntary 2-month schedule is not available wherever such payments are prohibited by the terms of leases or statutes, or by the regulations of other Federal Agencies. Paying adjustments will be necessary either (1) whenever the estimated royalty payment does not equal or exceed 95 percent of the actual royalties due; or (2) if the payor is granted a return to the regular 1-month schedule; or (3) when the operator/lessee/payor ends production on a given lease or sub-lease.

Payors who elect this 2-month payment schedule shall maintain it for a minimum of 12 consecutive production months unless the Deputy Director for Royalty Management or his designee determines that circumstances warrant early abandonment of the plan. Ordinarily, the Accounting Center will review such a payor request before authorizing a return to the regular 1-month reporting and paying schedule.

Dated: April 20, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary of the Interior.

[FR Doc. 82-11495 Filed 4-27-82; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 716 and 785

Prime Farmland: Interim and Permanent Regulatory Programs; Extension of Public Comment Period

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

ACTION: Notice of extension of public comment period.

SUMMARY: On March 22, 1982 (47 FR 12310), OSM published proposed rules for public comment which would place a temporal limit on the prime farmland grandfather exemption contained in Section 510(d) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* On April 12, 1982 (47 FR 15605), OSM extended the comment period on this rule to April 28, 1982. Since that publication and extension, OSM has received more requests to extend the public comment period. In order to ensure that all interested persons are afforded an adequate opportunity to comment, OSM is extending the comment period.

DATE: Written comments: The comment period on the proposed rules will extend until 5 p.m. (eastern time) on May 17, 1982.

ADDRESSES: Written Comments: Hand deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR-05), Room 5315, 1100 L Street, NW., Washington, D.C. 20240.

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

FOR FURTHER INFORMATION CONTACT: Donald F. Smith, Division of Engineering Analysis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, D.C. 20240; 202-343-5945.

SUPPLEMENTARY INFORMATION:

Public Commenting Procedures

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include an explanation in support of the commentor's recommendations. Commentors 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 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 Street). A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 716

Coal mining, Environmental protection, Surface mining, Underground mining.

List of Subjects in 30 CFR Part 785

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: April 23, 1982.

Dean Hunt,

Assistant Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 82-11587 Filed 4-27-82; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 70

[DOD Directive 1332.28]

Discharge Review Boards (DRB) Procedures and Standards

AGENCY: Office of the Secretary, DOD.

ACTION: Proposed amendment to rule.

SUMMARY: This proposed rule amends DOD rules now in effect for Discharge Review Boards (DRBs) to revise discharge review procedures and standards, including preparation of decisional documents and index entries, and sets forth procedures for complaints concerning documents and index entries. This amendment is intended to ensure that applicants or prospective applicants to the DRBs of the Military Services are fully aware of the proper procedures for submitting an application, the conduct of the review, the information that must be provided in the DRBs' decisional document, and the complaint procedures regarding the adequacy of decisional documents or index entries.

DATE: Written comments received by May 28, 1982, will be considered.

ADDRESSES: Office of the Assistant Secretary of Defense (Military Personnel and Force Management), Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Captain Thomas J. Smith, USA. Phone: (202) 697-3387.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-8638 appearing in the **Federal Register** on March 31, 1978 (43 FR 13564), the Office of the Secretary of Defense published Part 70 of this title. Amendments to Part 70 were issued on December 27, 1979 (43 FR 76486); July 2, 1981 (46 FR 34574); and December 24, 1981 (46 FR 62441). In FR Doc. 80-33887, appearing on October 31, 1980 (45 FR 72249), a notice of a revision to DRB complaint procedures was published. This notice, with some revisions, now constitutes the new § 70.7. The attachments are now being republished for easy reference, and a new attachment 7 is added. A proposed amendment with respect to reconsideration was issued August 25, 1981 (46 FR 42876) which is hereby revoked without further action. This topic may be addressed at a later date. This rule pertains to a military function, and the opportunity for public comments is provided solely to improve internal management of the federal government. This opportunity does not create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers or any party. In view of the importance of improving DoD procedures on this subject at the earliest possible date, the comment period is limited to thirty days.

This proposed rule is being coordinated with the Military Departments and is subject to revision during that coordination process.

List of Subjects in 32 CFR Part 70

Administrative practice and procedure, Military personnel.

PART 70—DISCHARGE REVIEW BOARDS (DRBs) PROCEDURES AND STANDARDS

Accordingly, it is proposed to amend 32 CFR Part 70 as follows:

1. Section 70.1 is amended by adding new paragraphs (a) (5) and (6) to read as follows:

§ 70.1 Purpose.

(a) * * *

(5) Establishes procedures for the preparation of decisional documents and index entries.

(6) Provides guidance for processing complaints concerning decisional documents and index entries.

* * * * *

2. Section 70.2 is revised to read as follows:

§ 70.2 Applicability.

The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, and, by agreement with the Secretary of Transportation, to the Coast Guard.

3. Section 70.3 is amended by revising paragraph (c) renumbering existing paragraphs (f), (g), (h) and (i), as (g), (h), (i) and (j), and by adding new paragraphs (f) and (k).

§ 70.3 Definitions.

* * * * *

(c) *Applicant.* A former member of the Armed Forces who has been discharged or dismissed administratively in accordance with the directives of the Military Departments or by sentence of a court-martial (other than a general court-martial) and, in accordance with statutory regulatory provisions, whose application is accepted by the DRB concerned or whose case is heard on the DRB's own motion. If the former member is deceased or incompetent, the term "applicant" includes the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member. When the term "applicant" is used in §§ 70.5-70.7, it includes the applicant's counsel/representative, except that the counsel/representative may not submit an application for review, waive the applicant's right to be present at a hearing, or terminate a review without providing the DRB with the written consent of the applicant.

* * * * *

(f) *Hearing.* A review involving an appearance before the DRB by applicant or on the applicant's behalf by a counsel/representative.

* * * * *

(k) *Complainant.* A person who submits a complaint concerning a decisional document or index entry under § 70.7.

4. § 70.4 is amended by adding paragraph (c)(6), reading as follows:

§ 70.4 Policy and responsibilities.

* * * * *

(c) * * *

(6) Maintain the Index of Decisions and provide for timely modification of index categories to reflect changes in discharge review policies, procedures, and standards issued by the Office of the Secretary of Defense and the Military Departments.

5. Section 70.5 is amended by revising paragraphs (a), (b)(3), (6), (8)(vi), (c)(4), (5), (9), and (d); removing paragraphs (b)(13) through (15); adding paragraphs (c)(11) and (12); redesignating paragraphs (e) through (i) as (i) through (m); adding new paragraphs (e) through (h); and revising new (m)(4)(ii) and (iii) to read as follows:

§ 70.5 Discharge review procedures.

(a) *Application for review.* (1) *In general.* Applications shall be submitted to the appropriate Discharge Review Board on DD Form 293, "Application for Review of Discharge or Separation from the Armed Forces of the United States," with such other statements, affidavits, or documentation as desired. It is to the applicant's advantage to submit such documents with the application or within 60 days thereafter in order to permit a thorough screening of the case. The DD Form 293 is available at most DoD installations and regional offices of the Veterans Administration, or by writing to the Armed Forces Discharge Review/Correction Board Reading Room, The Pentagon Concourse, Washington, D.C. 20310.

(2) *Timing.* A motion or request for review must be made within 15 years after the date of discharge or dismissal.

(3) *Applicant's responsibilities.* An applicant may request a change in the character of or reason for discharge (or both).

(i) *Character of discharge.* Block 5 of DD Form 293 provides an applicant an opportunity to request a specific change in character of discharge (*e.g.*, General Discharge to Honorable Discharge; Other than Honorable Discharge to General or Honorable Discharge; Bad-Conduct Discharge to General or Honorable Discharge.) A request for review from an applicant who does not have an Honorable Discharge will be treated as a request for a change to an Honorable Discharge unless the applicant requests a specific change to another character of discharge.

(ii) *Reason for discharge.* Block 5 of DD Form 293 provides an applicant an opportunity to request a specific change in the reason for discharge. If an applicant does not request a specific change in the reason for discharge, the DRB will presume that the request for review does not involve a request for change in the reason for discharge. Under its responsibility to examine the propriety and equity of an applicant's discharge, the DRB will change the reason for discharge if such a change is warranted.

(iii) The applicant must ensure that issues submitted to the DRB are consistent with the request for change in discharge set forth in Block 5 of the DD Form 293. If an ambiguity is created by a difference between an applicant's issue and the request in Block 5, the DRB will respond to the issue in the context of the action requested in Block 5. In the case of a hearing, the DRB will attempt to resolve the ambiguity under paragraph (a)(5) of this section.

(4) *Request for consideration of specific issues.* An applicant may request the DRB to consider specific issues which, in the opinion of the applicant, form a basis for changing the character of or reason for discharge, or both. In addition to the guidance set forth in this section, applicants should consult the other paragraphs in this section (particularly paragraphs (c), (d), and (e) and § 70.6 and § 70.7 prior to submitting issues for consideration by the DRB.

(i) *Submission of issues on DD Form 293.* Issues must be provided to the DRB on DD Form 293 prior to when the DRB closes the review process for deliberation.

(A) An issue must be stated clearly and specifically in order to enable the DRB to understand the nature of the issue and its relationship to the applicant's discharge.

(B) Each issue submitted by an applicant should be listed separately. Submission of a separate statement for each issue provides the best means of ensuring that the full import of the issue is conveyed to the DRB.

(C) *Use of DD Form 293.* DD Form 293 provides applicants with a standard format for submitting issues to the DRB.

(*1*) Use of the form provides a means for an applicant to set forth clearly and specifically those matters which, in the opinion of the applicant, provide a basis for changing the discharge.

(*2*) Use of the form assists the DRB in focusing on those matters considered to be important by an applicant.

(*3*) Use of the form assists the DRB in distinguishing between a matter submitted by an applicant in the expectation that it will be treated as a decisional issue under paragraph (e) this section and those matters submitted simply as background or supporting materials.

(*4*) Use of the form provides the applicant with greater rights in the event that the applicant subsequently submits a complaint under § 70.7(d)(1)(iii) concerning the decisional document.

(*5*) Use of the form reduces the potential for disagreement as to the content of an applicant's issue.

(D) *Incorporated by reference.* If the applicant makes an additional written submission, such as a brief, in support of the application, the applicant may incorporate by reference specific issues set forth in the written submission in accordance with the guidance on DD Form 293. The reference shall be specific enough for the DRB to identify clearly the matter being submitted as an issue. At a minimum, it shall identify the page, paragraph, and sentence incorporated. Because it is to the applicant's benefit to bring such issues to the DRB's attention as early as possible in the review, applicants who submit a brief are strongly urged to set forth all such issues as a separate item at the beginning of the brief. If it reasonably appears that the applicant inadvertently has failed expressly to incorporate an issue which the applicant clearly identifies as an issue to be addressed by the DRB, the DRB shall respond to such an issue under paragraphs (d) and (e), this section.

(ii) *Relationship of issues to character of or reason for discharge.* If the application applies to both character of and reason for discharge, the applicant is encouraged, but not required, to identify the issue as applying to the character of or reason for discharge (or both). Unless the issue is directed at the reason for discharge expressly or by necessary implication, the DRB will presume that it applies solely to the character of discharge.

(iii) *Relationship of issues to the standards for discharge review.* The DRB reviews discharges on the basis of issues of propriety and equity. The standards used by the DRB are set forth in § 70.6. The applicant is encouraged to review those standards prior to submitting any issue upon which the applicant believes a change in discharge should be based.

(A) *Issues concerning the equity of the discharge.* An issue of equity is a matter that involves a determination as to whether a discharge should be changed under the equity standards of § 70.6. This includes any issue, submitted by the applicant in

accordance with paragraph (a)(4)(i) this section, above, which is addressed to the discretionary authority of the DRB.

(B) *Issues concerning the propriety of a discharge.* An issue of propriety is a matter that involves a determination as to whether a discharge should be changed under the propriety standards of § 70.6. This includes an applicant's issue, submitted in accordance with paragraph (a)(4)(i), this section, in which the applicant's position is that the discharge must be changed because of an error in the discharge pertaining to a regulation, statute, constitutional provision, or other source of law (including a matter that requires a determination as to whether, under the circumstances of the case, action by military authorities was arbitrary, capricious, or an abuse of discretion.)

(C) *The applicant's identification of an issue.* The applicant is encouraged, but not required, to identify an issue as pertaining to the propriety or the equity of the discharge. This will assist the DRB in assessing the relationship of the issue to propriety or equity under paragraph (e)(1) (iii), this section.

(iv) *Citation of matter from decisions.* The primary function of the DRB involves the exercise of discretion on a case-by-case basis. Applicants are not required to cite prior decisions as the basis for a change in discharge. If the applicant wishes to bring the DRB's attention to a prior decision as background or illustrative material, the citation should be placed in a brief or other supporting documents. In such a case, the citation should not be set forth or expressly incorporated in the Applicant's Issue portion of DD Form 293. If, however, it is the applicant's intention to submit an issue that sets forth specific principles and facts from a specific cited decision, the following requirements are applicable:

(A) If an applicant's issue cites a prior decision (of the DRB, another board, an agency, or a court), the applicant shall describe the specific principles and facts that are contained in the prior decision and explain the relevance of cited matter to the applicant's case.

(B) In order to facilitate timely consideration of principles cited from unpublished opinions (including decisions issued by the Armed Forces Discharge Review Board/Corrective Board-Reading Room), applicants must provide the DRB with copies of such decisions or of the relevant portion of the treatise, manual or similar source in which the principles were discussed. At the applicant's request, such materials will be returned.

(C) If the applicant fails to comply with the requirements in paragraphs (a)(4)(iv)(A) or (B), this section, the decisional document shall note the defect, and shall respond to the issue without regard to the citation.

(5) *Identification by the DRB of issues submitted by an applicant.* The applicant's issues shall be identified in accordance with this section after a review of the materials noted under paragraph (c)(4) of this section.

(i) *Issues on DD Form 293.* The DRB shall consider all items submitted as issues by an applicant on DD Form 293 (or incorporated therein) in accordance with paragraph (a)(4)(i) of this section. With respect to applications submitted prior to [the effective date of the amendments to this enclosure], the DBR shall consider all issues clearly and specifically presented by the applicant.

(ii) *Amendment of issues.* The DRB shall not request or instruct an applicant to reword, withdraw, or amend any matter submitted by the applicant. Nothing in this provision:

(A) Limits the DRB's authority to question an applicant as to the meaning of such matter;

(B) Precludes the DRB from developing decisional issues based upon such questions;

(C) Prevents the applicant from amending or withdrawing such matter any time prior to when the DRB closes the review process for deliberation; or

(D) Prevents the DRB from presenting an applicant with a list of proposed decisional issues and written information concerning the right of the applicant to add to, amend, or withdraw the applicant's submission. The written information will note that the applicant's decision to take such action (or decline to do so) will not be used against the applicant in the consideration of the case.

(iii) *Additional issues identified during a personal appearance hearing.* The following additional procedure shall be used during personal appearance hearings in order to promote the DRB's understanding of an applicant's presentation. If, prior to closing the case for deliberation, the DRB believes that an applicant has presented an issue not listed on DD Form 293, the DRB may so inform the applicant, and the applicant may submit the issue in writing or add additional written issues at that time. This does not preclude the DRB from developing its own decisional issues.

(6) *Notification of possible bar to benefits.* Written notification shall be made to each applicant whose record indicates a reason for discharge that bars receipt of benefits under 38 U.S.C. 3103a. This notification will advise the applicant that separate action by the Board for Correction of Military/Naval Records and/or the Veterans Administration may confer eligibility for VA benefits. As regards the bar to benefits based upon the 180 days consecutive unauthorized absence:

(i) Such absence must have been included as part of the basis for the applicant's discharge under other than honorable conditions.

(ii) Such absence is computed without regard to the applicant's normal or adjusted expiration of term of service.

(b) *Conduct of reviews.* * * *

* * * * *

(3) *Types of review.* An applicant, upon request, is entitled to:

(i) *Record review.* A review of the application, available service records, and additional documents (if any) submitted by the applicant.

(ii) *Hearing.* A review involving an appearance before the DRB by the applicant or counsel/representative (or both)

* * * * *

(6) *Failure to appear at a hearing or respond to a scheduling notice.* Except as otherwise authorized by the Secretary concerned, further opportunity for a hearing shall not be made available in the following circumstances to an applicant who has requested a hearing:

(i) When the applicant, after being duly notified of the time and place of the hearing, fails to appear at the appointed time, either in person or by representative, without having made a prior, timely request for a continuation or withdrawal; or

(ii) When the applicant has received a scheduling notice and fails to make a timely response.

(iii) In such cases, the applicant shall be deemed to have waived the right to a hearing, and the DRB shall complete its review of the discharge. Further request for a hearing shall not be granted unless the applicant can demonstrate that the failure to appear or respond was due to circumstances beyond the applicant's control.

* * * * *

(8) * * *

(vi) Where the case was not previously considered under uniform standards pubished pursuant to Pub. L. 95–126 and such application is made within 15 years after the date of discharge; or

* * * * *

(c) *Decision Process.* (1) * * *

(4) The DRB shall identify and address issues in accordance with this Directive afer a review of the following material to the extent presented in accordance with this Directive and the

implementing instructions of the DRB: available official records, documentary evidence submitted by or on behalf of an applicant, presentation of a hearing examination, testimony by or on behalf of an applicant, oral or written arguments presented by or on behalf of an applicant, and any other relevant evidence obtained in accordance with this Directive.

(5) If the applicant who has requested a hearing does not respond to a scheduling notice or does not appear for a scheduled hearing, the DRB may complete the review on the basis of material previously submitted.

* * * * *

(9) There is no requirement for a statement of minority views in the event of a split vote. The minority, however, may submit a brief statement of its views under procedures established by the Secretary concerned.

* * * * *

(11) The preliminary determinations required by 38 U.S.C. 3103(c) shall be made upon majority vote of the DRB concerned on an expedited basis. Such determination shall be based upon the standards set forth in § 70.6.

(12) The DRB shall:

(i) Address items submitted as issues by the applicant under paragraph (d) of this section;

(ii) Address decisional issues under paragraph (e) of this section; and

(iii) Prepare a decisional document in accordance with paragraph (h) of this section.

(d) *Response to items submitted as issues by the applicant.*—(1) *General guidance.* (i) Paragraph (a) of this section governs the general responsibilities of the applicant and the DRB with respect to submitting and identifying the applicant's issues. Guidance on the relationship of the applicant's issues to character of or reason for discharge, and to the standards of propriety and equity is set forth in paragraph (e)(1) of this section.

(ii) If an issue submitted by an applicant contains two or more clearly separate issues, the DRB should respond to each issue under the guidance of this paragraph as if it had been set forth separately by the applicant.

(iii) If an applicant uses a "building block" approach (*i.e.*, setting forth a series of conclusions on issues that lead to a single conclusion purportedly warranting a change in the applicant's discharge), normally there should be a separate response to each issue.

(iv) Nothing in this paragraph precludes the DRB from making a single response to multiple issues when such action would enhance the clarity of the decisional document, but such reponse must reflect adequate consideration of each separate issue.

(2) *Decisional issues.* An item submitted as an issue by an applicant in acordance with this Directive shall be addressed as a decisional issue under paragraph (e) of this section in the following circumstances:

(i) When the DRB decides that a change in discharge should be granted, and the DRB bases its decision in whole or inpart on the applicant's issue; or

(ii) When the DRB does not provide the applicant with the full change in discharge requested, and the decision is based in whole or in part on the DRB's disagreement on the merits with an issue submitted by the applicant.

(3) *Response to items not addressed as decisional issues.* (i) If the applicant receives the full change in discharge requested (or a more favorable change), that fact shall be noted and the basis shall be addressed as a decisional issue. No further response is required to other issues submitted by the applicant.

(ii) If the applicant does not receive the full change in discharge requested with respect to either the character of or reason for discharge (or both), the DRB shall address the items submitted by the applicant under paragraph (e) of this section (decisional issues) unless one of the following responses is applicable:

(A) The DRB may state that there is a full response to the issue submitted by the applicant under a specified decisional issue. This response may be used only when one issue clearly duplicates another or the issue clearly requires discussion in conjunction with another issue.

(B) The DRB may state that the applicant's issue, which consists of a citation to a decision without setting forth the principles and facts from the decision that are relevant to the applicant's case, does not comply with the requirements of paragraph (a)(4)(iv)(A) of this section.

(C) The DRB may state that it cannot respond to an item submitted by the applicant as an issue because the meaning of the item is unclear. An issue is unclear if it cannot be understood by a reasonable person familiar with the discharge review process after a review of the materials considered under paragraph (c)(4) of this section.

(D) The DRB may state that it cannot respond to an item submitted by the applicant as an issue because it is not specific. Such a submission is not specific if a reasonable person familiar with the discharge review process, after a review of the materials considered under paragraph (c)(4) of this section, could not determine the relationship between the applicant's submission and the particular circumstances of the case. This response may be used only if the submission is expressed in such general terms that no other response is applicable. For example, if the DRB disagrees with the applicant as to the relevance of matters set forth in the submission, the DRB normally will set forth the nature of the disagreement under the guidance in paragraph (e) of this section, with respect to decisional issues, or it will reject the applicant's position on the basis of paragraphs (d)(3)(ii)(A) or (d)(3)(ii)(B) of this sections. If the applicant's submission is so general that none of those provisions is applicable, then the DRB may state that it cannot respond because the item is not specific.

(e) *Decision issues.* (1) *In general.* Under the guidance in this section, the decisional document shall discuss the issues that provide a basis for the decision as to whether there should be a change in the character of or reason for discharge.

(i) *Partial change.* When the decision changes a discharge, but the decision does not provide the applicant with the full change in discharge requested, the decisional document shall address both the issues upon which change is granted and the issues upon which the DRB denies the full change requested.

(ii) *Relationship of issue to character of or reason for discharge.* As a general matter, the decisional document should specify whether a decisional issue applies to the character of or reason for discharge (or both), but it is not required to do so.

(iii) *Relationship of an issue to propriety or equity.* (A) If an applicant identifies an issue as pertaining to both propriety and equity, the DRB will consider it under both standards.

(B) If an applicant identifies an issue as pertaining to the propriety of the discharge (e.g., by citing a propriety standard or otherwise claiming that a change in discharge is required as a matter of law), the DRB shall consider the issue solely as a matter of propriety. Except as provided in paragraph (e)(1)(iii)(D) of this section, the DRB is not required to consider such an issue under the equity standards, but may do so in its discretion if it adopts the issue in whole or in part as a decisional issue providing a basis for granting a change in the discharge.

(C) If the applicant's issue contends that the DRB is required as a matter of law to follow a prior decision (including a case decided by the DRB, another agency, or a court) by setting forth an issue of propriety from the prior decision

and describing its relationship to the applicant's case, the issue shall be considered under the propriety standards and addressed under paragraphs (e)(2) or (e)(3) of this section.

(D) If the applicant's issue sets forth principles or equity contained in a prior DRB decision, describes the relationship to the applicant's case and contends that the DRB is required as a matter of law to follow the prior case, the decisional document shall note that the DRB is not bound by its discretionary decisions in prior cases under the standards in § 70.6. However, the principles cited by the applicant, and the description of the relationship of the principles to the applicant's case, shall be considered under the equity standards and addressed under paragraphs (e)(5) or (e)(6) of this section.

(E) If the applicant's issue cannot be identified as a matter of propriety or equity, the DRB shall address it as an issue of equity.

(2) *Change of discharge: issues of propriety.* If a change in the discharge is warranted under the propriety standards in § 70.6, the decisional document shall note that conclusion and list the errors or expressly retroactive changes in policy that provide a basis for the conclusion. The decisional document shall cite the facts in the record that demonstrate the relevance of the error or change in policy to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not granting the full change shall be addressed under the guidance in paragraphs (e)(3) or (e)(6) of this section.

(3) *Denial of the full change requested: issues of propriety.* (i) If the decision rejects the applicant's position on an issue of propriety, or if it is otherwise decided on the basis of an issue or propriety that the full change in discharge requested by the applicant is not warranted, the decisional document shall note that conclusion.

(ii) The decisional document shall list reasons for its conclusion on each issue of propriety under the following guidance:

(A) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the DRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the particular circumstances in the case.

(B) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event of circumstance, including a factor required by applicable service regulations to be considered for determination of the character of and reason for the applicant's discharge, the DRB shall make a finding of fact for each such event or circumstance.

(*1*) For each such finding, the decisional document shall list the source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in service record section of the decisional document, a citation is not required.

(*2*) If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the DRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the DRB did not find the applicant's testimony to be credible enough to overcome the presumption.

(C) If the DRB disagrees with the position of the applicant on an issue of propriety, the following guidance applies in addition to the guidance in paragraphs (e)(3)(ii) (A) and (B) of this section:

(*1*) The DRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with paragraph (a)(4)(iv) of this section).

(*2*) The DRB may reject the applicant's position by explaining why the principles set forth in the applicant's issues (including principles derived from cases cited by the applicant in accordance with paragraph (a)(4)(iv) of this section are not relevant to the applicant's case.

(*3*) The DRB may reject an applicant's position by stating that the applicant's issue of propriety is not a matter upon which the DRB grants a change in discharge, and by providing an explanation for this position. This basis will not be used when the applicant indicates that the issue is to be considered in conjunction with one or more other specified issues (including a request by the applicant that the same issue be considered as an issue of equity as well as an issue of propriety) unless it is applicable in the context of the other issues.

(*4*) The DRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the DRB agreed with the applicant's position.

(*5*) If the applicant takes the position that the discharge must be changed because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the DRB may respond that it will presume the validity of the record in the absence of such corrective action. If the organization empowered to correct the record is within the Department of Defense, the DRB shall provide the applicant with brief information as to process for obtaining a correction of the record. The DRB shall address the issue as a matter of equity under paragraphs (d)(5) or (d)(6) of this section.

(4) *Denial of the full change in discharge requested when property is not at issue.* If the applicant has not submitted an issue of propriety and the DRB has not otherwise relied upon an issue of propriety to change the discharge, the decisional document shall contain a statement to that effect. The DRB is not required to provide any further discussion as to the propriety of the discharge.

(5) *Change discharge: issues of equity.* If the DRB concludes that a change in the discharge is warranted under the equity standards in § 70.6, the decisional document shall list each issue of equity upon which this conclusion is based. The DRB shall cite the facts in the record that demonstrate the relevance of the issue the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not giving the full change requested shall be discussed under the guidance in paragraph (e)(6) of this section.

(6) *Denial of the full change in discharge requested: issues of equity.* (i) If the DRB rejects the applicant's position on an issue of equity, or if the decision otherwise provides less than the full change in discharge requested by the applicant, the decisional document shall note that conclusion.

(ii) The DRB shall list reasons for its conclusion on each issue of equity under the following guidance:

(A) If a reason is based in whole or in part upon a regulation, statute,

constitutional provision, judicial determination, or other source of law, the DRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the exercise of discretion on the issue of equity in the applicant's case.

(B) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable service regulations to be considered for determination of the character of and reason for the applicant's discharge, the DRB shall make a finding of fact for each such event or circumstance.

(*1*) For each such finding, the decisional document shall list the source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in service record section of the decisional document, a citation is not required.

(*2*) If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the DRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption or regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the DRB did not find the applicant's testimony to be credible enough to overcome the presumption.

(C) If the DRB disagrees with the position of the applicant on an issue of equity, the following guidance applies in addition to the guidance in paragraphs (e)(6)(ii)(A) and (B) of this section.

(*1*) The DRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with paragraph (a)(4)(iv) of this section.

(*2*) The DRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant) are not relevant to the applicant's case.

(*3*) The DRB may reject an applicant's position by explaining why the applicant's issue is not a matter upon which the DRB grants a change in discharge as a matter of equity. This basis will not be used when the applicant indicates that the issue is to be considered in conjunction with one or more other specified issues (including a request that the same issue be considered under the propriety standards) unless it is applicable in the context of the other issues.

(*4*) The DRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the DRB agreed with the applicant's position.

(*5*) If the applicant takes the position that the discharge should change as a matter of equity because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the DRB may respond that it will presume the validity of the record in the absence of such corrective action. However, the DRB will consider whether it should exercise its equitable powers to change the discharge on the basis of the alleged error. If it declines to do so, it shall explain why the applicant's position did not provide a sufficient basis for the change in the discharge requested by the applicant.

(D) If the applicant has not submitted any issues of propriety or equity and the DRB has not otherwise relied upon an issue of equity for a change in discharge, the decisional document shall contain a statement to that effect, and shall note that the major factors upon which the discharge was based are set forth in the service record portion of the decisional document.

(f) *The recommendation of the DRB President.*—(1) *In general.* The President of the DRB may forward cases for consideration by the Secretarial Reviewing Authority (SRA) under rules established by the Secretary concerned. There is no requirement that the President submit a recommendation when a case is forwarded to the SRA. If the President makes a recommendation with respect to the character of or reason for discharge, however, the recommendation shall be prepared under the guidance in paragraph (f)(2) of this section. Under procedures established by the Secretary concerned, the President of the DRB may request that a proposed recommendation be prepared, but only such part of the draft as is used by the President shall become a part of the record.

(2) *Format for recommendation.* If a recommendation is provided, it shall contain the President's views as to whether there should be a change in the character of or reason for discharge (or both). If the President recommends such a change, the particular change to be made shall be specified. The recommendation shall set forth the President's position on decisional issues and issues submitted by the applicant under the following guidance:

(i) *Adoption of the DRB's decisional document.* The recommendation may state that the President has adopted the decisional document prepared by the majority. The President shall ensure that the decisional document meets the requirements of this enclosure.

(ii) *Adoption of the specific statements from the majority.* If the President adopts the views of the majority only in part, the recommendation shall cite the specific matter adopted from the majority. To the extent that the President modifies a statement submitted by the majority, the recommendation shall set forth the modification.

(iii) *Response to issues not included in matter adopted from the majority.* The recommendation shall set forth the following to the extent not adopted in whole or in part from the majority:

(A) The issues on which the President's recommendation is based. Each such decisional issue shall be addressed by the President under paragraph (e) of this section.

(B) The President's response to items submitted as issues by the applicant under paragraph (d) of this section.

(C) Reasons for rejecting the conclusions of the majority with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in greater relief for the applicant than that afforded by the President's recommendation. Such issues shall be addressed under the principles in paragraph (e) of this section.

(g) *Secretarial Reviewing Authority (SRA).* (1) *Review by the SRA.* The Secretarial Reviewing Authority (SRA) is the Secretary concerned or the official to whom Secretary's discharge review authority has been delegated.

(i) The SRA may review the following types of cases prior to issuance of the final notification of a decision:

(A) Any specific case in which the SRA has an interest.

(B) Any specific case which the President of the DRB believes is of significant interest to the SRA.

(ii) Cases reviewed by the SRA shall be considered under the standards set forth in § 70.6.

(2) *Processing the decisional document.* (i) The decisional document shall be transmitted by the DRB President under paragraph (e) of this section.

(ii) The following guidance applies to cases that have been forwarded to the SRA except for cases reviewed on the DRB's own motion without the participation of the applicant or the applicant's counsel:

(A) The applicant and counsel or representative, if any, shall be provided with a copy of the proposed decisional document, including the DRB President's recommendation to the SRA, if any. Classified information shall be summarized.

(B) The applicant shall be provided with a reasonable period of time, but not less than 25 days, to submit to the SRA a rebuttal. An issue in rebuttal consists of a clear and specific statement by the applicant in support of or in opposition to the statements of the DRB or DRB President on decisional issues and other clear and specific issues that were submitted by the applicant in accordance with paragraph (a)(4)(i) of this section. The rebuttal shall be based solely on matters in the record prior to when the DRB closed the case for deliberation or in the President's recommendation.

(3) *Review of the decisional document.* If corrections in the decisional document are required, the decisional document shall be returned to the DRB for corrective action. The corrected decisional document shall be sent to the applicant (and counsel, if any), but a further opportunity for rebuttal is not required unless the correction produces a different result or includes a substantial change in the discussion by the DRB (or DRB President) of the issues raised by the majority or the applicant.

(4) *The Addendum of the SRA.* The decision of the SRA shall be in writing and shall be appended as an addendum to the decisional document under the guidance in paragraph (g)(4) of this section.

(i) *The SRA's decision.* The addendum shall set forth the SRA's decision as to whether there will be a change in the character of or reason for discharge (or both); if the SRA concludes that a change is warranted, the particular change to be made shall be specified. If the SRA adopts the decision recommended by the DRB or the DRB President, that fact shall be noted and no further statement is required.

(ii) *Discussion of issues.* In support, of the SRA's decision, the addendum shall set forth the SRA's position on decisional issues, items submitted as issues by an applicant in accordance with paragraph (a)(4)(i) of this section and issues raised by the DRB and the DRB President in accordance with the following guidance:

(A) *Adoption of the DRB President's recommendation.* The addendum may state that the SRA has adopted the DRB President's recommendation.

(B) *Adoption of the DRB's proposed decisional document.* The addendum may state that the SRA has adopted the proposed decisional document prepared by the DRB.

(C) *Adoption of specific statements from the majority or the DRB President.* If the SRA adopts the views of the DRB or the DRB President only in part, the addendum shall cite the specific statements adopted. To the extent that the SRA modifies a statement submitted by the DRB or the DRB President, the Addendum shall set forth the modification.

(D) *Reponse to issues not include in matter adopted from the DRB or the DRB President.* The Addendum shall set forth the following to the extent not adopted in whole or in part from the DRB or the DRB President:

(*1*) A list of the issues on which the SRA's decision is based. Each such decisional issue shall be addressed by the SRA under paragraph (e) of this section. This includes reasons for rejecting the conclusion of the DRB or the DRB President with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in change to this discharge more favorable to the applicant than that afforded by the SRA's decision. Such issues shall be addressed under the principles in paragraph (e) of this section.

(*2*) The SRA's response to item submitted as issues by the applicant under paragraph (d) of this section.

(iii) *Response to the rebuttal.* (A) If the SRA grants the full change in discharge requested by the applicant (or a more favorable change), that fact shall be noted, the decisional issues shall be addressed under paragraph (e) and no further response to the rebuttal is required.

(B) If the SRA does not grant the full change in discharge requested by the applicant (or a more favorable change) the addendum shall list each issue in rebuttal submitted by an applicant in accordance with paragraph (g)(4) of this section, and shall set the forth response of the SRA under the following guidance:

(*1*) If an issue in rebuttal alleges an error of law or fact in the proposed decisional document, and the statements of the DRB or DRB President adopted by the SRA (if any) do not provide a basis for rejecting the rebuttal, the SRA shall explain the reasons for rejecting the rebuttal material under the principles in paragraph (e) of this section.

(*2*) If the SRA adopts the discussion of issues prepared by the DRB or the DRB President, and such discussion provides a basis for the SRA's rejection of the rebuttal material, the SRA may note that fact in his statement of adoption.

(*3*) If the matter submitted by the applicant does not meet the requirements for rebuttal material in paragraph (b)(2)(iii)(B) of this section, that fact shall be noted.

(iv) *Index entries.* Appropriate index entries shall be prepared for the SRA's actions for such matters as are not adopted from the DRB's proposed decisional document.

(h) *The Decisional Document.* A decisional document shall be prepared for each review. At a minimum, this document shall contain:

(1) The circumstances and character of the applicant's service as extracted from available service records, including health records, and information provided by other government authorities or the applicant, such as, but not limited to:

(i) Information concerning the discharge at issue in the review, including:

(A) Date of discharge.

(B) Character of discharge.

(C) Reason for discharge.

(D) The specific regulatory authority under which the discharge was issued.

(ii) Date of enlistment.

(iii) Period of enlistment.

(iv) Age at enlistment.

(v) Length of service.

(vi) Periods of unauthorized absence.

(vii) Conduct and efficiency ratings (numerical or narrative).

(viii) Highest rank achieved.

(ix) Awards and decorations.

(x) Educational level.

(xi) Aptitude test scores.

(xii) Incidents of punishment, pursuant to Article 15, Uniform Code of Military Justice (including nature and date of offense or punishment).

(xiii) Convictions by court-martial.

(xiv) Prior military service and type of discharge received.

(2) A list of the type of documents submitted by or on behalf of the applicant (including a written brief, letters of recommendation, affidavits concerning the circumstances of the

discharge, or other documentary evidence), if any.

(3) A statement as to whether the applicant testified, and a list of the type of witnesses, if any, who testified on behalf of the applicant.

(4) A notation as to whether the application pertained to the character of discharge, the reason for discharge, or both.

(5) The DRB 's conclusions as to the following matters:

(i) Whether the character of or reason for discharge should be changed.

(ii) The specific changes to be made, if any.

(6) A list of the items submitted as issues on DD Form 293 or expressly incorporated therein and such other items submitted as issues by the applicant that are identified as inadvertently omitted under paragraph (a)(4)(i)(E) of this section. If the issues are listed on DD Form 293, a copy of the relevant portion of the form may be attached.

(7) The response to the items submitted as issues by the applicant under the guidance in paragraph (d) of this section.

(8) A list of decisional issues and a discussion of such issues under the guidance in paragraph (e) of this section.

(9) Minority views, if any.

(10) The recommendation of the DRB President when required by paragraph (f) of this section.

(11) The Addendum of the Secretarial Reviewing Authority when required by paragraph (g) of this section.

(12) Advisory opinions, including those containing factual information, where such opinions have been relied upon for final decision or have been accepted as a basis for rejecting any of the applicant's issues. Such advisory opinions or relevant portions thereof that are not fully set forth in the discussion of decisional issues or otherwise in response to items submitted as issues by the application shall be incorporated by reference therein. A copy of opinions incorporated by reference shall be appended to the decision and included in the record of proceedings.

(13) A record of the voting, including:

(i) The number of votes for the DRB's decision and the number of votes in the minority, if any.

(ii) The DRB member's names and votes. The copy provided to the applicant may substitute a statement that the names and votes will be made available to the applicant at the applicant's request.

(14) Index entries under appropriate categories listed in the Index of Decisions.

(15) An authentication of the document by an appropriate official.

* * * * *

(m) *Availability of DRB Documents for Public Inspection and Copying.*

* * * * *

(4) * * *

(ii) The index shall be maintained at selected permanent locations throughout the United States. This ensures that it is reasonably available to applicants at least 30 days prior to a traveling panel review. A list of these locations shall be published in the **Federal Register** by the Department of the Army. The index shall also be made available at sites selected for traveling panel hearings hearing examinations for such periods as the DRB or a hearing examiner is present and in operation. An applicant who has requested a traveling panel review or a hearing examination shall be advised of the permanent index locations in the notice of such review.

(iii) The Armed Forces Discharge Review/Correction Board Reading Room shall publish indexes quarterly for all Boards. All Boards will be responsible for timely submission to the Reading Room of individual case information required for update of the indexes. In addition, all Boards will be responsible for submission of new index categories based upon published changes in policy, procedures, or standards. These indexes shall be available for public inspection or purchase (or both) at the Reading Room. When the DRB has accepted an application, information concerning the availability of the index shall be provided in the DRB's response to the application.

* * * * *

6. Section 70.6 is amended by adding a sentence to the end of paragraph (a); redesignating paragraph (b) as (c) and paragraph (c) as (b); revising new paragraph (c), to read as follows:

§ 70.6 Discharge review standards.

(a) *Objective of Review.* * * * An applicant may not receive a less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

(b) *Equity.* * * *

(c) *Propriety.* (1) A discharge shall be deemed proper unless, in the course of discharge review, it is determined that:

(i) There exists an error of fact, law, procedure, or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error, if there is substantial doubt that the discharge would have remained the same if the error had not been made); or

(ii) A change in policy by the Military Service of which the applicant was a member, made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

(2) When a record associated with the discharge at the time of issuance involves a matter in which the primary responsibility for corrective action rests with another organization (*e.g.*, another board, agency, or court), the DRB will determine that there has been an error only to the extent that an error has been identified by the organization with primary responsibility for correcting the record.

(3) The primary function of the DRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions in which the DRB exercised its discretion to change a discharge based on issues of equity (including the factors cited in such decisions or the weight given to factors in such decisions) do not bind the DRB in its review of subsequent cases.

(4) The following applies to applicants who received less than fully honorable administrative discharges because of their civilian misconduct while in an inactive reserve component and who were discharged or had their discharge reviewed on or after April 20, 1971: the DRB shall either recharacterize the discharge to honorable without any additional proceedings or complete a review to determine whether proper grounds exist for the issuance of a less than honorable discharge, taking into account that:

(i) An other than honorable (formerly undesirable) discharge can only be based upon civilian misconduct found to have affected directly the performance of military duties;

(ii) A general discharge can only be based upon civilian misconduct found to have had an adverse impact on the overall effectiveness of the military, including military morale and efficiency.

7. Part 70 is further amended by adding a new § 70.7, reading as follows:

§ 70.7 Complaints concerning decisional documents and index entries.

(a) *In general.*—(1) The procedures in this section are established for the purpose of ensuring that decisional documents and index entries issued by the DRB of the Military Departments comply with the decisional document and index entry principles of this proposed rule.

(2) This section may be modified or supplemented by the Deputy Assistant Secretary of Defense for Military Personnel and Force Management (DASD) (MP&FM).

(3) Any person may correspond with the Office of the Secretary of Defense concerning decisional documents or index entries issued by the DRB.

(4) The Department of Defense is committed to timely processing of complaints within the priorities and processing goals set forth in paragraph (d)(1)(iii) of this section. This commitment, however, is conditioned upon reasonable use of the complaint process in accordance with the following considerations. The discharge review boards were established for the benefit of former members of the armed forces. The complaint process can aid such persons most effectively if it is used by former members of the armed forces when necessary to obtain correction of their own decisional documents or to prepare for discharge reviews. If a substantial number of complaints submitted by others interferes with the ability of the DRBs to process applications for discharge review, the Department of Defense will adjust the processing goals to ensure that the system operates to the primary advantage of applicants.

(5) The DASD(MP&FM) is the final authority with respect to action on such correspondence.

(b) *The Joint Service Review Activity (JSRA).*—A three member Joint Service Review Activity (JSRA) consisting of one judge advocate from each Military Department shall advise the DASD(MP&FM). The operations of the JSRA shall be coordinated by a full-time administrative director, who shall serve as recorder during meetings of the JSRA. The members and the administrative director shall serve at the direction of the DASD(MP&FM).

(c) *Classification and control of correspondence.*—

(1) Correspondence with the Office of the Secretary of Defense concerning decisional documents or index entries issued by the DRBs should be addressed as follows:

Joint Service Review Activity, OASD (MRA&L) (MP&FM), Washington, D.C. 20301

(2) All such correspondence shall be controlled by the administrative director through the use of a uniform docketing procedure.

(3) All such correspondence shall be reviewed by the administrative director and categorized as either a complaint or an inquiry in accordance with the following:

(i) A complaint is any correspondence in which it is alleged that a decisional document or and index entry issued by a DRB contains a specifically identified violation of the Stipulation of Dismissal or the decisional document or index entry principles of this Part. A complainant who alleges error with respect to a decisional document issued to another persom must also specifically set forth the grounds for determining that a reasonable person familiar with the discharge review process could not understand the basis for the decision.

(ii) An inquiry is any correspondence other than a complaint.

(d) *Review of Complaints.* (1) The following guidance applies to review of complaints:

(i) Complaints shall be considered under the following standards:

(A) A complaint by an applicant with respect to the decisional document issued in the applicant's own discharge review shall be considered under the Stipulation of Dismissal, other decisional document requirements applicable at the time the document was issued, and the principles issued under paragraph (j) of this section, subject to any limitations set forth therein with respect to dates of applicability. If the authority empowered to take corrective action has a reasonable doubt as to whether a decisional document meets specific requirements of the Stipulation or other applicable rules, the complaint shall be resolved in the applicant's favor.

(B) With respect to all other complaints, the standard shall be whether a reasonable person familiar with the discharge review process could understand the basis for the decision, including the disposition of issues raised by the applicant.

(ii) With respect to any decisional document issued after [the effective date of the amendments to § 70.5 regarding submission of issues on DD Form 293], a complaint alleging failure of the DRB to address adequately matter not submitted on DD Form 293 or expressly incorporated therein will be resolved in the complainant's favor only if the failure to address the issue was arbitrary, capricious, or an abuse of discretion.

(iii) When a complaint concerns a specific issue in the applicant's own discharge review, the complaint review process shall involve a review of all the evidence that was before the DRB, including the testimony and written submissions of the applicant, to determine whether the issue was submitted, and if so, whether it was addressed adequately with respect to the Stipulation of Dismissal and other applicable provisions of this Part. With respect to all other complaints about specific issues, the complaint review process may be based solely on the decisional document, except when the complainant demonstrates that facts present in the review in question raise a substantial likelihood of a violation of the Stipulation of Dismissal and a reasonable person, familiar with the discharge review process, could resolve the complaint only after a review of the evidence that was before the DRB.

(iv) The following governs complaints about the failure to list or address an applicant's issue:

(A) When the complaint is submitted by the applicant, and the record of the hearing is ambiguous on the question of whether there was a meeting of the minds between the applicant and the DRB as to modification or omission of the issue, the ambiguity will be resolved in favor of the applicant.

(B) When the complaint is submitted by the applicant and it is rejected on the basis of the presumption of regularity, the response to the complaint must set forth the reasons why the evidence submitted by the complainant was not sufficient to overcome the presumption.

(v) The following applies to a complaint concerning a decisional document that has been the subject of prior complaints:

(A) If the complaint concerns a decisional document that was the subject of a prior complaint in which action was completed, the complainant will be informed of the substance and disposition of the prior complaint, and will be further informed that no additional action will be taken unless the complainant within 30 days demonstrates that the prior disposition did not produce a decisional document that comports with the requirements of paragraph (d)(1)(i)(A) of this section.

(B) If the complaint concerns a decisional document that is the subject of a pending complaint, the complainant will be informed that he or she will be provided with the results of the pending complaint.

(C) These limitations do not apply to the initial complaint submitted on or after the effective date of the amendments to this Part by an applicant with respect to his or her own decisional document.

(2) The administrative director shall take the following actions:

(i) Acknowledge receipt of the complaint;

(ii) Assign a docket number and note the date of receipt; and

(iii) Forward the complaint to the Military Department concerned, except

that the case may be forwarded directly to the DASD (MP&FM) when the administrative director makes an initial determination that corrective action is not required.

(3) The following guidance applies to administrative processing of complaints:

(i) Complaints normally shall be processed on a first-in/first-out basis, subject to the availability of records, pending discharge review actions, and the following priorities:

(A) The first priority category consists of cases in which (*1*) there is a pending discharge review and the complainant is the applicant; and (*2*) the complainant sets forth the relevance of the complaint to the complainant's pending discharge review application.

(B) The second priority category consists of requests for correction of the decisional document in the complainant's own discharge review case.

(C) The third priority category consists of complaints submitted by former members of the armed forces and their counsel who state that the complaint is submitted to assist the former member's submission of an application for review.

(D) The fourth priority category consists of other complaints in which the complainant demonstrates that correction of the decisional document will substantially enhance the ability of applicants to present a significant issue to the DRBs.

(E) The fifth priority category consists of all other cases.

(ii) Complainants who request consideration in a priority cateogry shall set forth in the complaint the facts that give rise to the claim of placement in the requested category. If the complaint is relevant to a pending discharge review in which the complainant is applicant or counsel, the scheduled date of the review should be specified.

(iii) The administrative director is responsible for monitoring compliance with the following processing goals:

(A) The Administrative Director normally shall forward correspondence to the Military Department concerned shall be completed within three days after the date of receipt specified in the docket number. Correspondence forwarded directly to the DASD(MP&FM) under paragraph (d)(2)(iii) of this section, normally shall be transmitted within 7 days after the date of receipt.

(B) The Military Department normally shall request the necessary records within 5 working days after the date of receipt from the administrative director. The Military Department normally shall complete action under paragraph (d)(4) of this section within 45 days after receipt of all necessary records. If action by the Military Department is required under paragraph (d)(9) of this section, normally it shall be completed within 45 days after action is taken by the DASD(MP&FM).

(C) The JSRA normally shall complete action under paragaraph (d)(7) of this section at the first monthly meeting held during any period beginning 10 days after the administrative director receives the action of the Military Department under paragraph (d)(5) of this section.

(D) The DASD(MP&FM) normally shall complete action under paragraph (d)(8) within 30 days after action is taken by the JSRA under paragraph (d)(7) or by the administrative director under paragraph (d)(2)(iii) of this section.

(E) If action is not completed within the overall processing goals specified in this paragraph, the complainant shall be notified of the reason for the delay by the administrative director and shall be provided with an approximate date for completion of the action.

(F) If complaints are submitted in any 30 day period with respect to more than 50 decisional documents, the administrative director shall adjust the foregoing processing goals in light of the number of complaints and discharge review applications pending before the DRBs.

(4) The Military Department shall review the complaint under the following guidance:

(i) If the Military Department determines that all the allegations contained in the complaint are not specific or have no merit, it shall address the allegations using the format at Attachment 1 (Review of Complaint).

(ii) If the Military Department determines that some of the allegations contained in the complaint are not specific or have no merit and that some of the allegations contained in the complaint have merit, it shall address the allegations using the format at Attachment 1 (Review of Complaint) and its DRB shall take appropriate corrective action in accordance with paragraph (d)(4)(v) of this section.

(iii) If the Military Department determines that all of the allegations contained in the complaint have merit, its DRB shall take appropriate corrective action in accordance with paragraph (d)(4)(v) of this section.

(iv) If, during the course of its review, the Military Department notes any other defects in the decisional document or index entries (under the Stipulation of Dismissal or Part 70 of this title), the DRB shall take appropriate corrective action under paragraph (d)(4)(v) of this section. This does not establish a requirement for the Military Department to review a complaint for any purpose other than to determine whether the allegations contained in the complaint are specific and have merit; rather, it simply provides a format for the Military Department to address other defects noted during the course of processing the complaint).

(v) The following procedures govern appropriate corrective action:

(A) If a complaint concerns the decisional document in the complainant's own discharge review case, appropriate corrective action consists of amending the decisional document or providing the complainant with an opportunity for a new discharge review. An amended decisional document will be provided if the applicant requests that form of corrective action.

(B) If a complaint concerns a decisional document involving an initial record review under the Special Discharge Review or the Pub. L. No. 95-126 rereview program, appropriate corrective action consists of

(*1*) Amending the decisional document; or

(*2*) Notifying the applicant and counsel, if any, of the opportunity to obtain a priority review using the letter provided at Attachment 7.

(vi) When the DRB takes corrective action under this provision by amending a decisional document, it shall notify the applicant and counsel, if any, of the opportunity to request a *de novo* review under the Special Discharge Review Program or under the Pub. L. No. 95-126 rereview program, as appropriate.

(C) Except for cases falling under paragraph (d)(4)(v)(B) of this section, if a complaint concerns a decisional document in which the applicant received an Honorable Discharge as well as the full relief requested, if any, with respect to the reason for discharge, appropriate corrective action consists of amending the decisional document.

(D) In all other cases, appropriate corrective action consists of amending the decisional document or providing the applicant with the opportunity for a new review, except that an amended decisional document will be provided when the complainant expressly requests that form of corrective action.

(vi) An amended decisional document is one that reflects a determination by a DRB panel (or the SRA) as to what the DRB panel (or SRA) that prepared the defective decisional document would have entered on the decisional

document to support its decision in this case.

(A) The action of the amending authority does not necessarily reflect substantive agreement with the decision of the original DRB panel (or SRA) on the merits of the case.

(B) When an amended decisional document is required under paragraphs (d)(4)(v)(A) or (d)(4)(D) of this section and the necessary records cannot be located, a notation to that effect will be made on the decisional document, the applicant and counsel, if any, will be afforded an opportunity for a new review, and the complainant will be informed of the action.

(C) When an amended decisional document is requested under paragraph (d)(4)(v)(C) of this section and the necessary records cannot be located, a notation to that effect will be made on the decisional document, and the complainant will be informed that the situation precludes further action.

(vii) An applicant who is afforded an opportunity to request a new review shall be provided with 45 days to make the request.

(viii) When the Military Department determines that some or all of the allegations contained in the complaint are not specific or have no merit but its DRB takes corrective action under paragraphs (d)(4)(ii) or (d)(4)(iv) of this section, the DRB's notification to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel, should include the following or similar wording: "This is in partial response to (your)/(a) complaint to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated ——— concerning ——— Discharge Review Board decisional document ———. A final response to (your)/(the) complaint, which has been returned to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) for further review, will be provided to you in the near future."

(ix) When the DRB takes corrective action under paragraphs (d)(4)(iii) and (d)(9) of this section, its notification to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel, should include the following or similar wording: "This is in response to (your)/(a) complaint to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated ——— concerning ——— Discharge Review Board decisional document ———.

(5) The Military Department shall return the complaint to the administrative director with a copy of the decisional document and, when applicable, any of the following documents:

(i) The "Review of Complaint."

(ii) A copy of the amendment to the decisional document and the accompanying transmittal letter or letters to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel.

(iii) A copy of the notification to the applicant and counsel, if any, of the opportunity to request a new review, and a copy of the notification to the complainant, if other than the applicant or counsel, that the applicant has been authorized a new review.

(6) The administrative director shall review the complaint and accompanying documents and ensure the following:

(i) If the Military Department determined that any of the allegations contained in the complaint are not specific or have no merit, the JSRA shall review the complaint and accompanying documents. The JSRA shall address the allegations using the format at Attachment 2 (Review of and Recommended Action on Complaint) and shall note any other defects in the decisional document or index entries (under the Stipulation of Dismissal or Part 70 of this title) not previously noted by the Military Department. This does not establish a requirement for the JSRA to review such complaints for any purpose other than to address the allegations contained in the complaint; rather, it simply provides a format for the JSRA to address other defects noted in the course of processing the complaint.

(ii) If the Military Department determined that all of the allegations contained in the complaint have merit and its DRB amended the decisional document, the amended decisional document shall be subject to review by the JSRA on a sample basis each quarter using the format at Attachment 3 (Review of any Recommendation on Amended Decisional Document).

(iii) If the Military Department determined that all of the allegations contained in the complaint have merit and its DRB notified the applicant and counsel, if any, of the opportunity to request a new review, review of such corrective action is not required.

(7) The JSRA shall meet for the purpose of conducting the reviews required in paragraphs (d)(6)(i), (d)(6)(ii), and (d)(11)(i) of this section. The administrative director shall call meetings once a month, if necessary, or more frequently depending upon the number of matters before the JSRA. Matters before the JSRA shall be presented to the members by recorder. Each member shall have one vote in determining matters before the JSRA, a majority vote of the members determining all matters. Determinations of the JSRA shall be reported to the DASD (MP&FM) as JSRA recommendations using the prescribed format. If a JSRA recommendation is not unanimous, the minority member may prepare a separate recommendation for consideration by the DASD (MP&FM) using the same format. Alternatively, the minority member may indicate "dissent" next to his signature on the JSRA recommendation.

(8) The DASD (MP&FM) shall review all recommendations of the JSRA and the administrative director as follows:

(i) The DASD (MP&FM) shall review complaints using the format at Attachment 4 (Review of and Action on Complaint). The DASD (MP&FM) is the final authority in determining whether the allegations contained in a complaint are specific and have merit. If the DASD (MP&FM) determines that no further action by the Military Department is warranted, the complainant and the Military Department shall be so informed. If the DASD (MP&FM) determines that further action by the Military Department is required, the Military Department shall be directed to ensure the appropriate corrective action is taken by its DRB and the complainant shall be provided an appropriate interim response.

(ii) The DASD (MP&FM) shall review amended decisional documents using the format at Attachment 5 (Review of and Action on Amended Decisional Document). The DASD (MP&FM) is the final authority in determining whether an amended decisional document complies with the Stipulation of Dismissal and, when applicable, Part 70 of this title. If the DASD (MP&FM) determines that no further corrective action by the Military Department is warranted, the Military Department shall be so informed. If the DASD (MP&FM) determines that further corrective action by the Military Department is required, the Military Department shall be directed to ensure that appropriate corrective action is taken by its Discharge Review Board.

(iii) It is noted that any violation of the Stipulation of Dismissal is also a violation of part 70 of this title. However, certain requirements under this Part are not requirements under the Stipulation of Dismissal. If the allegations contained in a complaint are determined to have merit or if an amended decisional document is determined to be defective on the basis of one of these additional requirements

under this Part, the DASD (MP&FM) determination shall reflect this fact.

(9) With respect to a determination by the DASD (MP&FM) that further action by the Military Department is required, its DRB shall take appropriate corrective action in accordance with paragraph (d)(4) of this section.

(10) The Military Department shall provide the administrative director, when applicable, with any of the following documents relevant to corrective action taken in accordance with paragraph (d)(9) of this section.

(i) A copy of the amendment to the decisional document and the accompanying transmittal letter or letters to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel.

(ii) A copy of the notification to the applicant and counsel, if any, of the opportunity to request a new review, and a copy of the notification to the complainant, if other than the applicant or counsel, that the applicant has been authorized a new review.

(11) The administrative director shall review the documents relevant to corrective action taken in accordance with paragraph (d)(9) and ensure the following:

(i) If the DRB amended the decisional document, the amended decisional document shall be subject to review by the JSRA on a sample basis each quarter using the format at Attachment 3 (Review of and Recommended Action on Amended Decisional Document).

(ii) If the DRB notified the applicant and counsel, if any, of the opportunity to request a new review, review of such corrective action is not required.

(12) Upon request, the Military Department shall provide the administrative director with other documents required by the JSRA or the DASD (MP&FM) in the conduct of their reviews.

(e) *Responses to inquiries.* The following procedures shall be utilized in processing inquiries:

(1) The administrative director shall assign a docket number to the inquiry.

(2) The administrative director shall forward the inquiry to the Military Department concerned.

(3) The Military Department shall prepare a response to the inquiry and provide the administrative director with a copy of the response.

(4) The Military Department's response should include the following or similar wording: "This is in response to your inquiry to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated ——— concerning ———.

(f) *Indexing.* The Discharge Review Board concerned shall reindex all amended decisional documents and shall provide copies of the amendments to the decisional documents to the Armed Forces Discharge Review/Correction Board Reading Room.

(g) *Information requirements.* Each Military Department shall provide the administrative director with a monthly report using the format at Attachment 6 (Complaints/Inquiries Status Report). The report shall be prepared by the Military Department as of the last day of each month and provided to the administrative director not later than the 5th working day of the following month.

(h) *Disposition of documents.* The administrative director is responsible for the disposition of all Military Department, DRB, JSRA, and DASD (MP&FM) documents relevant to processing complaints and inquiries.

(i) *Referral by the General Counsel.* The Stipulation of Dismissal permits *Urban Law*, plaintiffs to submit complaints to the General Counsel, DoD, for comments. The General Counsel, DoD, may refer such complaints to the Military Department concerned or to the JSRA for initial comment.

(j) *Decisional document and index entry principles.* The DASD (MP&FM) shall transmit to the Military Departments summaries of significant principles concerning the preparation of decisional documents and index entries, as derived from decisions under this section and other opinions of the Office of General Counsel. The summaries shall be published in the **Federal Register** and shall be made available to the public in conjunction with the Index of Decisions. The summaries shall be published at a minimum on a semiannual basis.

(k) *Implementation of amendments.* The following governs the processing of any correspondence that is docketed prior to the effective date of amendments to this enclosure except as otherwise provided in such amendments:

(1) Any further action on the correspondence shall be taken in accordance with the amendments; and

(2) No revision of any action taken prior to the effective date of such amendments is required.

Attachments

1. Review of complaint by the Military Department.
2. Review of complaint by the Joint Service Review Authority.
3. Review of amended decisional document (quarterly review).
4. Review of complaint (Deputy Assistant Secretary).
5. Review of amended decisional documents (Deputy Assistant Secretary.
6. Complaints/Inquiries status report.
7. Notice of opportunity for expedited review.

Attachment 1

Review of Complaint

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:

1. Specific allegation(s) noted:

(2) Finding(s), conclusion, and reason(s) with respect to each specific allegation:

3. Other defects noted in the decisional document or index entries: (Authentication)

Attachment 2.—Joint Service Review Activity, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of and Recommended Action on Complaint

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:

1. Attached is the Military Department's "Review of Complaint", which reflects the Military Department's finding(s), conclusion, and reason(s) with respect to each specific allegation noted in para. 2 below as well as any other defects in the decisional document or index entries noted by the Military Department.

2. Specific allegation(s) noted by the Military Department:

3. Specific allegation(s) not noted by the Military Department:

4. Finding(s), conclusion, and reason(s) with respect to each specific allegation:

5. Other defects in the decisional document or index entries not noted by the Military Department:

6. *Recommendation:*

( ) The complainant and the Military Department should be informed that no further action on the complaint is warranted.

( ) The Military Department should be directed to ensure that corrective action consistent with the above comments is taken by its Discharge Review Board.

(Army Member, JSRA)
(Navy Member, JSRA)
(Air Force Member, JSRA)
(Recorder, JSRA)

Attachment 3.—Joint Service Review Activity, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of and Recommended Action on Amended Decisional Document

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:

Recommendation:

( ) The amended decisional document complies with the requirements of the Stipulation of Dismissal and when applicable, DoD Directive 1332.28. The Military Department should be informed that no further corrective action is warranted.

( ) The amended decisional document does not comply with the Stipulation of Dismissal or DoD Directive 1332.28 as noted herein. The Military Department should be directed to ensure that corrective action consistent with the defects noted is taken by its Discharge Review Board.

(Army Member, JSRA)
(Navy Member, JSRA)
(Air Force Member, JSRA)
(Recorder, JSRA)

BILLING CODE 3810-01-M

Yes	No	NA	Item	Source
			1. Discharge data.	
			a. Date of discharge	1. Stip., Para. 5A(1)(d)(i); DoDD, Encl. 2, Para. (d)1.
			b. Character of discharge	
			c. Reason for discharge	
			d. Specific regulatory authority under which discharge was issued	
			2. Service data. (This requirement applies only in conjunction with Military Department implementation of DoD General Counsel letter dated July 20, 1977, or to discharge reviews conducted on or after March 29, 1978.).	2. Ltr from DoD/GC to Military Departments dtd July 20, 1977; DoDD, Encl. 2, Para. (d)2.
			a. Date of enlistment	
			b. Period of enlistment	
			c. Age at enlistment	
			d. Length of service	
			e. Periods of unauthorized absence*	
			f. Conduct and efficiency ratings (numerical or narrative)*	
			g. Highest rank achieved	
			h. Awards and decorations*	
			i. Educational level	
			j. Aptitude test score	
			k. Art. 15's (including nature and date of offense or punishment)*	
			l. Convictions by court-martial*	
			m. Prior military service and type of discharge(s) received*	
			3. Reference to materials presented by applicant. (This requirement applies only to discharge reviews conducted on or after March 29, 1978.).	3. DoDD, Encl. 2, Para. (d)3.
			a. Written brief*	
			b. Documentary evidence*	
			c. Testimony*	
			4. Conclusions. The decisional document must indicate clearly the DRB's conclusion concerning:	4. Stip., Para. 5A(1)(d)(iv); DoDD, Encl. 2, Para. (d)4c; Pub. L. No. 95-126.
			a. Determination of whether a discharge upgraded under the SDRP would have been upgraded under DoD Directive 1332.28. (This applies only to mandatory re-reviews under Pub. L. No. 95-126 of SDRP reviews.)	
			b. Character of discharge, where applicable.[1]	
			c. Reason for discharge, where applicable.[2]	
			5. Reasons for conclusions. The decisional document must indicate clearly the DRB's reasons for conclusions concerning:	5. Stip., Para. 5A(1)(d)(v); DoDD, Encl. 2, Para. (d)4d.
			a. Determination of whether a discharge upgraded under the SDRP would have been upgraded under DoD Directive 1332.28. (This applies only to mandatory re-reviews under Pub. L. No. 95-126 of SDRP reviews.)	
			b. Character of discharge, where applicable.[1]	
			c. Reason for discharge, where applicable.[2]	
			6. Issues. (See Issues Worksheet.)	6. Stip., Paras. 5A(1)(d)(ii), (iii), and (v), 5A(4)(a); DoDD, Encl. 2, Paras. (d)4a, b, and d, (d)8.
			7. Advisory opinions.*	7. Stip., Para. 5A(1)(f); DoDD, Encl. 2, Para. (d)5.
			8. Minority opinions or reports.	8. Stip., Para. 5A(1)(g); DoDD, Encl. 2, Para. (d)7.
			9. Record of names and votes of board members.	9. Stip., Para. 5A(3); DoDD, Encl. 2, Para. (d)6.
			10. Indexing of decisional document.	10. Stip., Para. 5A(5)(a); DoDD, Encl. 2, Para. (i)4a.
			11. Authentication of decisional document. (This requirement applies only to discharge reviews conducted on or after March 29, 1978.)	11. DoDD, Encl. 2, para. (d)9.
			12. Other	12. As appropriate

ISSUES WORKSHEET[3]

Issue	Findings, Conclusions, and Reasons Therefor		
	Yes	No	NA

(to be continued as necessary)

EXPLANATION OF ITEMS MARKED NO
(to be used as necessary)

KEY

Yes: The decisional document meets the requirements of the Stipulation of Dismissal and, where applicable, DoD Directive 1332.28.

No: The decisional document does not meet the requirements of the Stipulation of Dismissal or DoD Directive 1332.28.

NA: Not applicable.

*Items marked by an asterisk do not necessarily pertain to every review. If the decisional document contains no reference to such an item, NA is indicated unless there is a specific complaint with respect to that item, in which case the underlying discharge review record shall be examined in order to determine whether YES or NO should be indicated.

FOOTNOTES

[1] In this instance "where applicable" means all reviews except:

a. Mandatory re-reviews under Pub. L. 95-126 of SDRP reviews.

b. Reviews in which the applicant requested only a change in the reason for discharge and the DRB did not raise the character of discharge as an issue.

[2] In this instance "where applicable" means all reviews in which:

a. The applicant requested a change in the reason for discharge.

b. The DRB raised the reason for discharge as an issue.

c. A change in the reason for discharge is a necessary component of a change in the character of discharge.

[3] a. Issues may be categorized as follows:

(1) Issues of fact, law, or discretion upon which the decision on the application is based, including those factors required by applicable regulations to be considered for determination of the character of and reason for the discharge or dismissal in question [where such factors are a basis for denial of any of the relief requested by the applicant]. (The material in brackets pertains only to discharge reviews conducted on or before March 28, 1978.)

(2) Issues of fact, law, or discretion that would have warranted greater relief than that afforded the applicant by the DRB's decision, if resolved in the applicant's favor; such issues must be stated clearly and specifically.

(3) Issues of fact, law or discretion that are irrelevant because the applicant was afforded full relief on the basis of another issue.

(4) Matters that are not issues of fact, law, or discretion or that are not clearly and specifically stated.

Only those issues in categories (1) and (2) above require findings, conclusions, and reasons therefor.

b. This review may be made based upon the decisional document without reference to the underlying discharge review record except as follows: if there is an allegation that a specific contention made by the applicant to the DRB was not addressed by the DRB. In such a case, the complaint review process shall involve a review of all the evidence that was before the DRB, including the testimony and written submissions of the applicant, to determine whether the contention was made, and if so, whether it was addressed adequately with respect to the Stipulation of Dismissal and, where applicable, DoD Directive 1332.28.

c. This review may be based upon the decisional document without reference to the regulation governing the discharge in question except as follows: if there is a specific complaint that the DRB failed to address a specific factor required by applicable regulations to be considered for determination of the character of and reason for the discharge in question [where such factors are a basis for denial of any of the relief requested by the applicant]. (The material in brackets pertains only to discharge reviews conducted on or before March 28, 1978.)

BILLING CODE 3810-01-C

Attachment 4.—Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of and Action on Complaint

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:

1. Specific allegation(s) noted:

2. Finding(s), conclusion, and reason(s) with respect to each specific allegation:

3. Other defects noted in the decisional document or index entries:

4. *Determination:*

( ) No further action on the complaint is warranted.

( ) Corrective action consistent with the above comments is required.

(DASD (MPP))

Attachment 5.—Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of and Action on Amended Decisional Document

Review of and Action on Complaint

MIlitary Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:
Determination:

( ) The amended decisional document complies with the requirements of Stipulation of Dismissal and, when applicable, DoD Directive 1332.28. No futher corrective action is warranted.

( ) The amended decisional document does not comply with the Stipulation of Dismissal of DoD Directive 1332.28. Further corrective action is required consistent with the defects noted in the attachment:

(DASD (MPP))

Attachment to Attachment 5.—Defects in the Amended Decisional Document (to be used as necessary)

Attachment 6

Complaints/Inquiries Status Report

1. Total number of Complaints/ Inquiries received through last day of (previous month):———

2. Complaints/Inquiries received by docket number* during (current month):

3. Total number of Complaints/ Inquiries received through last day of (current month):———

4. Status of Complaints by docket number* pending Military Department action 60 days or more after the docket date:

5. Status of Inquiries by docket number* pending Military Department action 30 days or more after the docket date:

(Authentication)

*IN chronological order beginning with the oldest complaint or inquiry.

Attachment 7

Dear ———:

It has been determined that the decisional document issued in your case by the Navy Discharge Review Board during the review program under Public Law 95–126 did not comport with the requirements for an adequate statement of findings, conclusions, and reasons as set forth in DoD Directive 1332.28.

In order to correct this error, you may elect one of the following options to receive a new review under the re-review program mandated by Public Law No. 95–126:

1. You may request a new review, including a personal appearance hearing if you so desire, by responding on or before the suspense date noted at the top of this letter. Taking this action will provide you with a priority review before all other classes of cases.

2. You may request correction of the original decisional document issued to you by responding on or before the suspense date noted at the top of this letter. After you receive a corrected decisional document, you will be entitled to request a new review, including a personal appearance hearing if you so desire. If you request correction of the original decisional document, you will not receive priority processing in terms of correcting your decisional document or providing you with a new review; instead, your case will be handled in accordance with standard processing procedures, which may mean a delay of several months or more.

If you do not respond by the suspense date noted at the top of this letter, no action will be taken. If you subsequently submit a complaint about this decisional document, it will be processed in accordance with standard procedures.

To insure prompt and accurate processing of your request, please fill out the form below, cut it off at the dotted line, and return it to the Navy Discharge Review Board at the address listed at the top of this letter.

Check only one:

( ) I request a new review of my case on a priority basis. I am requesting this priority review rather than requesting correction of the decisional document previously issued to me. I have enclosed DD Form 293 as an application for my new review.

( ) I request correction of the decisional document previously issued to me. I understand that this does not entitle me to priority action in correcting my decisional document. I also understand that I will be able to obtain a further review of my case upon my request after receiving the corrected decisional document, but that such a review will not be held on a priority basis.

Date———
Signature ———————————
April 22, 1982.
Printed Name and Address

M. S. Healy,
OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-11455 Filed 4-27-82; 8:45 am]
BILLING CODE 3810-01-M

32 CFR Part 199

[DoD Regulation 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services; Durable Medical Equipment

AGENCY: Office of the Secretary of DoD.

ACTION: Proposed amendment to rule.

SUMMARY: This proposed rule would amend DoD Regulation 6010.8–R (32 CFR 199) to remove a restriction under the civilian Health and Medical Program of the Uniformed Services (CHAMPUS) Basic Program that durable medical equipment may only be rented or obtained under a lease/purchase arrangement, regardless of the cost advantages of outright purchase if lease/purchase is not available or if prolonged rental will be necessary. Amendment to allow outright purchase in cases of prolonged need will permit cost savings for the Government and for beneficiaries, and is consistent with major government and private health benefit plans.

DATES: Comments must be submitted on or before June 28, 1982. It is proposed to make this amendment effective retroactive to October 1, 1980.

ADDRESS: Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Policy Division, Aurora, CO 80045.

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

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)", as Part 199 of this title.

Section 199.10(d)(3)(ii) of this part states that CHAMPUS benefits are payable under the Basic Program for the rental or lease/purchase of durable medical equipment, but does not provide for outright purchase of such equipment even if that purchase would be cost-advantageous to the Government.

The Program has encountered a number of situations where there has been or is expected to be a prolonged period of medical necessity for the use of the durable medical equipment, where a lease/purchase arrangement is not possible, or where the equipment is not available for rent.

Following a review of the applicable statute, the Department of Defense has concluded that there is no statutory bar to CHAMPUS sharing in the cost of purchase of durable medical equipment when such purchase is more cost-advantageous to the Government or where the equipment cannot be rented.

The amendment does not change the current definition or coverage criteria for durable medical equipment. Instead, it provides an additional alternative for acquisition which offers potential cost savings both to the Government and to beneficiaries.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated within the Department of Defense, with the Department of Health and Human Services and with other interested agencies, in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

List of Subjects in 32 CFR Part 199

Military personnel, Health insurance, Handicapped.

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

Therefore, it is proposed to amend 32 CFR, Chapter I, §199.10 as follows:

By revising paragraph (d)(3)(ii) as set forth below.

§ 199.10 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(ii) *Durable Medical Equipment*—(*A*) *Coverage Criteria.* Durable medical equipment for the specific use of the beneficiary/patient is covered, provided such equipment meets the following criteria:

(*1*) It must be medically necessary for the treatment of an illness or injury.

(*2*) It must improve the function of a malformed, diseased or injured body part or retard further deterioration of the patient's physical condition.

(*3*) It must be an item which is not useful to a person in the absence of an illness or injury.

(*4*) It must be primarily and customarily used to serve a medical purpose, rather than primarily for transportation, comfort or convenience.

Note.—A wheelchair (or Program-approved alternative) is not considered transportation in the sense of paragraph (d)(3)(ii)(*a*)(*4*) of this section. It is qualified as durable medical equipment under paragraph (d)(3)(ii)(*a*)(*2*) of this section above, because by providing basic mobility, it retards further deterioration of the patient's physical condition. Mobility beyond that basic mobility provided by a wheelchair (or a Program-approved alternative) is considered to be primarily transportation.

(*5*) It must withstand repeated use, and will be provided on a one-at-a-time basis only, based on the anticipated lifetime of the specific item of equipment.

(*6*) It must be other than spectacles, eyeglasses, contact lenses, other optical devices, hearing aids, or other communication devices.

(*7*) It cannot be beyond the medically appropriate level of performance and quality required under the circumstances (i.e., non-luxury, non-deluxe). However, this criterion is not intended to preclude the special fitting of equipment to accommodate a particular disability, such as fitting a wheelchair for a one-armed individual.

(*8*) It cannot be for a patient in a facility which can provide or ordinarily provides such equipment.

(*9*) It is not available for loan from any local Uniformed Service Medical Treatment Facility.

(*10*) The reasonable charge for the item must be more than $100.

(*B*) *Payment Alternatives.* Generally, CHAMPUS reimbursement for durable medical equipment will be limited to the most cost-advantageous to the Government. These methods can include rental, lease/purchase and outright purchase. Factors to be considered in the reimbursement process include the reasonable charge for purchase of the equipment, the reasonable monthly rental charge for the equipment, the estimated duration of medical necessity for the use of the equipment, and the availability of rental equipment. Regardless of the method of reimbursement to be used, all equipment must first meet the coverage criteria in paragraph (d)(3)(ii)(*a*) of this section above.

* * * * *

(10 U.S.C. 1079, 1086; 5 U.S.C. 301)

Dated: April 22, 1982.

M. S. Healy,

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

[FR Doc. 82-11596 Filed 4-27-82; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1E2473/P233; PH-FRL-2108-8]

Chlorothalonil; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for the combined residues of the fungicide chlorothalonil and its metabolite in or on the raw agricultural commodity mint hay. The proposed amendment to establish a maximum permissible level for residues of the fungicide in or on the commodity was submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before May 13, 1982.

ADDRESS: Written comments to: Donald R. Stubbs, Emergency Response Section, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703-557-7700).

SUPPLEMENTARY INFORMATION: The Interregional Research Protect No. 4 (IR-4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number 1E2473 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Indiana, Michigan, and Wisconsin.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide chlorothalonil (tetrachloroisophthalonitrile) and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on the raw agricultural commodity mint hay at 0.1 part per million (ppm). The petition was later amended to propose a tolerance of 2 ppm.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance included a 2-year dog feeding study with a no-observed-effect level (NOEL) of 60 ppm; a 2-year rat feeding study with a NOEL of 60 ppm; a 3-generation rat reproduction study with a NOEL of 15,000 ppm for reproductive effects and 1,500 ppm for effects on lactation; a rabbit teratology study negative for teratogenic effects at 62.5 mg/kg (highest level fed); and a series of mutagenicity studies (host-mediated assay, in vivo cytogenetic in mice, cell transformation in rats, Ames assay, in vitro point mutation in V–79 hamster cells and BALB/3T3 mouse fibroblasts, and DNA repair) that resulted in negative findings except for a finding that chlorothalonil may interfere with DNA repair in TA–1538 cells.

Data considered in support of the 4-hydroxy metabolite were an acute rat oral study with an LD_{50} of 242 mg/kg for female rats; an acute dog oral study with an LD_{50} of 100 mg/kg; a 4-month rat feeding study with a NOEL of 100 ppm; and a 90-day dog feeding study with an NOEL not demonstrated at 50 ppm (lowest dose tested).

The National Cancer Institute (NCI) released the results of a study which showed that in this bioassay chlorothalonil gave weakly positive evidence of oncogenicity in male and female Osborne-Mendel rats, but not in $B_6C_3F_1$ mice. The Registrant has submitted an independent analysis of the bioassy which questions the integrity of the study; however, the present tolerance regulation is based on the assumption that the NCI study is valid.

No detectable residues are expected in mint oil intended for human consumption, and mint hay will not be fed to animals. Therefore, the current action will not increase the dietary exposure.

The nature of the residues is adequately understood and an adequate analytical method (gas-liquid chromatography utilizing microcoulometric or electron capture detection) is available for enforcement purposes. Residue data to support this tolerance are from tests conducted in Indiana. A prohibition against feeding of either fresh or spent mint hay will preclude any problems with secondary residues in meat, milk, poultry, or eggs resulting from this use. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request on or before May 13, 1982, that this rulemaking proposal be referred to a Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. As provided for in the Administrative Procedure Act (15 U.S.C. 553(d)(3)), the comment period time is shortened to less than 30 days because of the necessity to expeditiously provide a means for control of rust and septoria leaf spot infesting mint crops. Comments must bear a notation indicating the document control number, "[PP 1E2473/P2333]". All written comments filed in response to this petition will be available in the Emergency Response Section, Registration Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 14, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, it is proposed that 40 CFR 180.275 be amended by adding and alphabetically inserting the raw agricultural commodity mint hay to read as follows:

§ 180.275 Chlorothalonil; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Mint hay	2
* * * * *	

[FR Doc. 82–11024 Filed 4–27–82; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 1E2497/1E2498/P220, PH FRL 2110–7]

Carbaryl; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that tolerances be established for the combined residues of the insecticide carbaryl and and its hydrolysis product, 1-naphthol, in or on certain raw agricultural commodities. The proposed amendment to establish maximum permissible levels for residues of the insecticide in or on the commodities was submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments must be received on or before May 28, 1982.

ADDRESS: Written comments to: Donald R. Stubbs, Emergency Response Section, Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703–557–7123).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions numbers 1E2497 and 1E2498 to EPA on behalf of the IR–4 Technical Committee

and the Agricultural Experiment Station of North Dakota.

These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate), including its hydrolysis product 1-naphthol, calculated as 1-naphthyl *N*-methylcarbamate, in or on the raw agricultural commodities millet straw and seed at 1 part per million (ppm) and flax seed and straw at 5 ppm. The petitions were later amended to propose tolerances in or on proso millet grain at 3 ppm, proso millet straw at 100 ppm, flax seed at 5 ppm, and flax straw at 100 ppm.

The data submitted in the petitions and all other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances are sought. The toxicolgical data considered in support of the proposed tolerance were a 2-year rat feeding study with a no-observed-effect-level (NOEL) of 200 ppm and slight systemic effects observed at 400 ppm; a 1-year dog feeding study with a NOEL of 400 ppm; a 3-generation rat reproduction study with a NOEL of 200 mg/kg/day (highest level tested); an 18-month mouse oncogenicity study negative at 400 ppm (highest level tested); a second 18-month mouse oncogenicity study negative at 14 ppm; a rat dominant lethal assay with a NOEL of 200 mg/kg/day (highest level tested); a rat teratology study showing no teratologic effects at 375 mg/kg (highest level tested); a monkey teratology study showing no effects at 20 mg/kg (highest level tested); and a dog teratology study showing no effects at 3 mg/kg, but terata at a higher level (6.5 mg/kg). The dog study was performed over 10 years ago and would not meet current sicentific standards. In view of the fact that there are adequate prenatal studies in eight species (all of which are negative), it would appear that carbaryl is not a potent teratogen.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 10.0 mg/kg/day, or 200 ppm) and using a 100-fold safety factor, is calculated to be 0.10 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 6.0 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 4.6593 mg/day; the current actions will increase the TMRC by a total of 0.0036 mg/day (0.077 percent). Published tolerances utilize 77.66 percent of the ADI; the current actions will utilize an additional 0.06 percent.

The nature of the residues is adequately understood and an adequate analytical method (gas-liquid chromatography using an electron capture detector) is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical. Carbaryl was under consideration for the RPAR process primarily because two laboratory studies conducted in the late 1960's indicated that carbaryl induced teratogenicity (birth defects) when administered in low doses to pregnant beagle dogs. After reviewing the risks associated with the use of carbaryl, EPA issued a "Notice of Determination Not to Initiate a Rebuttable Presumption Against Registration (RPAR)" published in the **Federal Register** on December 12, 1980 (45 FR 81869).

Based on the above information considered by the Agency and the fact that currently established tolerances for meat and milk are adequate to cover any secondary residues resulting from treated millet and flax plant parts used as animal feed, the tolerances established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request on or before May 28, 1982 that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, "[PP 1E2497/1E2498/P220]". All written comments filed in response to these petitions will be available for public inspection in the office of Donald Stubbs at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant enconomic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: April 28, 1982.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides, and pests.

Dated: April 14, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, it is proposed that 40 CFR 180.169(a) be amended by adding and alphabetically inserting the raw agricultural commodities proso millet grain and straw, flax seed, and flax straw to read as follows:

§ 180.169 Carbaryl; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Flax, seed	5
Flax, straw	100
* * * * *	
Millet, proso, grain	3
Millet, proso, straw	100
* * * * *	

[FR Doc. 82-11162 Filed 4-27-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8E2065/P226; PH FRL 2110-6]

Chlorothalonil; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for the combined residues of the fungicide chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile

in or on the raw agricultural commodity dry beans. The proposed amendment to establish a maximum permissible level for residues of the fungicide in or on the commodity was submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments must be received on or before May 28, 1982.

ADDRESS: Written comments to: Donald R. Stubbs, Emergency Response Section, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703–557–7700).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number 8E2065 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Stations of Arkansas, Florida, Georgia, Kentucky, Michigan, Minnesota, Tennessee, and the U.S. Department of Agriculture.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide chlorothalonil (tetrachloroisophthalonitrile) and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on the raw agricultural commodity dry beans at 0.3 part per million (ppm). The petition was later amended to propose a lower level, 0.1 ppm.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include a 2-year dog feeding study with a no-observed-effect level (NOEL) of 60 ppm (1.5 mg/kg of body weight); a 3-generation rat reproduction study with a NOEL of 15,000 ppm (based on reproduction) and 1,500 ppm (based on lactation); a rabbit teratology study with a NOEL of 62.5 mg/kg (highest level fed); and a series of mutagenicity studies (Host-mediated assay, in vivo in cytogenetic in mice, cell transformation in rats, Ames assay, in vitro point mutation in V–79 hamster cells and BALB/3T3 mouse fibroblasts, and DNA repair) that resulted in negative findings except for a finding that chlorothalonil may interfere with DNA repair in TA–1538 cells.

Data considered in support of the 4-hydroxy metabolite were an acute rat oral study with an LD50 of 242 mg/kg for female rats; an acute dog oral study with an LD50 or 100 mg/kg; a 4-month rat feeding study with a NOEL of 100 ppm; and a 90-day dog feeding study with a NOEL not demonstrated at 50 ppm (lowest dosage tested).

The National Cancer Institute (NCI) released the results of a study which showed that in this bioassay chlorotalonil gave weakly positive evidence of oncogenicity in male and female Osborne-Mendel rats, but not in B6C3F1 mice. The registrant has submitted an independent analysis of the bioassay which questions the integrity of the study; however, the present tolerance regulation is based on the assumption that the NCI study is valid.

The acceptable daily intake (ADI), based on the 2-year dog feeding study (NOEL of 1.5 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.015 mg/kg of body weight/day, with regard to chronic effects other than oncogenicity. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.9 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.70395 mg/day. Published tolerances utilize 78.2 percent of the ADI. The current action will increase the TMRC by 0.00047 mg/day and will utilize an additional 0.05 percent of the ADI. Thus the tolerance that will be established by this proposed rule is considered to pose a negligible increment in risk since dietary exposure will not be significantly increased.

The nature of the residues is adequately understood and an adequate analytical method (gas-liquid chromatography) is available for enforcement purposes. There is no problem of secondary residues in meat and milk due to a restriction prohibiting grazing or feeding of treated plant parts. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.275 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request on or before May 28, 1982 that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, "[PP 8E2065/P226]". All written comments filed in response to this petition will be available for public inspection in the office of Donald Stubbs at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

Dated: April 13, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURE COMMODITIES

Therefore, it is proposed that 40 CFR 180.275 be amended by adding and alphabetically inserting the raw agricultural commodity dry beans to read as follows:

§ 180.275 Chlorothalonil; tolerances for residues.

* * * * *

Commodities	Parts per million
Beans (dry)	0.1
* * * * *	

[FR Doc. 82–11163 Filed 4–27–82; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 9E2140/P218; PH-FRL 2112-6]

2-Chloro-N-Isopropylacetanilide; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for the combined residues of the herbicide 2-chloro-*N*-isopropylacetanilide and its metabolites calculated as (2-chloro-*N*-isopropylacetanilide) in or on the raw agricultural commodity pumpkins. The proposed amendment to establish a maximum permissible level for residues of the herbicide in or on pumpkins was submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before May 28, 1982.

ADDRESS: Written comments to: Donald R. Stubbs, Emergency Response Section, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703-557-7123) at the above address.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number 9E2140 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Illinois.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide propachlor in or on the raw agricultural commodity pumpkins at 0.1 part per million (ppm). The petition was later amended to propose the same tolerance level in terms of combined residues of the parent compound (2-chloro-*N*-isopropylacetanilide) and its metabolites calculated as (2-chloro-*N*-isopropylacetanilide).

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance were a rat acute oral LD_{50} of 1.2 gm/kg; a rabbit acute dermal LD_{50} of 380 mg/kg; and a subacute 90-day rat feeding study with a no-observed-effect level (NOEL) of 13.3 mg/kg.

The provisional acceptable daily intake (PADI), based on the 90-day rat feeding study (NOEL of 13.3 mg/kg/day) and using a 2,000-fold safety factor, is calculated to be 0.0067 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60 kg human is calculated to be 0.3990 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.0196 mg/day; the current action will increase the TMRC by 0.0002 mg/day (1.02 percent). Published tolerances utilize 4.92 percent of the ADI; the current action will utilize an additional 0.04 percent.

The nature of the residues is adequately understood and an adequate analytical method (gas-liquid chromatography with hydrogen flame detector) is available for enforcement purposes. Because there are no feed items involved here, there is no reasonable expectation of secondary residues in meat, milk, poultry, and eggs. There are presently no actions pending against the contained registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.211 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request on or before May 28, 1982 that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, "(PP 9E2140/P218)." All written comments filed in response to this petition will be available in the Emergency Response Section, Registration Division, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

Dated: April 20, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, it is proposed that 40 CFR 180.211 be amended by reformatting the commodities into an alphabetical tabular format and alphabetically inserting the raw agricultrual commodity pumpkins to read as follows:

§ 180.211 2-Chloro-N-isopropylacetanilide; tolerances for residues.

Tolerances are established for residues of the herbicide 2-chloro-N-isopropylacetanilide and its metabolites (calculated as 2-chloro-N-isopropylacetanilide) in or on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	0.02(N)
Cattle, mbyp	0.02(N)
Cattle, meat	0.02(N)
Corn, forage	1.5
Corn, grain	0.1(N)
Corn, sweet (K+CWHR)	0.1(N)
Cottonseed	0.1(N)
Eggs	0.02(N)
Goats, fat	0.02(N)
Goats, mbyp	0.02(N)
Goats, meat	0.02(N)
Hogs, fat	0.02(N)
Hogs, mbyp	0.02(N)
Hogs, meat	0.02(N)
Horses, fat	0.02(N)
Horses, mbyp	0.02(N)
Horses, meat	0.02(N)
Milk	0.02(N)
Peas (with pods, determined on peas after removing any pod present when marketed)	0.2
Peas, forage	1.5
Poultry, fat	0.02(N)
Poultry, mbyp	0.02(N)
Poultry, meat	0.02(N)
Pumpkins	0.1
Sheep, fat	0.02(N)
Sheep, mbyp	0.02(N)
Sheep, meat	0.02(N)
Sorghum, forage	3.0
Sorghum, grain	0.25
Sugarbeet, roots	0.2
Sugarbeet, tops	1.0

[FR Doc. 82-11525 Filed 4-27-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300059; PH-FRL 2112-7]

Seven Rare Earth Chlorides; Proposed Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that seven rare earth chlorides—cerous, dysprosium, europic, lanthanum, scandium, ytterbium, and yttrium—be exempted from the requirement of a tolerance when used as inert ingredients in pesticide formulations. Booz, Allen and Hamilton requested this action so that rare earth chlorides could be used as tagging agents in pesticide formulations.

DATE: Written comments must be received on or before May 28, 1982.

ADDRESS: Written comments to: Peter Gray, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Peter Gray (703-557-7700).

SUPPLEMENTARY INFORMATION: At the request of Booz, Allen and Hamilton, the Administrator proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for seven rare earth chlorides: cerous chloride, dysprosium chloride, europic chloride, lanthanum chloride, scandium chloride, ytterbium chloride, and yttrium chloride. Use of these rare earths as inert ingredients is intended solely for the purpose of product identification. Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term inert is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific basis used in arriving at a conclusion of safety in support of the exemption.

Name of Inert Ingredients: Cerous chloride, dysprosium chloride, europic chloride, lanthanum chloride, scandium chloride, ytterbium chloride, and yttrium chloride.

Name and Address of Requestor: Booz, Allen and Hamilton, Suite 1000 N., 4550 Montgomery Avenue, Bethesda, Maryland 20014.

Basis for Approval: 1."Worst case" maximum residue levels would be only 0.04 part per million (ppm) in raw agricultural commodities, less than "background" amounts.

2. Clearance would be restricted to § 180.1001(d), pre-harvest application only, with a formulation limit of 0.001 percent (10 ppm) of all salts, alone or in combination.

3. Only nonradioactive materials will be used. Based on the above information, and review of their use, it has been found that, when used in accordance with good agricultural practices, these ingredients are useful and do not pose a hazard to humans or to the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act which contains these inert ingredients may request, on or before May 28, 1982, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(d) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition and document control number "[OPP-300059]". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Process Coordination Branch (TS-767C), Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act, (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** on May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514; (21 U.S.C. 346(a)(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, pesticides and pests.

Dated: April 20, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTUAL COMMODITIES

Therefore, it is proposed that 40 CFR 180.1001(d) be amended by adding and alphabetically inserting the seven rare earth chlorides to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
Cerous chloride	10 ppm in formulation.	Tagging agent.
* * * * *		
Dysprosium chloride.	10 ppm in formulation.	Tagging agent.
* * * * *		
Europic chloride.....	10 ppm in formulation.	Tagging agent.
* * * * *		
Lanthanum chloride.	10 ppm in formulation.	Tagging agent.
* * * * *		
Scandium chloride...	10 ppm in formulation.	Tagging agent.
* * * * *		
Ytterbium chloride...	10 ppm in formulation.	Tagging agent.
Yttrium chloride	10 ppm in formulation.	Tagging agent.
* * * * *		

[FR Doc. 82-11527 Filed 4-27-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[WH-FRL 2095-5]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate an ocean disposal site in the Gulf of Mexico near Freeport Harbor, Texas, for continuing use for the

disposal of dredged material. This action is necessary to provide an ocean dumping site for the disposal of dredged material resulting from the enlargement, realignment, and future maintenance of the existing Freeport Harbor, Texas, Federal navigation project which will permit the unrestricted and safe use of marine transportation to the Freeport area.

DATE: Comments must be received on or before June 14, 1982.

ADDRESSES:

Send comments to: Mr. T. A. Wastler, Chief, Marine Protection Branch (WH-585), EPA, Washington, DC 20460.

The final EIS and reports relating to this proposed action are available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2404 (rear), 401 M Street Southwest, Washington, DC.

Environmental Services Division, EPA Region VI, 28th floor, First International Building, 1201 Elm Street, Dallas, Texas.

Brownsville Corps of Engineers Area Office, Suite 508, 2100 Boca Chica Boulevard, Brownsville, Texas.

Galveston District Corps of Engineers, 400 Barracuda, Galveston, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. T. A. Wastler, 202/755-0356.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. (hereafter "the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. Section 103(b) of the Act states that the Secretary of the Army, in considering appropriate locations for dumping, shall to the extent feasible utilize the recommended sites designated by the Administrator pursuant to section 102(c) of the Act. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and extended on December 9, 1980 (45 FR 81042 et seq.). That list established this site as an interim site.

The purpose of this notice is to provide the public an opportunity to comment on the proposed final designation, as an EPA Approved Ocean Dumping Site, of a site in the Gulf of Mexico near Freeport Harbor, Texas, for the continuing disposal of dredged material.

The interim site listed in the January 11, 1977, Federal Register is located about 2 miles offshore on the south side of the entrance channel to Freeport Harbor. It is presently approximately rectangular, 0.43 square nautical miles in size, with water depths ranging from 8.8 to 10.7 meters, with coordinates as follows:

28d 54'42" N., 95d 17'38" W.;
28d 54'03" N., 95d 16'54" W.;
28d 53'48" N., 95d 17'27" W.;
28d 54'21" N., 93d 18'03" W.

In order to accomodate the increased amount of dredged material resulting from deepening, widening, and realigning the channels, it is proposed to expand the size of the existing site by 0.42 square nautical miles, making the total size of the site 0.85 square nautical miles, with coordinates as follows:

28d 54'42" N., 95d 17'38" W.;
28d 53'32" N., 95d 16'19" W.;
28d 53'10" N., 95d 16'45" W.;
28d 54'21" N., 95d 18'03" W.

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement ("EIS") on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. 39 FR 16186.

The U.S. Army Engineer District, Galveston, Texas, has prepared a Final EIS entitled "Final Environmental Statement, Freeport Harbor, Texas." This document fulfills EPA's commitment to prepare an EIS on this site. The Final EIS was filed with the EPA Office of Environmental Review on March 2, 1979, and a notice of availability for public review and comment was published in the Federal Register on March 12, 1979 (44 FR 13576). The public comment period on this Final EIS closed April 12, 1979. Information contained in the EIS that is pertinent to this site designation is summarized below.

Dredging of the new entrance channel will be accomplished by hopper dredge or pipeline dredge. The site in the Gulf of Mexico presently used for disposal of dredged material from hopper dredging operations will be increased by approximately 340 acres in order to accomodate the increased amount of dredged material.

Two reports were prepared for the Galveston District to comprise an evaluation of the potential environmental effects of the proposed ocean disposal of dredged material under section 103 of the Act. These documents reported the results of bioassays, chemical analyses, and statistical analyses of samples obtained from Freeport Harbor and Sabine-Neches Waterway Entrance Channels. The results of the bioassays showed that sediments of the Freeport Harbor Entrance Channel pose no serious or unacceptable hazard to the marine environment, and there was no evidence of bioaccumulation of cadmium or mercury in the tissues of marine organisms.

Based on the information reported in the Final EIS, EPA proposes to designate this expanded site for continuing disposal of dredged material resulting from the enlargement, realignment, and future maintenance of the Freeport Harbor, Texas, Navigation project. For additional information regarding this site and the anticipated environmental consequences of dumping dredged material at the site, interested parties should examine the EIS. The EIS and the two reports, "Bioassay, Chemical Analyses, and Statistical Analyses of Samples Obtained from Freeport Harbor and Sabine-Neches Waterway Entrance Channels, Texas," April 1978 and October 1978, are available for inspection at the addresses given above.

EPA regulations provide for ambient site monitoring programs as deemed necessary by the Regional Administrator and the District Engineer, and for evaluation of disposal site impacts based on the results of such programs. See 40 CFR 228.3 and 228.9-228.10. The regulations further provide for modifications in site use or designation based upon the results of the analyses of impact or upon changed circumstances concerning use of the site. See 40 CFR 228.11. Management authority of this site will be delegated to the Regional Administrator of EPA Region VI.

The designation of the Freeport Harbor Site as an EPA Approved Ocean Dumping Site is being published as proposed rulemaking. Interested persons may participate in this proposed rulemaking by submitting written comments on or before June 14, 1982 to the address given above.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option to the Corps of Engineers for the dredged material resulting from the enlargement, realignment, and future maintenance by the Corps of the Freeport Harbor navigation project. Consequently, this proposed rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 228

Water pollution control.

(33 U.S.C. Sec. 1412 and 1418)

Dated: April 21, 1982.

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended by adding to § 228.12(b) and ocean dumping site for Region VI as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(13) Freeport Harbor, Texas, Site—Region VI. Location: 28d 54'42" N., 95d 17'38" W.; 28d 53'32" N., 95d 16'19" W.; 28d 53'10" N., 95d 16'45"W.; 28d 54'21"N., 95d 18'03" W.

Size: 0.85 square nautical miles.
Depth: Ranges from 8.8 to 12.2 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material.

[FR Doc. 82-11524 Filed 4-27-82; 8:45 am]
BILLING CODE 6560-50-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 36

Construction and Architect-Engineer Contracts

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of availability and request for comment on draft Federal Acquisition Regulations.

SUMMARY: The Office of Federal Procurement Policy is making available for public and Government agency review and comment a segment of the draft Federal Acquisition Regulation (FAR) on construction and architect-engineer contracts. Availability of additional segments for comment will be announced on later dates. The FAR is being developed to replace the current system of procurement regulations.

DATE: Comments must be received on or before June 25, 1982.

ADDRESS: Obtain copies of the draft regulation from and submit comments to William Maraist, Assistant Administrator for Regulations, Office of Federal Procurement Policy, 726 Jackson Place, NW, Room 9025, Washington, D.C. 20503. Federal agency requests must be directed to the FAR Agency Contact Point (see Federal Register, Vol. 46, No. 50, March 16, 1981, p. 16818 for list).

FOR FURTHER INFORMATION CONTACT: William Maraist, (202) 395-3300.

SUPPLEMENTARY INFORMATION: The fundamental purposes of the FAR are to reduce proliferation of regulations; to eliminate conflicts and redundancies; and to provide an acquisition regulation that is simple, clear and understandable. The intent is not to create new policy. However, because new policies may arise concurrently with the FAR project, the notice of availability of draft regulations will summarize the section or part available for review and describe any new policies therein.

List of Subjects in 48 CFR Part 36

Government procurement.

The following part of the draft Federal Acquisition Regulation is available upon request for public and Government agency review and comment.[1]

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

This part prescribes policies and procedures peculiar to contracting for construction and architect-engineer services. It includes requirements for using certain clauses and standard forms that apply also to contracts for dismantling, demolition, or removal of improvements.

Consistent with FAR drafting conventions, many clauses used in construction contracts have been located with the pertinent subject matter, e.g., 52.246-12, Inspection of Construction, is prescribed in FAR Part 46, Quality Assurance; those concerning bonds are in Part 28, Bonds and Insurance; those implementing labor laws are in Part 22, Application of Labor Laws to Government Acquisitions. The spreadsheets identify the FAR location or disposition of each clause authorized for use in construction contracting by the DAR and the FPR.

FAR Part 36 requires the use of a new standard form (SF) entitled "Solicitation, Offer, and Award (Construction, Alteration, or Repair)," which is proposed to replace the SF 19 (Invitation, Bid and Award (Construction, Alteration or Repair)), the SF 20 (Invitation for Bids (Construction Contract), and SF 23 (Construction Contract). Part 36 also proposes to eliminate the SF 19B (Representations and Certifications (Construction and Architect-Engineer Contracts)), the SF 22 (Instruction to Bidders), and the SF 23A (General Provisions). The creation of the new standard form and the elimination of seven existing standard forms is made possible by the decision to delete solicitation provisions and contract clauses from standard forms.

The DAR approach for evaluating the performance of construction contractors and architect-engineer contractors has been extended to civilian agencies. This regulatory standardization is complemented by new standard forms for performance evaluation.

Dated: April 23, 1982.

William J. Maraist,

Assistant Administrator for Regulations.

[FR Doc. 82-11592 Filed 4-27-82; 8:45 am]
BILLING CODE 3110-01-M

[1] The draft Federal Acquisition Regulation is filed with the original document.

Notices

Federal Register
Vol. 47, No. 82
Wednesday, April 28, 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

Test of a Contingent Right Stipulation to be Included in Geothermal and Noncompetitive Oil and Gas Leases

AGENCY: Forest Service, USDA.

ACTION: Notice

SUMMARY: The Forest Service announces that it will recommend or consent to issue oil and gas and geothermal leases which include a contingent right stipulation. Areas will be selected on which to test the use of this stipulation. Criteria are herein discussed for selection of areas where the stipulation will be used. This action is consistent with that of the Department of the Interior which approved the use of a contingent right stipulation on noncompetitive oil and gas leases on February 24, 1982.

EFFECTIVE DATE: May 28, 1982.

ADDRESS: R. Max Peterson, Chief, Forest Service, USDA, Rm. 803–RPE, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Robert F. May, Forest Service, USDA, Minerals and Geology Management Staff, P.O. Box 2417, Rm. 803–RPE, Washington, D.C. 20013, (703) 235–9715.

SUPPLEMENTARY INFORMATION: The Forest Service administers approximately 190.7 million acres of National Forest System lands, most of which are available for oil and gas or geothermal leasing. Over 7,000 lease applications for National Forest System lands are filed each year with the Bureau of Land Management (BLM). The Forest Service is responsible for determining if a lease proposal is compatible with other resource uses and, if so, under what conditions a lease will be issued. Until now the Forest Service examined each application separately, or collectively if applications could be logically grouped. In conducting environmental analysis of a lease application, the Forest Service has assumed that issuance of a lease would result in drilling and in productive wells causing extensive impacts on surface resources. Using this assumption as a basis for analyzing leasing impacts and for arriving at recommendations to BLM has proven time consuming and costly in many cases.

Experience has shown that less than 5 percent of all Federal oil and gas leases issued nationally are actually drilled, and even fewer result in productive wells. Thus, the present approach to analysis on lease applications has resulted in excessive backlogs and expense that has proven difficult to justify.

In several lawsuits involving National Environmental Policy Act (NEPA) issues, the courts have endorsed segmented decisionmaking. Segmentation occurs in a Federal mineral disposal context where there is "separate utility" in the granting of leases and the later approval of each subsequent stage of operations, including prospecting, exploration, and production.

Use of the contingent right stipulation is based on the premise that NEPA environmental analyses can be most effectively handled at the operational stage of the lease, after submission of a specific proposal. Each proposal must be approved before operations can begin. However, it is expected that rarely will the leasee/operator and the Government fail to agree on an acceptable plan of operations and thereby invoke the contingent right stipulation.

To test the acceptance and workability of the contingent right stipulation, the Forest Service will select certain National Forest areas within which the stipulation will be considered for all geothermal and noncompetitive oil and gas leases issued during the test period. All designated wildernesses, Congressionally mandated wilderness study areas and Administration-endorsed wilderness proposals will be excluded (see 46 FR 26667 of May 14, 1981). If a roadless area designated for further planning is selected, the contingent right stipulation will take precedence over the further planning stipulation (see Forest Service Manual 2822.43). The stipulation will not be applied to leases issued under the simultaneous filing system.

No environmental assessment prior to leasing will be necessary for leases to be issued subject to the contingent right stipulation. The contingent right stipulation will be used in those areas where additional protection is needed beyond that provided by standard lease terms and conditions. If it is determined that the contingent right stipulation will not be used, the usual environmental assessment process will be followed. In either situation, standard lease terms and conditions will be required in the leases.

The text of the Contingent Right Stipulation is as follows:

All operations on this lease are subject to Government approval with such site-specific stipulations as may be necessary to assure reasonable protection of or mitigation of effects on other values. A plan of operations shall not be approved if it results in unacceptable impact on other resources, land uses, and/or the environment. If for these reasons a plan of operations cannot be approved, the lease term may be suspended for up to 5 years subject to timely submittal of an appropriate application by the lessee for a suspension of operating and producing requirements of the lease and approval by the United States. If the conditions do not change sufficiently, and/or significantly improved techniques are not developed such that a plan of operations has not been approved during the suspended term of the lease, the suspension shall automatically terminate. Unless relinquished sooner, the lease will continue for the term remaining at the effective date of the suspension or, if not suspended, for the term remaining when the plan of operations was disapproved, subject to Government approval of all operations as provided herein, without recourse for compenstion.

Douglas R. Leisz,

Associate Chief.

April 22, 1982.

[FR Doc. 82–11536 Filed 4–27–82; 8:45 am]

BILLING CODE 3410–11–M

CIVIL AERONAUTICS BOARD

[Docket 40534]

Braniff-Pan American Route Transfer Case; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled matter is assigned to be held commencing June 7, 1982, 9:30 a.m. (local time) in Room 1003, Hearing Room "A", Universal Building North, 1875 Connecticut Avenue, NW., Washington, D.C. before the undersigned administrative law judge.

The ground rules for the hearing will be circulated at the prehearing conference, scheduled to be held on May 12, 1982, and will be appended to the prehearing conference report. The order of appearance at the hearing and other arrangements regarding the conduct of the hearing, as necessary, will be the subject of future notices to all parties.

Dated at Washington, D.C., April 23, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-11564 Filed 4-27-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40534]

Braniff-Pan American Route Transfer Case; Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge Elias C. Rodriguez. Future communciations should be addressed to him.

Dated at Washington, D.C., April 22, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-11563 Filed 4-27-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40534]

Braniff-Pan American Route Transfer Case; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter will be held on May 12, 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.

Order 82-4-13 set forth in ordering paragraph 4 the issues to be considered in this proceeding, and, in the body of the order, discussed the subsidiary issues on which evidence is to be developed. The Order of Chief Administrative Law Judge of April 22, 1982, outlined the procedural schedule to be followed and announced that the prehearing conference would be of limited scope, primarily designed to clarify and resolve any possible uncertainties, and to contribute to the prompt, efficient and orderly completion of the hearing process.

To facilitate the conduct of the conference, parties having specific proposals to make are requested to submit one copy to each party and three copies to the judge of any proposed clarification of issues or proposed stipulations that should be considered. Any such submissions should be submitted to the parties and to the judge no later than May 7, 1982. Parties should hand-deliver such submissions or utilize express delivery service to ensure their timely receipt. In addition, parties with common interests are encouraged to explore the feasibility to making joint, rather than individual, presentations at the conference and at the hearing.

Dated at Washington, D.C., April 22, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-11562 Filed 4-27-82; 8:45 am]

BILLING CODE 6320-01-M

Commuter Fitness Determination

The Board is proposing to find the following carriers fit willing and able to provide commuter air carrier service under Section 419(c)(2) of the Federal Aviation Act, as amended, and that aircraft used in this service conform to applicable safety standards.

Order	Applicant	Response date
82-4-112	U.S. Aviation d.b.a. Air U.S.	May 12, 1982.
82-4-116	Catskill Airways, Inc.	Do.

All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed in Attachment A of the respective orders and file response or additional data for Order 82-4-112 with the Essential Air Services Division, and for Order 82-4-116, with the Special Authorities Division, Room 915; 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

The complete text of the orders is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request to the above address.

FOR FURTHER INFORMATION CONTACT: For Order 82-4-112: Barbara Pfeiffer (202) 673-5354, and for Order 82-4-116: Ms. Patti Szrom, (202) 673-5088, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428.

By the Civil Aeronautics Board: April 22, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-11561 Filed 4-27-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40627]

Houston-Acapulco Route Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications should be addressed to him.

Dated at Washington, D.C., April 22, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-11565 Filed 4-27-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40580]

Samoa, Inc., d.b.a. Samoa Airlines, Inc., Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications should be addressed to him.

Dated at Washington, D.C., April 22, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-11566 Filed 4-27-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40269]

Visit USA Fare/Export Inland Contract Rate Investigation; Prehearing Conference

A prehearing conference in this proceeding was held on February 11, 1982, during which requests for information and evidence were discussed and ruled upon. By letter dated March 16, 1982, counsel for the foreign carriers in this proceeding indicated that only Lufthansa German Airlines would be able to submit the materials required under request 3. These letters also set forth various reasons as to why Japan Air Lines, Philippine Airlines, and Singapore Airlines are unable to comply, and state that Swissair, Swiss Air Transport, Co., Ltd., is also unable to produce the information and will not actively participate in this proceeding. The foreign carriers also state that these

materials are not necessary for the resolution of the principal issues in this case and to the extent these materials are significant, the U.S. carriers have this data in their possession.

On April 1, 1982, Pan American World Airways filed concurrent motions for dismissal of this proceeding or relief from the information request requirements, and for confidential treatment of certain information responses. In the former motion, Pan Am states that the foreign carriers' March 16 letter indicates a waning interest on their part to pursue this investigation. Pan Am also states that without the foreign carriers' input, the corresponding information to be submitted by the U.S. carriers would be meaningless. Pan Am points out that they do not have this information in hand and they are conducting a coupon survey to produce the required materials. Pan Am, therefore, requests that this proceeding be dismissed with respect to the Visit USA phase due to the unfair requirements on the U.S. carriers and lack of meaningful evidence, or, in the alternative, relieve the U.S. carriers from the burden of providing the data required in requests 3(b) and 3(c).

In their request for confidential treatment of certain information responses, Pan Am states that is response to request 3(d) contains sensitive business information which, if disclosed, would damage the carrier. Since the foreign carriers indicated that they would not be submitting comparable data, Pan Am objects to such disclosure to the foreign carriers without receiving comparable information in return.

Answers to Pan Am's motions were received by the foreign carriers, Northwest Airlines, Trans World Airlines, and the Bureau of International Aviation. After considering all of the contentions raised in these pleadings, the undersigned believes that a second prehearing conference is essential for a fair and complete resolution of the matters discussed above.

Accordingly,

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on May 6, 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 22, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-11567 Filed 4-27-82; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

New York Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 12:00 p.m. on May 20, 1982, at the Eastern Regional Office, Jacob K. Javits Building, 26 Federal Plaza, Room 305, New York, New York 10278. The purpose of this meeting will be to conduct a press conference to release the Committee's report on immigration entitled "Documented and Undocumented Persons."

Persons desiring additional information should contact the Chairperson, Robert J. Mangum, 420 East Twenty-Third Street, New York, New York 10010, (212) 420-3935 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 21, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-11568 Filed 4-27-82; 8:45 am]

BILLING CODE 6335-01-M

Tennessee 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 Tennessee Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 1:00 p.m. on May 20, 1982, at the Quality Inn-Downtown, 401 Summit Hill Drive, in the Tennessee Room, Knoxville, Tennessee 37902. The purpose of this meeting is to release the Committee's report, "Affirmative Action and Equal Employment, Knoxville and Oak Ridge," and to discuss program plans and activities for Fiscal Year 1983.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mattie R. Crossley, 351 Fay Avenue, Memphis, Tennessee, 38109, (901) 276-4461 or the Southern Regional Office, Citizens Trust Bank Building, 75 Piedmont Avenue, NE., Room 362, Atlanta, Georgia 30303, (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 23, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-11569 Filed 4-27-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, on or before May 18, 1982.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00138. Applicant: NASA Lewis Research Center, 21000 Brookark Rd., Cleveland, Ohio 44135. Article: Electron Microscope, Model EM 400T and Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use of article: The article is intended to be used in a wide variety of research programs in the Materials Division. Applications will range from low magnification surveys to high resolution studies. These projects will include:

(1) Identification of precipitates and/or inclusions in dispersion strengthened alloys, directionally solidified alloys, ceramics, fibers, powders, fiber reinforced plastics, cell separators, etc.

(2) Studies of coatings which are presently used on alloys to keep them from oxidizing at high temperatures.

(3) Investigation of high temperature lubrication properties of materials which will be used in space technology.

(4) Research on high strength, high temperature alloys, high strength polymers, ceramics, fiber reinforced materials, etc.

(5) Characterization and identification of materials used in various research projects and to aid in correlating physical phenomena with microstructure and distribution of elemental characteristics. Application received by Commissioner of Customs: March 17, 1982.

Docket No. 82-00139. Applicant: Northwestern University Medical School, Department of Cell Biology and Anatomy, 303 East Chicago Avenue—Ward 7-150, Chicago, IL 60611. Article: Electron Microscope, Model JEM 200CX/SEG and Accessory. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for studies of molecular architecture of tissues, cells and isolated molecules obtained as part of the experimental data derived from biomedical research projects. The experiments to be conducted will revolve around determining structural alterations in cells during different physiological activities. The article will also be used for the instruction of graduate students, postdoctoral fellows, medical students and dental students. Application received by Commissioner of Customs: March 23, 1982.

Docket No. 82-00141. Applicant: University of Miami, School of Medicine, Dept. of Neurology (D4-5), P.O. Box 016960, Miami, FL 33101. Article: Electron Microscope, Model EM 10CA and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in conjunction with the Cerebral Vascular Disease Research Center for the study of the brain following experimental stroke. Brain tissue obtained from experimental rats will be processed for ultrastructural examination by routine methods and studied to document neuronal as well as vascular changes as a result of the ischemic insult. The objectives of these studies will be to conduct an ultrastructural inquiry into the mechanisms leading to ischemic brain injury. The ultimate goal will be to identify those factors responsible for the ultrastructural changes within ischemic regions of the brain. Application received by Commissioner of Customs: March 23, 1982.

Docket No. 82-00142. Applicant: University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. Article: Fused Quartz Optical Lens Blank. Manufacturer: Heraeus Quarzschmelze GMBH, West Germany. Intended use of article: The article is intended to be used in the Country's most advanced effort to demonstrate the feasibility of the generation of usable power in a controlled thermonuclear fusion reaction. Specifically, the article will transmit blue-green light harmonically generated by a nonlinear crystal from the infrared Nd: glass NOVA Laser and attenuate the original infrared laser beam. This wave length selectivity is needed to prevent unfocused infrared light from reaching the target and preheating it, resulting in poor target performance. Application received by Commissioner of Customs: March 23, 1982.

Docket No. 82-00143. Applicant: VA Medical Center, Research Division (151), 3350 La Jolla Village Drive, San Diego, CA 92161. Article: VaP-11 Free Flow Electrophoresis System. Manufacturer: Bender and Hobein GMBH, West Germany. Intended use of article: The article is intended to be used to separate population of cells present in a mixed sample, and to isolate pure membrane fraction from a cell or tissue homogenate containing many diferent membranes based on their differing surface changes. Application received by Commissioner of Customs: March 23, 1982.

Docket No. 82-00145. Applicant: U.S. Geological Survey, Water Resources Division, St. Anthony Falls Hydraulic Laboratory, Hennepin Island & Third Ave., SE., Minneapolis, MN 55414. Article: Canadian VUV Bedload Sampler and Canadian Arnhem Bedload Sampler. Manufacturer: Inland Waters Directorate, Canada. Intended use of article: The article is intended to be used for studies of the transport of gravel on the bed of rivers. Specific experiments will consist of measuring transport rates in a laboratory channel at the St. Anthony Falls Hydraulic Laboratory to calibrate the subject samplers for use in rivers. Application received by Commissioner of Customs: March 23, 1982.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-11546 Filed 4-27-82; 8:45 am]

BILLING CODE 3510-25-M

Princeton University; Decision of 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, NW., Washington, D.C. 20230.

Docket No. 81-00330. Applicant: Princeton University, Office of Research Administration, 509 South Building, P.O. Box 36, Princeton, New Jersey 08540. Article: DA3.02 Spectrophotometer with Subassembly. Manufacturer: BOMEM, Inc., Canada. Intended use of article: See Notice on page 43730 in the Federal Register of August 31, 1981.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides an angular deviation from optimum alignment of less than 10^{-6} radians. The National Bureau of Standards advises in its memorandum dated February 22, 1982 that (1) the capability of the foreign article described above its pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scentific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scenitific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-11545 Filed 4-27-82; 8:45 am]

BILLING CODE 3510-25-M

Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Computer Systems Technical Advisory Committee was initially established on January 3, 1973, and rechartered on September 18, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The

Subcommittee was approved for continuation on October 5, 1981 pursuant to the charter of the Committee. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

TIME AND PLACE: May 19, 1982, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Ave., NW., Washington, D.C.

AGENDA:

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Swiss Blue import certificate update.
4. Discussion of software source code export policy.
5. Post-COCOM procedures.
6. Review of U.S. Government policy of the export of embedded microprocessor product.
7. New business.

PUBLIC PARTICIPATION: The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written Statements may be submitted at any time before or after the meeting.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT: Mrs. Margaret A. Cornejo, Committee Control Officer, Office of Export Administration, Room 2613, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202–377–2583.

Dated: April 22, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 82–11571 Filed 4–27–82; 8:45 am]

BILLING CODE 3510–25–M

President's Export Council; Open Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The President's Export Council was initially established by Executive Order 11753 of December 20, 1973. The Council was reconsitituted by Executive Order 12131 of May 4, 1979, and continued by Executive Order 12258 of December 31, 1980. The Council's purpose is to advise the President on matters relating to United States export trade.

TIME AND PLACE: May 14, 1982, from 9:30 a.m.–3:00 p.m. The meeting will take place in Room 4830 of the U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

AGENDA: The purpose of the meeting is to hear progress reports on the subcommittee activities and to discuss key issues before the Council. The agenda will include 10–20 minute reports by each of the subcommittee Chairmen, followed by discussion of resolutions being proposed by the subcommittees. These resolutions are expected to concern the Foreign Corrupt Practices Act, export financing, and trade in services. Discussion of other business will include a proposal for a national export initiative, reciprocity in trade, status of the export trading company legislation, East-West trade and credits, preparations for the GATT Ministerial, and high-technology exports.

PUBLIC PARTICIPATION: The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Council. Written statements may be submitted at any time before or after the meeting.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT: Ms. Wendy Haimes, Executive Secretary, President's Export Council, Room 3213, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 377–1125.

Dated: April 23, 1982.

Henry Misisco,

Acting Director, Office of Policy and Coordination.

[FR Doc. 82–11572 Filed 4–27–82; 8:45 am]

BILLING CODE 3510–25–M

Proposal Concerning Suspension of Investigation Prestressed Concrete Steel Wire Strand From South Africa

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of proposal concerning suspension of investigation.

SUMMARY: The Department of Commerce is considering a proposal to suspend the countervailing duty investigation involving prestressed concrete steel wire strand (PC strand) from South Africa. The petitioners have been notified and are being consulted regarding the proposal to suspend the investigation. All other parties to the proceeding have also been notified of the proposal.

EFFECTIVE DATE: April 28, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph A. Black, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202) 377–1774.

SUPPLEMENTARY INFORMATION: On November 9, 1981 we received a petition from counsel for American Spring Wire Corporation, Bethlehem Steel Corporation, Florida Wire & Cable Company and Shinko Wire America, Inc. The petition alleged that the government of South Africa provides bounties or grants to its producers and exporters of PC strand through the following programs: preferential railroad rates, reduced harbor rates, reduced ocean freight rates, export credit insurance, pre- and post-shipment financing, export incentive programs, the Iron/Steel Export Incentive Scheme, employee training allowances, benefication allowances for base mineral processing, homeland development and other indirect benefits.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate a countervailing duty investigation. Therefore, on November 25, 1981 we announced our initiation (46 FR 59283).

We presented a questionnaire concerning the allegations to the government of South Africa. On February 25, 1982 we received a response to the questionnaire which covers the period of calendar years 1980 and 1981. Between March 9 and March 17, we verified this information by a review of government documents and company books and records of Haggie Limited, the only known manufacturer and exporter in South Africa of the subject merchandise. We stated in our notice of initiation of the investigation that we expected to issue a preliminary determination by February 2, 1982. However, we postponed the preliminary determination on January 12, 1982 to no later than April 8, 1982 and published a notice in the **Federal Register** (47 FR 2789). The reason for the postponement was that we determined, in accordance with section 703(e)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), that the investigation was extraordinarily complicated.

Counsel for Haggie Limited, in a letter dated February 26, 1982, proposed entering into a suspension agreement pursuant to section 704 of the Tariff Act of 1930, as amended ("the Act") and section 355.31 of the Commerce Regulations. On April 8, 1982 Haggie and the Department of Commerce initialled a proposed suspension agreement. Although not admitting the existence of any bounties or grants

under U.S. law, Haggie agreed to eliminate completely all benefits which we preliminarily found to be bounties or grants on exports of the subject merchandise to the United States.

On April 8, 1982 we preliminarily determined that the government of South Africa is providing bounties or grants to manufacturers, producers, and exporters of PC strand under three export programs. The programs found to be preliminarily countervailable are the railroad rate differential; the Export Incentive Programs, categories B, C and D; and the Iron/Steel Export Promotion Scheme. Notice of the affirmative countervailing duty determination was published in the **Federal Register** on April 14, 1982 (47 FR 16060).

We have determined that Haggie's renunciation of all benefits under the agreement forms an appropriate basis for proposing the suspension of the countervailing duty investigation of PC strand from South Africa pursuant to section 704(b) of the Act.

We have provided copies of the proposed suspension agreement between Haggie Limited and the Department of Commerce to the petitioners for their counsultation and to other parties to the proceeding for their comments.

Dated: April 21, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-11570 Filed 4-27-82; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Antidumping Investigation; Chlorine From Canada

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of antidumping investigation.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether chlorine from Canada is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission ("ITC") of this action so that it may determine whether imports of this merchandise are materially injuring, or threatening to materially injure, a United States industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before May 20, 1982, and we will make ours on or before September 13, 1982.

EFFECTIVE DATE: April 28, 1982.

FOR FURTHER INFORMATION CONTACT: Steve Garment, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 (202) 377-1757.

SUPPLEMENTARY INFORMATION:

The Petition

On April 5, 1982, we received a petition from counsel for the Diamond Shamrock Corporation ("Diamond"), the Olin Corporation ("Olin"), and the Pennwalt Corporation ("Pennwalt"), on behalf of the United States industry producing chlorine. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry. The allegation of sales at less than fair value is supported by comparisons of United States prices (developed from actual bids, quotes and acceptances) on sales of the merchandise in the United States with Canadian home market prices (obtained from bids, quotes and acceptances of Canadian manufacturers) on sale made in Canada.

Initiation of Investigation

Under section 732(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673a) ("the Act"), we must determine, within 20 days after the petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition filed by the industry, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping investigation to determine whether chlorine from Canada is being, or is likely to be, sold at less than fair value in the United States. If our investigation proceeds normally, we will make our preliminary determination by September 13, 1982.

Scope of the Investigation

The merchandise covered by this investigation is chlorine, a chemical currently classifiable under item number 415.20, *Tariff Schedules of the United States Annotated* ("TSUSA"). Chlorine is primarily used in the production of the following products: (1) polyvinyl chloride; (2) pulp and paper industry processes; (3) chlorinated methanes or ethanes; and (4) water treatment.

Notification to ITC

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

Preliminary Determination by ITC

The ITC will determine within 45 days whether there is a reasonable indication that imports of chlorine from Canada are materially injuring, or are likely to materially injure, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: April 21, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-11421 Filed 4-27-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Announcement of Availability of Issue Paper and Scheduling of Public Workshops on the Proposed Fagatele Bay National Marine Sanctuary

AGENCY: Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration (NOAA), plans to conduct, in cooperation with the Territory of American Samoa, a Public Workshop on the Issue Paper prepared for the proposed Fagatele Bay National Marine Sanctuary. The workshop is scheduled for 7:00 p.m., May 4, 1982 at the Convention Center in Utulei. The Issue Paper and related workshop is designed to solicit views which will aid OCZM in determining the scope of the final sanctuary proposal (e.g., preferred

boundary, management regime, and research and education priorities), and whether to move the nomination forward in the designation process (e.g., prepare a Draft Environmental Impact Statement).

FOR FURTHER INFORMATION CONTACT:
Mr. Kelvin Char, Regional Sanctuary Program Manager, Sanctuary Programs Office, Office of Coastal Zone Management, 3300 Whitehaven St., NW., Washington, D.C. 20235, (202) 634–4236.

SUPPLEMENTARY INFORMATION: In March 1982, the Office of Coastal Zone Management received a proposal from Governor Peter T. Coleman nominating Fagatele Bay, Tutuila Island, American Samoa, as a candidate for marine sanctuary designation. After preliminary analysis by OCZM and meetings with the American Samoa Government (ASG), Fagatele Bay was placed on the List of Recommended Areas (LRA) on April 9, 1982 (47 FR 15397).

After discussion with the ASG regarding the feasibility and desirability of further evaluating this site, NOAA decided to proceed with the next step. In accordance with 15 CFR 922.23(b), preliminary consultation was initiated with relevant Federal agencies and Territorial authorities and other interested parties. Bases on this consultation, the site was made an Active Candiate and an Issue Paper has been prepared.

Individuals desiring to receive a copy of the Issue Paper may call or write the Sanctuary Programs Office in Washington, D.C., or the Development Planning Office, American Samoa Government, Pago Pago, American Samoa 96799.

Interested parties who wish to submit suggestions, comments, or substantive information regarding this meeting are invited to attend. NOAA will continue to receive comments on the Issue Paper until June 4, 1982.

Comments may be submitted in writting to: Mr. Kelvin Char, Regional Sanctuary Programs Manager, Sanctuary Programs Office, Office of Coastal Zone Management, 3300 Whitehaven St., NW, Washington, D.C. 20235, (202) 634–4236.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: April 23, 1982.

Willian Matuszeski,

Acting Assistant Administrator for Coastal Zone Management.

[FR Doc. 82–11573 Filed 4–27–82; 8:45 am]

BILLING CODE 3510–08–M

Announcement of Fagatele Bay, American Samoa as an Active Candidate for National Marine Sanctuary Designation and Intent To Prepare an Issue Paper

AGENCY: Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), as amended (16 U.S.C. 1431–1434), authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological, or aesthetic values. The waters of Fagatele Bay, American Samoa, were included in the List of Recommended Areas published in the **Federal Register** on April 9, 1982 (47 FR 15397) and have now been selected as an Active Candidate for possible designation as a national marine sanctuary. As issue Paper will be prepared and distributed and workshops scheduled in American Samoa. This announcement has no applicability to OMB Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects.

FOR FURTHER INFORMATION CONTACT:
Mr. Kelvin Char, Regional Sanctuary Programs Manager, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven St., NW., Washington, D.C. 20235, (202) 634–4236.

SUPPLEMENTARY INFORMATION: In March 1982, the Office of Coastal Zone Management (OCZM) received a marine sanctuary nomination from Governor Peter T. Coleman of American Samoa. The information provided in the proposal described the physiography of Fagatele Bay, its past and current use, the purposes that would be served through its designation, and how the proposed area would be managed if it were accorded marine sanctuary status.

The proposed site is a 163-acre bay located on an undeveloped portion of the southwest coast of Tutuila, the largest and most populated island in American Samoa. This site was reviewed by NOAA and was determined to have met the criteria for inclusion on the List of Recommended Areas (LRA) in accordance with § 922.21 (Analysis of Recommendations) of NOAA's procedures for designating marine sanctuaries (15 CFR Part 922).

Pursuant to § 922.23(b), preliminary consultation has taken place with relevant Federal agencies, Territory of American Samoa officials, the Western Pacific Regional Fishery Management Council, and other interested parties. No major objections to the proposal submitted to NOAA have been received. In response to this consultation, the Acting Assistant Administrator for OCZM has selected the recommended site as an Active Candidate.

The site meets the requirements of § 922.23(a) of the regulations and is selected as an Active Candidate for possible designation as a marine sanctuary on the basis of the following evaluation:

(1) *The significance of the ecological, geological, recreational, and research and educational resources identified during review for listing under § 922.21(b) on the List of Recommended Areas § 922.23(a)(1):* Fagatele Bay is a pristine environment with high biological productivity. The bay was formed when a geologically recent, but long extinct, volcanic crater was breached thousands of years ago on its southern, ocean side. As a result of its steep cliffs, there has been limited human use of disturbance of the bay.

Over the years, the bay's extraordinary resources have attracted the interest and concern of many persons and agencies who have recommended that Fagatele Bay be accorded special status in recognition of its values, and managed accordingly. The bay is well-suited for scientific research in areas such as natural reef ecology because of its pristine condition and accessibility to researchers for long-term monitoring on a regular basis.

Before the bay was infested by the crown-of-thorns starfish (*Acanthaster planci*) in late 1978, it supported a high diversity and abundance of corals and associated reef fish as well as providing habitat for the threatened green sea turtle (*Chelonia mydas*). As a result of this infestation, only 10 percent of the corals remain. However, recent studies indicate that the corals are beginning to recover. This occurrence provides a unique opportunity to examine the ecological dynamics of marine systems that have been affected by natural perturbations. Research findings in Fagatele Bay would be widely applicable throughout the Pacific in assisting in the management and restoration of similarly affected areas.

(2) *The ability of the Sanctuary Programs Office to support full review within the time specified in § 922.23(a)(2):*

NOAA can prepare an Issue Paper, hold workshops, and initiate an Environmental Impact Statement (EIS) for the proposed site as required.

(3) *The following additional factors (§ 922.23(a)(3)):*

(a) Existing and potential threats to the resources: The coral reefs of the bay play a crucial role in both human and marine environments as they provide essential habitat for fish and shellfish resources that form a large part of a Samoan diet, and buffer the coastal areas from the destructive forces of normal hurricane-induced wave action. Its productive waters also provide a relatively undisturbed tropical habitat for several species of fish, invertebrates, and algae, as well as the endangered hawksbill turtle (*Eretmochelys imbricate*), loggerheard (*Caretta caretta*), and Pacific ridley (*Lepidochelys olivacea*), turtles. However, increasing population and land-use pressure is bring brought to bear on the limited flat land available in the volcanic South Pacific islands. In order to meet the demand for more flat land, many reef and mangrove areas have been filled. Much more information regarding the activities which affect the bay and its resources needs to be gained to ensure the long-term survival of the pristine characteristics that make the bay so unique.

(b) *The ability of existing regulatory mechanisms to protect the value of the sanctuary and the likelihood that sufficient effort will be devoted to accomplishing those objectives:* All of the area under consideration is within Territorial jurisdiction. If fully implemented, existing Federal and Territorial regulatory mechanisms could offer adequate protection to the resources in the area. However, specific regulations must be promulgated before protection and preservation of the bay's resources can be fully realized. Although existing legal authorities are generally sufficient to protect the bay's resources, designation will enhance, significantly, resource protection by making available additional management and enforcement funds by providing: (1) A comprehensive management framework to monitor, assess, and act on information concerning the effects of human activities on the bay; (2) a mechanism to coordinate and encourage research on restoration and recovery of coral reefs and their resources; (3) a public education and interpretive program focused on understanding the fragility and significance of coral reef ecosystems and their resources. These aspects of resource management are not fully provided for under existing regulatory mechanisms.

(c) *The significance of the area to research opportunities on a particular type of ecosystem:* Previous to the 1978 infestation by the crown-of-thorns starfish (*Acanthaster planci*), Fagatele Bay supported a high diversity of corals and coral reef fish. However, a complete understanding regarding the biology of *A. planci* and their long-term effects on coral reef ecosystems is lacking. The bay's pristine condition makes it well-suited for scientific research in areas such as coral reef ecology and is a prime candidate for on-going studies of reef damage and recovery processes.

(d) *The value of the area in complementing other public or private programs with similar objectives, including approved Coastal Zone Management Programs:* All of the area under consideration is under Territorial jurisdiction and, consequently, may be affected by programs such as the American Samoa Coastal Management Program (ASCMP) and the Special Areas Program of the ASCMP. The designation of a marine sancturay under Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 offers a unique opportunity for coordinating Federal and Territorial effects in resource protection, research, and public awareness and education.

(e) *The aesthetic quality of the area:* The area under consideration is a pristine environment that offers unique aesthetic opportunities, including splendid, unspoiled surface and submerged vistas and features.

(f) *The type and estimated economic value of the natural resources and human uses within the area which may be foregone as a result of marine sanctuary designation:* Preliminary consultation and discussions indicate that the area under consideration does provide opportunity for a wide range of commercial and recreational activities, especially boating, fishing, diving, swimming, and underwater photography. However, since human activity in the bay is insignificant, it appears unlikely that any significant economic impacts would result from any proposed regulations associated with sanctuary designation. On the other hand, added scientific research opportunities, public education programs, and resource management efforts will provide a further measure of protection and increased public awareness of coral reefs in American Samoa and the South Pacific. A thorough analysis of the economic impacts resulting from the designation of a marine sanctuary will be conducted as part of the review process. An Issue Paper will be prepared by NOAA for distribution to interested parties describing: (1) The biology and ecology of coral reef ecosystems in American Samoa; (2) the distinctive characteristics of the waters of American Samoa that make the area suitable for coral reef growth; (3) existing government programs aimed at protecting these resources; (4) boundary alternatives; and (5) possible management activities, including a scientific research program as required by § 922.24 of the marine sanctuary regulations, Review of Active Candidate. OCZM will conduct public workshops in American Samoa within 6 months of the date of this publication. The Issue Paper and workshops are designed to solicit views which will aid NOAA in determining the scope of a final sanctuary proposal (e.g. preferred boundary, management regime, reserach and education priorities) and whether to move the nomination forward in the designation process (e.g. prepare a Draft Environmental Impact Statement). The workshops are required in addition to the public hearings under Section 302(e) of the MPRSA should an Environmental Impact Statement (EIS) be prepared. These workshops are part of the scoping process to determine those issues to be addressed in the event that an EIS is subsequently prepared.

Dated: April 23, 1982.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

William Matuszeski,

Acting Assistant Administrator for Coastal Zone Management.

[FR Doc. 82-11574 Filed 4-27-82; 8:45 am]

BILLING CODE 3510-08-M

CONSUMER PRODUCT SAFETY COMMISSION

Privacy Act of 1974; Announcement of System of Records

AGENCY: Consumer Product Safety Commission.

ACTION: Announcement of system of records.

SUMMARY: The Consumer Product Safety Commission is publishing a notice of a Health Unit Medical Records system of records.

DATE: Comments must be received on or before June 28, 1982.

ADDRESS: Comments should be sent to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:
Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207. Telephone: (301) 492–6980.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Commission is reestablishing a Health Unit at its office in Bethesda, Maryland (mailing address Washington, D.C.) to provide various health services to its employees, as authorized by 5 U.S.C. 7901 and OMB Circular No. A–72, Federal Employees Occupational Health Service Programs. The Health Unit is operated by contractor personnel. In accordance with normal medical practice, records will be kept for each employee who visits the Health Unit. Employees will also be given an opportunity to designate a relative or friend to be notified in case of medical emergency. The records will be used by Health Unit personnel in the course of providing medical treatment and advice to Commission employees.

The system of records will become effective June 28, 1982 unless comments are received which justify a contrary determination.

The President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget have been notified of this system.

Dated: April 21, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

CPSC–23

SYSTEM NAME:

Health Unit Medical Records—CPSC –23

SYSTEM LOCATION:

CPSC Employee Health Unit, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CPSC Headquarters employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records of CPSC employees who have received health care or health maintenance examinations in the Employee Health Unit, and names and addresses of relatives or friends of these employees to be contacted in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901, 44 U.S.C. 3101.

PURPOSE(S):

a. To document single incidences of walk-in patients, symptoms and treatment.

b. To maintain a continuing history file on each patient.

c. To document physical examinations, complete with histories and laboratory reports (physicals normally limited to CPSC laboratory and warehouse personnel whose work involves a possible health risk.

d. For use by Health Unit nurses and doctors in the course of providing medical treatment and advice to Commission employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To report individual cases of certain diseases and injuries to Federal, state, and local health authorities, as required by law.

b. To make available records of occupational injuries and illnesses to Federal and state health officials as required by law.

c. To notify employee-designated relative or friend in case of health emergency.

POLICIES, AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records, primarily handwritten or typed cards and forms, plus EKG tracings mounted on forms, are stored in locked file cabinets.

RETRIEVABILITY:

Filed alphabetically by patient's name.

SAFEGUARDS:

Access to records is limited to Health Unit personnel. Records are released only upon written request of the employee.

RETENTION AND DISPOSAL:

Records are retained for duration of CPSC employment. On termination of employment, records are given to employee or forwarded to employee's physician as requested by employee. If terminated employee does not take possession of his or her records or direct that they be forwarded to a physician, the records are sealed and sent to the Personnel Office for inclusion in the employee's official personnel folder, which is sent to the Federal Records Center in St. Louis, Missouri for retention, or to a new Federal employer, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Management Services, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURES:

Same as System Manager.

CONTESTING RECORD PROCEDURES:

Same as System Manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the employee to whom a record pertains, Health Unit personnel, an employee's personal physician when the employee approves, witnesses of accident or illness incidents, and medical records transferred from an employee's previous employer.

Report on Privacy Act System of Records Health Unit Medical Records—CPSC–23

This system of records is used to record and preserve the medical records of the CPSC employees who use the services of the Employee Health Unit provided by the Consumer Product Safety Commission. Information pertaining to each employee visit to a Health Unit is recorded in that employee's file by a nurse or physician who provides the service to the employee. Employees are also given the opportunity to designate a relative or friend to be notified in case of a medical emergency.

These records are maintained in the Health Unit and are used to assist the Health Unit in providing medical treatment and advice to Commission employees, and by an employee's personal physician when the employee requests that his or her records be provided to his or her personal physician. Information from these records is also provided to Federal and State governments in accordance with statutes requiring the reporting of certain types of injuries or diseases.

Authority for the system of records is found in 5 U.S.C. 7901 and OMB Circular No. A–72, which authorize the operation of employee health units, and 44 U.S.C. 3101 which directs agency heads to maintain records of agency operations.

This system of records should not adversly affect the privacy or other rights of employees of the Consumer Product Safety Commission since it only contains medical information entered by nurses and physicians and it is used only to assist in further treatment or counseling of an employee, except

where disclosure of specific injuries or diseases to governmental agencies is required by law. There should be no effect on the principles of federalism or separation of powers since this is an internal agency system of records containing information on federal employees who perform functions expressly authorized by Congress.

As described in the enclosed system notice, the records are stored in locked file cabinets within the employee health unit, with access limited to Health Unit personnel. These precautions are believed by management to be adequate to minimize the risk of unauthorized access to the personal information contained in the system.

[FR Doc. 82-11520 Filed 4-27-82; 8:45]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Flood Control Project, Lake Darling, Souris River, North Dakota

AGENCY: Army Corps of Engineers, St. Paul District, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The 1982 Energy and Water Development Act authorized the Corps of Engineers to raise Lake Darling by approximately 4 feet and to implement work on upstream and downstream flood control measures. Congress has also directed that the Corps take no further action to construct Burlington Dam until expressly directed to do so, at which time the EIS and supplement will be completed and coordinated. Congress also directed the Corps of Engineers to expeditiously prepare and submit a report on the mitigation needs related to Lake Darling.

Features considered to be part of the authorized project include a 4-foot raise of Lake Darling; levee improvements at Velva, Sawyer, and six subdivision areas between Burlington and Minot; relocation of roads and railroads affected by the lake raise; flood proofing residences downstream of the dam; modification of U.S. Fish and Wildlife Service structures in the Upper Souris National Wildlife Refuge; mitigation measures; compensation to Canada for altered return flows; and warning against flooding from the Gassman Coulee near Minot.

Two separate EIS's will be prepared for the project. The first will be, in part, a programmatic EIS, prepared under the "tiering" process discussed in 40 CFR 1502.20 and 1508.28. It will present sufficient information regarding the general impacts on the Lake Darling-Souris River project as a whole so a reasoned judgment can be made on the merits of the action at the present stage of planning. In addition to the programmatic information, this document will also discuss the site-specific impacts of the Velva levee feature. The significant issues identified to date which will be analyzed in depth in the DEIS include the following site-specific impacts of the Velva levee feature: potential effects on wetlands in the vicinity of the proposed cutoff channel and along the western portion of the levee system; potential impacts on cultural resources in the project area; effects on recreational resources, particularly the sports facilities in the Velva park area; adverse impacts on fish and wildlife habitat from channel modification; relocations or potential changes in community stru cture at Velva; the effect of local sponsorship requirements on community resources.

Reasonable alternatives to levee construction at Velva and other downstream areas include the no-action alternative and nonstructional measures such as floodplain evacuation, flood proofing, floodplain regulations, and flood insurance. The Lake Darling alternatives to be addressed are the 4-foot raise, various operating plans, and the no-action alternative.

A second EIS will be prepared at a later date, under a separate Notice of Intent, for the site-specific impacts of the Lake Darling and the upstream and downstream flood control features other than the Velva levee.

The programmatic EIS will identify data gaps and will include plans to supplement the data in the later site-specific EIS. Some of the significant issues related to the Burlington Dam project (carp control, effects on wildlife, vegetation, water quality, erosion, agricultural lands, cultural resources, mitigation, land acquisition, and population displacements) may be applicable concerns of the Lake Darling project. The programmatic EIS will discuss these issues in a general manner, while the site-specific EIS will examine them in depth.

The scoping process for the DEIS will be initiated by letter to all concerned Federal, State, and local agencies; affected Indian tribes; and other interested private organizations and individuals. Anyone who has an interest in participating in the scoping process and the developmesnt of the DEIS is invited to contact the St. Paul District, Corps of Engineers, as soon as possible. We hope to accomplish the scoping task by letter. Because of the geographical distances between interested parties, we feel this is the most practical and efficient method. However, if interest is sufficient at the end of the scoping process, we will hold a meeting, after contacting all parties who have expressed an interest in the project.

Our review of the project will comply with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and applicable Corps of Engineers and other regulations and guidance.

The programmatic/Velva site-specific EIS will be made available to the public in November 1982. The estimated date for public availability of the Lake Darling site-specific DEIS is January 1984.

Questions concerning the proposed action and DEIS can be directed to: Colonel William W. Badger, District Engineer, St. Paul District, Corps of Engineers, 1135 U.S. Post Office and Custom House, St. Paul, Minnesota 55101.

Dated: April 20, 1982.

John O. Roach II,

Army Liaison Officer With the Federal Register.

[FR Doc. 82-11550 Filed 4-27-82; 8:45 am]

BILLING CODE 3710-CY-M

Office of the Secretary

Defense Science Board Task Force on Automatic Target Recognition

The Defense Science Board Task Force on Automatic Target Recognition will meet in closed session on 20, 21 May 1982 at the General Research Corporation Facilities in Santa Barbara, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceiving needs of the Department of Defense.

At its 20, 21 May meeting the task force will review both government in-house programs and contracted efforts on electrooptical and computer techniques for the automatic detection and classification of tactical targets.

In accordance with 5 U.S.C. App. 1 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that

accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

April 23, 1982.

[FR Doc. 82-11531 Filed 4-27-82; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Mapping, Charting & Geodesy; Advisory Committee Meeting

The Defense Science Board Task Force on Mapping, Charting and Geodesy (MC&G) will meet in closed session on May 27, 1982 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At its meeting on May 27, 1982 the Defense Science Board Task Force on MC&G will review the Defense Department's plans and programs concerning generation, derivation, collection and transmission of MC&G data which is critical to the guidance of cruise missiles and other future weapons systems.

In accordance with 5 U.S.C. App. 1 10 (d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

April 23, 1982.

[FR Doc. 82-11532 Filed 4-27-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Indian Education Programs

AGENCY: Education Department.

ACTION: Notice of closing date for receipt of nominations—National Advisory Council on Indian Education.

SUMMARY: Notice is given that the Secretary will accept from Indian tribes and organizations nominations of Indians—as defined below—to serve as members of the National Advisory Council on Indian Education. The Secretary will forward to the President the list of nominees, including the Secretary's recommedations. The Council is appointed by the President and consists of 15 members who must represent diverse geographic areas of the country.

DATES: Nominations must be mailed or hand delivered to the Secretary of Education not later than May 28, 1982.

ADDRESS: James Evans, Indian Education Programs, U.S. Department of Education, Room 2177, FOB-6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: James Evans. Telephone (202) 245-8060.

SUPPLEMENTARY INFORMATION: Nominations are being requested from Indian tribes and organizations for the Secretary to recommend to the President five nominees for membership positions beginning September 30, 1982. Each Presidential appointment will be for a term of three years ending September 29, 1985.

(20 U.S.C. 1233b(a)(1))

Definition. As used in this Notice, "Indian" means an individual who (a) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (b) is considered by the Secretary of the Interior to be an Indian for any purpose, or (c) is an Eskimo or Aleut or other Alaska Native.

(Pub. L. 92-318, sec. 453(a), 20 U.S.C. 1221h(a))

Functions of the Council. The Council is directed to—

a. Submit to the Secretary of Education a list of nominees for the position of Director of Indian Education Programs;

(20 U.S.C. 1221f(a))

b. Advise the Secretary of Education with respect to the administration (including the development of regulations and of administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including Title III of the Act of September 30, 1950 (Pub. L. 81-874) and Section 1005 of Title X of the Elementary and Secondary Education Act of 1965 (both as added by Title IV of Pub. L. 92-318 and as amended), and with respect to adequate funding thereof;

c. Review applications for assistance under Title III of the Act of September 30, 1950 (Pub. L. 81-874), section 1005 of Title X of the Elementary and Secondary Education Act of 1965, and section 316 of the Adult Education Act (all as added by Title IV of Pub. L. 92-318 and as amended), and make recommendations to the Secretary with respect to their approval;

d. Evaluate programs and projects carried out under any program of the Education Department in which Indian children or adults can participate or from which they can benefit, and disseminate the results of such evaluations;

e. Provide technical assistance to local educational agencies and to Indian education agencies, institutions, and organizations to assist them in improving the education of Indian children;

f. Assist the Secretary in developing criteria and regulations for the administration and evaluation of grants made under section 303(b) of the Act of September 30, 1950 (Pub. L. 81-874) (as added by Title IV, Part A, of Pub. L. 92-318); and

g. Submit to Congress not later than June 30 of each year a report on its activities, including any recommendations it may deem necessary for the improvement of Federal education programs in which Indian children or adults participate, or from which they can benefit, and including a statement of the Council's recommendations to the Secretary with respect to the funding of any such programs.

(Pub. L. 92-318, sec. 442(b); 20 U.S.C. 1221g(b))

Nomination categories. Nominations submitted to the Secretary of Education should be made according to the following categories:

a. *Professional educators.* Indians with active experience as professionals in the areas of early childhood, elementary, secondary, higher, special, vocational, and adult education, such as teachers, professors, administrators, specialists (e.g., curriculum, language, mathematics, etc.), counselors, and researchers.

b. *Laypersons involved in education.* Indians with active experience as laypersons involved with education such as school board members, Parent-Teacher Association members, parents of school-age children, or those with other lay involvement.

c. *Students.* Indians who are college students or who have reached or passed their junior year of high school at the time of nomination.

d. *Individuals with other than education experience.* Indians who do not have education experience, preferably those individuals who have

experience in a field involving Indian affairs.

Nomination review procedure. The Director of Indian Education will gather members of the Indian Education Programs staff to screen nominations received and address appropriate criteria including those in the paragraph on criteria for recommendations. A list of recommended individuals will be compiled as a result of this screening and will be forwarded to the Secretary of Education for review. This list will be accompanied by a list of all individuals nominated.

The Secretary of Education will then make recommendations to the President of the United States and forward a list of recommended individuals, as well as the complete list of all individuals nominated, for the President's review and necessary action.

Criteria for recommendations. To maintain a balanced representation on the Council, priority consideration will be given to nominees in categories other than professional educators. Every effort will be made to recommend individuals representing diverse geographic areas of the country, particularly from those areas with large Indian populations. Consideration will also be given to the balance on the Council in terms of sex, and urban and rural (reservation and non-reservation) representation during the screening process.

The following factors will be considered in selecting individuals to be recommended for appointment: Indian education experience; general education experience; education expertise in the areas of early childhood, elementary, vocational, special and adult education; education background; previous council or committee experience; honors and awards received; and organizational memberships.

Nominees will also be considered on the basis of their knowledge of and experience with both local community and national issues.

Nomination procedure. Nominations must be submitted to the Secretary of Education on Form OE–543. The forms may be obtained by writing or telephoning Indian Education Programs, U.S. Department of Education, FOB–6, Room 2177, 400 Maryland Avenue, S.W., Washington, D.C., 20202, telephone (202) 245–8060.

Proof of mailing must consist of one of the following:

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier;

(4) Any other proof of mailing acceptable to the Secretary of Education.

If a nomination is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. (Note the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the nominating Indian tribe or organization should check with its local post office.)

The use of registered or first class mail is encouraged. To be assured of consideration, a nomination must be mailed or hand-delivered no later than May 28, 1982. If the nomination is late, the Department of Education may lack sufficient time to review it with other nominations and may decline to accept it.

b. *Nominations delivered by hand.* A nomination that is hand-delivered must be taken to the Indian Education Programs office, Room 2177, Federal Office Building Six, 400 Maryland Avenue, S.W., Washington, D.C. Hand-delivered nominations will be accepted daily between the hours of 7:30 a.m. and 4:00 p.m., Washington, D.C. time, except Saturdays, Sundays, and Federal Holidays.

Incomplete forms. Incomplete forms will be returned to the nominating Indian tribe or organization accompanied by a checklist detailing information necessary for completion. Completed forms must be returned to the Indian Education Programs office no later than fifteen (15) days after the date on the checklist in order to be considered for recommendation by the Secretary. Proof of mailing will be the same as stated in the nomination procedure.

Dated: April 22, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82–11533 Filed 4–27–82; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86, Stat. 770), notice is hereby given that the American Statistical Association's Committee on Energy Statistics will meet with representatives of the Energy Information Administration (EIA) on Thursday, May 13, 1982, at the International Inn, 10 Thomas Circle, N.W., Washington, D.C., from 9:00 a.m., to approximately 4:00 p.m.

The purpose of the meeting is to enable the EIA to utilize the American Statistical Association's Committee on Energy Statistics to obtain advice on EIA programs and to benefit from the Committee's expertise concerning other energy statistical matters.

The tentative agenda is as follows:

A. Opening Remarks.

B. Major Topics:

1. Design of the Integrated Petroleum Products Data System;

2. EIA Frames and Frames Development Activities;

(The above topics will be presented jointly.)

3. Cost of Coal vs. Nuclear Energy in Electric Power Generation;

4. Uses of Residential Energy Consumption System (RECS) Data—Particularly the Transportation Panel;

5. The EIA Standards Program;

6. Timeliness and Accuracy of Petroleum Supply Data.

C. Other Business:

1. Topics for Future Meetings;

2. Public Comments.

The meeting is open to the public. Any member of the public may file a written statement with the EIA for forwarding to the Committee, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should inform Mr. Bruce D. Dwyer, EIA Committee Liaison, (202) 252–6460, or Dr. Fred C. Leone, Executive Director of the American Statistical Association, (202) 393–3253, at least five days prior to the meeting and reasonable provisions will be made to include their presentations on the agenda. Subsequent to approval by the Committee, minutes and an executive summary of the meeting will be available for public review and copying at the Office of Planning and Resources, EI–32, EIA, 1000 Independence Avenue, S.W., Room 2H055, Washington, D.C. 20585, (202) 252–6460, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Issued at Washington D.C. on April 22, 1982.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 82–11507 Filed 4–27–82; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Solar Panel of the Energy Research Advisory Board; Meeting

Notice is hereby given of the following meeting:

NAME: Solar Panel of the Energy Research Advisory Board (ERAB). ERAB is a Committee constituted under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770).

DATE AND TIME: May 12, 1982, 9 a.m. to 5 p.m.

PLACE: Department of Energy, Forrestal Building, Room 4A-110 1000 Independence Avenue, SW., Washington, DC 20585.

CONTACT: Mary Gant, Energy Research Advisory Board, Department of Energy, Forrestal Building, ER-6, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/252-8933.

PURPOSE OF THE PARENT BOARD: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda

—Organizational matters
—Administrative items
—Future schedule
—Site visits
—Report structure
—Program briefings.

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Energy Research Advisory Board at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 6:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 27, 1982.

J. Ronald Young,
Associate Director for Management, Office of Energy Research.

[FR Doc. 82-11736 Filed 4-27-82; 11:05 am]
BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements, Civil Uses; United States and International Atomic Energy Agency, Finland, Japan, and European Atomic Energy Community (EURATOM); Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) Concerning Peaceful Uses of Atomic Energy, as amended, the Agreement for Cooperation Between the Government of the United States of America and the Government of Finland Concerning Civil Uses of Atomic Energy, the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreements involve approval for the supply of the following nuclear materials:

Contract Number WC-IA-127, to the IAEA Safeguards Analytical Laboratory, Vienna, Austria, 105.7 grams of uranium enriched to 4.30% in U-235, and 23.6 grams of uranium enriched to 2.84% in U-235.

Contract Number WC-FI-10, to the University of Helsinki, Finland, 105.7 grams of uranium enriched to 4.30% in U-235, and 23.6 grams of uranium enriched to 4.30% in U-235.

Contract Number WC-FI-11, to the Technical Research Centre of Finland, 105.7 grams of uranium enriched to 4.30% in U-235.

Contract Number WC-JA-38, to Japan Nuclear Fuel Co., Ltd., 105.7 grams of uranium enriched to 4.30% in U-235.

Contract Number WC-JA-39, to the Safeguards Analytical Laboratory, Tokai-Mura, Japan, 105.7 grams of uranium enriched to 4.30% in U-235, and 23.6 grams of uranium enriched to 2.84% in U-235.

Contract Number WC-JA-40, to the Power Reactor and Nuclear Fuel Development Corp., Japan, 105.7 grams of uranium enriched to 4.30% in U-235, and 59.8 grams of uranium enriched to 2.84% in U-235.

Contract Number WC-EU-224, to Fabbricazioni Nuclear, SPA, Italy, 105.7 grams of uranium enriched to 4.30% in U-235.

Contract Number WC-EU-225, to the Institute Fur Radiochemie, Karlsruhe, the Federal Republic of Germany, 23.6 grams of uranium enriched to 2.84% in U-235.

Contract Number WC-EU-226, to CEN/SACLAY, France, 5.98 grams of uranium enriched to 2.84% in U-235.

Contract Number WC-EU-227, to the Netherlands Energy Research Foundation, 105.7 grams of uranium enriched to 4.30% in U-235, and 59.8 grams of uranium enriched to 2.84% in U-235.

Contract Number WC-EU-228, to CEN/GRENOBLE, France, 105.7 grams of uranium enriched to 4.30% in U-235, and 23.6 grams of uranium enriched to 2.84% in U-235.

Contract Number WC-EU-229, to Alpha-Chemie and Melallurgie GMBH, Hanau, the Federal Republic of Germany, 105.7 grams of uranium enriched to 4.30% in U-235, and 23.6 of uranium enriched to 2.84% in U-235.

Contract Number WC-EU-230, to Belgonucleaire, Belgium, 105.7 grams of uranium enriched to 4.30% in U-235.

Contract Number WC-EU-231, to the Institute fuer Chemische Technologie, Juelich, the Federal Republic of Germany, 23.6 grams of uranium enriched to 2.84% in U-235.

Contract Number WC-EU-232, to the Ministry of Defense, the United Kingdom, 5.98 grams of uranium enriched to 2.84% in U-235.

Contract Number WC-EU-233, to British Nuclear Fuels, Ltd., the United Kingdom, 105.7 grams of uranium enriched to 4.30% in U-235, and 23.6 grams of uranium enriched to 2.84% in U-235.

Contract Number WC-EU-234, to the Centre D'Etude de L'Energie Nucleaire, Mol, Belgium, 105.7 grams of uranium enriched to 4.30% in U-235, and 23.6 grams of uranium enriched to 2.84% in U-235.

Contract Number WC-EU-235, to the Bundesanstalt fuer Materialpruefung, the Federal Republic of Germany, 105.7 grams of uranium enriched to 4.30% in U-235.

Contract Number WC–EU–236, to AGIP Nucleare SPA, Italy, 105.7 grams of uranium enriched to 4.30% in U–235, and 23.6 grams of uranium enriched to 2.84% in U–235.

These materials are to be utilized in the Safeguards Analytical Laboratory Evaluation (SALE) Program. This program is designed to evaluate the capability of participating laboratories to analyze materials to be safeguarded in the nuclear fuel cycle, and to provide means by which measurement capability may be improved through the interchange of measurement technology.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than May 13, 1982.

For the Department of Energy.

Dated: April 22, 1982.

Jack Ebetino,

Acting Director, Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82–11499 Filed 4–27–82; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Taiwan; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangment" authorized by the Taiwan Relations Act of 1979 (Pub. L. 96–8).

The subsequent arrangement to be carried out under the above mentioned authority involves for supply of the following material: Contract Number WC–CI–8, to the Institute of Nuclear Energy Research, Taiwan, 105.7 grams of uranium enriched to 4.30% in U–235, and 23.6 grams of uranium enriched to 2.84% in U–235.

These materials are to be utilized in the Safeguards Analytical Laboratory Evaluation (SALE) Program. This program is designed to evaluate the capability of participating laboratories to analyse materials to be safeguarded in the nuclear fuel cycle, and to provide means by which measurement capability may be improved through the interchange of measurement technology.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than May 13, 1982.

For the Department of Energy.

Dated: April 22, 1982.

Jack Ebetino,

Acting Director, Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82–11500 Filed 4–27–82; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements, Peaceful Uses; United States and European Atomic Energy Community (EURATOM); Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreement to be carried out under the above mentioned agreement involve approval of the following sales: Contract Number S–EU–727, to the Fakultat fur Physik, Federal Republic of Germany, 50 milligrams of plutonium-240 for use as absorber material in Mossbauer experiments: Contract Number S–EU–730, to the Bureau De Recherches Geologiques ET Minieres, France, 20 milligrams of uranium enriched to 99.9% in U–235, for preparation of solutions for analysis by isotopic dilation in geochemistry.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than May 13, 1982.

For the Department of Energy.

Dated: April 22, 1982.

Jack Ebetino,

Acting Director, Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82–11502 Filed 4–27–82; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Peaceful Uses; United States and European Atomic Energy Community (EURATOM); Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended:

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the following sale: Contract Number S–EU–731, to the Office des Rayonnements Ionisants, France, 8.1 grams of uranium, enriched to an average of 72.4% in U–235, and 26 grams of natural uranium in the form of metal, for use as standard reference materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than May 13, 1982.

For the Department of Energy.

Dated: April 22, 1982.

Jack Ebetino,

Acting Director, Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82–11503 Filed 4–27–82; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Civil Uses; United States and Japan; Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangments to be carried out under the above metioned agreement involve approval of the following sales: Contract Number S–JA–317, to the Shibayama Scientific Co., Ltd., Tokyo, Japan, 30.948 grams of natural uranium for use as standard reference material:

Contract Number S–JA–318, to the Power Reactor and Nuclear Fuel Development Corp., Tokyo, Japan, 33.75 grams of plutonium, for use as standard reference materials. License XSNM1768 has been issued by the U.S. Nuclear Regulatory Commission for the export of this material.

Contract Number S–JA–319, to Nuclear Fuel Industries, Ltd., Tokyo, Japan, 5 grams of uranium enriched to 5.01% in U–235, and 5 grams of uranium enriched to 2.038% in U–235, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than May 13, 1982.

For the Department of Energy.

Dated: April 22, 1982.

Jack Ebetino,

Acting Director, Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82-11501 Filed 4-27-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-42011A; TSH-FRL-2100-6]

2-Chlorotoluene; Response to the Interagency Testing Committee

March 29, 1982.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the Eighth Report of the Interagency Testing Committee (ITC), transmitted to the Administrator of the EPA on April 24, 1981, the Committee designated the chemical 2-chlorotoluene for testing considerations. Following publication of the ITC report and a public meeting on June 16, 1981, the sole American manufacturer of 2-chlorotoluene, Hooker Chemicals and Plastics Corporation, presented to the EPA plans for testing its health and environmental effects. The Agency has discussed the planned testing with Hooker and, after an opportunity for public review and comment, decided to accept the program. Consequently the EPA is not, at this time, proposing a section 4(a) rule to require health or environmental effects testing of 2-chlorotoluene.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(a) of the Toxic Substances Control Act (TSCA) authorizes the EPA to promulgate regulations requiring testing of chemical substances and mixtures in order to develop data relevant to determining the risks that such chemicals may present to health and the environment.

Section 4(e) of the TSCA [90 Stat. 2010; (15 U.S.C. 2601 et seq.)] established an Interagency Testing Committee (ITC) to recommend to the EPA a list of chemicals to be considered for the promulgation of testing rules under section 4(a) of the Act.

The IRC placed 2-chlorotoluene on its priority testing list in April 1981, requiring the EPA to respond to such listing within 12 months of the date it was made, either by initiating rulemaking under section 4(a) or publishing in the **Federal Register** reasons for not doing so. The ITC recommended testing of 2-chlorotoluene for carcinogenicity, mutagenicity, chronic effects, reproductive effects, teratogenicity, chemical fate, bioconcentration, and chronic toxicity to fish and aquatic invertebrates.

II. Proposed Testing

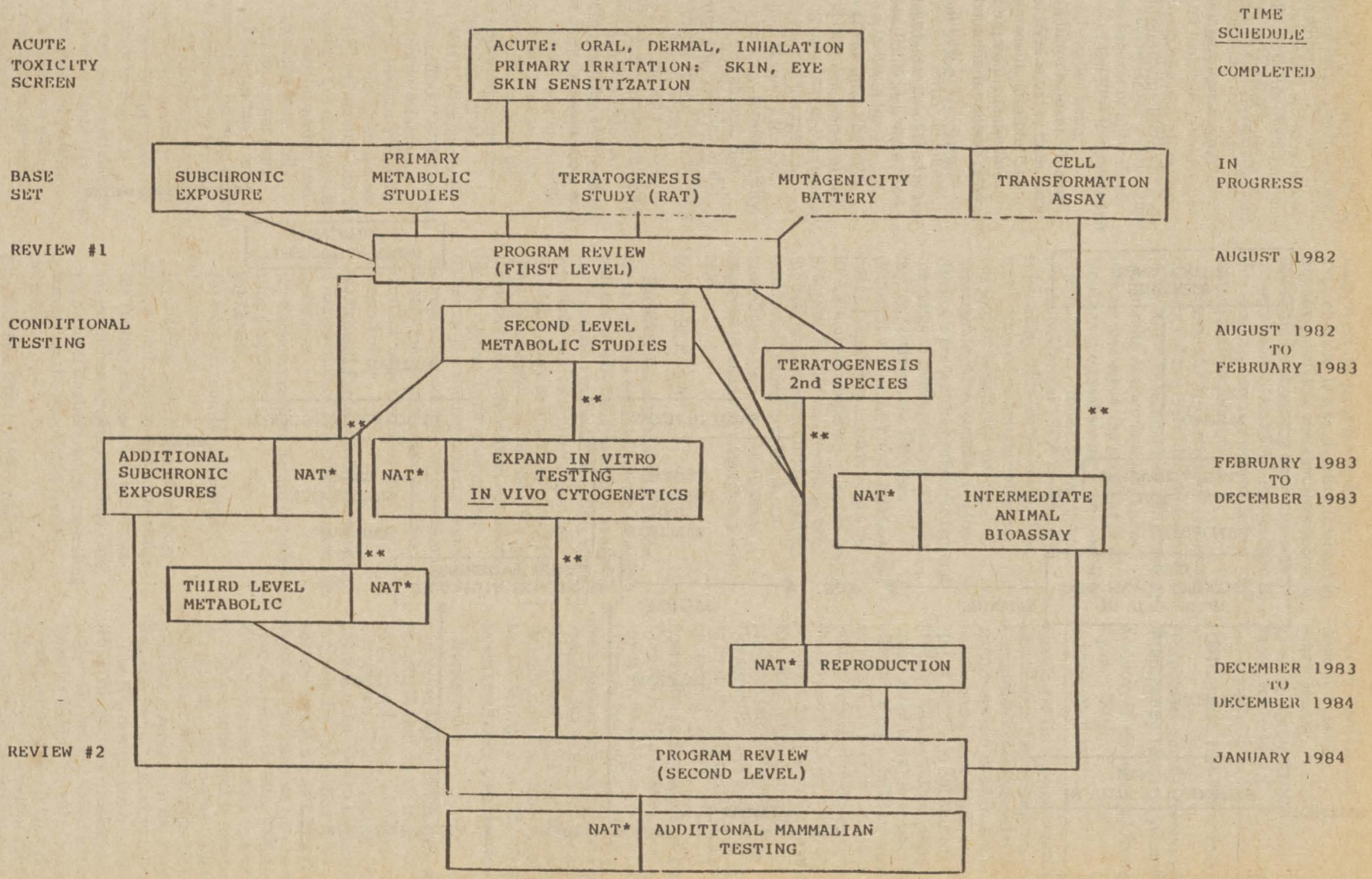
Hooker Chemicals and Plastics Corporation is the sole American manufacturer of 2-chlorotoluene. At a public meeting held by the EPA on July 16, 1981, Hooker announced that it was planning additional testing of 2-chlorotoluene. After discussions with Agency staff, a detailed testing scheme and schedule was submitted for EPA review and comment. A revised version was made available to the public for comment in January 1982 (47 FR 3596, January 26, 1982).

Hooker's proposal for health effects testing is a tiered system, with lower tier tests acting as triggers to additional testing or as stop points following review of the data with EPA personnel. The complete health effects tier can be seen in Figure 1, along with decision points and estimated schedules. A more detailed portrayal of the mutagenicity test program is seen in Figure 2.

BILLING CODE 6560-50-M

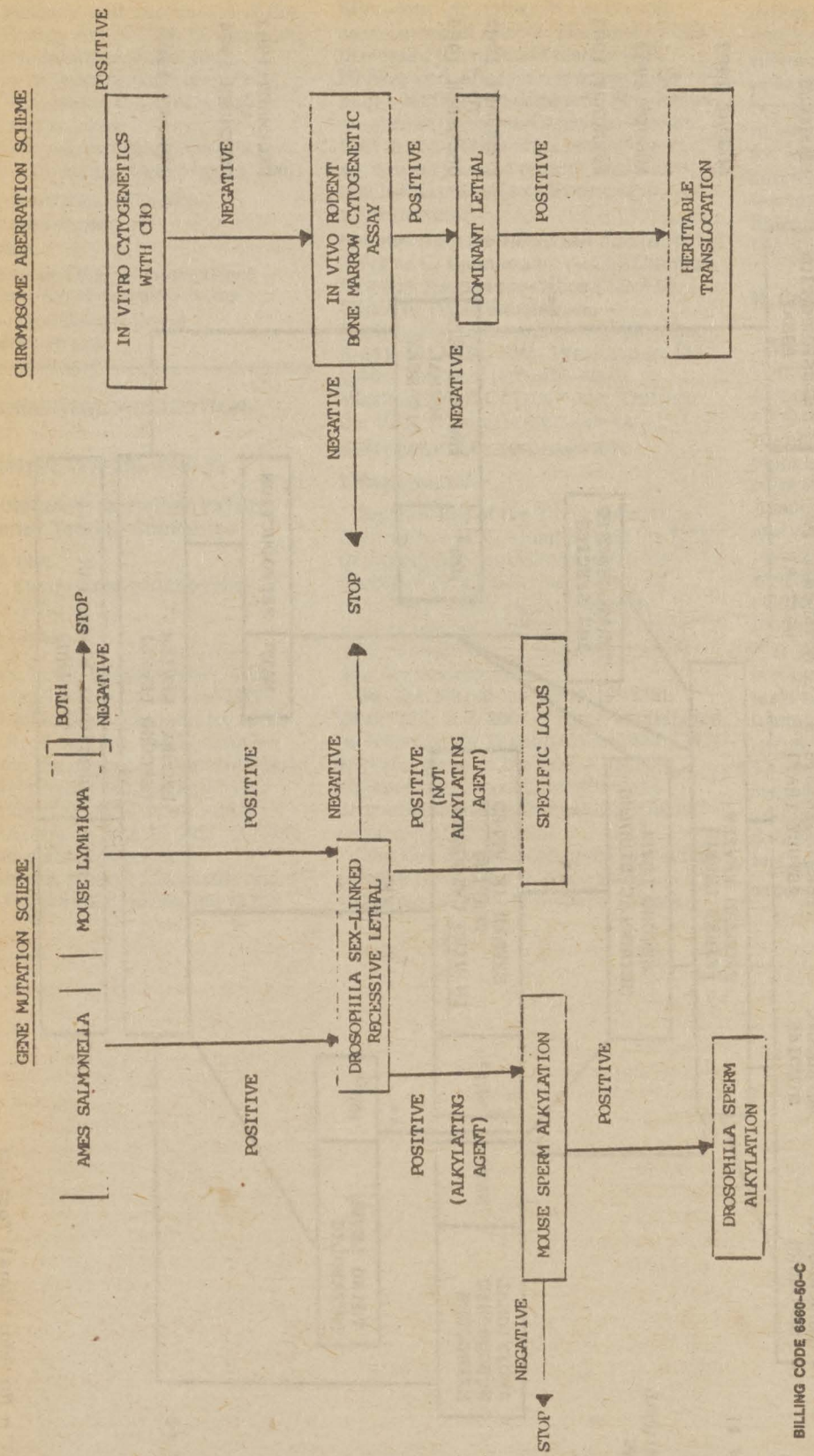
Figure 1

2-CHLOROTOLUENE
MAMMALIAN TOXICOLOGY
PROGRAM



* NAT = No Additional Testing
** Data Review with EPA

FIGURE 2



BILLING CODE 6560-50-C

The aquatic toxicity testing scheme is a non-tiered set of tests. The following tests will be performed:

Acute fish—trout, fathead minnow
Acute invertebrate—*Daphnia*
Chronic fish (embryo-juvenile test)—fathead minnow
Fish bioconcentration (species to be determined)

Hooker has agreed to permit Good Laboratory Practices/Quality Assurance activities at the request of authorized representatives of the EPA in connection with any and all studies being conducted by and for Hooker. Hooker will supply the EPA with the data from the studies as soon as possible. The Agency will periodically make this information available for public review.

III. Decision not to Require Testing

After a thorough review of the Hooker testing proposal, the EPA has decided not to propose a test rule for 2-chlorotoluene at this time. The EPA believes that the Hooker proposal will meet the testing concerns of the Agency for 2-chlorotoluene. Of the specific recommendations made by the ITC, testing for mutagenicity, teratogenicity, bioconcentration, and chronic fish toxicity are explicitly included in the Hooker proposal. Eli Lilly and Company have submitted an oral 90-day subchronic study to the EPA. Hooker Chemical will be performing metabolic studies which, when evaluated in conjunction with available shorter-term oral, dermal and inhalation studies, will aid the Agency in determining whether additional subchronic tests will be needed. The EPA believes such an approach to be appropriate for the reasons presented in the EPA's Response to the NRDC Comments on the Chlorinated Paraffins (OPTS Docket 42004). For reproductive effects, a decision whether to perform full-scale reproduction studies will be based on results of the 90-day subchronic and the teratogenicity studies. For oncogenicity, the results of cell transformation and short term mutagenicity tests will determine the need for longer term testing. Chemical fate testing is now considered unnecessary because enough data have been submitted by Hooker and by Eli Lilly and Company during the past year to satisfy data needs in that area. Finally, Hooker has proposed to omit chronic toxicity testing of 2-chlorotoluene on aquatic invertebrates, proposing instead to evaluate this effect on the basis of the planned 48-hour *Daphnia* test in conjunction with a comparison of results from the acute and chronic fish studies and bioconcentration studies. From these data, it can be judged whether 2-chlorotoluene is a cumulative toxicant in aquatic species or whether invertebrates appear to be unusually susceptible to the compound. The EPA believes that this is an appropriate approach for testing 2-chlorotoluene.

Because Hooker's proposal covers the concerns of the ITC either directly or indirectly, and Hooker has agreed to include the Agency in all decision-making processes, the acceptance of Hooker's proposal seems a reasonable alternative to a time-consuming and expensive formal TSCA section 4(a) rulemaking. This allows the EPA to focus upon other testing needs not covered by negotiated testing agreements. After considering the Agency's present test rules burden and the range of testing included in this testing proposal, the EPA has determined that the public interest will best be served by Hooker's and the EPA's mutual cooperation in this testing program. Should test results or other information reveal a strong need for additional testing that Hooker is unwilling to perform, the Agency reserves its right to promulgate a test rule.

IV. Public Record

The EPA has established a public record for this testing decision (docket number OPTS-42011) which is available for inspection in the OTS reading room from 8:00 a.m. to 4:00 p.m. Monday through Friday in Rm. E-107, 401 M St., SW., Washington, DC 20460. This record includes basic information considered by the Agency in developing this decision. The Agency will supplement the record periodically with additional relevant information received. The record includes the following information:

(1) **Federal Register** notice containing the designation of 2-chlorotoluene to the priority list.

(2) Communications before industry testing proposal.

(a) Letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries of Agency-industry and Agency-public meetings.

(3) Testing proposal and protocols.

(4) Published and unpublished data.

(5) **Federal Register** notice requesting comment on the negotiated testing proposal.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2061))

Dated: April 22, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-11575 Filed 4-27-82; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-42010; TSH-FRL 2081-6]

Hexachloroethane; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice constitutes EPA's response to the Interagency Testing Committee's recommendation that EPA require environmental effects testing of hexachloroethane (HCE) under section 4(a) of the Toxic Substances Control Act (TSCA). EPA is not initiating rulemaking under section 4(a) to require further effects testing of HCE because, given the small amounts of the substance which will be released to the environment, there is no basis for believing that the compound may present an unreasonable risk. Regulatory action is already in progress under the Resource Conservation and Recovery Act (RCRA) to control the disposal of HCE-containing wastes.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, D.C., 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(e) of TSCA (sec. 4(a); Pub. L. 94-469, 90 Stat. 2003; 15 U.S.C. 2601 et seq.) established an Interagency Testing Committee (ITC) to recommend a list of chemicals for EPA to consider for promulgation of testing rules under section 4(a) of the Act. The ITC may designate substances for priority consideration by EPA. TSCA requires EPA to respond within twelve months of the date a substance is recommended for priority response by initiating rulemaking under section 4(a) or by publishing reasons in the **Federal Register** for not initiating rulemaking.

The ITC designated hexachloroethane (HCE) for priority consideration in its Eighth Report, published in the **Federal Register** of May 22, 1981 (46 FR 28138), recommending that it be tested for the following environmental effects: chemical fate, terrestrial plant uptake and toxicity, bioaccumulation, microbial

toxicity, avian toxicity, toxicity to terrestial investrebrates, chronic toxicity to fish and aquatic investebrates.

The ITC's recommendations were based on annual production and importation figures between 4 and 41 million pounds, and the opportunity for substantial environmental release during use and disposal of HCE-containing materials. Other factors included evidence of acute toxicity to aquatic organisms at concentrations below 1 ppm HCE and a lack of information concerning chemical fate, toxicity to other organisms, and effects of chronic exposure.

This notice provides EPA's response to the ITC's designation of HCE for testing.

II. Decision Not to Test

EPA has decided that section 4 testing of HCE is not warranted at this time based on limited exposure and release of HCE to the environment, and on regulatory action already in progress under RCRA.

There are curently two sources of HCE in the U.S.: (1) Imports and (2) HCE-containing hex-wastes resulting from the production of chlorinated hydrocarbons. In 1980, imports accounted for 26 percent and hex-wastes for 74 percent of the approximately 11 million-pound volume of HCE in the U.S. Approximately 90–98 percent of the imported HCE is used in the manufacture of U.S. Army smoke munitions and aluminum industry degassing pellets. The majority of the HCE in these products is destroyed during the use of the products (estimated >91 percent and >99 percent respectively). Very little HCE would be expected to be released to the environment through these uses. The military is presently seeking a substitute for HCE and plans to discontinue its use of the chemical

The waste streams, i.e., hex-wastes, from the production of certain chlorinated hydrocarbons typically contain 4–15 percent HCE. The HCE is not recovered from the hex-wastes, but is disposed by various methods. Over the last 10 years, disposal practices for hex-waste have shifted from landfill operations to incineration. In 1981, 82 percent of the hex-wastes will be disposed of by incineration, 18 percent by deepwell injection and less than 1 percent by landfill operations. The incinerators used for this purpose reportedly achieve 99.99 percent destruction efficiency. Some hex-wastes also contain PCBs at levels exceeding 50 ppm and thus must be handled according to the regulations governing PCBs under TSCA. these regulations include disposal in EPA-approved incinerators (99.9999 percent destruction efficiency), secured landfills, or high-efficiency boilers. In addition, regulatory action under RCRA is being directed toward the proper disposal of HCE-containing wastes. HCE and hex-waste streams are listed as hazardous wastes under RCRA, 40 CFR Part 261.

HCE is also present as an intermediate in the production of chlorofluorocarbons. However, the HCE is generated and entirely consumed during the manufacturing process. A chlorofluorocarbon industry source estimates a release of 7 tons of HCE per year (1) from emissions to the atmosphere during the storage of chlorinated hydrocarbons containing HCE and (2) from the disposal of materials generated through sampling, equipment cleaning operations, etc.

In light of current uses and disposal practices, and regulatory action taken under RCRA, it is anticipated that only small quantities of HCE will be released to the environment. Therefore, there is no basis for believing that the compound may present an unreasonable risk to the environment. EPA has, therefore, decided that section 4 testing of hexachloroethane is not warranted at this time. If monitoring data under RCRA or other data indicate an increase in release or exposure to HCE, this decision not to require testing may be reconsidered at that time.

III. Public Record

EPA has established a public record for this testing decision (docket number OPTS–42010) which is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m. on working days in Rm. E–107, 401 M St. SW., Washington, D.C., 20460. This record includes basic information considered by the Agency in developing this decision. The Agency will supplement the record with additional relevant information as it is received. The record includes the following information:

1. **Federal Register** notice containing the designation of hexachloroethane to the Priority List.

2. Communications (public, intra-agency, and interagency):

a. Memoranda and letters.

b. Contact reports of telephone conversations.

c. Meetings.

3. Public comments on the ITC report.

4. Published and unpublished data.

Dated: April 22, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82–11576 Filed 4–27–82; 8:45 am]

BILLING CODE 6530–50–M

[OPP–00155 PH FRL 2110–5]

State FIFRA Issues Research and Evaluation Group Working Committees; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a two-day meeting of the Working Committee on Enforcement and Certification of the State FIFRA Issues Research and Evaluation Group (SFIREG) and a one-day meeting of the SFIREG Working Committee on Registration and Classification to discuss various aspects of pesticides. The meetings will be open to the public.

DATES: The Working Committee on Enforcement and Certification will meet on Tuesday and Wednesday, May 11–12, 1982. The Working Committee on Registration and Classification will meet on Thursday, May 13, 1982. The meetings of both committees will start at 8:30 a.m. each day.

ADDRESS: Both meetings will be held at: Menger Hotel, 204 Alamo Plaza, San Antonio, TX, (512–223–4361).

FOR FURTHER INFORMATION CONTACT: Philip H. Gray, Jr., Office of Pesticide Programs (TS–766C), Environmental Protection Agency, Rm. 1124, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2126).

SUPPLEMENTARY INFORMATION: The meeting of the Working Committee on Enforcement and Certification will be concerned with the following topics:

1. Pesticide drift.

2. Pesticide safety program for farm workers.

3. National listing by State of reported violations for structural, institutional, and industrial applicators.

4. Certification and training: Funding issues.

5. Alternatives to full federal funding of Nebraska/Colorado applicator certification programs.

6. EPA interpretation of section 2(ee). (This subject will be discussed the afternoon of May 12 in conjuction with the Working Committee on Registration and Classification.)

7. Parathion product labels: Reentry statements.

8. Compilation of enforcement policies by EPA's Pesticides and Toxic Substances Enforcement Division.

9. Enforcement strategy for pesticides suspended pursuant to section 3(c)(2)(B).

10. Other topics as appropriate.

The meeting of the Working Committee on Registration and Classification will be concerned with the following topics:

1. Revised section 3 regulations.

2. Tolerance setting procedures/Crop grouping.

3. Repetitive issuance of section 24(c) registrations.

4. Classification of grain fumigants and granulars.

5. EPA policy on interpretation of section 2(ee). (This subject will be discussed the afternoon of May 12 in conjunction with the Working Committee on Enforcement and Certification.)

6. March 10, 1982, Federal Register notice on tolerances for minor uses.

7. Suggested addition to section 24(c) application form.

8. Proposed rule on closed system packaging.

9. General registration standard for certain types of products.

10. Other topics as appropriate.

Dated: April 15, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-11170 Filed 4-27-82; 8:45 am]

BILLING CODE 6560-50-M

[OPP-55000A; PH-FRL-2112-4]

Idaho; Approval of State Plan for Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Federal Insecticide, Fungicide and Rodenticide Act and the implementing regulations of 40 CFR Part 172, Subpart B, require each State desiring to issue experimental use permits to submit a plan to EPA for its experimental use permit program. Any State experimental use permit program under this section shall be maintained in accordance with the State Plan approved under this section. This is a notice of approval of such a plan for Idaho.

DATE: This approval became effective on April 28, 1982.

ADDRESS: Complete copies of the Idaho State Plan are available for public inspection at: Idaho Department of Agriculture, 120 Klotz Lane, Boise, Idaho 83701, and U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Lyn Frandsen, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-1091.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 27, 1982 (47 FR 3873) notice was published of the intent of the Regional Administrator, EPA, Region 10, to approve the Idaho State Plan for Issuance of Experimental Use Permits, and public comment was solicited. EPA received no comment.

Therefore, it has been determined that the Idaho State Plan satisfies the requirements of section 5(f) of the amended FIFRA and 40 CFR 172, and the Idaho State Plan is hereby approved.

The Office of Management and Budget (OMB) has granted EPA an exemption from OMB review (under the authority of Executive Order 12291, section 8(b)), of final approval of State Plans for issuing state experimental use permits.

(Sec. 5(f), as amended (Pub. L. 95-396, 92 Stat. 819 (7 U.S.C. 136))

Dated: April 14, 1982.

John R. Spencer,

Regional Administrator, Region 10.

[FR Doc. 82-11405 Filed 4-27-82; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/17B; PH-FRL-2090-8]

Pentachloronitrobenzene (PCNB); Notice of Determination Concluding the Rebuttable Presumption Against Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Termination of RPAR proceeding.

SUMMARY: This notice announces that the rebuttable presumption against registration (RPAR) of pesticide products containing pentachloronitrobenzene (PCNB), has been terminated. The notice describes the voluntary amendments to the conditions of registration which all PCNB registrants have agreed to implement to eliminate any potential unreasonable risks related to the use of this pesticide.

DATE: Effective April 28, 1982.

FOR INFORMATION CONTACT: Joseph Panetta, Special Pesticide Review Division (TS-791), Office of Pesticide Programs, Environmental Protection Agency, Rm. 709, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7451)

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 20, 1977, the Environmental Protection Agency issued a notice of rebuttable presumption against registration (RPAR) of pesticide products containing pentachloronitrobenzene (PCNB), published in the **Federal Register** of October 20, 1977 (42 FR 56072). Publication of that notice initiated the agency's public review of the potential risks of PCNB. PCNB is a compound currently registered in the United States for use as a soil fungicide and seed treatment. This notice constitutes the agency's Notice of Determination, pursuant to 40 CFR 162.11(a)(5)(i), terminating the review process initiated under 40 CFR 162.11.

The rebuttable presumption against PCNB was triggered by the potential risk of oncogenicity to man based primarily on information suggesting that hexachlorobenzene (HCB), an impurity produced during the manufacture of PCNB, was oncogenic and might also have presented risks of other chronic effects, including reproductive effects in humans. The agency requested registrants and other interested parties to submit data on the following concerns pertaining to PCNB and its impurities: Acute and chronic effects; degradation products in the environment; and metabolism in humans. The agency also requested comments on the benefits of PCNB use.

After reviewing all of the available information, the agency has concluded that the evidence does not positively establish a correlation between exposure to PCNB itself and oncogenicity. With regard to HCB, the available studies indicate that this impurity of PCNB is an animal carcinogen and is likely to be responsible for any potential oncogenic effect of commercial PCNB. Accordingly, the agency has concluded that reducing the level of HCB in PCNB would be essential to reducing any potential risks posed by PCNB products.

All registrants of PCNB products have voluntarily agreed to apply for modifications of the terms and conditions of registration, which will substantially reduce any potential risks posed by the HCB impurity in PCNB. A copy of the agreement is found in Unit IV of this Notice. Label amendments imposing requirements for the use of protective clothing and respirators during mixing/loading have been proposed by the agency and accepted by the registrants. These voluntary modifications to the terms and conditions of registration would make

the likelihood of significant human exposure to HCB present in PCNB very remote. Further, registrants have agreed to cancel their registrations of certain dust formulations and reduce to 0.1 percent of HCB level in PCNB. Although the agency believes that there are potential hazards associated with exposure to HCB, the agency does not believe that the use of PCNB in accordance with the agreed to restrictions will result in any significant chronic adverse effects.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA"), a manufacturer must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment", FIFRA section 3(c)(5). "Unreasonable adverse effects on the environment" is defined to mean "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide", FIFRA, section 2(bb). In effect, this standard requires a finding that the benefits of each use of the pesticide exceed the risks of use, when the pesticide is used in accordance with commonly recognized practice and in compliance with the terms and conditions of registration. The burden of proving that a pesticide satisfies the registration standard is on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide or modify the terms and conditions of registration whenever it is determined that the pesticide causes unreasonable adverse effects on the environment. The agency created the RPAR process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

The regulations governing the RPAR process are set forth at 40 CFR 162.11. This section provides that a rebuttable presumption shall arise if a pesticide meets or exceeds any of the risk criteria set out in the regulations. The agency announces that an RPAR has arisen by publishing a notice of determination in the **Federal Register**. After an RPAR is issued, registrants and other interested persons are invited to review the data upon which the presumption is based and to submit data and information to rebut the presumption of risk by showing that the agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant exposure to human beings or the environment with regard to the adverse effects in question. In addition to submitting evidence to rebut the risk presumption, respondents may submit evidence as to whether the economic, social and environmental benefits of the use of the pesticide outweight the risks of use.

The regulations require the agency to conclude an RPAR by issuing a notice of determination. In that notice, the agency is required to state and explain its position on the question of whether the risk presumption has been rebutted. If the agency determines that the presumption is not rebutted, it will then consider information relating to the social, economic, and environmental costs and benefits which registrants and other interested persons submitted to the agency, and any other benefits information known to the agency. In determining whether the use of a pesticide poses risks which are greater than the benefits, the agency considers possible changes to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of the use. After weighing the risks and benefits of pesticide use, the Administrator may conclude the RPAR process by issuing a notice of intent to cancel, deny, or reclassify the registrations of the pesticide for the use in question, pursuant to FIFRA section 6(b)(1) and section 3(c)(6), or by issuing a notice of intent to hold a hearing pursuant to section 6(b)(2) of FIFRA to determine whether the registrations for the use should be cancelled, denied, or reclassified.

III. Determination To Terminate Rebuttable Presumption Proceeding

The agency has considered information on the potential risks associated with the uses of pentachloronitrobenzene (PCNB) including information submitted by registrants and other interested persons in rebuttal to the PCNB RPAR. The Agency's assessment of the risks associated with the use of PCNB and its conclusions regarding whether or not the uses of PCNB under current label restrictions pose unreasonable adverse effects are summarized below. The determination of the agency with respect to PCNB is as follows:

a. Determination on Risks

The PCNB RPAR was based on information indicating that PCNB with its HCB impurity may pose risks of oncogenicity to humans. The agency has concluded that the HCB contaminant in PCNB is likely to be responsible for any oncogenic effects of PCNB.

The agency has determined that the presumption against PCNB has been rebutted because PCNB manufacturers have voluntarily agreed to reduce the HCB impurity level in PCNB to 0.1 percent HCB over the next six years. This period is necessary to permit manufacturers the time to develop and implement technology required to reduce the HCB impurity. The analytical methodology to measure the purity of PCNB and the level of HCB impurity has been submitted by the registrants and approved by the agency. All formulators have also agreed to amend labels to require protective clothing and respirators during mixing/loading, to cancel the registrations of certain dust formulations, and to reduce applicator exposure to wettable powder and hopper box dust formulations. With these revisions, the risks cited in the presumption are no longer of concern to the agency, because anticipated exposure to PCNB would be insignificant and would be unlikely to result in any significant acute or chronic adverse effects in humans.

B. Determination of Benefits

PCNB is registered for uses as a soil fungicide and seed treatment. The Agency has concluded that there are significant economic benefits for these uses, totaling more than 35 million dollars annually.

C. Determination of Unreasonable Adverse Effects

The Agency has determined that the revised use patterns of PCNB will eliminate the likelihood of unreasonable adverse effects to humans or the environment. The Agency's determination is the result of voluntary modifications to the conditions of registration which reduce significantly human exposure to PCNB. Accordingly, the registration of PCNB, as voluntarily modified, will be allowed to continue in effect without further modification in the terms and conditions of registration.

IV. Agreement To Modify Registration

A copy of the agreement in which all registrants of PCNB products apply for modifications in the terms and conditions of registration, is reprinted in full below.

We agree to accept the following modifications in the conditions of registration of PCNB:

Technical Product

1. Amend current Confidential Statements of Formula for technical PCNB to specify the following percentages and to submit data to confirm percentages and to submit data to confirm these percentages:

	Percent
Pentachloronitrobenzene (minimum)	95.0
Hexachlorobenzene (maximum)	0.5

2. Implement new technology to lower the HCB level in PCNB to 0.1 percent or less.

We will be permitted one year from the date of publication of this agreement in the Federal Register to complete requirement number 1 and six years to complete requirement number 2. We will submit a progress report at the end of each year summarizing our efforts to implement HCB reduction technology.

3. Perform a residue study of PCNB and HCB levels in potatoes, after processing. A protocol will be submitted for EPA approval prior to beginning the study. The final results will be submitted within six months of EPA approval of the protocol.

End-Use Products

1. Voluntarily cancel, within six months of the publication of this agreement in the Federal Register, the registrations of all dust base formulations with the exception of those used as a planter box seed treatment.

2. Submit data showing that remaining dust base formulations, for which there are currently no alternatives, and all wettable powder formulations have been modified in such a way that the formulations *per se*, packaging of the formulations, and/or the use pattern will not result in unreasonable adverse effects to the pesticide applicator. We will submit a protocol for approval by the Agency before beginning a worker exposure study to demonstrate reduced exposure. If, at the end of a maximum of one year after EPA approval of the protocol for planter box seed dusts, and wettable powders used as dusts, and two years for wettable powders, we are unable to demonstrate to EPA that the exposure to applicators has been reduced to such a level as to result in insignificant risk, we will cancel voluntarily the registrations of these products.

3. Amend labels for granular formulations used in parks and on golf courses to include the following precautionary statement:

"Do not apply directly adjacent to potable water supplies."

4. Amend labels for homeowner products to include the following precautionary statement:

"Avoid contact with skin by wearing the following protective clothing: long-sleeved shirt, long pants, socks and shoes. Wash hands thoroughly after using."

5. Amend labels for professional applicator products to include the following protective clothing requirements during mixing/loading procedures:

"Granular formulations: gloves, long-sleeved shirt, long pants, socks and shoes"

"Emulsifiable concentrate and liquid formulations: respirator, gloves, long-sleeved shirt, long pants, socks and shoes"

We understand that our acceptance of this agreement will result in the termination of EPA's Rebuttable Presumption Against Registration of our product(s) containing PCNB. We agree that unless we meet all of the terms and conditions of this agreement as of the dates specified, or unless EPA determines we have shown good faith effort and extends these dates by a maximum of one year, our registrations will be automatically cancelled.

Date _____

Signature _____

Company _____

Please return this agreement, signed by an authorized representative of your company, within 30 days (by January 20, 1982) to: Director, Special Pesticide Review Division (TS–791), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460.

V. Procedural Matters

As indicated above, this Notice of Determination announces the termination of the notice of rebuttable presumption against registration of pesticide products containing pentachloronitrobenzene (PCNB).

Dated: March 23, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82–11406 Filed 4–27–82; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

[Docket No. 82–22]

Intent To Review Certain Portwide Exemptions Granted Pursuant to § 510.33(e) of General Order 4

Notice is hereby given that the Federal Maritime Commission intends to review the portwide exemptions granted by the Commission to the ports of Pensacola, Port Everglades and Tampa, Florida pursuant to § 510.33(e) of Commission General Order 4 (46 CFR 510.33(e)).[1]

Section 510.33(e) prohibits a licensed independent ocean freight forwarder from collecting compensation from oceangoing common carriers if the carrier or its agent (whether or not licensed as a forwarder) performs any of the forwarding services at the request of the forwarder. This prohibition does not apply if there is no other forwarder at the port of loading willing to perform such services. Section 510.33(e) also provides for the grant of an exemption from this prohibition upon a finding that insufficient forwarding services are being offered by nonagent licensees at the port of loading.

By Orders served on November 28, 1966 the Commission granted the Ports of Pensacola and Tampa, Florida portwide exemptions. Port Everglades, Florida was granted a portwide exemption by Commission Order served on May 2, 1967. It has been some fifteen years since these exemptions were granted. According to Commission records regarding the number of nonagent licensees at each port, conditions that were present when the exemptions were granted have changed. Therfore, the Commission intends to review the present conditions to determine whether these exemptions are still justified.

Interested parties are requested to submit comments on this matter.

Comments may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before May 28, 1982.

Dated: April 14, 1982.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82–11580 Filed 4–27–82; 8:45 am]

BILLING CODE 6730–01–M

[1] Section 510.33(e) superseded original § 510.22(a).

[Docket No. 82-23]

Rates Applicable to Ocean Shipments via American President Lines; Filing of Petition for Declaratory Order

Notice is given that a petition for declaratory order has been filed by American President Lines, Ltd., asking the Commission to terminate a controversy between it and Norwood Industries, Inc. The controversy involves the proper rate to be applied to shipments of "plastic inflatable boats" transported by petitioner during the period January through March, 1981. Petitioner seeks an order declaring that it properly rated the shipments in accordance with its tariffs in effect at the time and that the rates it charged were the only rates which it could legally charge under the statutes and regulations administered by the Commission.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L St., NW., Room 11101, or may inspect the petition at the Commission's Field Offices located at New York, New York; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Participation in this proceeding by persons not named in the petition will be permitted only upon grant of intervention pursuant to Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72).

Petitions to intervene shall be accompanied by intervenors complete reply in the matter. Such petitions and any replies to the petition for declaratory order shall be filed with the Secretary on or before May 17, 1982. An original and fifteen copies shall be submitted and a copy served on all parties. Replies shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition for declaratory order.

Francis C. Hurney,

Secretary.

[FR Doc. 82-11581 Filed 4-27-82; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Prince of Fundy Cruises Limited and Transworld Steamship Company (Panama) Inc., c/o Prince of Fundy Cruises Limited, P.O. Box 4216 Station A, Portland, Maine 04101.

Dated: April 22, 1982

Francis C. Hurney,

Secretary.

[FR Doc. 82-11490 Filed 4-27-82; 8:45 am]

BILLING CODE 6730-01-M

Terminal Agreements Filed for a Determination of Subjectivity to Section 15, Shipping Act, 1916

Commencing with the publication date of this notice, the Commisson will no longer publish notice in the **Federal Register** of terminal agreements filed for a determination of subjectivity to section 15, Shipping Act, 1916 (46 U.S.C. 814) as defined in 46 CFR 530.5. Experience has shown that comments or protests rarely, if ever, address the applicability of section 15 to these agreements. Since agreements found to be not subject are outside the Commission's jurisdiction, this action is not contrary to any Federal statute of regulation. The purpose of this action is to reduce unnecessary administrative costs and to expedite the processing of requests for Commission rulings on section 15 application. In the event such agreements are subsequently determined to be subject to the filing and approval requirements of section 15, notice of the filing of such agreements will be published in the **Federal Registration.**

Dated: April 22, 1982.

Robert G. Drew,

Director, Bureau of Agreements

[FR Doc. 82-11492 Filed 4-27-82; 8:45 am]

BILLING CODE 6730-01-M

Inactive Tariffs—Bureau of Tariffs; Notice of Cancellation

By Notice published in the Federal Register on March 19, 1982, the Commission notified the carriers named therein of its intent to cancel their foreign tariffs 30 days thereafter, in the absence of a showing of good cause why such tariffs should not be cancelled. The carriers failed to respond to this Notice.

Accordingly, by authority delegated by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981, the tariffs of the carriers listed are hereby cancelled.

Seatrain International, S.A., Port Seatrain, Weehawken, N.J. 07087.
FMC Nos. 4, 39, 41, 43, 54, 81, 110, 111, 112, 113, 118, 123, 124, 126, 127, 128, 129, 130, 132, 133, 134, 135, 137, 139, 142, 148, 149, 153, 154, 155, 156, 158, 159, 160, 161, 163, 164, 166, 167, 168, 169.

Wall Street Plaza, New York, N.Y. 10004.
FMC Nos. 79, 83, 106, 107, 114, 115, 125, 131, 136, 138, 152.

Seatrain Europa B.V., Winjbrugstraat 14, 3011 Rotterdam, Netherlands.
FMC Nos. 119, 121, 122, 140, 141, 143, 162.

Seatrain (U.K.) Ltd., 9th Floor, Armdale House, Armdale Center, Manchester M4 3 AP, England.
FMC No. 146.

Seatrain, A.D., Skanelermanalen Syd., Hamnen Box 11064, Helsingborg 25011, Sweden.
FMC No. 147.

Daniel J. Connors,

Director, Bureau of Tariffs.

[FR Doc. 82-11491 Filed 4-27-82; 8:45am]

BILLING CODE 6730—01—M

FEDERAL RESERVE SYSTEM

Bankers Trust New York Corp.; Proposal to Engage in Execution and Clearance of Futures Contracts as a Futures Commission Merchant

Bankers Trust New York Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1843(c)(8)) and § 225.4(a) and (b)(2) of the Board's Regulation Y (12 CFR 225.4(a), (b)(2)), for permission to acquire voting shares of a *de novo* subsidiary, BT Capital Markets Corp. Applicant states that BT Capital Markets Corp. would engage, as a futures commission merchant for nonaffiliated persons, in the execution and clearance of futures contracts on major commodity exchanges. Such contracts would cover U.S. Government and Government National Mortgage Association ("GNMA") securities, negotiable U.S. money market instruments (in particular, domestic and Euro-dollar CD's), foreign exchange, and bullion.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8). The proposed activity has not been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies. Applicant believes, however, that the activity is closely

related to banking and a proper incident thereto, and this opinion is based in part on Board Orders of September 14, 1977, approving the retention of voting shares of Republic Clearing Corporation, New York, New York, by Republic New York Corporation, New York, New York, and other parties (63 *Federal Reserve Bulletin* 951), and September 27, 1973, approving an acquisition of voting shares of Mocatta Metals, Inc., New York, New York, by Standard and Chartered Banking Group, Limited, London, England (38 FR 27552).

Interested persons may express their views on whether the proposed activity is "so closely related to banking or managing or contolling banks as to be a proper incident thereto," and whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on these questions must be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 22, 1982.

Board of Governors of the Federal Reserve System, April 22, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-11506 Filed 4-27-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1982:

Name: Maternal and Child Health Research Grants Review Committee
Date and Time: May 27-28, 1982, 9:00 a.m.
Place: Conference Room L, Parklawn Building,
5600 Fishers Lane,
Rockville, Maryland 20857
Open May 27, 9:00 a.m.-10:00 a.m.
Closed for remainder of meeting.

Purpose: The Committee is charged with the review of all research grant applications in the program areas of maternal and child health administered by the Bureau of Community Health Services.

Agenda: The open portion of the meeting will cover: Report on program issues, Congressional activities, and other topics of interest in the field of maternal and child health. The meeting will be closed to the public on May 27, 1982, from 10:00 a.m. for the remainder of the meeting for the review or research grant applications. The closing is in accordance with the provision set forth in section 552b(c)(6), Title 5, U.S. Code, and the Determination by the Acting Administrator, Health Services Administration, pursuant to Pub. L. 92-463.

Anyone wishing to obtain a roster of the members, minutes of meeting, or other relevant information should write to or contact Dr. Gontran Lamberty, Bureau of Community Health Services, Health Services Administration, Room 7-44, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2190.

Agenda items are subject to change as priorities dictate.

Dated: April 14, 1982.

William H. Aspden, Jr.,

Associate Administrator for Management.

[FR Doc. 82-11549 Filed 4-27-82; 8:45 am]

BILLING CODE 4110-84-M

Public Health Service

Privacy Act of 1974; New System of Records

Correction

In FR Doc. 82-10419, appearing at page 16413 in the issue for Friday, April 16, 1982, please make the following corrections:

(1) On page 16413, in the first column, in the first paragraph of the "Summary", in the sixth line, the first word should be "Pharmacokinetic".

(2) On page 16413, in the third column, in the first full paragraph, in the eleventh line, the word "for" should be "far".

(3) In the same paragraph, in the twelfth line, the word "and" should have been "any".

(4) On page 16414, in the middle column, under "Routine uses of records * * *", in paragraph 3, in the second line, the word "and" should have been "an".

(5) On page 16414, in the third column, in the tenth line from the top of the column, the word "date" should have been "data".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Office of Interstate Land Sales Registration; Order of Suspension of Certain Developers

[Docket No. N-82-1122]

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, Office of Interstate Land Sales Registration, HUD.

ACTION: Order of suspension.

SUMMARY: The Department is issuing an Order of Suspension to each developer listed on the attached Appendix. These developers have failed to either file amendments to their registrations or file documentation establishing that no such amendments were necessary. The Order of Suspension is issued pursuant to the Interstate Land Sales Full Disclosure Act.

EFFECTIVE DATE: April 28, 1982.

FOR FURTHER INFORMATION CONTACT: Christopher Peterson, Director, Land Sales Enforcement Division, Department of Housing and Urban Development, Room 4116, Washington, D.C. 20410. Telephone: (202) 755-5989.

SUPPLEMENTARY INFORMATION: The Office of Interstate Land Sales Registration gives public notice of its attempt to serve upon certain persons at their last known address a notice requiring revisions to their Statement of Record. Although service of notice by certified mail was attempted in accordance with 24 CFR 1720.170, it was not possible. Consequently, on February 16, 1982, the Department of Housing and Urban Development, pursuant to 44 U.S.C. 1508, published in the **Federal Register** a Notice of Proceedings and Opportunity for Hearing (47 FR 6722) effecting constructive notice on certain Developer responsdents. The Notice informed these persons of omissions of

material provisions required by law in their Statement of Record and Property Reports, and advised them of their rights to request a hearing within 15 days of publication of the Notice. More than 15 days have now elapsed since the publication of the Notice and the persons listed in the attached Appendix and referred to in the Order of Suspension as "Developer" have not requested a hearing; therefore, the Department is required to issue this Order of Suspension.

Order of Suspension

1. The Developer being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90–448) (15 U.S.C. 1701 et seq.) and the Rules and Regulations lawfully promulgated thereto pursuant to 15 U.S.C. 1718, has filed its Statement of Record and Property Report covering its subdivision which became effective pursuant to 24 CFR 1710.21 of the Interstate Land Sales Regulations. Said Statement is still in effect.

2. Pursuant to lawful delegation, as authorized by 15 U.S.C. 1715, the authority and responsibility for administration of the Interstate Land Sales Full Disclosure Act has been vested in the Secretary or designee.

3. Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), if it appears to the Secretary or designee at any time that a Statement of Record, which is in effect, includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statement therein not misleading, the Secretary or designee may, after notice, and after an opportunity for a hearing requested within 15 days of receipt of such notice, issue an order suspending the Statement of Record.

4. A Notice of Proceedings and Opportunity for Hearing was published in the **Federal Register** on February 16, 1982 informing the developer of information obtained by the Office of Interstate Land Sales Registration stating an untrue statement of a material fact or an omission of a material fact required to be stated therein or necessary to make the statements therein not misleading in the developer' s Statement of Record. The developer was constructively notified of its right to request a hearing and that if it failed to request a hearing it would be deemed in default and proceedings would be determined against it, the allegations of which would be determined to be true. The Developer has failed to answer or to request a hearing pursuant to 24 CFR 1720.220 within 15 days of publication of said Notice of Proceedings and Opportunity for Hearing.

Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1) the Statement of Record filed by the Developer covering its subdivision is hereby suspended, effective as of April 28, 1982. This Order of Suspension shall remain in full force and effect until the Statement of Record has been properly amended as required by the Interstate Land Sales Full Disclosure Act and the implementing Regulations.

Pursuant to 44 U.S.C. 1508, service of this Order upon the Respondent is constructively noticed by publication of this order in the **Federal Register.**

Unless otherwise exempt any sales or offers to sell made by the Developer or its agents, successors, or assigns while this Order of Suspension is in effect will be in violation of the provisions of said Act.

Dated: April 19, 1982.

Philip Abrams,

General Deputy Assistant Secretary-Deputy Federal Housing Commissioner.

Appendix

The captioned matters in this Appendix are listed alphabetically by subdivision in each State. The list contains the name of the subdivision, developer, representative and title, OILSR number and Land Sales Enforcement Division Docket number.

Alabama

Wilmer Estates, Acre Lots, Inc., Fred P. Edwards, Authorized Agent; 0–03069–01–21, 81–29–IS.

Arizona

Hualapai Highlands, Rancho Escalante Cattle Co. Inc., Danny O'Keefe, President; 0–04329–02–805, 81–30–IS.

Colorado

Crested Butte South, Crested Butte Land Co., Peter D. Van Soest, President; 0–01509–05–104, 81–33–IS.

El Pinal Units 1–4, El Pinal Subdivision Co., Allan Boyar, President; 0–02421–05–254, 81–34–IS

Highland Meadows Unit 1 & 2, HM Development Corp., Henry Marcuso, President-Director; 0–0143–05–99, 81–35–IS.

Sierra Verde Estates, Perry Lancaster, Sole Proprietor; 0–01805–05–144, 81–36–IS.

Delaware

Shady Dell Park Section 4, Parcel A, CFL Enterprises, Inc., Charles M. Kauffman, Senior Executive Officer; 0–03523–07–16, 81–37–IS.

Florida

Canaveral Properties, Canaveral Properties Inc., Frederick T. Hyman, President-Director; 0–00138–09–39, (A) & (XA); 81–39–IS.

Cresent Estates, Flordando Investment Corp., S. I. Becker, President; 0–00633–09–142, 81–40–IS.

Gerber Groves, Section 2, United American Development, Ltd., Edward H. Gerber, President; 0–01157–09–306; 81–41–IS.

Inverness Village, Continental Land Corp., Sham G. Sani, President; 0–01084–09–281; 81–44–IS.

Mt. Plymouth Fairway Estates, Southern Acre Investment, Inc., Robert Kaufman, Authorized Agent; 0–03743–09–942; 81–46–IS.

New Eden on the Lakes, HPJ Inc., Harry Tzeses, President; 0–04347–09–1102; 81–47–IS.

Presidential Estates, Perini Land and Development Co., Arthur R. Weaver, Vice-President; 0–04345–09–1101, (A) & (B); 81–62–IS.

Rotonda Springs, Cape Cave Corp., Robert E. Dady, Authorized Agent; 0–02689–09–801; 81–63–IS.

Sunrise West, J.C. Investments Inc., James L. Carlo, President; 0–02524–09–752; 81–64–IS.

Suwannee River Country, Suwannee River Ltd., Nate J. Delisi, General Partner; 0–04289–09–1080; 81–65–IS.

Suwannee River Highlands, Suwannee River Highlands, Inc., Richard Grusmark, President; 0–02710–09–809; 81–66–IS.

Georgia

Treasure Lake of Georgia, Great Northern Development, Frank R. Carcaise, President; 0–01317–10–9, (A–B); 81–67–IS.

Idaho

Ramshorn Estates, Ramshorn Ranch Estates, Inc., Don French, President; 0–01142–12–6; 81–68–IS.

Maine

Belgrade Lakes Colony, Belgrade Lakes Colony, Inc., Stephen Hershoff, President; 0–00914–23–8; 81–69–IS.

Lake Arrowhead Estates, Lake Arrowhead Estates, Inc., Bernard J. Mayer, Jr., President; 0–00888–23–7; 81–70–IS.

Setters Landing, Northeast General Corp., Robert A. Bernhard, President; 0–01167–23–14; 81–71–IS.

Michigan

L'Arbre Croche, L'Arbre Croche Development Co., William A Petzold, President; 0–02352–26–38; 81–73–IS.

Nevada

Silver Springs, Lake Lahonton Properties, Bradley A. Erickson and John F. Farren, General Partners; 0–02670–33–50; 81–76–IS.

Tennessee

Dale Hollow Shores, Dale Hollow Shores Corp., Salvatore J. Farina, President; 0–02988–48–78, (A); 81–83–IS.

Texas

Roman Hills Sections 1–3, Texas Gulf Industries, Inc., Robert D. Darnell, President; 0–02734–49–239; 81–86–IS.

South Fort Worth County Estates, Landbankers of America, Howard Dwight, President; 0–02611–49–214; 81–87–IS.

Tall Timbers, Lucky Five Corp., Jim Moxon, Secretary; 0–02013–49–90; 81–88–IS.

Windswept Downs Sections 1–5, Windswept Downs, Inc., Lamar Golding, President; 0–02625–49–218; 81–89–IS.

Washington

Mill Creek No. 1, United Development Corp., Kotaro Furusawa, President; 0-04057-56-117; 81-95-IS.

Bahamas

Norman's South Cay Units 1-3, San Andres Ltd., Roberta Mossman, Vice-President; 0-04515-60-139; 81-96-IS.

[FR Doc. 82-11511 Filed 4-27-82; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-82-1122]

Certification of a State Land Sales Program

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, Office of Interstate Land Sales Registration, HUD.

ACTION: Notice of certification of the Land Sales Program of the State of Arizona, Department of Real Estate.

SUMMARY: The Secretary gives public notice that a determination has been made to accept the application and certify the land sales program of the State of Arizona, Department of Real Estate. A formal agreement was entered into on February 3, 1982, commencing the effect of the certification. The State of Arizona applied for certification of its land sales program under 24 CFT 1710.502, and notice of its application was published in the Federal Register on October 2, 1981. The purpose of this public notice of Arizona's certification is to advise the public, and particularly Arizona land developers and other state agencies with land sales regulatory responsibilities, of the terms of the agreement and the agreement's effect upon land sales businesses.

EFECTIVE DATE: February 3, 1982.

ADDRESSES:

HUD, Office of Interstate Land Sales Registration, Room 4130, 451 7th Street, S.W., Washington, D.C. 20410

Arizona Department of Real Estate, 1645 W. Jefferson, Phoenix, Arizona 85007

FOR FURTHER INFORMATION CONTACT: Parker Deal, U.S. Department of Housing and Urban Development (202) 755-6314 (This is not a toll free number).

SUPPLEMENTARY INFORMATION: The agreement between the Arizona Department of Real Estate (DRE) and the HUD Office of Interstate Land Sales Registration (OILSR) affects those land subdivisions located in Arizona for which both an Arizona Public Report and a Federal Statement of Record (a Federal registration) are required.

The Federal requirements will be satisfied and a registration for the particular subdivision automatically effective upon receipt of a certified copy of the Arizona Public Report in proper form, an Arizona Fact Sheet and the Federal registration fee in the amount set out in existing regulations governing administration and enforcement of the Interstate Land Sales Full Disclosure Act. No other documentation will be required. Federal rescission language will be incorporated into the body of the Arizona Public Report, as appropriate, and in sales contracts. No separate Federal disclaimer page, not agent certification or separate information relative to costs, activity reports or conversions to 1979 Federal regulatory requirements will be required of Arizona developers using the certification process. The Federal effective date will not appear on the Arizona Public Report.

Background

Congress, in order to eliminate duplicative reporting requirements, amended the Interstate Land Sales Full Disclosure Act in 1979 to give HUD expanded authority in the certification of states with equivalent land sales protection. Rules were adopted in June 1980 setting out the procedures and criteria for certifying a state land sales program. A state can be certified by the Federal government if its land sales program gives purchasers protection either through disclosure requirements or substantive regulation or a combination of the two that is substantially equivalent to that provided by administration of the Federal law. Once a state is certified, HUD may accept a state's disclosure materials, and any documentation required, and declare these effective as a Federal registration.

California was certified on January 6, 1981, Minnesota on October 2, 1981 and Florida on January 18, 1982. An affirmative decision has been made regarding the Arizona application, and a formal agreement was signed on February 3, 1982, following the close of a 60-day public comment period announced in the Federal Register on October 2, 1981. Only one commnent was received which was from the California Department of Real Estate. That comment supported the certification of Arizona.

The formal agreement is set forth below.

Dated: April 19, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Be it known that the State of Arizona, Department of Real Estate (DRE) and the United States Department of Housing and Urban Development (HUD), Office of Interstate Land Sales Registration (OILSR), agree as follows:

1. That the State of Arizona has adopted and is effectively administering a land sales program pursuant to Arizona Revised Statues Annotated Title 32, Chapter 20, Articles 1, 4, and 8 and the Commissioner's Rules and Regulations, Articles 5, 8, and 12 which in part gives a lot purchasers and lessees protection that is substantially equivalent to that given them by the Interstate Land Sales Full Disclosure Act (ILSFDA).

2. That the State of Arizona's land sales program is certified by the U.S. Department of Housing and Urban Development pursuant to 24 CFR 1710.501(b). A developer or subdivider who has properly registered with the DRE a subdivision located in Arizona may satisfy the registration requirements of the ILSFDA by filing or having filed with the Secretary of HUD, the final Public Report (which was previously filed with DRE) with fee, in lieu of the Federal Statement of Record provided that the DRE has determined that the Public Report is in compliance with all the substantive and disclosure requirements set forth in the aforementioned statutory and regulatory provisions and this agreement. Accordingly, a subdivision located in Arizona will be considered registered with HUD upon HUD's receipt of a certified current Public Report, an Arizona Fact Sheet (in a form similar to Attachment A hereto), and a fee in the amount specified in OILSR regulations. Compliance of the Public Report with Arizona law and regulations and this agreement would include, but not be limited to, the following:

(A) The developer has provided adequate financial assurances of completion for the installation of proposed improvements as set forth in section 32-2181(A) of the Arizona Revised Statutes Annotated.

(B) The Arizona Department of Health has approved the method of any central water supply and individual or central sewage disposal system. In addition, the water supply must otherwise conform with the provisions of section 32-2181(C) and (F) of the Arizona Revised Statutes Annotated.

(C) The method of sale complies with the provisions of section 32-2185.01 of the Arizona Revised Statutes Annotated.

(D) Permanent access will be available as required by section 32-2185.02 of the Arizona Revised Statutes Annotated.

(E) The Public Report identifies any proposed recreational facilities for the subdivision, the maintenance responsiblity thereof, and, if applicable their estimated completion date and whether there are adequate financial assurances of completion.

(F) The Public Report discloses the total estimated costs for individual water and sewage systems and the estimated costs to the purchaser to extend electric and/or telephone service to the lot line.

3. That the Public Report will identify under the heading "Risks of Buying Land", "Special Risks Factors", or by other similar heading the substance of those paragraphs enumerated in 24 CFR 1710.107(A) by use of a separate page or otherwise incorporating this information into the body of the Public Report.

4. That each agency agrees to notfiy the other within 30 days of any modification or amendment to its law, regulations or administrative procedures, or of any substantial changes in its administrative capabilities, and to send copies of the pertinent documents, if any, affecting the modifications or amendments, including legal opinions relative to regulation under this agreement.

5. That each agency agrees to notify the other of any action taken to suspend sales in a subdivisoion covered by this agreement subsequent to the issuance of a Public Report by the DRE and to send to the other copies of any administrative orders including Cease and Desist Orders, Suspension Orders and copies of injunctions obtained.

6. That the DRE will certify as true and currently in effect all Public Reports in compliance with Arizona's statutory and regulatory provisions and this agreement, including amended and renewed statements, as required by subdividers to comply with the ILSFDA.

7. That while additional documents will not be required to be certified and sent as a matter of course, the DRE will cooperate with OILSR by sending copies of any additional documents that are specifically requested.

8. That the DRE will cooperate with any other states obtaining HUD certification of its land sales programs by providing copies of documents that are specifically requested.

9. That DRE will accept a disclosure document covering land located in another state but offered for sale in Arizona if the disclosure document has been approved by the other state, provided the other state's land sales program has been certified by OILSR, and that such disclosure document will be the only disclosure document required by the DRE with respect to the offer, sale or lease of the subdivided lands. However, the DRE is not required to accept disclosure documents covering offerings located in another certified state if that offering is not subject to the registration requirements of the Interstate Land Sales Full Disclosure Act.

10. That this agreement is limited to disclosure documents required by both agencies and is not intended as a substitute for substantive requirements of the State of Arizona or of the enforcement authority of either agency. Thus, the DRE is not required to accept a disclosure document from another certified state when the subdivision in question and its operation do not meet the substantive requirements of Arizona law. In addition, neither OILSR nor the DRE are precluded from entering administrative, civil or criminal proceedings.

11. That OILSR will not certify another state unless that state's Land Sales program offers to purchasers and lessees protection which is substantially equivalent (either in terms of required disclosure or substantive protection or some combination of the two) to that offered through administration of the Interstate Land Sales Full Disclosure Act.

That the DRE will exert its best efforts to maintain the level of administration upon which certification is based.

13. That for all subdivisions certified to HUD, the DRE will assure that pursuant to section 1404 of the ILSFDA as interpreted at 24 CFR 1710.209(f)(3) purchasers are advised in both Public Reports and in all forms of contracts or agreements and promissory notes used in selling or leasing lots of rescission rights accruing to them under Federal law and that no representations will be made by subdividers that they will install or complete roads, sewers, water, gas, or electric service, or recreational amenities unless the subdividers stipulate in their contract of sale or lease that they will provide or complete such services or amenities—the purpose of which is to assure that purchasers have a private right of action as vested in them by Federal law.

14. That complaints received by OILSR from Arizona residents concerning subdivisions in Arizona will be sent to the DRE for investigation; however, they may also be investigated by OILSR. The DRE will advise OILSR of any action taken or resolution of each complaint and send OILSR a copy of the DRE's reply to the complainant. Where such complaints clearly address only Federal requirements, OILSR will handle the complaint directly. The DRE and OILSR will cooperate where both have a direct interest in the subdivision.

15. That each agency agrees to cooperate to the maximum extent possible and legally feasible in enforcement matters. OILSR will provide, upon request, the DRE with copies of inspections of subdivisions located in Arizona performed by its field representatives. The DRE will exert its best efforts to make inspections of subdivisions prior to issuing a Public Report when the subdivision will also be registered with OILSR.

16. That OILSR will apprise the DRE of any investigations it engages in affecting subdivisions located in Arizona or developers, subdividers or their agents involved with these subdivisions.

17. That this agreement does not affect the authority of either agency to assess or collect fees, particularly for filing and registration purposes.

18. That the Secretary of HUD is required periodically to review the laws and regulations and administration thereof of any state whose land sales program is certified; that the Secretary may withdraw certification upon a determination that the state's program no longer offers purchasers protection equivalent to that offered by the ILSFDA; and that prior to withdrawal of certification, the Secretary must issue to the state a notice of intent to withdraw certification, which notice shall afford the state an opportunity for hearing prior to withdrawal.

19. That the DRE may withdraw from certification by notice to the Secretary.

20. That this agreement may be amended or supplemented at a later date by written agreement of both parties.

This agreement is entered into the 3d day of February 1982.

Bruce Babbitt,

for the State of Arizona.

Alan J. Kappeler,

Director, Office of Interstate Land Sales Registration for the U.S. Department of Housing and Urban Development.

Attachment A.—State of Arizona Fact Sheet

Subdivision Name:

Developer's Telephone Number:

Agent's Name, Address and Telephone Number:

Total Number of Lots in Offering:

Total Number of Acres in Offering:

[FR Doc. 82-11510 Filed 4-27-82; 8:45 am]

BILLING CODE 4210-01-M

Office of the Secretary

[Docket No. N-82-1123]

Privacy Act of 1974, Deletion of System of Records

AGENCY: Office of the Secretary, HUD.

ACTION: Deletion of System of Records.

SUMMARY: Notice is given that a Privacy Act system of records is deleted.

EFFECTIVE DATE: April 28, 1982.

ADDRESS: Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Robert English, Departmental Privacy Act Officer, Telephone 202-755-5336. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On November 4, 1981, the Department published in the **Federal Register** (46 FR 54878-54915) an annual notice of the Privacy Act system of records it maintains. The record system being deleted was described in that notice. The system is HUD/NVACP-1, Consumer Register Mailing List. The Department no longer maintains these records.

(5 U.S.C. 552a, 88 Stat. 1896, Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)))

Dated: April 22, 1982.

Judith L. Tardy,

Assistant Secretary for Administration.

[FR Doc. 82-11544 Filed 4-27-82; 8:45 am]

BILLING CODE 82-4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Keweenaw Bay Indian Community of L'Anse Reservation, Mich.; Ordinance Regulating the Introduction, Possession, and Sale of Intoxicating Beverages

April 12, 1982.

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary, Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. Sec. 1161. I certify that the following ordinance relating to the application of the Federal Indian liquor laws to the L'Anse Indian Reservation, Michigan, was adopted on May 13, 1981, by the Tribal Council of the Keweenaw Bay Indian Community of the L'Anse Reservation which has jurisdiction over the area of Indian country included in a liquor ordinance enacted earlier by the Keweenaw Bay Indian Community and referred to in Sec. 1.2701 of the instant ordinance was published at 19 FR 4739 (July 31, 1954). The ordinance enacted on May 13, 1981, reads as set forth below.

Kenneth Smith,

Assistant Secretary, Indian Affairs.

Keweenaw Bay Indian Community; Resolution

This resolution is made the 13th day of May, 1981, by the Keweenaw Bay Tribal Council in accordance with the Constitution and Corporate Charter thereof.

Whereas, The Keweenaw Bay Indian Community Tribal Council has previously enacted a tribal criminal code; and

Whereas, It has become apparent after several years of experience with the said code that certain additions thereto are required in order to properly protect the health, safety, and welfare of the members of Keweenaw Bay Indian Community:

Now therefore be it resolved that, The following amendments to the tribal code of the Keweenaw Bay Indian Community are hereby adopted and enacted, subject only to the approval of the Secretary of the United States Department of the Interior, or his designee:

Code section and Statute

1.2043 Delete

Chapter 1.27, Alcoholic Beverages

1.2701 *Alcoholic Beverages, compliance with Federal and Tribal Law with respect thereto.* No Indian person shall sell, trade, transport, manufacture, use, or possess any beer, ale, wine, or other alcoholic beverage, nor any other substance whatsoever capable of producing alcoholic intoxication, nor aid nor abet any Indian or non-Indian person in any of the foregoing, without first complying with the terms and conditions of the liquor ordinance of the Keweenaw Bay Indian Community as published in the Federal Register on July 31, 1954; the Federal Indian Liquor Law; and the ordinances of the Keweenaw Bay Indian Community pertaining thereto. Any person violating the provisions of this ordinance within the jurisdiction of the Keweenaw Bay Indian Community shall be deemed guilty of an offense, and upon the conviction thereof, shall be sentenced to a period of imprisonment not to exceed six (6) months, a fine not to exceed Five Hundred ($500.00) dollars, or both such imprisonment and fine together with court costs.

1.2702(1) *Tribal Licenses for the Sale of Alcoholic Beverages; Procedures for Application and Issuance.* Upon proper application submitted to the Tribal Council of the Keweenaw Bay Indian Community by an Indian person twenty-one (21) years of age or over, the said Tribal Council may issue a license for on premises and/or off permises sale of alcoholic beverages, or specific types thereof, within the boundaries of the L'Anse Federal Indian Reservation.

1.2702(2) All applications for such licenses must be submitted to the Tribal Council in writing, setting forth the name, address, age, and tribal affiliation of the applicant together with the legal description of the premises upon which such sale is proposed to take place. The form upon which such application shall be made shall be supplied by the Tribal Council of the Keweenaw Bay Indian Community and may require such further information as such Tribal Council shall from time to time require of all such applicants.

1.2702(3) Licenses for the sale of alcoholic beverages issued by the Tribal Council of the Keweenaw Bay Indian Community shall remain the property of such Tribal Council, shall not be subject to assignment without Tribal Council approval, and shall be effective a period of one (1) year from the date of issuance.

1.2703(1) *Number of Licenses to be Issued; Compliance by Licensees with certain State Laws.* Tthe Keweenaw Bay Indian Community Tribal Council shall have the sole power and authority to determine, in its sole and only discretion, the number of any type of licenses for the sale of alcoholic beverages that may from time to time be issued.

1.2703(2) Any holder of a license for the sale of alcoholic beverages issued by the Tribal Council of the Keweenaw Bay Indian Community shall be required to comply, as a condition of retaining such license, with all applicable tribal laws and ordiances and shall further observe the laws of the State of Michigan insofar as times of sale and minimum ages of persons to whom sales may be made.

1.2704(4) *Tribal Council to be sole judge of qualification of Applicants; Suspensions and/or Revocation of Licenses.* The Tribal Council of the Keweenaw Bay Indian Community shall be the sole judge of the qualifications of applicants for licenses authorizing the licensee to sell alcoholic beverages. No applicant for such license shall be refused for arbitrary and capricous reasons; however, the Tribal Council may take into account in making its decision as to whether or not to issue such a license, whether or not the applicant has a prior criminal record; whether or not evidence exists that a person or persons other than the applicant will in reality have any financial or other interest in the license; and the prior conduct of the applicant as a licensee, if the applicant shall have previously been a licensee.

1.2705(2) The Tribal Council of the Keweenaw Bay Indian Community may suspend or revoke the license issued to any applicant pursuant to these provisions for any violation of any provision of Chapter 1.27 or for any violation by the licensee, in the course of his business of selling alcoholic beverages, of any portions of the criminal laws of the Keweenaw Bay Indian Community.

Upon receipt of any complaint with respect to any tribal licensee the Tribal Council shall cause such complaint to be placed in writing; shall cause a copy of such complaint to be served personally or by registered mail upon the licensee, and shall cause a hearing to be held upon such complaint not less than seven (7) days nor more than twenty-one (21) days after service of complaint upon the licensee. If at such hearing it is proved by a preponderance of the evidence that the allegations contained within the

complaint are correct, and that the licensee has violated any of the provisions of Chapter 1.27, or during the course of operating his business for the sale of alcoholic beverages has violated any of the criminal statutes of the Keweenaw Bay Indian Community, the Tribal Council may impose a suspension or revocation of the license of the involved licensee, the determination of the type of penalty to be imposed to be in the sole and only discretion of the said Tribal Council.

Certification

The foregoing resolution was duly adopted by the Keweenah Bay Tribal Council with a quorum present during (*regular*, special) session on the 13th day of May 1981, by a vote of *11* for, *0* against, *0* abstaining.

Joan M. Bemis,

Secretary, Keweenaw Bay Tribal Council.

[FR Doc. 82-11551 Filed 4-27-82; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[C-24224]

Colorado; Partial Cancellation of Withdrawal Application and Opening of Land

April 20, 1980.

The Bureau of Land Management, Department of the Interior, filed withdrawal application C-24224 August 3, 1976, which was published August 12, 1976, as FR Doc. 76-23531. This application is hereby cancelled insofar as it affects the following described lands:

Sixth Principal Meridian

T. 12 S., R. 79 W.,
Sec. 34, E½NE¼.

Lands described aggregate approximately 80 acres.

Therefore, in accordance with the regulations contained in 43 CFR 2310.2-1(c), at 10:00 a.m. on May 28, 1982, the lands described shall be relieved of the segregative effect of the application and open to operation of the public land laws, including the United States mining laws, subject to any valid existing rights.

All valid applications received at or prior to 10:00 a.m. on May 28, 1982 shall be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Any questions concerning these lands should be directed to the Chief, Branch of Adjudication, Bureau of Land Management, 1037 20th Street, Denver, CO 80202.

Robert D. Dinsmore,

Chief, Branch of Adjudication.

[FR Doc. 82-11554 Filed 4-27-82; 8:45 am]

BILLING CODE 4310-84-M

Planning Criteria Completed

Draft Planning Criteria have been completed for the Steese National Conservation Area Resource Management Plan and the White Mountains National Recreation Area Resource Management Plan. Copies are available upon request. Those who wish to receive copies or to comment on the planning criteria should contact Jeff Scott, Bureau of Land Management, Fairbanks District Office, P.O. Box 1150, Fairbanks, Alaska 99707, or by phone (907) 356-2025.

Carl D. Johnson,

District Manager.

[FR Doc. 82-11552 Filed 4-27-82; 8:45 am]

BILLING CODE 4310-84-M

New York Outer Continental Shelf; Availability of Final Environmental Impact Statement on Proposed Oil and Gas Lease Sale No. 52

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Final Environmental Impact Statement (FEIS) relating to a proposed Outer Continental Shelf oil and gas lease sale of 540 tracts of submerged Federal lands off the coasts of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey.

Single copies of the final impact statement can be obtained from the Office of the Manager, New York Outer Continental Shelf Office, 26 Federal Plaza, Federal Building, Suite 32-120, New York, New York 10278, and from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240.

Copies of the Final Environmental Impact Statement will also be available for review in the following public libraries:

New York Public Library, 5th Avenue & 42nd Street, New York, New York 10018
Suffolk Cooperative Library System, 627 N. Sunrise Service Road, P.O. Box 1872, Bellport, New York 11713
Atlantic City Free Public Library, Illinois & Pacific Avenues, Atlantic City, New Jersey 08401
Nassau Library System, Reference Division, 900 Jerusalem Avenue, Uniondale, New York 11553
Trenton Free Public Library, 120 Academy Street, Trenton, New Jersey 08608
Providence Public Library, 150 Empire Street, Providence, Rhode Island 02903
Newport Public Library, Aquidneck Park, Newport, Rhode Island 02840
Christian Science Monitor, 1 Norway Street, Boston, Massachusetts 02115
Rehoboth Beach Public Library, Municipal Center, Rehoboth Avenue, Rehoboth Beach, Delaware 19971
Lithgow Library, 1 Winthrop Street, Augusta, Maine 04330
Albany Public Library, Harmans Bleecker Bldg., 19 Dove Street, Albany, New York 12210
Provincetown Public Library, 33 Commercial Street, Provincetown, Massachusetts 02637
Fall River Public Library, 104 North Main Street, Fall River, Massachusetts 02720
Bridgeport Public Library, 925 Broad Street, Bridgeport, Connecticut 06603
Ocean County Library, 15 Hooper Avenue, Toms River, New Jersey 08753
Public Library, 105 45th Street, Sea Isle City, New Jersey 08243
Enoch Pratt Free Library, 400 Cathedral Street, Baltimore, Maryland 21201
Monmouth County Library, 25 Broad Street, Freehold, New Jersey 07723
Boston Public Library, Copley Square, Boston, Massachusetts 02117
Free Library of Philadelphia, Logan Circle, Philadelphia, Pennsylvania 19141
Concord Public Library, 45 Green Street, Concord, New Hampshire 03301
Portland Public Library, 619 Congress Street, Portland, Maine 04101
Hartford Public Library, 500 Main Street, Hartford, Connecticut 06103
Falmouth Public Library, Main Street, Falmouth, Massachusetts 02540
Free Public Library of Elizabeth, 11 South Broad Street, Elizabeth, New Jersey 07202
New Haven Free Public Library, 133 Elm Street, New Haven, Connecticut 06510
Atlantic County Library, Surrogate Building, Mays Landing, New Jersey 08330
Public Library, 639 Washington Street, Cape May, New Jersey 08204
Norfolk Public Library System, 301 S. City Hall Avenue, Norfolk, Virginia 23510
East Brunswick Public Library, 2 Jean Walling Civic Center, East Brunswick, New Jersey 03815
New Jersey State Library, P.O. Box 1898, Trenton, New Jersey 08625
Eastern Shore Area Library, 122-126 South Division, Salisbury, Maryland 21801
Wilmington Institute Free Public and Newcastle County Free Library, 10th & Market Streets, Wilmington, Delaware 19801

James M. Parker,

Associate Director, Bureau of Land Management.

April 21, 1982.

Approved:

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 82-11508 Filed 4-27-82; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Contract Negotiations With the City of Cheyenne, Wyo.; Intent To Negotiate a Water Storage Contract

In accordance with procedures established by the Department of the Interior concerning public participation in water service and repayment contract negotiations, the Bureau of Reclamation, through the Regional Director of the Lower Missouri Region, intends to initiate negotiations with the city of Cheyenne, Wyoming, for interim water storage space in Seminoe Reservoir of the Kendrick Project, Wyoming.

The proposed interim water storage contract will provide the city of Cheyenne with up to 10,000 acre-feet per year. The storage space is needed by the city of Cheyenne to implement an annual advance payback arrangement utilizing storage space in Seminoe Reservoir to operate the exchange of Little Snake River water as proposed under its Stage II water diversion proposal. The contract will provide temporary storage space for the city of Cheyenne until it can develop permanent storage facilities under its Stage II proposal. The Kendrick Project, located in central Wyoming, was authorized by a finding of feasibility approved by the President on August 30, 1935, as an addition under the Reclamation Project Act of 1939 (53 Stat. 1187). Major project features include Seminoe Dam, Reservoir, and Powerplant; Alcova Dam, Reservoir, and Powerplant; the Casper canal, laterals, and drainage works; and a power transmission system.

The city of Cheyenne is the capital of Wyoming, located in the southeastern corner of the State. Because of expanding energy development in Wyoming, the city of Cheyenne has foreseen a considerable increase in popuation. This population increase and additional demand for water is expected to exceed the city of Cheyenne's present water supply in the 1980's prompting the need for the city's Stage II water diversion proposal.

All meetings scheduled by the Bureau of Reclamation with the city of Cheyenne for the purpose of discussing terms and conditions of the proposed interim water storage contract will be open to the general public as observers. Advance notice of meetings shall be furnished only to those parties having previously furnished a written request for such notice at least 1 week prior to any meeting. Requests should be addressed to the Regional Director, Bureau of Reclamation, Attention Code 440, P.O. Box 25247, Denver, Colorado 80225. All written correspondence concerning the proposed contract shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act of September 6, 1966 (80 Stat. 383), as amended.

The public is invited to submit written comments on the form of the proposed contract not later than 30 days after the completed contract draft is declared to be available to the public. In the event there is little or no public interest evidenced in these contract negotiations pursuant to this notice, the availability of the negotiated draft contract for public review and comment will not be formally publicized in the Federal Register or other media.

For further information on scheduled contract negotiating sessions and copies of the proposed contract form, please contact Mr. Robin D. McKinley or Mr. Buddy J. Smith, Repayment Branch, at the above address, or telephone (303) 234–3327 or 234–6562.

Dated: April 22, 1982.

Aldon D. Nielsen,

Acting Assistant Commissioner of Reclamation.

[FR Doc. 82-11496 Filed 427-82; 8:45 am]

BILLING CODE 4310-09-M

Office of the Secretary

Oil Shale Environmental Advisory Panel; Meeting

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting of the Oil Shale Environmental Advisory Panel.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Oil Shale Environmental Advisory Panel (Panel) will be held on May 11–12, 1982, in the Aspen Room of the Ramada Inn, 124 West 6th Avenue, Glenwood Springs, Colorado. Tuesday's meeting will begin at 1:30 p.m. and conclude at 4:30 p.m. Wednesday's meeting will begin at 8:30 a.m. and conclude at 4:30 p.m.

The Panel was established to assist the Department of the Interior in the performance of functions in connection with the supervision of oil shale leases issued under the Prototype Oil Shale Leasing Program.

The Panel will review the development monitoring plan for the White River Shale Project in Utah (Tracts U-a and U-b) and the interim monitoring plans for the Rio Blanco Oil Shale Project (Tract C-a) and for the Cathedral Bluffs Shale Oil Company (Tract C-b), both of Colorado. The Panel will also hear reports by Department of the Interior representatives and a briefing on the morning of May 12 by an official of the U.S. Synthetic Fuels Corporation. Also, a representative of Garfield County, Colorado, will speak to the Panel on the local effects of oil shale development.

Within the given time constraints, the Panel will consider any other pertinent items which come before it.

The meeting will be open to the public. It is expected that space will permit at least 75 persons to attend the meeting in addition to the Panel members. Interested persons may make brief presentations to the Panel or submit written statements. Requests for time on the agenda or for further information concerning the meeting should be made to the Panel Chairman, Mr. Henry O. Ash, Office of the Oil Shale Environmental Advisory Panel, Department of the Interior, Room 1010, Building 67, Denver Federal Center, Denver, Colorado 80225, telephone no. (303) 234–3275.

Minutes of the meeting will be available for public inspection at the Panel Office 30 days after the meeting.

DATE: Meeting will be held May 11–12, 1982.

Dated: April 21, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 82-11553 Filed 4-27-82; 8:45 am]

BILLING CODE 4310-10-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931, and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the

relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC–FC–79709. By decision of April 12, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to PUFFER TRANSPORT, INC. of Certificate No. MC–77129 and Sub-Nos. 8, 9, 10, 12, and 13X issued to RAYMOND H. PUFFER, INC. authorizing the transportation of *General commodities* with exceptions radially between New York, NY and four New Jersey counties, and *food and related products,* several commodities and petroleum natural gas and their products radially between points in the Northeastern States. Applicants' representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048–0640.

MC–FC–79729. By decision of April 15, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Outlaw Enterprises, Inc. Permit No. MC–147896 (Sub-No. 8) issued November 2, 1981 and Centifink No. MC–147896 (Sub No. 9) issued March 17, 1982 to Western Sontex, Inc. authorizing the transportation of (1) metal products between points in the United States under continuing contracts(s) with Stoody Company, of City of Industry, CA; and (2) transportation equipment radially between points in CA and points in IL, OH, IA, and Cobb and Polk Counties, OR. Applicant's representative is: Miles L. Kavaller, Esq., 315 S. Beverly Dr., Suite 315 Beverly Hills, CA 90212.

MC–FC–79733. By decision of April 15, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to J.K. VREELAND MOVING & STORAGE, INC. of Plainfield, NJ of Certificate No. MC–25970 and Sub 1 issued to Warren R. Ocher and Raymond F. Ocher, partnership doing business as authorizing: household goods, over irregular routes, between points in Passaic and Bergen Counties, NJ, on the one hand, and, on the other points in CT, MD, NJ, NY and PA, traversing Delaware for operating convenience only. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Washington, DC 20036. TA lease is not sought. Transferee is a carrier.

MC–FC–79739. By decision of April 14, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to JESSEE TRUCKING COMPANY, INCORPORATED of Dryden, VA of Certificate No. MC–144269. and Subs 1 and 2 MESSA ENTERPRISES, INC. of Wise, VA authorizing: (1) The transportation of heavy construction equipment which because of size and weight requires the use of special equipment between points in Buchanan, Dickenson, Lee, Russell, Scott, Washington and Wise Counties, VA, on the one hand, and, on the other, points in KY, TN, and WV, (2) the transportation of commodities which because of size and weight require the use of special equipment between points in AK, AR, FL, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, WV, and DC, and (3) the transportation of general commodities (with exceptions) for or on behalf of the United States Government between points in the United States. Applicant's representative: Harry J. Jordan, 1000 Sixteenth St., Suite 502, Solar Bldg. Washington, DC 20036. TA lease is sought. Transfer is a carrier.

MC–FC–79749. By decision of April 19, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to ARROWHEAD CHARTER & TOURS, INC. of Certificate No. MC–153793 issued to SUPERIOR CHARTER AND TOURS, INC. authorizing the transportation of *passengers and their baggage,* in charter and special operations, beginning and ending at points in Douglas County, WI, and extending to points in the United States.

Note(s).—(1) Transferee is a non-carrier. (2) TA has been filed.

Applicants' representative: Robert S. Lee, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402.

Agatha L. Mergenovich,

Secetary.

[FR Doc. 82–11516 Filed 4–27–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: April 21, 1982.

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 aplicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the

application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this complicance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

Agatha L. Mergenovich,

Secretary.

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. OP3–065

MC 56344 (Sub-7), filed April 15, 1982. Applicant: ALERT MOTOR FREIGHT, INC., P.O. Box 1045, Delran, NJ 08075. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park NJ 08904, (201) 572–5551.Transporting *Metal Products*, between points in DE, MD, NJ, and PA, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VA, WV, and DC.

MC 59474 (Sub-6), filed April 15, 1982. Applicant: DAUM OVER-NITE EXPRESS, INC., 1501 South Holt Rd., Indianapolis, IN 46241. Representative: Andrew K. Light, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IN, IA, KY, MI, OH, and WI.

MC 98255 (Sub-7), filed April 12, 1982. Applicant: LAWRENCEBURG TRANSFER, INC., U.S. Hwy 127 North, Lawrenceburg, KY 40342. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602, (502) 223–8244. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (1) between Stanford, KY and Somerset, KY over U.S. Hwy 27, (2) between Stanford, KY and Mt. Vernon, KY over U.S. Hwy 150, (3) between Somerset, KY and London, KY over KY Hwy 80, (4) between Lexington, KY and Corbin, KY over U.S. Hwy 25, and also over Interstate Hwy 75, (5) between Lexington, KY and Mt. Sterling, KY over U.S. Hwy 60, and also over Interstate Hwy 64, (6) between Mt. Sterling, KY and Georgetown, KY over U.S. Hwy 460, (7) between Cynthiana, KY and Georgetown, KY over U.S. Hwy 62, (8) between Lexington, KY and Cynthiana, KY over U.S. Hwy 27, (9) between Winchester KY and Paris, KY over KY Hwy 627, and (10) serving all intermediate points and serving as off-route points in Harrison, Bourbon, Montgomery, Clark, Madison, Lincoln, Scott, Rockcastle, Pulaski, Laurel, Knox, and Whitley Counties, KY in connection with routes (1) through (9) above.

Note.—Applicant intends to tack this authority with its otherwise-authorized regular routes and to interline with connecting carriers.

MC 111274 (Sub-86), filed April 15, 1982. Applicant: SCHMIDGALL TRANSFER INC., P.O. Box 351, Morton, IL 61550. Representative: Frederick C. Schmidgall (same address as applicant), (309) 266–9773. Transporting *lumber and lumber mill products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Pacific Wood Products Co., Inc. of Carson, CA.

MC 144805 (Sub-4), filed April 14, 1982. Applicant: M–K TRUCKING, INC., 810 First St. South, Hopkins, MN 55343. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *textile mill products, lumber and wood products, furniture and fixtures, pulp, paper and related products, chemicals and related products, petroleum and coal products, rubber and plastic products, metal products, machinery,* and *electrical equipment*, (except commodities in bulk), between points in the U.S. (except AK and HI).

MC 146484 (Sub-6), filed April 15, 1982. Applicant: F. J. CRIKOS TRUCKING, INC., 141 Helman Ln., Cotati, CA 94928. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108, (415) 986–8696. Transporting (1) *building materials and lumber and wood products*, between points in CA, on the one hand, and, on the other, points in ID, NV, OR and WA and (2) *hides*, between points in Kern and Sonoma Counties, CA, on the one hand, and, on the other, points in Whatcom County, WA.

MC 146994 (Sub-4), filed April 14, 1982. Applicant: MOTOR RAIL DELIVERY, INC., 600 Fern, Ferndale, MI 48220. Representative: Steven J. Kalish, 1750 Pennsylvania Ave., NW., Washington, D.C. 20006, (202) 393–5710. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in FL.

MC 147404 (Sub-7), filed April 14, 1982. Applicant: DONALD J. GETTELFINGER, d.b.a. GETTELFINGER FARMS, Route 2, Box 241, Palmyr, IN 47164. Representative: Robert W. Loser, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204, (317) 635–2339. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Shedds Food Products, Inc., of Louisville, KY.

MC 150255 (Sub-4), filed April 15, 1982. Applicant: LEPRINO TRANSPORTATION COMPANY, 3740 Shoshone St., Denver, CO 80202. Representative: John T. Wirth, 2600 Petro-Lewis Tower, 717–17th St., Denver, CO 80202–3357, (303) 892–6700. Transporting *wine and liquor*, between points in the U.S. (except AK and HI), under continuing contract(s) with Ledo-Dionysus, Inc., of Denver, CO.

MC 152175 (Sub-2), filed April 12, 1982. Applicant: GRIFFIN DISTRIBUTING CO., INC., Rocky Ford Rd., P.O. Box 1847, Valdosta, GA 31601. Representative: W. Harold Cozart (same address as applicant), (912) 242–8635. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 152935 (Sub-8), filed April 14, 1982. Applicant: HILL-ROM COMPANY, Highway 46, Batesville, IN 47006. Representative: Steve A. Oldham (same address as applicant), (812) 934–7169. Transporting *furniture and fixtures*, between points in the U.S. (except AK and HI), under continuing contract(s) with American Desk Manufacturing Company, of Temple, TX.

MC 155205 (Sub-2), filed April 14, 1982. Applicant: T. L. VAN, INC., P.O. Box 1166, Center, TX 75935. Representative: William D. Lynch, P.O. Box 912, Austin, TX 78767, (512) 472–1101. Transporting (1) *such commodities* as are dealt in by chain grocery stores and food business houses (except commodities in bulk), between points in AZ, CO, CA, ID, NV, NM, OR, TX, UT, WA, LA, AR, MS, and OK, and (2) *fired clay shapes*, between points in Smith

County, TX, on the one hand, and, on the other, points in CA.

MC 155985, filed April 14, 1982. Applicant: FAMILYTREE, INC., 1000 N. Alexander, Baytown, TX 77520. Representative: Kenneth R. Hoffman, 1600 W. 38th St., Suite 410, Austin, TX 78731, (512) 451–7409. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between Houston, TX and its commercial zone, on the one hand, and, on the other, points in the U.S. (except HI).

MC 158295 (Sub-2), filed April 15, 1982. Applicant: CHEYENNE TRANSPORTATION, INC., 4094 Summerhill Rd., Texarkana, TX 75503. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneapolis, MN 55402, (612) 340–0808. Transporting *building and construction materials,* between points in the U.S. (except AK and HI), under continuing contract(s) with CertainTeed Corporation, of Valley Forge, PA.

MC 158824 (Sub-1), filed April 15, 1982. Applicant: ROBERT E. TROY, 138 So. First St., Catawissa, PA 17820. Representative: Arthur J. Diskin, 402 Law & Finance Bldg., Pittsburgh, PA 15219, (412) 281–9494. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Keck's Drapery Mfg. Co. of Bloomsburg, PA.

MC 161514, filed April 15, 1982. Applicant: MEMPHIS COMPRESS & STORAGE COMPANY, d.b.a. SHELBY DELIVERY SERVICE, 2350 Florida St., Memphis, TN 38109. Representative: Dale Woodall, 6077 Primacy Parkway, Suite 209, Memphis, TN 38119, (901) 683–5400. Transporting (1) *general commodities* (except classes A and B explosives, household goods, commodities in bulk, those commodities which because of their size or weight require the use of special handling or equipment, and iron and steel articles), between points in Shelby County, TN, on the one hand, and, on the other, points in AR, KY, MO, MS, AL, LA, TX, and TN, and (2) *agricultural chemicals* (except in bulk), between points in AR, KY, MO, MS, AL, LA, TX, and TN.

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WC 1347, filed April 6, 1982. Applicant: CARGO CARRIERS, INCORPORATED, P.O. BOX 9300, Minneapolis, MN 55440. Representative: Gerald W. Brown, (same address as applicant) (612) 475–6756. As a *contract carrier,* by water, in non-self-propelled vessels with the use of separate towing vessels in the transportation of *lumber and building materials* to ports and points between New Orleans, LA, on the one hand, and, on the other, Savage, MN, under continuing contract(s) with Knox Lumber Company, of St. Paul, MN. Condition: This is a major regulatory action and requires preparation of a statement of energy impact under the provisions of 49 CFR 1106.5(a)(8). Accordingly, applicant must submit the information required by 49 CFR 1106.7(a). Upon submission of such information, an appropriate statement of energy impact will be prepared.

MC 115667 (Sub-20), filed April 12, 1982. Applicant: ARROW TRANSPORTATION SYSTEMS, INC., 320 Seymour Blvd., North Vancouver, BC, Canada V7J 2J3. Representative: Clyde H. MacIver, 1700 Peoples National Bank Bldg., 1415 Fifth Ave., Seattle, WA 98171, (206) 624–1940. Transporting *clay, concrete or stone products and related products,* between points in the U.S., under continuing contract(s) with Interpace Corporation, of Seattle, WA.

MC 125037 (Sub-31), filed April 6, 1982. Applicant: DIXIE MIDWEST EXPRESS, INC., P.O. Box 372, Greensboro, AL 36744. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmington, AL 35209—4786, (205) 942–9116. 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 127587 (Sub-12), filed April 12, 1982. Applicant: MEXICANA REEFER SERVICES, LTD., 2830 Grandview Hwy., Suite 204, Vancouver, B.C., CD V5M 2C9. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104, (206) 622–3220. 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 Overseas Container Forwarding, Inc., of Vancouver, B.C. CD.

MC 128117 (Sub-48), filed April 12, 1982. Applicant: NORTON-RAMSEY MOTOR LINES, INC., P.O. Box 896, Hickory, NC 28601. Representative: Edward T. Love, 4401 East-West Highway, Suite 404, Bethesda, MD 20814, (301) 986–9030. Transporting *new furniture and furniture parts,* between Roanoke, VA and points in Roanoke, Cambpell and Franklin Counties, VA, Marion County, SC, and points in GA and NC, on the one hand, and, on the other, points in AR, AZ, CA, CO, LA, NE, NM, NV, OK, and TX.

MC 138977 (Sub-4), filed April 7, 1982. Applicant: EDWARD W. SKINNER, JR., d.b.a. SKINNER TRUCKING, P.O. Box 709, Twin Falls, ID 83301. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343–3071. Transporting *general commodities* (except classes A and B explosives and household goods), between points in ID in and south of Idaho County, and points in Elko County, NV, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, OR, UT, WA, and WY.

MC 154667 (Sub-8), filed April 12, 1982. Applicant: B. I. TRANSPORTATION, INC., P.O. Box 691, Burlington, NC 27215. Representative: J. Franklin Fricks, Jr., (same address as applicant) (919) 228–2239. Transporting *such commodities* as are dealt in or used by artists, schools, and offices, between points in the U.S. (except AK and HI), under continuing contract(s) with Hunt Manufacturing Company, of Statesville, NC.

MC 161357, filed April 13, 1982. Applicant: CONSOLIDATED DELIVERY SERVICE CORP., 1079 West Side Ave., Jersey City, NJ 07306. Representative: Anthony C. Vance, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101, (703) 821–1305. 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 Wyeth Laboratories, Inc., Division of American Home Products, of Radnor, PA.

[FR Doc. 82–11519 Filed 4–27–82; 8:45 am]
BILLING CODE 7035–01–M

[Permanent Authority Decisions Volume No. 251]

Motor Carriers; Restriction Removals; Decision-Notice

Decided: April 21, 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 develop in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Aplications 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 Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 65525 (Sub. 28)X, filed March 3, 1982. Applicant: WHITE BROTHERS TRUCKING CO., P.O. Box 96, Wasco, IL 60183. Representative: Leonard R. Kofkin, 29 South La Salle Street, Chicago, IL 60603. Lead, Subs 16 and 19. Broaden commodity descriptions: in lead, part 3, from concrete pipe and concrete pressure pipe which, because of size or weight, require special equipment, and portable concrete pipe plants and equipment, to "such commodities which, because of size or weight, require the use of special handling or equipment, and machinery"; in lead, parts 4, 5 and 6, from concrete pipe, concrete pressure pipe and portable concrete plants, equipment therefor, and equipment used in the manufacture of concrete pipe, to "machinery, clay, concrete, glass or stone products and metal products"; in lead, part 7, from reinforced concrete construction members (including concrete slabs, beams, columns and piling), and accessories used in the installation thereof, to "clay, concrete, glass or stone products"; in Subs 16 and 19, from precast concrete slabs and beams, of such size and weight as to require the use of special equipment, accessories and materials incidental to the installation thereof, and supplies and materials incidental to the manufacture of prestressed concrete slabs and beams, to "such commodities which, because of size or weight, require the use of special handling or equipment"; and broaden all authorities to radial service.

MC 113784 (Sub-95)X, filed July 16 1981 , previously noticed in the **Federal Register** of July 2, 1981, republished as follows: Applicant: LAIDLAW TRANSPORT LIMITED, 110 King Street West, Suite 490, Hamilton, Ontario, Canada. Representative: Mel P. Booker, Jr., P. O. Box 1281, Old Town Station, Alexandria, VA 22313. Sub-Nos. 50 and 57 certificates: broaden tractors, tractor parts and accessories to "machinery and transportation equipment." While the Board reformed these authorities previously in Sub-No. 95X, a portion of proposed broadening was omitted; therefore we are republishing this portion of the application so as not to prejudice applicant's existing operations.

MC 134096 (Sub-8)X, filed April 7, 1982. Applicant: TROPICANA TRANSPORTATION CORP., P.O. Box 338, Bradenton, FL 33506. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Subs 2, 5, and 7 permits. Broaden citrus products (except in bulk) and canned and bottled nonalcoholic beverages and beverage concentrates (Sub 2), canned, chilled and frozen citrus products, and nonalcoholic beverages (Sub 5), and citrus products, citrus byproducts, beverages, and beverage preparations (Sub 7) to "food and related products"; and broaden territorial description to "between points in the U.S. (except HI)" under continuing contract(s) with named shipper.

MC 135285 (Sub-1)X, filed April 13, 1982. Applicant: JACKSON RAPID DELIVERY SERVICE, INC., P.O. Box 482, Jackson, MS 39205. Representative: John A. Crawford, 17th Floor, Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. No. MC–144487 (Sub 1F) permit, broaden to "between points in the U.S.," under continuing contract(s) with the named shipper.

MC 135828 (Sub-3)X, filed March 5, 1982. Applicant: PEACE BRIDGE BROKERAGE LIMITED, 33 Walnut St., Fort Erie, Ontario, CD L2A 5M7. Representative: William J. Hirsch, 1125 Convention Tower, 43 Court St., Buffalo, NY 14202. Lead and Sub 2 certificates: (A) Remove (1) all exceptions from the general commodities description, except classes A and B explosives, household goods, and commodities in bulk, both Subs; (2) "express service" and "weight" restrictions, both Subs; (3) "prior or subsequent movement by air" restriction, lead; and (4) "originating at or destined to" restriction, Sub 2; and (B) broaden to (1) county-wide authority: (a) Erie and Niagara Counties, NY (Buffalo, Lewiston and Niagara Falls), lead; (b) Jefferson County, NY (Wellesley Island), Sub 2; and (2) all ports of entry in NY (port of entry at Wellesley Island, NY), Sub 2.

MC 141005 (Sub-2)X, filed March 25, 1982. Applicant: GEMINI EXPRESS LINES, INC., 140 Maloy St., Maple, Ontario, CD L4K 1C5. Representative: William J. Hirsch, 1125 Convention Tower, 43 Court St., Buffalo, NY 14202. Sub 1F certificate: broaden (1) from (a) new furniture, toys and parts for new furniture and toys to "furniture and fixtures; miscellaneous products of manufacturing and materials, equipment, and supplies used in their manufacture and distribution"; and (b) paper board to "pulp, paper and related products"; (2) ports of entry on Niagara River, NY, to ports of entry in New York; and (3) radial authority, parts 2 and 3.

MC 142873 (Sub-17)X, filed April 8, 1982. Applicant: D & W TRUCK LINES, INC., P.O. Box 427, Parsons, WV 26287. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave, NW, Washington, DC 20006. No. MC–119793 (Sub-11F) permit: broaden (1) from glass and materials, supplies and equipment used in the manufacture or distribution of glass to "clay, concrete, glass or stone products," and (2) to between points in the U.S. (except AK and HI), under continuing contract(s) with a named shipper.

MC 143662 (Sub-4)X, filed April 15, 1982. Applicant: GENE VOIGT TRUCKING, INC., R. R. 2, Box 138, Marathon, WI 54458. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. Sub–Nos. 1 and 3 broaden lumber, lumber products, and ties to "lumber or wood products (except furniture)," and to radial authority.

MC 144609 (Sub-12)X, filed March 4, 1982. Applicant: DOMINGUEZ BROS. TRUCKING CO., 1500 South Zarzamora Street, San Antonio, TX 78207. Representative: Kenneth R. Hoffman, 1600 W. 38th Street, Suite 410, Austin, TX 78731. Subs 2F, 5F, 6F, 8F, 11, broaden: Sub 2F and Sub 5F, malt beverages, in containers, and foodstuffs (except in bulk) to "food and related products"; San Antonio to Bexar County, TX; Sub 6F, cement, in bags, to "clay, concrete, glass or stone products"; Sub 8F, batteries to "electrical machinery, equipment or supplies"; San Antonio to Bexar County, TX; Anaheim

and Santa Fe Springs to Los Angeles and Orange Counties, CA; Sub 11, general commodities, with exceptions, to "general commodities (except classes A and B explosives, household goods and commodities in bulk)"; remove restriction to traffic having prior/subsequent rail movement; broaden San Antonio and Laredo to Bexar and Webb Counties, TX respectively; and all, but Sub 11, to radial service.

MC 147378 (Sub-6)X, filed April 12, 1982. Applicant: BAMA TRANSPORTATION COMPANY, INC., 5247 East Pine, Tulsa, OK 74115. Representative: Jack R. Anderson, Suite 305 Reunion Center, 9 East Fourth St., Tulsa, OK 74103. Sub-No. 1 permit remove commodities in bulk and in tank vehicles exception from materials, equipment, and supplies used in the production of frozen bakery goods.

MC 148250 (Sub-1)X, filed March 23, 1982. Applicant: BARON TRANSPORT, INC., P.O. BOX 1311, Battle Creek, MI 49016. Representative: Donald B. Levine, 29 South La Salle St., Suite 905, Chicago, IL 60603. Lead certificate: (1) Broaden from parts for off-highway vehicles and materials, equipment, and supplies used in the manufacture of automotive parts to "automotive and off-highway vehicle parts and accessories and materials, equipment and supplies used in their manufacture and distribution"; (2) remove the (a) "commodities in bulk" restriction, and "originating at or destined to" restriction, and (3) broaden to county-wide authority: Calhoun County, MI (facilities—Battle Creek).

MC 149144 (Sub-6)X, filed March 8, 1982. Applicant: SCHIERDING TRUCKING CO., 3690 West Clay, St. Charles, MO 63301. Representative: James E. Shierding (same address as applicant). Subs 1F, 3, 4F, and 5 certificates: Broaden (1) in all certificates to "such commodities as are dealt in or used by manufacturers and distributors of beverages," from malt beverages, and carbonated beverages; (2) remove "in containers" restriction in Subs 1, 3, and 4; (3) to radial authority; and (4) to countywide authority in Subs 1, 4, and 5: St. Charles County, MO (St. Charles), and Franklin County, MO (Union).

MC 159979 (Sub-2)X, filed April 5, 1982. Applicant: WOODIE EVERLY & SON, INC., P.O. Box 1255, Warsaw, IN 46580. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Lead: (1) broaden (a) paper and plastic disposable cups, plates, bowls, containers without lids, and ice cream cones to "pulp, paper and related products", and (b) castings to "metal products"; (2) change the territorial description to between points in the U.S., under continuing contract(s) with named shippers; and (3) remove the facilities limitations.

[FR Doc. 82-11517 Filed 4-27-82; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

The following applications were filed in Region I. Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 161595 (Sub-1-1TA), filed April 20, 1982. Applicant: AMBASSADOR TOWNCAR SERVICE, INC., 120 Short Hill Lane, Fairfield, CT 06430. Representative: Edmund F. Schmidt, Esq., Trager and Trager, P.C., 1305 Post Road, Fairfield, CT 06430. *Passengers and their baggage* from points in CT to points in MA, RI, NY, NJ, PA, MD, DE, VA, and DC. Supporting shipper(s): There are three statements in support of this application which may be examined at the Regional Office of the I.C.C. in Boston, MA.

MC 123922 (Sub-1-3TA), filed April 20, 1982. Applicant: AMTRUK TRANSPORT, INC., P.O. Box 4327, Bergen Station, Jersey City, NJ 07304. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue, N.W., Washington, D.C. 20005. *Contract carrier:* irregular routes: *General commodities (except classes A & B explosives and household goods and hazardous waste),* between points in the U.S. (except AK and HI), under continuing contract(s) with Badische Corporation of Williamsburg, VA. Supporting shipper: Badische Corporation, P.O. Drawer D, Williamsburg, VA 23185.

MC 161508 (Sub-1-1TA), filed April 15, 1982. Applicant: BOB ANDERSON TOURS, INC., 512 Washington Avenue, Woodbine, NJ 08270. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K Street, N.W., Washington, D.C. 20005. *Passengers and their baggage, in the same vehicle with passengers in round trip charter operations,* beginning and ending at points in Delaware County, PA and Atlantic and Cape May Counties, NJ, and extending to points in AL, CT, DE, DC, FL, GA, IL, IN, KY, LA, ME, MD, MA, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WI, and WV. Supporting shippers: There are 24 individuals supporting this application.

MC 148560 (Sub-1-8TA), filed April 20, 1982. Applicant: GOLD STAR, INC., 130 Davidson Avenue, Somerset, NJ 08873. Representative: A. David Millner, 7 Becker Farm Road, P.O. Box Y, Roseland, NJ 07068. *Contract carrier:* irregular routes: *Access flooring, disassembled* between Jessup, MD on the one hand, and, on the other, points in and west of ND, SD, NE, KS, OK, and TX, under continuing contract(s) with Bettinger West, Inc., Denver, CO. Supporting shipper: Bettinger West, Inc., 666 Sherman Street, Denver, CO.

MC 161539 (Sub-1-1 TA), filed April 19, 1982. Applicant: HAMILTON CARGO TRANSIT LIMITED, 177 Plains Road West, Burlington, Ontario, CD L7T 1G1. Representative: William J. Hirsch P. C., 1125 Convention Tower, 43 Court Street, Buffalo, NY 14202. *Contract carrier: irregular routes: Precast concrete products,* between ports of entry on the International Boundary Line between the U.S. and CD, on the

one hand, and, on the other, Buffalo, Tonawanda, Rochester and Syracuse, NY, Grand Rapids, MI, and points in OH and PA, under continuing contract with Decor Precast Company Limited, Stoney Creek, Ontario, CD. Supporting shipper: Decor Precast Company Limited, 40 Idlewild Avenue, P.O. Box 9249, Stoney Creek, Ontario, CD L8G 3X9.

MC 161541 (Sub-1–1 TA), filed April 16, 1982. Applicant: J.H.M. TRANSPORTATION COMPANY, 68 Ferry Street, South Hadley, MA 01075. Representative: James H. Moynahan (same as applicant). *Paper & paper products; rubber and plastic goods,* between MA, CT, NY, PA, OH, IN, IL, NJ, DE, MD, VA, NC, SC, WV, TN, KY, DC AND GA. Supporting shipper(s): AIM Packaging Inc. of Massachusetts, 380 Union Street, West Springfield, MA 01089; Hampden Paper, Inc., 100 Water Street, Holyoke, MA 01040.

MC 161570 (Sub-1–1 TA), filed April 19, 1982. Applicant: LARSON BROTHERS INCORPORATED, 350 Hartford Avenue, Wethersfield, CT 06109. Representative: John E. Fay, 663 Maple Avenue, Hartford, CT 06114. *Contract carrier:* irregular routes: *Cold finished steel bars, steel coils, steel wire* between CT, MA, ME, NH, RI, and VT, under continuing contract(s) with Republic Steel Corporation-Union Drawn Div., Massillon, OH. Supporting shipper: Republic Steel Corporation—Union Drawn Division, P.O. Box 801, Massillon, OH 44648.

MC 161596 (Sub-1–1 TA), filed April 20, 1082. Applicant: EUGENE H. PIPER d.b.a. E. H. PIPER TRUCKING, Town Farm Hill, Bradford, VT 05033. Representative: Eugene H. Piper (same as applicant). *Paper, paper products and woood products,* from Bradford, VT to CT, ME, MA, NH, NJ, NY, RI, OH, and PA. Supporting shipper(s): Upper Valley Press, Inc., P.O. Box 305, Bradford, VT 05033; T. Copeland & Sons, Inc., P.O. Box 386, Bradford, VT 05033.

MC 159220 (Sub-1–1 TA), filed April 19, 1982. Applicant: REFRIGERATED INTERNATIONAL CARGO HAULERS, INC., 1170 Niagara Street, Buffalo, NY 14240. Representative: Charles H. White, Jr., 1019 19th Street, N.W., Suite 800, Washington, D.C. 20036. *Contract carrier:* Irregular routes: *Meat products, frozen and refrigerated foodstuffs* between point in the U.S. (except AK and HI) under continuing contract(s) with Russer Foods, Buffalo, NY. Supporting shipper: Russer Foods, 665 Perry Street, Buffalo, NY 14210.

MC 156800 (Sub-1–4 TA), filed April 20, 1982. Applicant: SEABOARD EXPRESS, INC., 565 Plank Road, Waterbury, CT 06705. Representative: Joseph A. Keating, Jr., 121 S. Main Street, Taylor, PA 18517. *Contract Carrier:* irregular routes: *(1) General commodities (except classes A and B explosives, hazardous materials, household goods and bulk commodities),* between New Haven, CT on the one hand, and, on the other, points in the U.S. (except AK and HI) under a continuing contract(s) with Connecticut Shipper's Association, Meriden, CT; *(2) Iron and steel articles and materials and supplies used in the manufacture and distribution of iron and steel articles,* between New Haven County, CT, on the one hand, and, on the other, CA, UT, IL, OH, NJ, OK, LA, MN and TX under a continuing contract(s) with Universal Wire Products Inc., North Haven, CT. Supporting shipper: Connecticut Shipper's Association, P.O. Box 620, Meriden, CT 07450; Universal Wire Products, Inc., 222 Universal Drive, North Haven, CT 06473.

MC 161540 (Sub-1–1TA), filed April 16, 1982. Applicant: SHIPPERS TERMINAL CO., INC., 2500 83rd Street, Bldg. 12, North Bergen, NJ 07047. Representative: H. Neil Garson, 3251 Old Lee Highway No. 400, Fairfax, VA 22030. *General commodities (except classes A & B explosives and hazardous waste)* between points in New York, NY and its Commercial Zone, Nassau, Suffolk and Westchester Counties, NY and Passaic, Bergen, Hudson, Essex, Morris, Union, Somerset, Hunterdon, Middlesex, Mercer, Monmouth, Ocean, Burlington, Camden and Gloucester Counties, NJ. Restricted to shipments having a prior or subsequent movement by water. Supporting shipper: Atlantic Consolidators, Inc., 2500 83rd Street, Bldg. 12, North Bergen, NJ 07047.

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 161173 (Sub-3–1TA), filed April 16, 1982. Applicant: BESTWAY SYSTEMS, INC., P.O. Box 597, Lilburn, GA. 30247. Representative: David P. Clark (same as applicant). *Building Materials* between points in the U.S. (except AK and HI). Supporting Shippers: There are 13 statements of support attached to the application which may be reviewed at Atlanta, GA ICC Regional Office.

MC 2908 (Sub-3–1TA), filed April 19, 1982. Applicant: CAPITAL MOTOR LINES, d.b.a. CAPITAL TRAILWAYS, 520 N. Court St., Montgomery, AL 36102. Representative: Lawrence E. Lindeman, P.C., 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304. *Common* carrier: (1) Regular routes, *passengers and their baggage, and express and newspapers in the same vehicle with passengers,* between junction Alabama Hwy 9 and US Hwy 231 and Montgomery, AL, via US Hwy 231; and (2) irregular routes, *passengers and their baggage,* in one-way and roundtrip charter and special operations, beginning and ending at points on the above-described regular route, and the area served by this route, and extending to points in the US (except HI). Applicant intends to tack the regular route authority with authority it is authorized to lease from Trailways Tennessee Lines, Inc., in docket MC–F–14820, and to interline with other carriers at Montgomery, Gadsden, Sylacauga, and Anniston, AL. Supporting shippers: There are five statements attached to the application which may be reviewed at the Atlanta Regional Office.

MC 151407 (Sub-3–3TA), filed April 19, 1982. Applicant: T & T TRUCKING, INC., 274 N.W. 37th Street, Miami, FL 33127. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *Hollow metal doors and frames* between Dade County, FL on the one hand, and on the other, Raleigh and Wnston-Salem, NC; Washington, DC; Sioux Falls, SD; Parris Island, SC; Oklahoma City, OK; Knoxville, TN; Atlanta, GA; Camp Pendleton, CA; Fort Campbell, KY; Oscada, Wi and Utica, NY. Supporting Shipper: Fire Door Corp. of Florida, 1350 N.W. 74th Street, Miami, FL 33147.

MC 161173 (Sub-3–2TA), filed April 19, 1982. Applicant: BESTWAY SYSTEMS, INC., P.O. Box 597, Lilburn, GA 30247. Representative: David P. Clark (same as Applicant). *Rubber and plastic products, metal products and machinery* between points in the U.S. (except AK and HI). Supporting Shippers: There are 17 statements of support attached to the application which may be reviewed at Atlanta, GA Regional Office.

MC 155688 (Sub-3–2TA), filed April 19, 1982. Applicant: JOHN BYRUM ROUNTREE, JR., Route, 1 Box 100, Gatesville, NC 27938. Representative: Robert C. Jenkins, P.O. Box 188, Ahoskie, NC 27910. *Lumber,* from Gates and Hertford Counties, NC, to points in VA, SC, MD, PA, DE, NJ, NY and DC. Supporting Shippers: Ashton Lewis Lumber Company, Court Street, Gatesville, NC 27938; and Ramsey Lumber Co. of Ahoskie, Inc., US 13 South, Ahoskie, NC 27910.

MC 67308 (Sub-3–1TA), filed April 19, 1982. Applicant: COLONIAL TRAILWAYS, 400 South Royal St., Mobile, AL 36601. Representative: Lawrence E. Lindeman, P.C., 4660 Kenmore Ave., Suite 1203, Alexandria,

VA 22304. *Common* carrier: (1) Regular routes, *passengers and their baggage, and express and newspapers in the same vehicle with passengers,* (A) between Jackson and Brandon, MS via US Hwy 80 and Interstate Hwy 20; and (B) between Jackson and Magee, MS via US Hwy 49; (2) irregular routes, *passengers and their baggage,* in one-way and round-trip charter and special operations, beginning and/or ending at points on the above-described regular routes, and the areas served by these routes, and extending to points in the US (except HI). Applicant intends to tack the regular route authority with authority it is authorized to lease from Trailways Southern Lines, Inc., in docket MC–F–14819, and to interline with other carriers at Jackson, MS and Mobile, AL. Supporting shippers: There are six statements attached to the application which may be reviewed at the Atlanta Regional Office.

MC 161584 (Sub-3–1TA), filed April 20, 1982. Applicant: SOMERSET TOURS, INC., P.O. Box 1031, Somerset, KY 42501. Representative: Robert H. Kinker, 314 West Main Street, P.O. Box 464, Frankfort, KY 40602. *Passengers and their baggage, in special and charter operations,* between Pulaski and McCreary Counties, KY, on the one hand, and, on the other, points in OH and TN. There are 20 supporting statements attached to this application which may be examined at the I.C.C. Regional Office at 1776 Peachtree Street, NW, Room 300, Atlanta, GA 30309.

MC 139253 (Sub-3–1TA), filed April 20, 1982. Applicant: SOUTHEASTERN WAREHOUSING AND DISTRIBUTION CORPORATION, 102 Ashe Street, Johnson City, TN 37061. Representative: Roland M. Lowell, Fifth Floor, 501 Union Street, Nashville, TN 37219. *Packaged Flour,* between Johnson City, TN (and its commercial zone) on the one hand, and, on the other, points in FL, GA, NC, and SC. Supporting Shipper: General Mills, Inc., 500 West Walnut Street, Johnson City, TN 37061.

MC 71772 (Sub-3–4TA), filed April 20, 1982. Applicant: MT. PLEASANT TRANSFER, INC., P.O. Box 267, Columbia Hwy., Mt. Pleasant, TN 38474. Representative: George M. Boles, Carlton, Boles, Vann & Stichweh, 727 Frank Nelson Bldg., Birmingham, AL 35203. *Common carrier:* Regular: *General Commodities* between Mt. Pleasant, TN, and Memphis, TN: (1) From Mt. Pleasant, TN, over U.S. Hwy 43 to Lawrenceburg, TN, then over U.S. Hwy 64 to Memphis, and return over the same route, serving no intermediate points but serving Lawrenceburg, TN, for purposes of joinder with applicant's existing regular-route authority; (2) from Mt. Pleasant over TN State Hwy 20 to its junction with U.S. Interstate Hwy 40 at or near Jackson, TN, then over Interstate Hwy 40 to Memphis and return over the same route, serving no intermediate points. Supporting Shippers: There are 10 statements in support attached to this application which may be examined at the ICC Regional Office in Atlanta, Ga.

Note.—Applicant intends to tack with authority presently held under Sub-No. 7X, Sub-No. 5F, and Sub-No. 6F. Applicant also plans to interline at Memphis, TN, and Mt. Pleasant, TN.

MC 148947 (Sub-3–3 TA), filed April 19, 1982. Applicant: HUNTER TRANSPORT CO., INC., 1603 Long Street, Chattanooga, TN 37408. Representative: Ann K. Merriman, Assistant to the President, 1603 Long Street, Chattanooga, TN 37408. *Contract carrier,* irregular routes: *Malt beverages, materials, equipment and supplies used in the distribution thereof,* from Jacksonville, FL, to Cleveland, TN. Supporting shipper: Tarver Distributing Company, 300 Twentieth Street, SE, Cleveland, TN, 37311.

MC 161583 (Sub-3–1TA), filed April 20, 1982. Applicant: RESOURCE RECYCLING TECHNOLOGIES, INC., P.O. Box 356, Portland, TN 37148. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave, NW, Suite 500, Washington, DC 20006. *Contract,* irregular; *Hazardous materials, hazardous waste, and industrial waste material,* between Portland and Mt. Pleasant, TN, on the one hand, and, on the other, points in the U.S., (except AK and HI). Supporting shipper: Stauffer Chemical Company, Westport, CT 06880.

MC 161565 (Sub-3–1TA), filed April 20, 1982. Applicant: GARRETT TRANSPORTATION CO., INC., Rt. 1, Box 216, Springville, AL 35146. Representative: Donald B. Sweeney, Jr., Esq., P.O. Box 2366, Birmingham, AL 35201. *Metal articles* between St. Clair, County, AL, on the one hand, and, on the other, all points in the U.S. Supporting shipper: Dietrich Industries, Inc., P.O. Box 400—Hwy 11, Ashville, AL 35953.

MC 161519 (Sub-3–1TA), filed April 21, 1982. Applicant: CAROLINA TRANSPORT OF KERNERSVILLE, INC., P.O. Box 321, Kernersville, NC 27284. Representative: Gary Lee Wemlinger (same as applicant). *Contract carrier,* irregular routes *Furniture and Fixtures* between points in U.S. (Except AK, HI) under continuing contracts with Ladd Furniture Co., Inc., High Point, NC. Supporting shipper: Ladd Furniture Co. Inc., One Plaza Center, High Point, NC 27261.

The following applications were filed in Region 4. Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, Il 60604.

MC 120364 (Sub-4–24TA), filed April 19, 1982. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Rd., Rockford, IL 61109. Representative: Michael J. Wyngaard, McBurney, Wyngaard & Wilson, 150 East Gilman St., Madison, WI 53703. *Such commodities as are dealt in or used by grocery stores, food business houses, and variety houses, agricultural chemicals, pharmaceuticals, and cleaning compounds* between Peoria and East Peoria, IL, on the one hand, and, on the other, points in IN, IA, KS, MI, MN, MO, NE, OH, WI and Louisville, KY for 270 days. Underlying ETA seeks 120 day authority. Supporting shipper: Federal Warehouse Company, P.O. Box 1329, Peoria, IL 61109.

MC 140418 (Sub-4–1TA), filed April 19, 1982. Applicant: E. L. M. ENTERPRISES, INC., 1006 Carroll Street, East Chicago, IN 46312. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Citric Acid and Enzymes,* from Elkhart, IN to points in the States of CO, CT, DE, FL, GA, ME, MD, MA, MT, NH, NM, NJ, NY, NC, RI, SC, VT and WY. Supporting Shipper: Miles Laboratories, Inc., P.O. Box 40, Elkhart, IN 46514.

MC 144369 (Sub-4–2TA), filed April 19, 1982. Applicant: GERARDO & SON MOTOR SERVICE, INC., (9850 Balmoral Avenue (P.O. Box 674), Rosemont, IL 60018. Representatives: Donald S. Mullins, 1033 Graceland Avenue, Des Plaines, IL 60016, (312) 298–1094. *General Commodities (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk);* Between points in the Chicago, IL, Commercial Zone, on the one hand, And, on the other, points in the states of IL, IN, IA, KY, MI, MN, MO, OH, TN, and WI. Supporting Shippers: Allstate Shippers Association, 6035 Northwest Highway, Chicago, IL 60631; Central Grocers Cooperative, Inc., 3701 N. Centrella Lane, Franklin Park, IL 60131; and Stewart Warner Corporation, 1050 Congdon Avenue, Elgin, IL 60120.

MC 144617 (Sub-4–1TA), filed April 19, 1982. Applicant: AUSTIN TRUCKING COMPANY, INC., 14 West Morgan Street, Austin, IN 47102. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Contract* irregular; *Food and related products and materials, equipment and supplies used in the manufacture of food and related products,* between Austin, IN on the one hand, and on the other, Bayonne, NJ.

Mechanicsburg, PA, Toledo, OH, Houston and Dallas, TX, Charlotte, NC, Atlanta, GA, Harvey, LA, North Lake, IL, Jacksonville and Tampa, FL, Independence, MO, and Memphis, TN, under continuing contracts with Hunt-Wesson Foods, Inc., 1645 W. Valencia Drive, Fullerton, CA 92633.

MC 146108 (Sub-4–5TA), filed April 19, 1982. Applicant: BIG T TRANSFER, INC., 2414 Jacobs Drive, New Albany, IN 47150. Representative: Harold C. Jolliff, 3242 Beech Drive, Columbus, IN 47201, (812)379–2556. *General Commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in Jefferson County, KY, on the one hand, and, on the other, points in the United States (except AK and HI). An underlying ETA seeks 120 days authority. Supporting shipper: Continental Forest Industries, division of The Continental Group, Inc., 4701 Allmond Avenue, Louisville, KY 40214.

MC 147874 (Sub-4–1TA), filed April 20, 1982. Applicant: ZILK ENTERPRISES, INC., 2807 S. Maple, Brookfield, IL 60513. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. *Such commodities as are dealt in or used by shoe and apparel stores,* between the Chicago, IL commercial zone, on the one hand, and, on the other, points in PA. Supporting shipper: Butler Shoe Corp. 1600 Pratt Blvd., Elk Grove Village, IL.

MC 154907 (Sub-4–2TA), filed April 14, 1982. Applicant: THE BUCK COMPANY, 631 W. Cherry, Wayland, MI 49348. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. *Contract* irregular: *General commodities (except commodities in bulk, Classes A and B explosives, and household goods as defined by the Commission)* between points in the United States, under contract with L. G. Cook Distributors, Inc. and L. L. Buck Produce, Inc. Supporting shippers: L. G. Cook Distributors, Inc., 525 Ann NW, Grand Rapids, MI 49504 and L. L. Buck Produce, Inc., 631 W. Cherry, Wayland, MI 49348.

MC 155357 (Sub-4–2 TA), filed April 16, 1982. Applicant: WEB TRANSPORT, div. of TAYLOR ENTERPRISES, INC., 700 East Pratt Blvd., Elk Grove Village, IL 60007. Representative: Abraham A. Diamond, 29 South La Salle Street, Chicago, IL 60603. *Contract* irregular: *General Commodities* (RESTRICTED against commodities in bulk, household goods, as defined by the ICC, and Classes A & B explosives) between points in the U.S. under continuing contracts with Williamhouse-Regency, Inc., Analytical Distribution Services, Inc., Phoenix International, Inc., Acme Steel Door Company and subsidiaries, and Transmart, Inc. Supporting Shippers: Williamhouse-Regency, Inc., 28 West 23rd Street, New York, NY 10010; Analytical Distribution Services, Inc., 2420 East Lunt Avenue, Elk Grove Village, IL 60007; Phoenix International, Inc., 1812 Elmhurst Road, Elk Grove Village, IL 60007; Acme Steel Door Company & Subsidiaries, 513 Porter Avenue, Brooklyn, NY 11222; and Transmart, Inc., 3700 West 47th Street, Chicago, IL 60632.

MC 161482 (Sub-4–1TA), filed April 16, 1982. Applicant: F & J GRAIN & COAL, R. R. #2, Box 143, Washington, IN 47501. Representative: Walter F. Jones, Jr., 1111 E. 54th Street, Indianapolis, IN., 462220. *Lime and dry fertilizer* from Chicago and Danville, IL, Delphi, Lafayette, Logansport, Indianapolis, Burns Harbor and Mount Vernon, IN, Hannibal, MO and Louisville, KY to points in IN, IL, KY and OH. There are nine supporting shippers.

MC 161485 (Sub-4–1TA), filed April 16, 1982. Applicant: MERL'S TOWING SERVICE, INC., 400 55th St. SW, Grand Rapids, MI 49508. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. *Wrecked and disabled vehicles, and replacements therefor, and buses on low boy trailers,* between points in the U.S. (except AK and HI). There are 9 supporting shippers.

MC 161551 (Sub-4–1TA), filed April 16, 1982. Applicant: FRANCIS J. CAITO INC., 5724 E. 10th Street, Indianapolis, IN 46219. Representative: Francis J. Caito (same as above). *Bananas* from points in LA, MS, AL, TX, FL and SC to points in IN, IL, OH and MI. Supporting shipper: Caito and Mascari Inc., 4101 Massachusetts Ave., Indianapolis, IN. 46218.

MC 161561 (Sub-4–1TA), filed April 19, 1982. Applicant: KYGER TRANSPORT, INC., 2009 Ladoga Road, Crawfordsville, TN 47933. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Fertilizer,* in bulk, in tank vehicles, from Crawfordsville, Franklin, Walton and Terre Haute, IN to points in IL and MI. Supporting shipper: Vistron Corporation, 1510 Rockefeller Bldg., 614 Superior Avenue, Cleveland, OH 44113.

The following applications were filed in region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 161056 (Sub-6–1 TA), filed April 16, 1982. Applicant: AMERICAN HIGHWAYS, INC., P.O.B. 194, Moreland, ID 83256. Representative: Timothy R. Stivers, P.O.B. 1576, Boise ID 83701. *Lumber and lumber mill products,* from points in ID, MT, OR and WA to points in CO, UT and WY, for 270 days. An ETA seeks 120 day authority. Supporting shipper: Workmans Forest Products, Inc., P.O.B. 361, Clackamas OR 97015.

MC 149128 (Sub-6–1 TA), filed April 16, 1982. Applicant: BURCH TRUCKING, INC., P.O.B. 2535, Casper, WY 82602. Representative: D. J. Burch (same as applicant). *Machinery, materials, equipment and supplies used in replacing, servicing and repairing machinery and equipment used in or in connection with discovery, development, production, storage, transmission and distribution of natural gas and petroleum and their products and by-products.* Restricted against the transportation of complete oil-field drilling rigs. Between points in KS, OK, TX, AZ, NV, CA, OR, WA, and LA, for 270 days. Applicant will tack with existing authority. Supporting shipper: There are 24 shippers. Their statements may be examined at the Regional office listed.

MC 1515 (Sub-6–18 TA), filed: April 16, 1982. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: R. L. Wilson (same as applicant). *Common carrier,* regular route, *passengers and their baggage and express and newspapers in the same vehicle with passengers,* between Phoenix, AZ, and Prescott, AZ: From Phoenix over Interstate Hwy 17 to junction AZ State Hwy 69, then over AZ State Hwy 69 to Prescott and return over the same route, serving all intermediate points for 180 days. Applicant intends to tack this authority with authority it presently holds in MC–1515. Supporting shippers: There are 6 shippers. Their statements may be examined at the regional office listed.

MC 140826 (Sub-6–1 TA), filed April 15, 1982. Applicant: MAR-AIR BUS COMPANY P.O.B. 422, Haines, AK 99827. Representative: Steve L. Homer (same address as applicant). *Common carrier,* regular route, *passengers and their baggage in the same vehicle,* between Anchorage, Glenallen and Tok, AK and Whitehorse, Yukon over Alaska State Hwy. 1 (Glenn Hwy) from Anchorage to Tok, AK: thence via Alaska Hwy 2 from Tok to U.S./ Canadian border: thence via Canadian Provincial Hwy 1 from Beaver Creek to Whitehorse, Yukon, CD., for 180 days. An underlying ETA seeks 90 days authority. Carrier intends to tack to existing authority and to interline. Supporting shippers: Mt. McKinley Alaska Glacier Tours, P.O.B. 2315.

Anchorage, AK 99510–2315 and Captain Cook Travel Agency, 745 W. 5th Ave., Anchorage, AK 99501.

MC 151444 (Sub-6–4TA), filed April 16, 1982. Applicant: RAC TRANSPORT COMPANY, INC., P.O.B. 2565, Grand Junction, CO 81502. Representative: Lee E. Lucero, 601 E. 18th Ave. # 107, Denver, CO 80203. Regular routes: *General commodities* (except Classes A and B explosives, household goods as defined by the Commission and commodities in bulk): (1) Between Grand Junction, CO, and the CO/NM state line: (a) from Grand Junction over U.S. Hwy 50 to Montrose, CO, then over U.S. Hwy 550 to Durango, CO, then over U.S. Hwy 160 to Cortez, CO, then over either U.S. Hwy 160 or U.S. Hwy 666 to the CO/NM state line, and return over the same route, serving all intermediate points; (b) from Grand Junction over U.S. Hwy 50 to Jct CO Hwy 141, then over CO Hwy 141 to Jct U.S. Hwy 666, then over U.S. Hwy 666 to Cortez, CO, then over either U.S. Hwy 160 or U.S. Hwy 666 to CO/NM state line, and return over the same route, serving all intermediate points; and (2) serving all other points in Ouray, San Miguel, Dolores, Montezuma, La Plata, San Juan and Gunnison Counties, CO, as off-route points in connection with carrier's otherwise authorized regular-route operations, for 270 days. An underlying ETA seeks 120 days Authority. Applicant intends to tack the requested authority with its existing authority and to interline with other carriers. Supporting shippers: There are 19 shippers. Their statements may be examined at the Regional office listed.

MC 161057 (Sub-6–1TA), filed April 16, 1982. Applicant: RIGA TRUCK LINES, INC., P.O. B. 729, Baker, OR 97814. Representative: Timothy R. Stivers, P.O. B. 1576, Boise, ID 83701. *Lumber and wood products, building materials, metal and metal products,* between points in AZ, AR, CA, CO, ID, KS, LA, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA and WY, for 270 days. Supporting shippers: Workmans Forest Products, Inc., P.O.B. 729, Baker, OR 97814; Mid-Pacific Trading Co., Inc., 120 I Street, Suite 220, Sacramento, CA 95814.

MC 107743 (Sub-6–2TA), filed April 16, 1982. Applicant: SYSTEM TRANSPORT, INC., P.O.B. 3456, Spokane, WA 99220. Representative: James E. Wallingford, P.O.B. 2647, Spokane, WA 99220. *Machinery and parts thereof, metal and metal products* between points in: AL, AR, AZ, CA, CO, IA, ID, IL, IN, KS, KY, LA, MD, MI, ND, MS, MO, MT, NE, NV, NM, ND, NJ, OH, OK, OR, PA, SD, TN, TX, WA, WI, WY, and WV for 270 days. Supporting shippers; eleven. Their statements may be examined at the regional office above.

MC 155733 (Sub-6–3TA), filed April 16, 1982. Applicant: TRAIL BLASERS, INC., 7990 Overland Rd., Boise, ID 83709. Representative: Timothy R. Stivers, P.O.B. 1576, Boise, ID 83701. *Contract Carriers,* Irregular Routes: *Contractors' equipment, materials and supplies,* between points in UT, ID, Walsenburg, CO, Madras and Warm Springs, OR, on the one hand, and, on the other, points in the U.S., for the account of A.S.C. Constructors, Inc., for 270 days. Supporting shipper: A.S.C. Constructors, Inc., P.O.B. 9048, Boise, ID 83707.

MC 148791 (Sub-6–12TA), filed April 19, 1982. Applicant: TRANSPORT-WEST, INC., 2125 N. Redwood Rd., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O.B. 2465, Salt Lake City, UT 84110. *Contract Carrier,* Irregular routes: *Paper and paper products and equipment, materials and supplies used in the manufacture and distribution thereof,* between points in the Louisiana Parishes of Washington and West Feliciana, on the one hand, and, on the other, points in AZ, AR, CA, CO, KS, MS, MO, NV, NM, OK, TN, TX and UT, for the account of Crown Zellerbach for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Crown Zellerbach, P.O.B. 1060, Bogalusa, LA 70427.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–11518 Filed 4–27–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-118)]

Rail Carriers; Grand Trunk Western Railroad Co., Exemption for Contract Tariff ICC–GTW–C–0014

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Donald J. Shaw, Jr.

or

Jane F. Mackall, (202) 275–7656.

SUPPLEMENTARY INFORMATION: The Grand Trunk Western Railroad Company (GTW) filed a petition on April 9, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). Petitioner Requests that we permit contract tariff ICC–GTW–C–0014 to become effective on one day's notice. The tariff was filed to become effective on May 10, 1982. The tariff provides for the transportation of sugar.[1]

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. CF. former section 10762(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. Petitioner originally issued its contract tariff on December 2, 1981, with an effective date of January 4, 1982. Subsequently, it filed an amendment to the contract, but was notified by the Commission that the original contract had not been filed. Petitioner submits that the original apparently was lost by its special delivery carrier. In essence, the contract tariff is being refiled. The involved shipper has lost three months' benefit from this contract. We find a provisional exemption is warranted.

Petitioner's amended contract tariff GTW–C–0014 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

> If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint to review this contract.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30-day notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication the the Federal Register.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: April 21, 1982.

By the Commission, Division 2, Commissioners Gresham, Gilliam, and

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[1] The Detroit, Toledo and Ironton Railroad Company (DT&I) also is a party to the contract. However, DT&I is owned by the GTW.

Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-11515 Filed 4-27-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Privacy Act of 1974; Systems of Records; Annual Publication

The Privacy Act of 1974 (5 U.S.C. 552a (e) (4) requires agencies to publish annually in the **Federal Register** a notice of the existance and character of their systems of records. The Agency for International Development last published the full text of its systems of records at 42 FR 47371 on September 20, 1977. No changes have occurred, therefore, the systems of records remain in effect as published.

The full text of the Agency for International Development systems of records also appears in Privacy Act Issuances, 1980 Compilation, Volume IV, page 38.

This volume may be viewed at Federal depository libraries or Federal Information Centers.

Rhea Johnson,

Acting Chief, Public Inquiries Division, Office of Public Affairs.

[FR Doc. 82-11422 Filed 4-27-82; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

Agency Forms Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted two proposals for the collection of information to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTIONS: The proposed information collections are for use by the Commission in connection with the following investigations:

(1) Investigation No. 332-139, Probable Economic Effect of the Continued Designation of Certain Headwear of Straw as Articles Eligible for Duty-Free Treatment under the Generalized System of Preferences;

(2) Investigation No. 332-140, The Competitive Status of Major Supply Regions for Fall-Harvested Fresh White or Irish Potatoes in Selected Markets.

SUMMARY OF PROPOSALS: The following summarizes the information collection proposal submitted to OMB for inv. No. 332-139:

(1) Number of forms submitted: two.

(2) Title of forms: Questionnaire for Producers of Certain Headwear of Straw Headwear; Questionnaire for Importers of Certain Straw Headwear.

(3) Type of request: new.

(4) Frequency of use: nonrecurring.

(5) Description of respondents: businesses (U.S. producers and importers of straw headwear).

(6) Estimated number of respondents: 80.

(7) Estimated total number of hours to complete the forms: 1,040.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

(9) Section 3504(h) of Pub. L. 96-511 does not apply.

The following summarizes the information collection proposal submitted to OMB for inv. No. 332-140:

(1) Number of forms submitted: two.

(2) Title of forms: Potato Growers' Questionnaire; Potato Importers' Questionnaire.

(3) Type of request: new.

(4) Frequency of use: nonrecurring.

(5) Description of respondents: farms and businesses (U.S. potato farmers and importers).

(6) Estimated number of respondents: 1,100.

(7) Estimated total number of hours to complete the forms: 26,400.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commisson and not disclosed in a manner that would reveal the individual operations of a firm.

(9) Section 3504(h) of Pub. L. 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Charles Ervin, the USITC agency clearance officer (tel. no. 202-523-4463). Comment and questions about the proposals should be directed to Philip Balazs, the designated reviewer for OMB (tel. no. 202-395-4814). If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise Philip Balazs of your intent as soon as possible. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436).

Issued: April 23, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-11558 Filed 4-27-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. TA-203-13]

Certain Mushrooms; Report to the President

April 15, 1982.

To the President:

In accordance with sections 203(i)(1) and 203(i)(2) of the Trade Act of 1974 (19 U.S.C. 2253(i)(1) and (i)(2)), the United States International Trade Commission herein reports the results of an investigation concerning certain mushrooms.

The Commission unanimously [1] advises, on the basis of information obtained in the investigation, that termination of the import relief presently in effect with respect to imports of canned and frozen mushrooms broiled in butter or in butter sauce, provided for in item 144.20 of the Tariff Schedules of the United States, would have an adverse economic effect on the domestic industry concerned.[2]

The Commission instituted this investigation on December 29, 1981, following receipt of a request for such an investigation from the United States Trade Representative (USTR) on December 21, 1981. Public notice of the investigation and hearing was given by posting copies of the notice at the office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** of January 6, 1982, (47 FR 688). A public hearing was held in connection with this investigation on March 10, 1982, in Washington, D.C. All interested persons were afforded an opportunity to be present, to present evidence, and to be heard.

[1] Commissioner Haggart did not participate.

[2] Detailed advice on the probable economic effect on the domestic industry concerned of the termination of the import relief presently in effect with respect to the mushroom products specified in the letter to the Commission from USTR is contained in the statement of the Commission which follows. The Commission's statement also contains advice on developments in the mushroom industry since import relief became effective, including the progress and specific efforts made by the firms in the industry to adjust to import competition, as requested by USTR.

The information in this report was obtained from field work, questionnaires sent to domestic producers and importers, the Commission's files, other Government agencies, briefs filed by interested parties, and other sources.

Statement of the Commission

The present investigation was instituted on December 29, 1981, at the request of the U.S. Trade Representative in order that the Commission might advise the President with respect to (1) developments in the mushroom industry since import relief became effective, and (2) the probable economic effect on the domestic mushroom industry of exempting canned and frozen mushrooms broiled in butter or in butter sauce from the import relief duties currently in place.[3]

This is the second mushroom investigation the Commission has conducted under section 203(i) since import relief was proclaimed in October 1980. As a result of the Commission's earlier investigation completed in September 1981,[4] the President on February 27, 1982, announced that he was terminating relief with respect to certain wild specialty mushrooms valued at over $1.60 per pound (drained weight) and to certain whole oriental mushrooms in retail-size containers.[5]

In responding to the request, we will provide first our assessment of the current state of the domestic industry and then our advice as to the probable economic effect of terminating relief with respect to canned and frozen mushrooms broiled in butter or in butter sauce.

Current State of the Domestic Industry

In evaluating the current state of the domestic industry, three considerations should be emphasized at the outset. First, the domestic industry has had the benefit of import relief for only seventeen months. Thus, it is difficult to make any reliable assessment of the full impact import relief has had. Second, over the past 17 months, consumption of prepared and preserved mushrooms has been in decline, falling from 217.2 million pounds in 1980 to 175.5 million pounds in 1981, the first full year of relief. And third, it is possible that the prolonged series of import investigations itself has affected the domestic industry by diverting its limited financial and other resources. These investigations have also created a continuing uncertainty as to the status of the import relief. Taking into account these factors and all the data we have collected in this third mushroom investigation since 1980, it is our view that the domestic mushroom industry continues to suffer serious harm from import competition.

In 1979, the last full calendar year before relief was imposed, imports of prepared or preserved mushrooms totalled 98.6 million pounds (drained weight.)[6] In 1980, the year during which relief was imposed, imports rose to 117.3 million pounds. However, in 1981, after imposition of the import relief, imports fell to 88.6 million pounds.[7]

Coupled with this decline in total imports was a significant and dramatic change in the source of imports. In 1979, Taiwan and Korea accounted for 81 percent of U.S. imports, while Hong Kong, Macao, and the People's Republic of China (PRC) were responsible for 16 percent. By 1981, the share of the import market held by Taiwan and Korea had fallen to 39 percent. The share accuring to Hong Kong, Macao, and the PRC increased to 60 percent.[8] Most of the mushrooms exported from Hong Kong and Macao were grown in the PRC. Had not Hong Kong, Macao, and the PRC increased their lower-priced exports to the U.S. market, domestic producers might have been able to generate higher profits and sustain greater adjustment efforts. Moreover, the ease and rapidity with which PRC imports have displaced those of Taiwan and Korea is an indication of the PRC's potential as a competitor to the U.S. industry.

In addition to this decline in imports, total U.S. consumption of prepared and preserved mushrooms has followed an erratic path, climbing from 179.5 million pounds in 1979 to 217.2 million pounds in 1980, but then falling to 175.5 million pounds in 1981.[9] Despite this severe decline in U.S. consumption, the domestic industry has recaptured a small portion of the U.S. market from foreign competitors. It increased its share of the market from 49 percent in 1979 and 1980 to 52 percent in 1981.[10]

However, this increase in market share does not appear to have significantly improved the health of the domestic industry in 1981. The domestic industry continues to suffer from low and even negative profitability.[11] This can be attributed to two factors: First, that total U.S. consumption of canned processed mushrooms fell, and second, that declining import prices appear to have depressed domestic mushroom prices. There also continues to be pressure from some imports entering in bulk which are subsequently being repackaged in the United States.

The domestic industry's poor health is reflected by a number of economic indicators. Capacity utilization among domestic canners increased from 45 percent in 1979 to 58 percent in 1980, but then declined to 53 percent in 1981.[12] Although the capacity utilization of domestic freezers has increased steadily during the period 1979–81, it stood at only 50 percent in 1981.

Domestic production of canned mushrooms followed a similar pattern. Canners produced 86.5 million pounds in 1979, 111.6 million pounds in 1980, and 106.4 million pounds in 1981.[13] Freezers increased their production from 16.8 million pounds in 1979 to 20.6 million pounds in 1981.[14]

Sales by canners increased from 87.6 million pounds in 1979 to 106.5 million pounds in 1980, and then fell to 92 million pounds for 1981.[15] Sales of frozen mushrooms rose from 8 million pounds in 1979 to 15.2 million pounds in 1980 and 19.9 million pounds in 1981.[16]

A further sign of serious weakness in the domestic industry is its inventory position. From December 31, 1979, to December 31, 1981, inventories of canned mushrooms increased from 12.9 million pounds to 30.2 million pounds.[17] Similarly, inventories of frozen mushrooms increased from 0.92 million pounds to 3.3 million pounds during the same period.[18]

The domestic industry has begun several projects which may further increase its share of the U.S. market and improve its overall condition. First, U.S. producers have developed a new method for processing mushrooms which would reduce the amount of shrinkage experienced under present processing methods, thereby reducing their raw product costs since more of the mushroom is utilized.[19] One industry representative estimated that this new process would reduce shrinkage by approximately 60 percent. The

[3] The Commission has conducted this investigation under the authority of section 203(i)(1) and (i)(2) of the Trade Act of 1974 (19 U.S.C. 2253(i)(1) and (i)(2)).

[4] Mushrooms, Inv. No. TA–203–9, USITC Pub. 1184 (1981).

[5] Presidential Proclamation 4904, 47 FR 8753.

[6] These figures, as well as the following, include imported specialty mushrooms which accounted for 1 percent of total imports.

[7] A–9.

[8] A–9, Table 3 at A–60.

[9] A–12, Table 7 at A–63.

[10] A–12.

[11] Precise financial data regarding the condition of the domestic industry are presented at A–20–24.

[12] A–13.

[13] A–14.

[14] A–14.

[15] A–15.

[16] *Id.*

[17] A–16.

[18] *Id.*

[19] Transcript of hearing page 21. The process cannot be implemented until it receives Food and Drug Administration (FDA) approval, which may take 2 years.

developer of the process and a food industry technologist both claim that the new process will yield a mushroom with greater weight, better texture, and a closer resemblance to fresh mushrooms. This process is being patented, with the intent of allowing its use solely by the U.S. mushroom industry.[20]

Second, the domestic industry has invested in advanced equipment and improved growing and harvesting techniques which have boosted yields. In marketing year 1980/81, U.S. grower yields of fresh mushrooms averaged 3.4 pounds per square foot, 7 percent greater than during the marketing year 1979/80. In fact, certain firms have increased their yields to over 4 pounds per square foot from under 3.4 pounds per square foot, reducing raw mushroom costs. These costs savings can be passed on to the processor through lower mushroom prices.

Third, the domestic industry has improved its market research so as to identify better the relationships among retail pricing, advertising, and consumer purchasing patterns. Knowledge of these relationships should enable the domestic industry to pursue advertising and pricing strategies that will promote mushroom consumption.[21]

Finally, the domestic industry has begun to diversify into the broader and more promising field of frozen vegetables and new forms of frozen mushroom preparations and combinations with other foods.

Probable Economic Effect

Exempting canned and frozen mushrooms broiled in butter or in butter sauce would adversely affect the domestic industry. Consumption of canned buttered mushrooms fell from * * * pounds to * * * pounds from 1979 to 1981.[22] Further, testimony before the Commission indicated that the market is unlikely to expand, particularly during a recession.[23]

Despite the relief currently in place, imported canned buttered mushrooms have captured an increasing share of the U.S. market of this product, increasing more than tenfold from 1979.[24] Part of the increase in imports in 1981 is due to the fact that the largest domestic producer of buttered mushrooms moved most of its production of these mushrooms from the United States to Taiwan. Imports have assumed this strong market position despite the fact that they are currently higher priced than the domestic product.[25] If canned buttered mushrooms were exempted from import relief, it is likely that the price of the imports would fall below that of the domestic product if cost-savings were passed on to consumers.[26] Such a development would likely accelerate the decline of the domestic industry's position in the canned buttered mushroom market.

Although the domestic industry has not yet begun to participate in the frozen buttered mushroom market,[27] several U.S. processors have invested heavily in vegetable freezing equipment which could be used to freeze mushrooms.[28] Although domestic consumption of frozen buttered mushrooms fell in 1981, the consumption of frozen mushrooms, in general, did increase. Frozen mushroom products and the broader category of frozen vegetables appear to be promising for the domestic mushroom industry. Exemption of frozen buttered mushrooms from the import duties might foreclose entry of the U.S. industry into this segment of the mushroom market.

Another reason for not exempting buttered mushrooms from the import relief is the possibility that such an exemption would encourage circumvention of the relief which would remain in effect. There is currently no FDA standard for the amount of butter needed to permit labeling a mushroom product "in butter" or "in butter sauce." If the mushroom industry practice of about 2 percent butter content were adopted as the requirement for mushrooms to be "in butter," importers of mushrooms in brine could add, at minimal expense, this token amount of butter to circumvent the import relief. These cost savings due to circumvention could be greater than the production costs of adding butter by from 5 cents to 15 cents per pound of mushrooms, which is 1.6 to 4.8 percent of average buttered mushroom prices.

Additionally, there is no definition by the FDA for the term "broiled" when used in connection with mushrooms. While the process of broiling mushrooms in butter is more expensive and less likely to attract those inclined to evade the duty, it is difficult to distinguish canned broiled from canned unbroiled mushrooms, particularly since there are no government or industry standards guiding the use of the term. Therefore, it would neither be possible to establish an enforceable exemption, nor would it be practical for Customs officials to administer uniformly an exemption for this type of canned mushroom. Circumvention of the current import relief would greatly exacerbate the harm the domestic industry is already suffering.[29]

Conclusion

It is our assessment that the domestic industry remains in a depressed state despite its sucess in recapturing a small portion of the domestic market and its diverse efforts to adjust to import competition. Nevertheless, the import relief duties currently in place have had the effect of providing some restraint on imports from Taiwan and Korea since their institution in November 1980 and should be permitted to continue for the full 3-year period. An exemption to the current import relief duties for canned or frozen mushrooms broiled in butter or in butter sauce would encourage circumvention of those duties and thereby harm the domestic industry.

Issued: April 15, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-11584 Filed 4-27-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-120]

Certain Silica-Coated Lead Chromate Pigments; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: April 20, 1982.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 82-11586 Filed 4-27-82; 8:45 am]

BILLING CODE 7020-02-M

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[20] Submission of Mushroom Cooperative Co., pp. 4 and 5.

[21] Market research of this nature was conducted by several private consulting firms under the auspices of the American Mushroom Institute. This and other studies covering the U.S. mushroom industry were funded by a U.S. Department of Commerce technical assistance grant.

[22] A-12.

[23] Transcript of hearing, p. 163.

[24] The precise figure is based upon confidential information gathered by the Commission in Table 8 at A-64.

[25] A-27. Imports appear to benefit from better brand recognition which accounts for their higher prices.

[26] A-30.

[27] A-14.

[28] A-28.

[29] Commissioner Frank notes that beside the above-mentioned economic effects, there are also the cost burdens in the United States of conforming to a wide variety of regulations issued by a variety of governmental entities.

[Investigations Nos. 701-TA-152 and 153 (Preliminary) and 731-TA-89 (Preliminary)]

Prestressed Concrete Steel Wire Strand From Brazil, France, and the United Kingdom

Determinations

On the basis of the record [1] developed in its countervailing duty investigations on prestressed concrete steel wire strand from Brazil and France, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury [3] by reason of imports of wire strand of steel for prestressing concrete, provided for in item 642.11 of the Tariff Schedules of the United States (TSUS), upon which bounties or grants are alleged to be paid.

On the basis of the record developed in its antidumping investigation on prestressed concrete steel wire strand from the United Kingdom, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury [3] by reason of imports of wire strand of steel for prestressing concrete provided for in item 642.11 of the TSUS, from the United Kingdom which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On March 4, 1982, a petition was filed by counsel on behalf of 6 U.S. producers [4] with the U.S. International Trade Commission and with the Department of Commerce alleging that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports from Brazil and France of prestressed concrete steel wire strand upon which bounties or grants are alleged to be paid and by reason of imports from the United Kingdom of prestressed concrete steel wire strand which are allegedly being sold at less than fair value.

Accordingly, the Commission instituted preliminary investigations under sections 701(a) and 733(a), respectively, of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or that the establishmnent of an industry in the United States is materially retarded, by reason of the importation of such merchandise into the United States.

Notice of the institution of the Commission's investigations and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on March 16, 1982 (47 FR 11342). The conference was held in Washington, D.C. on March 25, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of Chairman Bill Alberger, Vice Chairman Michael J. Calhoun, and Commissioners Paula Stern, Alfred E. Eckes and Veronica A. Haggart

Introduction

We find that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of prestressed concrete steel wire strand from Brazil and France, which allegedly are subsidized, and imports from the United Kingdom, which allegedly are sold at less than fair value.[5] We have made this determination on a case-by-case basis.[6] Should any of the affirmative preliminary cases return for final determinations, however, we do not preclude cumulation of the imported products if the record developed shows that such cumulation is appropriate.[7]

Recent profits of the domestic industry have been low and prices essentially flat for the past three years as imports from the three countries under investigation have increased. These developments, among other considerations, give rise to a reasonable indication that the domestic industry is being materially injured by reason of imports from the three countries under investigation, primarily through lost sales and the impact on pricing. Despite the fact that imports from Japan fell sharply after antidumping duties were imposed in late 1978, the health of the domestic industry did not improve as expected. Furthermore, the large unused capacity of the British and Brazilian producers and the large inventory of the French importer indicate that imports may continue to affect the domestic industry adversely in the near future.

Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[8] The statute defines "like product" as a product which is like or in the absence of like, most similar in characteristics and uses with the article under investigation.[9]

Prestressed concrete steel wire strand (PC strand), the imported article subject to these investigations, is a product consisting of one center wire and six helically placed outer wires. It is made to ASTM specification A416-74 and is available in two grades, 250 and 270. The most common size in which the product is sold is ½" diameter, although PC strand is also sold in ¼", 5/16", 3/8", 7/16", and 0.6" diameters.

The U.S. product that is like the imported product is all wire strand of steel for prestressing concrete. The domestic and imported products are made to the same ASTM specifications and are devoted to the same uses. Although there was testimony at the conference by those opposed to the petition that there are quality differences between the imported product and the domestic product, there is no indication that the domestic product is sufficiently dissimilar in characteristics and uses so as not to be a "like product".

The domestic producers of the like product are American Spring Wire Corp., Armco Steel Corp., Bethlehem Steel, CF&I Steel Corp., Florida Wire & Cable Co., Pan American Rope Co., Shinko Wire Co., and Sumiden, Inc. These producers constitute the domestic industry.

Shinko and Sumiden are principally owned by Japanese companies, and Florida Wire is principally owned by Ivaco of Canada. The statutory definition of the domestic industry treats

[1] The "record" is defined in sec. 207.2(i) of the Commission's rules of practice and procedure (47 FR 6190, Feb. 10, 1982).

[2] Commissioner Frank dissenting.

[3] Chairman Alberger and Commissioner Haggart find a reasonable indication of present material injury only.

[4] American Spring Wire Corp., Armco Inc., Bethlehem Steel Corp., Florida Wire & Cable Co., Pan American Ropes, Inc., and Shinko Wire America, Inc. are petitioners in the investigations concerning imports of the product from France and the United Kingdom. These same firms, except Armco and Bethlehem, are also petitioners in the investigation concerning imports from Brazil.

[5] Chairman Alberger and Commissioner Haggart determine only that there is a reasonable indication of material injury, and therefore do not reach the issue of reasonable indication of threat of material injury.

[6] Vice Chairman Calhoun has cumulated. See his Additional Views.

[7] For Chairman Alberger, Commissioners Stern and Eckes views on cumulation, see *Carbon Steel Wire Rod from Brazil, Belgium, France and Venezuela*, Inv. No. 731-TA-88, pp. 7-8.

[8] 19 U.S.C. 1677(4)(A).

[9] 19 U.S.C. 1677(10).

foreign-owned producers located in the United States the same as the other domestic producers unless it can be shown that such producers are related parties as defined in section 771(4)(B).[10] In this case, there is no connection between foreign-owned domestic producers and the imports in question. Thus, there is no basis in law for excluding Sumiden, Shinko, and Florida Wire from the U.S. industry for the purposes of these investigations.

Material Injury by Reason of LTFV or Subsidized Imports

In preliminary countervailing duty and antidumping investigations, the Commission is directed by Title VII of the Tariff Act of 1930 to determine, based upon the best information available at the time of the determinations, whether there is a reasonable indication that an industry in the United States is materially injured or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise that is the subject of the investigations.[11] "Material injury" is defined as "harm which is not inconsequential, immaterial, or unimportant."[12]

Section 771(7) of the Act directs the Commission to consider, in making its determinations, among other factors, (1) the volume of imports of the merchandise under investigation, (2) their impact on domestic prices and (3) the consequent impact on the domestic industry.[13]

Volume of imports.—Although total annual imports decreased 36 percent from 1978 to 1981, imports from each of the countries under investigation rose irregularly over the same period.[14] Imports from Brazil increased from 10 million pounds in 1978 to 14 million pounds in 1981. Imports from France also showed a dramatic increase, tripling from 2 million pounds in 1978 to 6 million pounds in 1981. The United Kingdom's imports nearly doubled from 5.5 million pounds in 1978 to almost 10 million pounds in 1981. The market share of the three countries under investigation increased.

Effect of imports on domestic prices.—The best information available to the Commission shows that imports from each of the three countries under consideration have affected domestic prices. Domestic prices have been essentially flat since January 1979 despite general inflationary trends in the economy that have increased the costs to the domestic industry for labor, energy, and other inputs. Low-priced imports seem to be partly responsible for suppressing domestic prices. The Commission has confirmed underselling by imports from all three countries under consideration.

Lost sales.—Pricing data received in the investigation on the bulk of the United Kingdom imports show that United Kingdom prices exceeded domestic prices on average.[15] However, six lost sales due to underselling were alleged and three were confirmed.[16] While these lost sales represented only a small percentage of total United Kingdom imports in 1981, they do reasonably indicate that imports are a cause of material injury.

Eleven lost sales were alleged to have been lost to PC strand from Brazil. Ten of these allegations were investigated by the staff and lost sales were verified in nine instances, which covered 89 percent of the alleged lost volume.[17] The staff investigated twelve allegations of lost sales from France and verified ten instances in which sales were lost due to underselling.[18]

Impact on the domestic industry.—[19] The profit-and-loss experience of the domestic industry reflects the impact of the flat price levels since January 1979. The ratio of net profits to net sales went from a healthy aggregate level in 1979 to a very low level in 1981, as domestic producers were unable to raise prices to cover increased costs.[20] Although production and sales rose, the combination of flattened prices during a time of rising costs, underselling by the imports from each country, and a strong showing of lost sales provide a reasonable indication that imports were adversely affecting the profitability of the domestic industry.

Threat of Material Injury [21]

The report of the Committee on Ways and Means of the House of Representatives on the Trade Agreements Act of 1979 states that, with respect to threat, the Commission should focus on—

demonstrable trends—for example, the rate of increase of the * * * dumped exports to the U.S. market, capacity in the exporting country to generate exports, the likelihood that such exports will be directed to the U.S. market taking into account the availability of other export markets.* * *

An important factor in considering how substantial an impact imports have had is the short period of time in which the increase occurred. Since the imposition of antidumping duties on imports from Japan in late 1978, imports from the three subject countries have increased dramatically, and these import levels appear likely to continue. Substantial excess capacity in Brazil and the United Kingdom indicates that those countries will be able to continue to increase shipments to the United States.[22] Although France does not have nearly the same amount of unused capacity, the French producers are expanding their capacity in 1982.[23] Furthermore, the sale of French inventories warehoused in the United States could adversely affect the U.S. industry in the near future.

Conclusion

On the basis of the best information available, we find that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of prestressed concrete steel wire strand from Brazil and France, which are allegedly being subsidized, and imports from the United Kingdom, which are allegedly being sold at less than fair value.[24] The reasonable indication standard has been satisifed in these preliminary cases. Should these cases return for final determinations, we will require a more complete demonstration of how the prices of the imports affect the health of the domestic industry, particularly its profitability.[25]

Additional Views of Vice Chairman Michael J. Calhoun [26]

Consistent with my analysis in the most recent series of steel cases [27] and in view of all the relevant economic factors before us, my view is that it is through their aggregate rather than individualized presence in the domestic marketplace that the imports before us most reasonably have their requisite

[10] 19 U.S.C. 1677(4)(B).
[11] 19 U.S.C. 1671b, 1673b.
[12] 19 U.S.C. 1671(7)(A).
[13] 19 U.S.C. 1677(7).
[14] Report, p. A–27.
[15] Report, p. A–38, Table 21, p. A–36.
[16] Report, p. A–41.
[17] Report, p. A–40.
[18] Report, p. A–40.
[19] Industry data are confidential and cannot be discussed in this public document.
[20] Report, p. A–24.
[21] See fn. 1.
[22] See Report, p. A–14 and A–16.
[23] See Report, p. A–15.
[24] See fn. 1.
[25] Chairman Alberger, Vice Chairman Calhoun, and Commissioners Stern and Haggart note that the last consideration could be important because the recent large increase in domestic capacity could have a negative impact on profits which would have little to do with any import-related injury.
[26] As market share figures are confidential in this investigation, references to market share are general.
[27] Investigations Nos. 701–TA–86 through 119, 701–TA–121, 701–TA–123 through 144, 701–TA–146, 701–TA–147, 731–TA–53 through 65, and 731–TA–67 through 86 (Preliminary), USITC Pub. No. 1221.

impact. In the absence of other data regarding behavior in the marketplace, I reach this conclusion based on all the factors relied upon in the majority opinion as well as two others.

First, the market share held by each of the three countries under investigation is very low. This strongly suggests to me, in the absence of other information, that any causal link between these imports and material injury to the domestic industry likely results from the collective impact rather than individual behavior.

In addition, the domestic producers enjoy a rather low, though expanding share of the domestic market compared with the share held by other parts of the steel sector. In a situation where a domestic industry characteristically holds relatively low levels of market share, absent special market circumstances, the likelihood of very low levels of imports causing material injury is certainly greater than where the domestic producer's share is high. Thus, to me, the combination of low individual market shares coupled with low levels of the domestic producers' shares strongly suggests that the impact on the domestic industry must be cumulative, if it exists at all.

But, as in other cases, I wish to make clear that in general, market share analysis is not the sole basis for aggregating in this investigation. Historically, the Commission has looked at a number of factors in deciding if it were appropriate to aggregate the impact of imports from various sources. These factors include comparability and competition of the products in the marketplace. Related to this is the fact that the subject imports are identical to the domestic product both in characteristics and in uses. Evidence of lost sales and preliminary pricing data make it clear that imports and the corresponding domestic product interact very closely in the market.

With respect to cumulating the impact of allegedly LTFV sales of imports from the United Kingdom with the allegedly subsidized imports from Brazil and France, as I indicated in our most recent steel investigation,[28] this is an issue with which I continue to have difficulty. I do not resolve the matter in this opinion as I am awaiting more detailed legal argument in the final steel investigation.

However, quite a reasonable argument can be made that it is permissible to cumulate the impact of imports of allegedly LTFV sales and the impact of subsidized imports in reaching a finding of material injury. And since my view in this preliminary investigation is that material injury turns on the opposite impact, I have found that there is a reasonable indication that imports from the United Kingdom are a cause of material injury to the domestic industry.

Issued: April 19, 1982.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Note.—The opinion of Commissioner Frank was not completed prior to the statutory deadline of April 19, 1982. When completed, it will appear in a subsequent edition of the **Federal Register.**

[FR Doc. 82-11585 Filed 4-27-82; 8:45 am]

BILLING CODE 7020-02-M

[28] Certain Steel Wire Rod from Brazil, Belgium, France, and Venezuela, Investigation No. 731-TA-88, USITC Pub. No. 1230, pp. 17-20.

[Investigation 332-141]

Study of Transportation Costs in U.S. Foreign Trade

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), the Commission has instituted investigation No. 332-141 for the purpose of analyzing how transportation costs, as a hindrance to trade, have change in recent years. In conducting this investigation, the Commission will ask what industries have been most affected by changes in transportation costs, and it will examine the reasons for these changes. The Commission will also compare the changes in the cost of international transportation to changes in the cost of domestic transportation.

EFFECTIVE DATE: April 15, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Henry McFarland, Research Division, U.S. International Trade Commission, Washington, D.C. 20436 (Phone 202-523-0075).

WRITTEN SUBMISSIONS: Since there will be no public hearing scheduled for this study, written submissions from interested parties are invited concerning any phase of the study. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission in this study, written statements should be submitted at the earliest practicable date, but no later than September 15, 1982. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued April 23, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-11583 Filed 4-27-82; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Business Investment and Development Corp.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) and (h), that a proposed Final Judgment, Stipulation and Competitive Impact statement (CIS) have been filed with the United States District Court for the Western District of Texas in *United States of America v. Business Investment and Development Corporation*, Civil No. MO-81-CA-20. The Compliant in this case alleged that the defendant, through its wholly owned subsidiary American Lenders Service Company, had conspired with other persons in the repossession industry to fix prices and allocate territories in violation of section 1 of the Sherman Act. The proposed Final Judgment enjoins the defendant from agreeing with any other repossessor organization on the prices of repossession services and from publishing any prices for those services except for its company-controlled offices. The defendant would also be barred from restricting the geographic area in which any of its franchisees provide repossession services. However, the decree does not prohibit the defendant from restricting the area in which a franchisee may operate an office so long as after three years from entry of the decree that area does not overlap an area for which exclusive rights have been granted to the same person by another repossessor organization.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John W. Poole, Jr., Chief, Special Litigation Section, Room 7218,

Antitrust Division, United States Department of Justice, Washington, D.C. 20530, (Telephone: (202) 633–2425).

Joseph H. Widmar,

Director of Operations.

U. S. District Court, Western District of Texas, Midland-Odessa Division

United States of America, Plaintiff, v. *Business Investment and Development Corporation*, Defendant.

Civil No. MO–81–CA–20.

Filed: March 24, 1982.

Stipulation

The parties, by their attorneys, stipulate that:

1. The parties consent that the final judgment may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before the entry of the Final Judgment by serving notice on defendant and by filing that notice with the Court.

2. If the plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: March 19, 1982.

For the Plaintiff: William F. Baxter, *Assistant Attorney General;* Mark Leddy, John W. Poole, Jr.

For the Defendant: Bogdan Rentea, Esq., 306 East Second Street, Odessa, Texas 79740, Telephone: (915) 332–0361

Terrence F. McDonald, Steven B. Kramer, Ann C. Yahner,

Attorneys, Antitrust Division, U.S. Department of Justice, 10th & Pennsylvania Ave., N.W., Washington, D.C. 20530, Telephone: (202) 633–3082

U.S. District Court, Western District of Texas, Midland-Odessa Division

United States of America, Plaintiff, v. *Business Investment and Development Corp.*, Defendant.

Civil No. MO–81–CA–20.

Filed: March 24, 1982.

Final Judgment

The plaintiff, United States of America, having filed its complaint on February 27, 1981, and the plaintiff and the defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by either party with respect to any issue;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon consent of the parties, it is

Ordered, Adjudged and Decreed, as follows:

I

This Court has jurisdiction over the subject matter of this section and over both parties. The complaint states a claim upon which relief may be granted against the defendant under section 1 of the Sherman Act (15 U.S.C. 1).

II

As used in this Final Judgment:

(A) "BIDCO" means Business Investment and Development Corporation and specifically includes its wholly owned subsidiary American Lenders Servce Company ("ALSCO");

(B) "Person" means any individual, corporation, partnership, joint venture, firm, association, or any other business or legal entity;

(C) "Repossession services" includes, but is not limited to, tracing of property, collection and adjustment of loans, as well as repossession sale or return of collateral;

(D) "Repossessor" means any person that provides adjustment or repossession services for banks, credit unions or other lending institutions that seek to recover merchandise sold under security agreements where the debtor has forfeited possessory rights by defaulting on loan terms;

(E) "Repossessor organization" means any trade association for repossessors or any person that licenses other persons to provide repossession services under a trademarked name;

(F) "Franchisee" means any person that has executed an ALSCO franchise agreement.

III

The provisions of this Final Judgment shall apply to the defendant BIDCO, its subsidiaries, sucessors and assigns, to its officers, directors, franchisees, members, agents and employees, and to all other persons in active concert or participation with the defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

(A) The defendant, whether acting unilaterally or in concert with any other person, is enjoined from, directly or indirectly,

(1) entering into, adhering to, or maintaining any contract, agreement, understanding, plan or program wih any other repossessor organization to fix or maintain the prices of repossession services;

(2) formulating, establishing, publishing, maintaining, or distributing any price schedule or list of fees for repossession services;

(3) advocating, urging, recommending or suggesting any price schedule or list of fees for repossession services; or

(4) participating in any conversation, discussion or other communication with any other repossessor or with any representative of any repossessor organization that in any way relates to fees for repossession services, provided that nothing in Paragraph IV(A)(4) prohibits the defendant from negotiating with repossessors regarding fees to be charged for specific accounts that it is referring or accepting.

(B) Nothing in this Final Judgment shall limit the ability of ALSCO to set and disseminate prices for the repossession services ALSCO offices in which ALSCO owns a majority interest, provided that such price lists are neither distributed to nor discussed with franchisees, except with respect to negotiation regarding fees to be charged for specific accounts that it is referring or accepting.

(C) Nothing in this paragraph shall prohibit ALSCO from allowing individual franchisees to advertise in any ALSCO directory independently determined prices or fees for repossession services.

V

The defendant is ordered:

(A) to include in a prominent manner in the prefatory section of each ALSCO directory, at such time as it is published, the following statement:

In conformity with a consent decree entered into with the United States Department of Justice, American Lenders Service Company has discontinued publishing and disseminating fee schedules for its franchisees. All prior schedules are, in their entirety, null and void. ALSCO, however, may set and disseminate prices for repossession services of ALSCO offices in which ALSCO owns a majority interest. ALSCO makes no suggestion whatsoever concerning its franchisees' specific fees or prices to be charged for repossession services. ALSCO may require its franchisees to guarantee customer satisfaction regarding prices, terms, or conditions of providing repossession services.

(B) until an ALSCO directory is published, to include in a prominent manner in any BIDCO publication that lists ALSCO franchisees and is disseminated by ALSCO to current and prospective customers, at least once every six (6) months for the first two years following the date of entry of this Final Judgment and once every twelve (12) months thereafter, the statement in Paragraph V(A).

VI

The defendant is enjoined from:

(A) restricting the area in which or the customers for which its franchisees may provide repossession services; and

(B) restricting the geographic area for which its franchisees may advertise their services, *provided, however,* that nothing in this Final Judgment shall prohibit the defendant from imposing a reasonable limit on the total number of cities and towns that each franchisee may list in any ALSCO directory;

unless the plaintiff approves in writing such restriction as necessary or appropriate to promote competition in the repossession industry.

VII

Nothing in this Final Judgment shall prohibit the defendant from restricting the area in which its franchisees may operate repossessor offices if such restrictions do not grant to any franchisee an exclusive territory which overlaps in whole or in part in exclusive territory granted to such franchisee by any other repossessor organization,

provided that the defendant may continue in effect any such overlapping exclusive territory held by any franchisee on February 6, 1982 for a period not to exceed three years from the date of entry of this Final Judgment. Prior to the end of such period, the defendant shall require any franchisee that holds any overlapping exclusive territory pursuant to this proviso to notice its termination of the franchise granted by the defendant or to notice its waiver of all other overlapping exclusive territorial rights granted by any other repossessor organization. If such franchisee does not terminate the franchise granted by the defendant, and declines to waive all other overlapping exclusive territorial rights granted by other repossssor organizations, the defendant shall terminate such franchise.

VIII

Except as provided in Paragraph V, the defendant is ordered to amend and eliminate from its bylaws, franchise agreements, manuals, rules, regulations and any other governing documents, any provision inconsistent with this Final Judgment, including but not limited to, deletion of any language relating to any fee schedule for repossession services provided by its franchisees.

IX

The defendant is ordered and directed:

(A) to furnish within sixty (60) days after entry of this Final Judgment a copy of it to each of its officers, directors, employees and franchisees;

(B) to furnish a copy of this Final Judgment to each person who in the ten (10) years after entry of this Final Judgment, becomes an officer, director or franchisee within thirty (30) days after such person becomes associated with the defendant;

(C) to direct each person to whom a copy of this Final Judgment is furnished pursuant to subparagraphs IX(A) and IX(B) to retain such copy as long as he or she is associated with the defendant;

(D) to require each person to whom a copy of this Final Judgment is furnished pursuant to subparagraphs IX(A) and IX(B) to sign and submit to the defendant, within thirty (30) days of receipt of a copy of this Final Judgment, a certificate in substantially the following form; and the defendant shall retain such certificates as long as this Final Judgment is in effect and for one year thereafter:

I (1) acknowledge receipt of a copy of the 1982 antitrust Final Judgment, (2) represent that I have read and understand the Final Judgment, and (3) acknowledge that I have been advised and understand that non-compliance with the Final Judgment may result in conviction for contempt of court and imprisonment and/or fines.

(E) at least once each year, during the ten (10) years after entry of this Final Judgment, to call to the attention of each of its officers, directors, employees and frachisees the limitations imposed upon them by this Final Judgment, and of the sanctions that may be imposed for non-compliance;

(F) to file with the court and serve upon the plaintiff, within one hundred-twenty (120) days from the date of the entry of this Final Judgment, and affidavit as to the fact and manner of its compliance with subparagraphs IX(A), IX(D) and IX(E); and

(G) to furnish the plaintiff within thirty (30) days after each anniversary date of the entry of this Final Judgment, for a period of ten (10) years, an affidavit as to the fact of and manner of securing and ascertaining compliance with, the provisions of Sections IV, V, VI, VH, VIII, and subparagraphs IX(B), IX(C), IX(D), and IX(E) of this Final Judgment.

X

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to the defendant made to its principal office, any duly authorized representative of the Department of Justice shall be permitted:

(1) access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the posssession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, franchisees, employees, or agents, of the defendant, who may have counsel present, regarding any such matters;

(B) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath, if required, with respect to any of the matters contained in this Final Judgment as may be requested. No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) if at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such materials in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XI

Jurisdiction is retained by the Court to enable only either of the named parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this Final Judgment, for the modification of any of its provisions, for the enforcement of compliance, and for the punishment of violations.

XII

This Final Judgment shall remain in effect until ten (10) years from date of entry.

XIII

Entry of this Final Judgment is in the public interest.

Dated:

Lucius D. Bunton,

United States District Judge.

Certificate of Service

I certify that I served Bogdan Rentea, Esq., counsel for defendant, with true copies of the attached proposed Final Judgment and Competitive Impact Statement by Airborne Courier Service on March 23, 1982, addressed to: Bogdan Rentea, Esq., 312 East Second Street, Odessa, Texas 79760.

Ann C. Yahner,

Attorney, U.S. Department of Justice, Antitrust Division, Room 7228-Main, 10th & Constitution Avenue, N.W., Washington, D.C. 20530, Telephone: (202) 633-2077.

U.S. District Court, Western District of Texas, Midland-Odessa Division

United States of America, Plaintiff, v. *Business Investment and Development Corporation*, Defendant.

Judge Lucius D. Bunton.

Civil No. MO-81-CA-20.

Competitive Impact Statement

This competitive impact statement analyzes the proposed final judgment ("Judgment") submitted for entry in this civil antitrust proceeding and is filed by the United States pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h) ("Act").

I. Nature and Purpose of the Proceeding

On February 27, 1981, the United States filed a civil antitrust complaint alleging that Business Investment and Development Corporation ("BIDCO") and other co-conspirators in the repossession industry had violated section 1 of the Sherman Act, 15 U.S.C. 1, by agreeing upon and publishing a fee schedule for repossession services, and by restricting the area in which its franchisees could advertise and provide repossession services.

BIDCO has a wholly owned subsidiary, American Lenders Service Company ("ALSCO"), which operates a national repossession service organization. At the time the complaint was filed, thirty BIDCO stockholders who held approximately 90% of total equity outstanding, including all BIDCO officers and directors, owned or operated repossession agencies.

The complaint asks the Court to enjoin and restrain the defendant from engaging in the allegedly illegal activities and other activities with a similar purpose or effect.

Entry of this Judgment by the Court will terminate the litigation, except that the Court will retain jurisdiction over the matter for possible future proceedings to interpret, modify or enforce provisions of the Judgment.

II. Nature of the Alleged Violations

Repossessors, or adjusters as they are sometimes called, provide services for banks, credit unions, and other lending institutions that seek to recover merchandise sold under a security agreement. Repossessors act as agents for lenders and furnish a variety of services to them, including tracing of property, collection and adjustment of loans, as well as repossession and sale or return of collateral. BIDCO, through its subsidiary, ALSCO, is a franchisor of offices which provide repossession services under the ALSCO trademark. These franchisees presently operate in about 25 states under franchise agreements. Some of these franchisees are actual or potential competitors of one another.

Several of the nationwide repossessor organizations each publish directories, listing the names of their members and the geographic areas they serve, and distribute them to banks, credit unions, and other lenders across the country. ALSCO intends to publish such a directory. Potential clients refer to these publications to find repossessors in areas outside the client's local area because collateral is often no longer in the vicinity of the lender. This "out of area" business comprises a significant portion of the services performed by members of repossessor organizations.

During the period covered by this complaint, ALSCO sold Franchises granting exclusive rights to operate offices in various geographical areas. Many of the ALSCO franchisees also held exclusive rights from other nationwide repossessor organizations to maintain offices in the same geographical territories. Thus, although several national organizations of repossessors exist, the actual number of competitors in many markets was limited because of overlapping exclusive territories.

The complaint alleges that the defendant and co-conspirators agreed to eliminate price and other forms of competition in the trade and commerce of providing repossession services. The complaint alleges that the defendant and co-conspirators have (a) agreed to, prepared, and published a list of fees for repossession services; (b) agreed to observe the list of fees for repossession services; (c) restricted the area for which each ALSCO franchisee can advertise and provide repossession services; (d) restricted the number of persons who can obtain an ALSCO franchise for any given area; and (e) required that each franchisee not engage in any competitive enterprise not approved by ALSCO.

III. Explanation of the Proposed Final Judgment

The United States and the defendant have stipulated that the Court may enter the Judgment at any time after compliance with the Act. The Judgment provides that its entry does not constitute any evidence against or admission by any party with respect to any issue of fact or law. Under Section 2(a) of the Act, the Judgment may not be entered until the Court finds that entry is in the public interest.

The Judgment contains two principal forms of relief. First, the defendant is enjoined from engaging in behavior that constituted the alleged conspiracy. Second, the Judgment places affirmative burdens on the defendant to prevent recurrence of the alleged conspiracy.

A. Prohibited Behavior

Under Section IV of the Judgment, the defendant is restrained from: (1) entering into any agreement with any repossessor organization to fix prices for repossession services; (2) fixing or publishing any price schedule or list of fees for repossession services; (3) recommending any price schedule or list of fees for repossession services; and (4) participating in any communication with any other repossessor or with any representative of other repossessor organizations that relates to any price schedule or list for repossession services. The defendant is, however, allowed to set and distribute suggested prices for services of ALSCO offices in which ALSCO owns a majority interest. The defendant is also allowed to negotiate fees to be charged for specific accounts referred to or accepted by its company-controlled offices. The defendant may require its franchisees to guarantee customer satisfaction regarding prices, terms or conditions of providing repossession services. The purpose of this provision is to permit ALSCO to respond to complaints by its customers about price gouging by its franchisees.

Under Section VI, the defendant is enjoined from restricting the area in which or the customers for which its franchisees provide services and from restricting the geographic area for which its franchisees may advertise. The Judgment, however, does not prohibit ALSCO from placing a reasonable limit on the total number of listings for each franchisee in an ALSCO directory.

Section VII provides that the Judgment does prohibit ALSCO from restricting the area in which its franchisees may operate offices if such restricted areas do not, in whole or in part, overlap areas in which exclusive rights were granted to the same person by another repossessor organization. Each person who, as of February 6, 1982, held such overlapping areas of exclusive rights has a period of three years to either waive exclusive rights in all other organizations or have his ALSCO franchise terminated.

B. Defendant's Affirmative Obligations

Under Section V, when an ALSCO directory is published, a statement of compliance with the Judgment's price provisions, i.e., cessation of the publication of suggested price lists, must be included in a prominent manner in the prefatory section of each directory. Until an ALSCO directory is published, ALSCO must publish the statement of compliance in its newsletter every six months for two years and thereafter once a year.

Under Section VIII, the defendant is required to eliminate from its bylaws, franchise agreements, manuals and other governing documents any provisions inconsistent with the Judgment.

Sections IX and X require the defendant to establish an antitrust compliance program which includes annual reporting to the Department of Justice and dissemination of the Judgment to each of the defendant's officers, directors, employees, and franchisees.

Under Section XI, jurisdiction is retained by the Court for purposes of enabling either of the parties to apply to the Court at any time for such further orders necessary or appropriate for construction, modification, or enforcement of the Judgment.

C. Scope of the Proposed Judgment

The Judgment will remain in effect for ten years from its date of entry and applies to the defendant and to its officers, directors, franchisees, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with the defendant who have received actual notice of the Judgment.

D. Effect of the Proposed Judgment on Competition

Section IV of the Judgment is designed to encourage competition in the repossession business by ensuring that the defendant's franchisees act independently in determining prices or fees to be charged for repossession services. Section VI restricts the defendant from limiting the geographic territory in which any ALSCO franchisee operates or for which any ALSCO franchisee advertises that it operates. Section VII allows the defendant to restrict the area in which its franchisees operate offices so long as those restrictions do not result in a franchisee having an overlapping exclusive territory. Section VII also provides that three years after entry of the Judgment, the defendant's franchisees who have exclusive rights in all or any portion of the same territory from ALSCO and another repossessor organization either terminate the ALSCO franchise or waive the exclusive rights granted by the other repossession organization.

Thus, the Judgment is intended to increase competition in the repossession business in two ways. It eliminates certain restraints on competition among franchisees of ALSCO that may have served to inhibit competition with other repossessor groups. All or most such groups had similar price schedules and there were many geographic areas served by repossessors with two or more exclusives from different organizations. The decree enjoins the use of price schedules and requires ALSCO franchisees to elect between exclusive rights to a territory from ALSCO or from another repossessor organization. On the other hand, the Judgment allows ALSCO to grant to its franchisees exclusive areas in which to maintain an ALSCO office as long as the franchisees do not have exclusive rights from another repossessor organization for the same territory. Such exclusives can be used by ALSCO to encourage its franchisees to offer more or better service in order to compete more effectively with members of other repossessor organizations.

Compliance with the Judgment should prevent collusion among the defendant, its franchisees and competitors in determining prices or fees to be charged for repossession services and in unreasonably restricting the geographic territories in which ALSCO franchisees operate or for which they advertise their services. The prohibition against ALSCO franchisees' holding exclusive rights for the same territory from more than one repossessor organization should promote competition between ALSCO franchisees and members of other repossessor organizations.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees.

Entry of the Judgment will neither impair nor assist the bringing of such actions. The Judgment has no *prima facie* effect in any lawsuit that may be brought against the defendant because no matters are estopped as between the defendant and private parties under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a).

V. Procedures Available for Modification of the Proposed Consent Judgment

As provided by the Act, any person wishing to comment upon the Judgment may, within the statutory 60-day comment period, submit written comments to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530. These comments and the Department's responses will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department, which remains free to withdraw its consent to the Judgment at any time prior to entry. The Judgment provides that the Court retains jurisdiction over this action and either of the named parties may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI. Alternatives to the Proposed Final Judgment

The Department considered two alternatives to the Judgment. First, it considered an injunction requiring the defendant to accept as an ALSCO franchisee any repossessor meeting reasonable and objective criteria. Under this alternative, ALSCO franchises would no longer be able to have exclusive rights to operate an office in a given territory. The Department rejected this alternative in favor of a provision which is expected to increase competition among repossessor organizations, in large part by eliminating the overlapping territories that reduced significantly the number of competitors in many geographic markets. In addition, as noted above, ALSCO can utilize the limited exclusives it may grant under the Judgment to improve and promote its service, thus differentiating its brand from other repossessor organizations and increasing interbrand competition.

The second alternative to the Judgment considered by the Department was a full trial on the merits. The Department considers the Judgment to be of sufficient scope and effectiveness to make a trial unnecessary.

VII. Determinative Materials and Documents

The Department did not consider any materials or documents of the type described in section 2(b) of the Act in formulating the Judgment.

Respectfully submitted,

Terrence F. McDonald,
Steven B. Kramer,
Attorneys, Antitrust Division, United States Department of Justice, 10th & Constitution Avenue, N.W., Washington, D.C. 20530, Telephone: (202) 633-3082.

[FR Doc. 82-11556 Filed 4-27-82; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Justice

Improved Handling of Long Term Offenders; Solicitation

The National Institute of Justice announces a competitive grant solicitation, *Improved Handling of Long Term Offenders*, for research to identify improved methods for managing prisons that house long term offenders, defined as a minimum period of incarceration of six years. Research responsive to this solicitation includes examination of administration of "good time" statutes, development of work career "ladders" appropriate for long term inmates, and prevention of physical and mental deterioration due to prolonged imprisonment. Applicants are encouraged to propose alternative topics.

The solicitation requests submission of proposals which will then be considered by a peer review panel. In order to be considered, proposals must be postmarked no later than June 18, 1982. A total of $250,000 has been allocated for this research; more than one grant may be awarded within this allocation.

Additional information and copies of the solicitation *Improved Handling of Long Term Offenders* may be obtained by contacting: National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850, 301/251-5500.

Dated: April 23, 1982.

James L. Underwood,

Acting Director, National Institute of Justice.

[FR Doc. 82-11530 Filed 4-27-82; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-250]

Florida Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 85 to Facility Operating License No. DPR-31 issued to Florida Power and Light Company (the licensee), which revised Technical Specifications for operation of the Turkey Point Plant Unit No. 3 (the facility) located in Dade County, Florida. The amendment was effective on April 5, 1982.

The amendment permits operation of Unit 3 for low power physics tests with Unit 4 operating at full power and only two boric acid transfer pumps operable. The amendment was authorized on an expedited bases to permit plant startup.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the inssuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the request for amendment dated April 5, 1982, (2) the Commission's letter to the licensee dated April 6, 1982, (3) Amendment No. 85 to License No. DPR-31, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy of items (2), (3), and (4) 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, Maryland, this 21st day of April, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-11590 Filed 4-27-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-18671; File No. SR-MSTC-82-9]

Midwest Securities Trust Co.; Proposed Rule Change by Self-Regulatory Organizations; Price Revision Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 9, 1982 the Midwest Securities Trust Company filed with the Securities and Exchange Commission, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the Price Revision Schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most signifficant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed price modifications, effective with services rendered beginning April 1, 1982, reflect cost savings experienced through automation in 1981 in conjunction with growth in activity. This has enabled MSTC to retain almost all existing 1981 fees despite the impact of inflation on its overall operations and those of its participants. MSTC, however, has increased fees for monthly fixed services and several labor intensive functions to more accurately reflect the expense associated with providing the particular service.

In addition, interactivity movement services will be subject to a variable rate schedule to reflect economies of scale which are realized in the book entry settlement process from Midwest Clearing Corporation. Such variable rate schedule, however, will not apply to accounts which are established primarily to utilize the automatic stock loan service. The economies of scale are only realized when applied to accounts established for settlement of trades. Due to a variety of services which are utilized in conjunction with settlement of trades in the MST System, a discount can be provided, based on volume, for interactivity movements which are trade related since the costs involved can be spread over the full range of settlement and depository services. This is not the case with interactivity movements based upon automatic stock loans since its costs are only offset by that particular service.

The proposed fee schedule is consistent with Section 17A of the Act in that the fee schedule will help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. In addition, the price changes provide for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed change in fees will have an impact on competition, but such impact will not impose any burdens on competition, but rather, will relieve a burden on or otherwise promote competition. The proposed fee schedule will enable MSTC to become more competitive with other major clearing/depository organizations in providing comprehensive and cost effective settlement, custodial/safekeeping and related services. In addition, the proposed fee schedule may enable a Participant to reduce its overall depository costs by taking advantage of certain economies of scale, thus promoting competition with other brokers.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before May 18, 1982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 20, 1982.

George A. Fitzsimmons,

Secretary.

Exhibit A

MSTC PRICE REVISIONS

	Former	New
Service Charges:		
Participant Account Maintenance Fee.	$175.00/month	$190.00/month
Interactivity Movements (bookentry settlement from MCC):		
1–1,000/items/month	$0.82/item	0.82/item
1,001–2,000/items/month.	0.82/item	[1] 0.52/item
2,001–3,000/items/month.	0.82/item	[1] 0.32/item
3,001–4,000/items/month.	0.82/item	[1] 0.20/item
over 4,000/items/month.	0.82/item	[1] 0.10/item
Corporate Reorganization Processing:		
Manadatory Reorganization.	$20.00/issue/acct.	same.
Nonmandatory Reorganization.	$20.00/processing authorization.	same.
Execution of Liability Notice to Short Position.	N/A	$20.00/item.

[1] Discounts will not apply to those accounts which are established primarily to utilize the automatic stock loan service.

[FR Doc. 82-11512 Filed 4-27-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 10/10-0176]

Clifton Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On December 22, 1981, a notice was published in the **Federal Register** (46 FR 62211), stating that an application had been filed by Clifton Capital Corporation, 1408 Washington Building, Tacoma, Washington 98402, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1981)), for a license to operate as a small business investment company (SBIC).

Interested parties were given until close of business January 6, 1982, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, and after having considered the application and all other information, SBA issued License No. 10/10-0176, on April 14, 1982, to Clifton Capital Corporation to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 22, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-11534 Filed 4-27-82; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 05/05-0168]

Mesirow Capital Corp., Application for License To Operate as a Small Business Investment Company (SBIC)

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1981)), under the name of Mesirow Capital Corporation, 135 S. LaSalle Street, Suite 3705, Chicago, Illinois 60603, for a license to operate as small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.)* and the Rules and Regulations promulgated thereunder.

The proposed officiers, directors and shareholders of the Applicant are as follows:

Name and address	Title and relationship	Percent of ownership
Morris Gold, 1126 Skokie Ridge Dr., Glenco, Ill. 60022.	President (general manager) and director.	0
Clark L. Feldman, 73 Lakeside Pl., Highland Park, Ill. 60035.	Secretary and director.	0
Lester Allan Morris, 1306 Larrabee Lane, Northbrook, Ill. 60062.	Executive vice president and director.	0
Steven G. Gaber, 900 Lake St., Wilmette, Ill. 60091.	Treasurer and director.	0
Charles Smead, 275 E. Delaware Pl., Chicago, Ill. 60611.	Director	0
Erwin Kohn, 724 Lorraine Circle, Highland Park, Ill. 60035.	Director	0
MFS Capital Partners, 135 S. LaSalle St., Suite 3705, Chicago, Ill. 60603.	Parent company	100

The Applicant will begin operations with $1,365,000 of private capital derived from the sale of 1,000 shares to MFS Capital Partners (MFS). MFS is an Illinois Limited Partnership which was formed and capitalized for the purpose of capitalizing the Applicant and investment in businesses either alone or in combination with the Applicant.

It is proposed that MFS will have forty (40) limited partners and two (2) general partners, Morris Gold and Mesirow Financial Services, Inc. (Mesirow Financial). Mesirow Financial is an Illinois corporation which was formed in 1978 for the purposes of engaging in diversified financial services and is a wholly-owned subsidiary of Mesirow and Company. Mesirow and Company is an illinois Limited Partnership which was formed in 1929 and is registered with the Securities and Exchange Commission as a broker-dealer. There are 14 general partners in Mesirow and Company, no one of whom owns 10 percent or more of the equity, profits or losses of the partnership.

The Applicant will conduct its operations in the State of Illinois.

Matters involved in SBA's consideration of the application include the general reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness in accord with the Act and Regulations.

Notices is hereby given that any person may on or before May 13, 1982 submit written comments on the proposed company to the Acting Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Chicago, Illinois.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 22, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-11535 Filed 4-27-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Customs Service

Performance Review Boards; Appointment of Members

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB's is to review senior executive employees' performance and make recommendations regarding performance and performance awards.

DATE: The Performance Review Boards become effective on May 1, 1982.

FOR FURTHER INFORMATION CONTACT: Alexander Faison, Director, Office of Human Resources, U.S. Customs Service, 1301 Constitution Avenue, N.W., Room 3417, Washington, D.C., (202) 566–5563.

SUPPLEMENTARY INFORMATION: There are two Performance Review Boards in the U.S. Customs Service as follows:

1. The Performance Review Board to review Senior Executives rated by the Commissioner and Deputy Commissioner (i.e., the Assistant to the Commissioner, the Special Assistants to the Commissioner, the Assistant Commissioners, and Regional Commissioners) is composed of the following members:

John Mangels—Director, Office of Operations, Department of the Treasury
William Rhodes—Director, Office of Management and Organization, Department of the Treasury
Myron Weinstein—Deputy Director, U.S. Secret Service
Stephen Higgins—Deputy Director, Bureau of Alcohol, Tobacco and Firearms
Charles C. Hackett—Assistant Commissioner, Office of Management Integrity, U.S. Customs Service
Edward F. Kwas—Assistant Regional Commissioner, (Operations) U.S. Customs Service

2. The Performance Review Board to review all other Senior Executives is composed of the following members:

George C. Corcoran, Jr.—Assistant Commissioner, Office of Border Operations, U.S. Customs Service
Alfred R. De Angelus—Assistant Commissioner, Office of Commercial Operations, U.S. Customs Service
Jack T. Lacy—Comptroller, U.S. Customs Service
William J. Griffin—Regional Commissioner, U.S. Customs Service, 100 Summer Street, Boston, Massachusetts 02110
Dennis T. Snyder—Regional Commissioner, U.S. Customs Service, 6 World Trade Center, New York, New York 10048
John A. Hurley—Regional Commissioner, U.S. Customs Service, 40 S. Gay Street, Baltimore, Maryland 21202
Robert N. Battard—Regional Commissioner, U.S. Customs Service, 99 S.E. 5th Street, Miami, Florida 33131
Peter J. Dispenzirie—Regional Commissioner, U.S. Customs Service, 423 Canal Street, New Orleans, Louisiana 70130
Donald Kelly—Regional Commissioner, U.S. Customs Service, 500 Dallas Street, Houston, Texas 77002
Albert G. Bergesen—Regional Commissioner, U.S. Customs Service, 300 N. Los Angeles Street, Los Angeles, California 90053
Edward M. Ellis—Regional Commissioner, U.S. Customs Service, 211 Main Street, San Francisco, California 94105
Eugene H. Mach—Regional Commissioner, U.S. Customs Service, 55 E. Monroe Street, Chicago, Illinois 60603

Dated: April 22, 1982.

William von Raab,

Commissioner of Customs.

[FR Doc. 82-11591 Filed 4-27-82; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

[Delegation Order No. 165 (Rev. 4)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This Order delegates to the Assistant Commissoner (Support and Services) the authority to respond to administrative appeals filed pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA). The text of the Delegation Order appears below.

EFFECTIVE DATE: March 21, 1982.

FOR FURTHER INFORMATION CONTACT: Martha M. Seeman, 1111 Constitution Avenue NW., Room 3526, Washington, D.C. 20224, Telephone number 292–566–4273, (Not a Toll-Free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the Federal Register for Wednesday, November 8, 1978.

Martha M. Seeman,

Acting Chief, Internal Management Documents Branch.

Responses to Appeals Filed Pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA)

Date of issue: March 21, 1982.
Effective Date: March 21, 1982.

The authority vested in the Commissioner of Internal Revenue by 31 CFR 1.5(h) and Appendix B(4) to respond to administrative appeals filed pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA), is hereby delegated to the Assistant Commissioner (Support and Services). This authority may not be redelegated.

In addition, the authority vested in the Commissioner by 31 CFR 1.5(h)–(i) to acknowledge receipt of FOIA appeals and assert mandatory extensions of FOIA appeal time limits is hereby delegated to the Director, Disclosure Litigation Division. This authority may be redelegated not lower than attorneys in the Disclosure Litigation Division directly involved in such matters.

Delegation Order 165 (Rev. 3), issued February 23, 1981, is superseded.

James I. Owens,

Deputy Commissoner.

[FR Doc. 82-11497 Filed 4-27-82; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

[Supplement to Department Circular Public Debt Series No. 10–82]

Treasury Notes of April 15, 1982, Series No. 10–82

The Secretary announced on April 21, 1982, that the interest rate on the notes designated Series R–1984, described in Department Circular—Public Debt Series—No. 10–82 dated April 15, 1982, will be 13⅞ percent. Interest on the notes will be payable at the rate of 13⅞ percent per annum.

[FR Doc. 82-11509 Filed 4-27-82; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 82
Wednesday, April 28, 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

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, May 4, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed Contract Market Designation of the New York Exchange Equity Indexes/NYFE.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-622-82 Filed 4-26-82; 10:53 am]

BILLING CODE 6351-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, May 3, 1982, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,189-SR—American Bank & Trust Company, New York, New York

Case No. 45,194-L—Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico

Appeal from an initial denial of a request for records pursuant to the Freedom of Information Act.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: April 26, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-624-82 Filed 4-21-82; 11:21 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, May 3, 1982, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to merge and establish thirteen branches:

Continental Bank, Norristown, Pennsylvania, for consent to merge, under its charter and title, with Lincoln Bank, Bala-Cynwyd, Pennsylvania, and to establish the twelve offices and one approved but unopened office of Lincoln Bank as branches of the resultant bank.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Powell, Goldstein, Frazer & Murphy, Atlanta, Georgia, in connection with the liquidation of The Hamilton Bank and Trust Company, Atlanta, Georgia.

Memorandum proposing the appointment of an agent for service of process in the State of Nebraska.

Reports of committees and officers:

Minutes of the actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect ot applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr.

Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: April 26, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-623-82 Filed 4-26-82; 11:18 am]

BILLING CODE 6714-01-M

4

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 17914, Monday, April 26, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Wednesday, April 28, 1982.

PLACE: Board room, sixth floor, 1700 G Street, N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6679).

CHANGES IN THE MEETING: The following items have been withdrawn from the open portion of the Bank Board meeting:

Branching in Connection with Supervisory and Non-Supervisory Mergers and Acquisitions

Amendments relating to Change in Control

[No. 26, April 26, 1982]

[S-625-82 Filed 4-26-82; 3:12 pm]

BILLING CODE 6720-01-M

5

NATIONAL COMMISSION ON STUDENT FINANCIAL ASSISTANCE

PUBLIC MEETING

DATE: May 5, 1982.

PLACE: 5110 Dirksen Senate Office Building, Washington, D.C.

TIME: 9:30 a.m. until 1 p.m.

PURPOSE: General meeting to discuss status of on-going Commission studies; to release a background paper on the Guaranteed Student Loan Program; and to discuss options for dealing with the insurance premium charged to students.

FOR FURTHER INFORMATION CONTACT: Richard T. Jerue, Executive Director (202) 472–9023.

This meeting was called by the Commission Chairman, Mr. David R. Jones. Submitted the 21st day of April, 1982.

Richard T. Jerue,

Executive Director.

[S-620-82 Filed 4-23-82; 4:44 pm]

BILLING CODE 6820-BC-M

6

POSTAL RATE COMMISSION

TIME AND DATE: 10 a.m., Thursday, April 29, 1982.

PLACE: Conference Room, Room 500, 2000 L Street, N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket No. MC78–3 (Remand) [E–COM]. (Meeting closed pursuant to 5 U.S.C. 552b(c)(10)).

CONTACT PERSON FOR MORE INFORMATION: Dennis Watson, Information Officer, Postal Rate Commission, Room 500, 2000 L Street, N.W., Washington, D.C. 20268; Telehone (202) 254–5614.

[S-621-82 Filed 4-26-82; 10:32 am]

BILLING CODE 7715-01-M

federal register

Wednesday
April 28, 1982

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Federal Programs To Regulate Coal Exploration Operations on Non-Federal and Non-Indian Lands in the States of Massachusetts, Michigan, Oregon and Rhode Island; Final Rules

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 921, 922, 937, and 939

Federal Programs To Regulate Coal Exploration Operations on Non-Federal and Non-Indian Lands In the States of Massachusetts, Michigan, Oregon, and Rhode Island

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

ACTION: Final rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is promulgating Federal coal exploration programs for Massachusetts, Michigan, Oregon, and Rhode Island under the Surface Mining Control and Reclamation Act. The programs are being promulgated because these States, in which coal exploration is anticipated or underway, have not implemented their own coal exploration programs.

DATE: These programs are effective May 28, 1982.

OSM will accept comments until May 28, 1982, on the public testimony given in the State of Michigan and on how OSM has tailored these regulations to each of the four States and coordinated them with relevant State laws.

ADDRESSES: Questions and requests for copies of the final rules may be directed to the following offices:

For Massachusetts and Rhode Island: Office of Surface Mining, Pennsylvania State Office, 100 Chestnut Street, Harrisburg, PA 17101, (717) 782–4036.

For Michigan: Office of Surface Mining, Region III, Room 527, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204, (317) 269–2600.

For Oregon: Office of Surface Mining, Wyoming State Office, P.O. Box 1420, Mills, Wyoming 82644, (307) 261–5550 Ex 5776.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Federal Lands Specialist, Office of Surface Mining, U.S. Department of the Interior, South Interior Building, 1951 Constitution Avenue, N.W., Washington, DC 20240, (202) 343–5866.

SUPPLEMENTARY INFORMATION: The Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, proposed rules on January 5, 1982 (47 FR 560) to provide for the regulation of coal exploration operations on non-Federal and non-Indian lands in Massachusetts, Michigan, Oregon, and Rhode Island, in accordance with Sections 504 and 512 of the Surface Mining Control and Reclamation Act of 1977 (the Act); 30 U.S.C. 1254 and 1262, and 30 CFR Part 736. At that time, OSM published one proposed rule for all four States. Separate final rules for each State are being published today with all comments incorporated into a single preamble. As was stated in the proposed rule, OSM has tailored the final rule for each State. These final rules will amend 30 CFR Chapter VII, Subchapter T, by adding Part 921 for Massachusetts, Part 922 for Michigan, Part 937 for Oregon, and Part 939 for Rhode Island.

OSM will accept comments until May 28, 1982 on the public testimony given in the State of Michigan and on how OSM has tailored these regulations to each of the four States and coordinated them with relevant State laws. *See* comment number 2, below.

Section 504(g) of the Act provides that State laws or regulations which are in effect to regulate surface mining and reclamation operations that are subject to the Act shall be superseded by the Act or regulations issued under the Act insofar as they interfere with the achievement of the purposes and requirements of the Act and the Federal program. Section 505(b) provides that those State laws and regulations which are more stringent than the Act or its implementing regulations shall not be construed as inconsistent with the Act. OSM reviewed and obtained comments on State statutes and regulations for each of the four States during the comment period in order to identify any provisions which must be superseded under Section 504(g) or 505(b). As required by the Act, those State statutes and regulations so identified have been set forth in the final rule.

Because the Director anticipates that coal mining operations will commence in Michigan and Oregon in the near future, OSM intends to propose full regulatory programs to replace these exploration programs in the near future. OSM also intends to propose full regulatory programs for Massachusetts and Rhode Island.

Background

Under Section 503 of the Act and 30 CFR Part 731, States were provided the opportunity to submit programs for approval by the Secretary and thus achieve primacy for regulating coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands. Under Section 504(a) of SMCRA and 30 CFR 736.11, OSM must promulgate a Federal program in each State that did not submit such a program within the time provided in Section 504(a) and 30 CFR 731.12, if the Director reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands in that State at any time before June 1985. The time provided in 30 CFR 731.12 for submittal of State programs was extended to March 3, 1980 by the District Court for the District of Columbia. *In Re: Permanent Surface Mining Regulation Litigation,* 13 ERC 1586 (August 22, 1979).

On May 16, 1980 (45 FR 32328–32331), OSM published an advance notice of intent to promulgate Federal regulatory programs for States with known surface coal mining and reclamation activities that did not submit programs by March 3, 1980. The notice stated that OSM was evaluating States with known coal reserves to determine whether coal exploration and surface coal mining and reclamation operations were occurring or reasonably expected to occur before June 1985. OSM has determined that coal exploration operations are occurring or may soon occur in four States which have not submitted programs: Massachusetts, Michigan, Oregon and Rhode Island. Therefore, on July 21, 1980 (45 FR 48661–48662), OSM published notice of intent to promulgate Federal exploration programs for these States and on January 5, 1982 OSM published proposed programs for the four States (47 FR 560–582, Jan. 5, 1982).

OSM promulgated permanent program regulations in 30 CFR Chapter VII which establish the minimum standards for the regulatory program in each State and the procedures for developing, promulgating, and implementing such a program. The rules for the permanent program are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064). Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published at 44 FR 15312–15463 (March 13, 1979). Errata notices were published at 44 FR 15485 (March 14, 1979), 44 FR 49673–49687 (August 24, 1979), 44 FR 53507–53509 (September 14, 1979), 44 FR 66195 (November 19, 1979), 45 FR 26001 (April 6, 1980), 45 FR 37818 (June 5, 1980), and 45 FR 47424 (July 15, 1980). Amendments to the rules have been published at 44 FR 60969 (October 22, 1979), as corrected at 44 FR 75143 (December 19, 1979), at 44 FR 75302 (December 19, 1979), 44 FR 77440–77447 (December 31, 1979), 45 FR 2626–2629 (January 11, 1980), 45 FR 25998–26001 (April 16, 1980), 45 FR 33926–33927 (May 20, 1980), 45 FR 39446–39447 (June 10, 1980), 45 FR 52306–52324 (August 6, 1980), 45 FR 52375 (August 7,

1980), 45 FR 58780–58786 (September 4, 1980), 45 FR 76932–76935 (November 20, 1980), and 46 FR 41702 (August 17, 1981). Portions of these rules have been suspended, pending further rulemaking. See 44 FR 67942 (November 27, 1979) 44 FR 77447–77455 (December 31, 1979), 45 FR 6913 (January 30, 1980), and 45 FR 51547–51550 (August 4, 1980).

Representatives of industry, two States, and several environmental groups challenged the permanent regulatory program in the U.S. District Court for the District of Columbia. These suits were consolidated and heard in a single lawsuit entitled *In re: Permanent Surface Mining Regulation Litigation*, Civ. Action No. 79–1144. In response to arguments raised in the challenges, the Secretary voluntarily suspended several permanent program regulations. These suspensions were announced in the Federal Register on November 27, 1979 (44 FR 67942), December 31, 1979 (44 FR 77447–77454), and January 30, 1980) (45 FR 6913). In opinions issued on February 26, 1980 and May 16, 1980, the court remanded certain other regulations which had been challenged in the lawsuit. OSM has considered the reasons for these suspensions and remands in developing these coal exploration program regulations. If OSM promulgates new permanent program regulations, the coal exploration programs will be amended as appropriate.

Public Participation

Throughout the development of these rules OSM solicited and gave consideration to comments and recommendations from the public. OSM initially published a notice of intent to promulgate these exploration programs in the Federal Register on January 5, 1982 (47 FR 560–582). The public comment period on the proposed rules extended until February 4, 1982. Public hearings were held in Boston, Massachusetts on January 26, 1982; in Lansing, Michigan on January 28, 1982; in Portland, Oregon on January 26, 1982 and Enterprise, Oregon on January 28, 1982; and in Providence, Rhode Island on January 27, 1982. All comments received were considered and are discussed below, and all are available for review at places listed above under "ADDRESSES."

OMB Review

The recordkeeping and reporting requirements under the final rules are the same as those of the permanent program regulations, which were approved by the Office of Management and Budget undef 44 U.S.C. 3507 and assigned clearance numbers as follows:

Subparts and OMB Clearance Nos.

9—.700—1029–0020
9—.701—N/A
9—.761—1029–0029
9—.762—N/A
9—.764—1029–0030
9—.770—N/A
9—.776—1029–0033
9—.787—N/A
9—.800—1029–0043
9—.805—1029–0044
9—.806—1029–0045
9—.809—N/A
9—.815—N/A
9—.840—1029–0051
9—.843—1029–0052
9—.845—1029–0053

Forms for use in implementing the recordkeeping and reporting requirements of the program are being developed. All forms that will affect ten or more persons will be cleared with the Office of Management and Budget, with accompanying notices in the Federal Register, in accordance with the requirements of 44 U.S.C. Chapter 35.

Content and Organization of the Programs

These rules are based on those provisions of the permanent program regulations applicable to coal exploration. Most of the model language was retained. However, some variations have been made to clarify that these rules are applicable only to coal exploration. A more detailed discussion of the changes is given in the preamble to the proposed rules published at 47 FR 560–582, January 5, 1982.

In the preamble to the proposed rules, OSM requested written and oral comments from all interested persons. Those comments received and the disposition of each are described below.

References to 9—below indicate that each of the four programs covered by this rulemaking includes the section being referenced. For example, reference to 9—.815 means Subpart 921.815 for Massachusetts, 922.815 for Michigan, 937.815 for Oregon, and 939.815 for Rhode Island.

Section 9—.770–12(d) sets forth all those provisions of applicable State statutes that are more stringent than provisions in the Act and do not interfere with the achievement of the purposes and requirements of the Act, and are not superseded by the exploration program. These statutes will of course change and new State statutes will be promulgated from time to time. Such changes should be brought to the attention of OSM so that these exploration program rules can be amended. If a relevant State statute is changed, or a new one is promulgated, and these rules have not been amended to reflect either change, those changes nevertheless must be observed by the operator unless and until OSM determines that the amended State statute, or new statute, interferes with the achievement of the purposes and requirements of the Act.

The following briefly describes the known State statutes that are superseded by the Act pursuant to Section 504(g) or 505(b).

(1) One State statute and three chapter sections in Massachusetts have been found to interfere with the achievement of the purposes and requirements of the Act insofar as they relate to coal exploration. They are:

(a) The Coal Mining Regulatory and Reclamation Act of 1977, which protects citizens and the environment from significant damage or public health hazards that may occur from the operation of coal mines in the Commonwealth.

(b) Chapter 21 Section 54, which establishes a Division of mineral resources within the Department of Environmental Quality Engineering. The Director of the Division is responsible for the administration of laws, rules, and regulations with respect to the Commonwealth's mineral resources.

(c) Chapter 21 Section 56, which requires that a permit be obtained from the Director of the Department of Environmental Quality Engineering to explore for mineral resources in coastal waters or on lands thereunder by seismology, electronics, or any other method of exploration.

(d) Chapter 252 Section 15, which permits a person owning mines or mineral deposits which cannot be worked or used to advantage in the ordinary manner without crossing adjacent lands belonging to other persons or occupied as highways, to construct roads, tunnels, ditches, and railways thereto.

(2) One State statute in Michigan was found to interfere with the achievement of the purposes and requirements of the Act insofar as it relates to coal exploration. It is:

(a) The Reclamation of Mining Lands Act.

Sections 425.181 through 525.188. This act regulates surface mining of minerals, including coal, in the State of Michigan; its provisions, however, are to a large degree less strict and less comprehensive than the Act. Section 425.183 authorizes the Chief of the Geologic Survey Division of the Michigan Department of Natural Resources to promulgate rules pertaining to sloping or terracing of

stockpiles, vegetation of tailings basins, stabilization of surface overburden banks, and cleanup of minesite areas.

Section 425.184 allows the supervisor, on application by the landowner or operator, to modify or permit variance from the rules promulgated by the Department.

Section 425.185 provides authority to enforce the act and the rules promulgated thereunder along with the right to inspect sites, if reasonable prior notice was given to the landowner.

Section 425.186 requires the annual filing of a mine plan map.

Section 425.187 authorizes the Supervisor, if he has reasonable doubts as to an operator's financial ability to comply with reclamation rules, to require the operator to furnish a performance bond or other security or assurance.

Section 425.188 provides that at the request of the Supervisor, the Attorney General may institute an action in a circuit court of the county in which the mining operation affected is conducted for a restraining order or injunction or other appropriate remedy.

(3) Two States statutes in Oregon have been found to interfere with the achievement of the purposes and requirements of the Act insofar as they relate to coal exploration. They are:

(a) Oregon Revised Statute Sections 517.750 through 517.990 which contain the main body of Oregon law relating to reclamation of mined lands. These statutes impose requirements on exploration which are less strict and less comprehensive than the Act, 30 U.S.C. 1201 *et seq.* The Oregon statutory scheme regulates the surface effects of surface mineral mining (including coal) and designates the Department of Geology and Mineral Industries as the permitting authority. These statutes, *inter alia,* provide for reclamation of surface mined lands (including exploration) and require that a permit be obtained from the Department before there can be mineral prospecting or mineral exploration if more than 5000 cubic yards of minerals are to be removed or more than one acre affected for a period of 12 consecutive months. Also, where exploration operations affect more than one acre of land for each eight acres of land explored, a permit is required before such exploration operations may commence (ORS 517.750). The mining of minerals or the exploration for minerals without a valid permit, certificate of limited exemption or a certificate of total exemption constitutes a criminal law violation which may subject the offender to a fine of not more than $10,000.

(b) Oregon Revised Statutes Section 517.780 which exempts surface mining operations (including explorations) from the State permitting requirements if done pursuant to a permit issued by a city or county which has a surface mined land reclamation ordinance approved by the Department of Geology and Mineral Industries. Also exempted from the State permitting requirements are city or county operated surface mining operations (including explorations) which sell less than 5000 cubic yards within a 12 calendar month period, provided the city or county has adopted an ordinance including a general reclamation scheme for achieving reclamation by the city or county.

(4) The State of Rhode Island does not have any State statutes that relate to coal exploration.

If there are any State statutes in any of the four States which would affect coal exploration operations that have not been cited here, their existence should be brought to the attention of OSM so these rules can be amended. Even though an existing State statute may not be cited in these rules, operators must comply with the provisions of such statute, unless OSM has made the finding required under Section 504(g) or 505(b) of the Act.

In some cases OSM has modified the model language found in the permanent program regulations in order to make these regulations applicable only to coal exploration operations. Some sections such as "Scope," "Applicability," and "Responsibility" have been omitted unless they contain language critical to the understanding of subsequent sections. Other modifications include the substitution of "coal exploration" for "surface coal mining and exploration," "coal exploration approval" for "mining permit," "prospector" for "permittee," and "State Office" for "Regional, Field, or District Office." Provisions that apply to Section 503 or the Federal Lands Program are also deleted. Many of the provisions contained in the rule are identical to the provisions of the permanent program rules. These rules must remain consistent with the permanent regulatory program rules. Therefore, when any rule in the permanent regulations is amended, its counterpart in this regulation will be changed, unless specific circumstances found in a State warrant leaving the rule as originally promulgated or warrant a modification of the amendment before it is incorporated into these rules.

Several sections found in the proposed rule were deleted in the final rule. These sections referred to "State regulatory authorities" and were deleted because there is no "State regulatory authority" where OSM implements a Federal program under Section 504 of the Act. Publically available records may be obtained at the location shown in Section 9—.776–17(a). Accordingly, OSM is deleting the following sections: 9—.842–16(b); part of 9—.843–13(c)(1); part of 9—.843–14(d); and 9—.843–15 (c)(3) and (f)(3).

A change in Section 9—.845–17(b) was made to delete the reference to an address on a sign. Since the posting of signs is not required at exploration sites, this reference is irrelevant. Addresses of responsible persons may be obtained from the representative on site who is responsible for conducting exploration operations or from the nearest OSM State Office.

Furthermore, many of the definitions that appeared in the proposed rule have been deleted because the defined terms are not used here.

Disposition of Comments

In response to the proposed rule, 16 persons and organizations commented during the comment period either through testimony at one of the four public hearings or by mail. All commenters supported the promulgation of the proposed exploration program rules for the four States. The following discussion addresses specific comments received by OSM.

1. A number of commenters were concerned that the Federal program would not adequately recognize State and local laws and relevant local physical conditions.

Section 504(a) states that a "State's terrain, climate, biological, chemical, and other relevant physical conditions" will be taken into consideration in promulgating a Federal program. Section 504(g) of the Act provides that State laws or regulations which are in effect to regulate surface mining and reclamation operations shall be superseded by the Act where they "interfere with the achievement of the purposes and requirements of the Act"; thus State laws which reflect local conditions will continue in effect unless pre-empted. Section 9—.776–14 ensures that local governments will be notified of OSM's approval of any notice of intent to explore which will result in the removal of more than 250 tons of coal.

Where a State law has assigned the responsibility for land use planning to the local level, the prospector must abide by any regulations and ordinances promulgated by those entities except to the extent pre-empted. A State law of this sort would not be inconsistent with the Act solely because of the delegation

of responsibility to local agencies. If an exploration request meets all the requirements of these regulations, OSM will grant approval under the Act to commence exploration. However, appropriate local approvals may still be required before exploration may proceed.

2. One commenter requested that, because of the short time between the public hearings and the close of the public comment period, OSM extend the comment period to allow comment on the hearing testimony. The same person requested an opportunity to review any substantive changes made in the proposed rule to accommodate State and local needs.

Because of the urgent need to bring exploration operation under regulation, OSM is issuing this final rule. Nevertheless, OSM will accept comments on this final rule until May 28, 1982. If any comments are received by close of business on that date, OSM will take any further steps it deems appropriate. Comments are limited to the public testimony given in the State of Michigan and on how OSM has tailored these regulations to each of the four States and coordinated them with relevant State laws.

3. One commenter wanted preliminary studies to be done by OSM before exploration would be allowed close to any spring.

Although OSM requires prospectors to follow Section 515 of the Act in reclaiming all lands disturbed during exploration, it does not require studies preliminary to exploration (Section 512 of the Act).

4. Two commenters stated that active mining was imminent in Michigan and Oregon, and asked OSM to implement full regulatory programs for those States rather than just exploration programs.

OSM agrees and is developing full Federal programs for both States.

5. One commenter wanted a one- to two-year delay before the development of a full Federal program in order to adequately evaluate the unique physical characteristics of the States, particularly Oregon.

The comment was not accepted, since Section 504 of the Act does not provide for such a delay.

6. A commenter thought that the proposed exploration programs "clearly exceeded" the mandate of Section 512 of the Act.

OSM disagrees. Sections 512(a) (1) and (2) describe the minimum requirements for the regulation of coal exploration operations. OSM has included only those requirements OSM believes necessary to ensure that coal exploration is conducted in an environmentally sound manner.

7. Three commenters were concerned that when and if the State of Oregon developed a State program, there would not be enough funds available to properly administer the program.

OSM considers this issue to be outside the scope of the current rulemaking. The commenter may raise this issue if and when Oregon submits a proposed State program to OSM for approval.

8. Another commenter wanted the rules to clarify what happens if a mining request is received before a full Federal program is promulgated for a State.

OSM considers this issue to be outside the scope of the current rulemaking. Operators wishing to commence mining in a State for which neither a full Federal program has been promulgated nor a State program approved do not need SMCRA permits, but are subject to the requirements of the interim progarm (30 CFR Part 710).

9. One commenter wanted to be assured that the exploration regulations would provide for the reclamation of disturbed land to a condition that would be as good as, or better than, its original condition.

Section 515(b)(2) of the Act requires the operator to restore affected land to a condition capable of supporting uses it was capable of supporting prior to mining or better uses of which there is a reasonable likelihood. The reclamation requirements of 30 CFR Parts 816 and 817 of the rules are based on this section of the Act. Subpart 9—.815 sets forth the specific performance standards for coal exploration operations, and reflects the relevant provisions of 30 CFR Parts 816 and 817, which are the permanent program performance standards for surface and underground mining activities, respectively. All prospectors have certain reclamation responsibilities they must meet after an exploration operation.

Subpart 9—.776 of each program requires compliance with 9—.815 in any areas that are substantially disturbed during exploration. This section also requires that a description of the measures to be used to comply with 9—.815 be presented in a reclamation and operations plan prior to any exploration operations which results in the removal of more than 250 tons. OSM believes that these requirements ensure achievement of the intent of the Act that distrubed land be reclaimed to a condition as good as, or better than its original condition.

10. One commenter requested that OSM reprint the full text of all provisions of the program, rather than using cross-referencing to the permanent regulations.

This comment was rejected. The use of cross-referencing offers considerable advantages in convenience and cost. It results in administrative simplicity, in that there is one basic source of regulations (30 CFR). A change to the basic source automatically effects a change in all other rules that are cross-referenced to it (except where comments identify unique conditions in a State for which special rules should be promulgated), resulting in consistency among all Federal program rules. It also allows the public to comment once, rather than as many times as there are Federal program rules.

11. One commenter suggested that the regulations require bonding to protect landowners adjacent to exploration operations.

This comment was not accepted. OSM does not have the authority to require bonding during exploration operations. Section 509(a) of the Act requires performance bonds for "surface coal mining and reclamation permits" only. Section 701(28)(A) of the Act specifically excludes exploration operations subject to Section 512 of the Act from the definition of "surface coal mining operations."

12. One commenter objected to the tonnage limit in the definition of "reclamation" at 9—.701–5 of the proposed rules.

This comment was accepted. OSM agrees that Section 512 of the Act makes the reclamation standards in Section 515 of the Act applicable to all exploration operations, and that the tonnage distinction in the proposed definition of "reclamation" was inappropriate. The final rules have been changed accordingly.

13. One commenter wanted to delete the word "substantially" in the definition of "substantially disturb," while several others offered alternative definitions because they thought the term was either too stringent or not specific enough.

These suggestions have been rejected. The term "substantially disturb" is used in Section 512 of the Act. Because the term is not defined in the Act, OSM developed and promulgated a definition as part of the permanent program rules promulgated March 3, 1979. OSM believes that this definition, which has been incorporated into the programs promulgated today, is adequate and that it remains appropriate.

14. A commenter thought that the definition of the term "recharge capacity" was too narrow and not adequate.

This definition has been deleted because the term "recharge capacity" does not appear in the rules. OSM has also deleted from 9—.701–5 definitions of all other terms which are not actually used in these rules.

15. A commenter was concerned that when the definition of "roads" is repromulgated for the permanent program regulations the same change will not be made in the exploration regulations. The same commenter also asked the meaning of "land road," a phrase which was used in the definition of "road" in the proposed exploration rules (47 FR 570, Jan. 5, 1982).

Any changes made in the permanent program regulations affecting exploration program rules will also be made in those program rules. However, specific conditions in a State may necessitate variances from the permanent program rules which will be reflected in the individual State program rules. Furthermore, full Federal program rules which cross-reference the permanent programs are being developed for Massachusetts, Michigan, Oregon, and Rhode Island. The use of cross-referencing will ensure that any change in the permanent program rules will automatically be made in the Federal program rules for a State (except where special conditions in a State dictate modification, as discussed above).

The term "land roads" was a typographical error; the phrase should have been "haul roads" and has been corrected in the rules promulgated today.

16. One commenter suggested that these rules be amended to address State program development grants and administrative enforcement grants.

The question of grants is outside the scope of this rulemaking. Grants to States for program development or administration and enforcement are covered at 30 CFR Part 735.

17. A commenter said that the proposed rules failed to make clear that all of 30 CFR Chapter F, Areas Unsuitable for Mining, is applicable to exploration.

OSM agrees and has made necessary corrections.

18. One commenter asked that OSM declare Wollowa County, Oregon an area unsuitable for mining.

Such a designation can be made only through the petition process for State and private lands authorized in Section 552(c) of the Act and described in 30 CFR Chapter F.

19. Five commenters requested that OSM waive the one-year wait (Section 504(a) of the Act) between the promulgation of a Federal program and the initiation of the petition process to declare an area unsuitable for mining under 30 CFR Subchapter F.

OSM has not accepted this suggestion and believes that the commenters have misinterpreted the permanent rules and preamble. Section 765.13(a) of the permanent program rules implements Section 504(a) of the Act, which states that "If a Federal program is implemented for a State, section 552 (a), (c), and (d) shall not apply for a period of one year following such implementation." Section 765.13(b) provides the only grounds for waiving the one-year period, which is a failure of a State to adequately implement, maintain, or enforce the portion of the State program for designating lands unsuitable for mining.

20. Two commenters objected to the differing requirements imposed on prospectors based upon whether more or less than 250 tons of coal were removed (Sections 9—.776–11 and 9—.776–12).

The tonnage differentiation is based on Section 512(d) of the Act, which states that no operator shall remove more than 250 tons of coal without the specific written approval of the regulatory authority. This indicates that the Congress intended that the regulatory authority exercise a higher level of supervision over the prospector who removes more than incidental amounts (i.e., 250 tons) of coal during exploration. OSM believes that the approach adopted here fulfills the intent of the Act. The prospector who removes less than 250 tons does not have to comply with Section 9—.815 unless the exploration area has suffered substantial disturbance. Furthermore, OSM believes that the local authorities and residents should be aware of exploration operations in their vicinity, thus requiring a notice. On the other hand, only those prospectors who remove more than 250 tons of coal are required by Section 512(d) of the Act to obtain written approval for such removal. This, combined with the greater likelihood that the prospector who removes large quantities of coal will cause substantial disturbance, persuades OSM to require a greater preplanning effort of the prospector who intends to remove more than 250 tons of coal than of other prospectors, and to do so before the commencement of exploration operations.

21. Two commenters suggested that a permit process be established for exploration operations affecting less than 250 tons.

The only mention in the Act of a permit for exploration is found in Section 512(d), which refers to removal of more than 250 tons of coal "pursuant to an exploration permit." Although this implies that some form of permit is required for exploration, OSM does not believe that it refers to a "permit" of the type required for surface coal mining and reclamation operations.

Section 701(15) defines "permit" as "permit to conduct surface coal mining and reclamation operations issued by * * * the Secretary pursuant to a Federal program." the definition of "surface coal mining operations" in Section 701(28)(A) expressly excludes "coal explorations subject to Section 512 of this Act." OSM believes that the "exploration permit" referred to in Section 512(d) is intended to be an authorization to conduct operations based on a determination by the regulatory authority that the exploration can be conducted and the site reclaimed in compliance with the Act. The approval provided for in these exploration programs is such an authorization and is therefore an exploration permit. However, OSM has termed it an "approval" to avoid confusion with the term "permit" as used elsewhere in OSM's regulation.

22. A commenter suggested that OSM amend Section 9—.776–11 to remove the ambiguity as to whether or not reclamation is required in exploration operations resulting in the removal of less than 250 tons.

OSM believes that the commenter has misinterpreted the proposed rules. Section 9—.776–11(c) requires the prospector to comply with Section 9—.815 if substantial disturbance occurs during exploration operations. Thus all prospectors who substantially disturb the natural land surface are required to reclaim; the quantity of coal recovered (if any) is not a determinant.

23. Two comments suggested that the information required in Section 9—.776–11(b)(3) goes far beyond that required by the Act at Section 512(a)(1) and that disclosure of the required information would give competitors an unfair advantage.

OSM disagrees that the required information goes beyond that required by the Act. The information requirements are the same as those in the permanent program regulations and are the minimum consistent with OSM's responsibility to ensure compliance with the Act. A prospector who believes that the disclosure to third parties of the required information would give competitors and unfair advantage may submit a request under Section 9—.776–17(b)(1) that the information not be released to the public.

24. A commenter requested that Sections 776.11(b)(5) and 776.12(a)(6) of the March 13, 1979, permanent program regulations, which were omitted from the proposed exploration regulations, be restored. These sections require a person who intends to explore land, the surface rights of which are owned by another person, to provide a description of the basis upon which that person claims the right to explore.

These sections were remanded May 16, 1980, U.S. District Court *In re: Permanent Surface Mining Regulation Litigation,* Civ. Action No. 79–1144. OSM is in the process of developing alternative requirements for these sections.

25. A commenter believed that OSM had deleted Section 776.12(a)(2) from the proposed exploration regulations, and requested that it be added. Section 776.12(a)(2) provides that an on-site contact person be identified for operations involving the removal of more than 250 tons of coal.

A Section 9—.776–12(a)(2) was in fact included in the proposed rules and has been retained in the programs promulgated today.

26. Two commenters supported the 60-day limit in Section 9—.776–13(a), within OSM must act upon a completed application for approval. Another commenter was concerned about what would happen if OSM misses the deadline, and asked that OSM make clear that its failure to meet the deadline would not result in an automatic approval of the application.

OSM agrees. The words "not to exceed an additional thirty days" in Section 9—.776–13(a) have been replaced by "or such longer time as may be reasonable under the circumstances" in the the final rules to remove any implication that the specified time limits are mandatory.

27. A commenter suggested Section 9—.776–17 exceeded the mandate of the Act by allowing for greater non-disclosure than the Congress intended.

OSM disagrees. Section 512(b) of the Act clearly allows the withholding of information that relates to trade secrets and privileged commercial or financial information which relates to the competitive rights of the prospector. Section 9—.776–17(b)(1) requires the prospector to present a written request to withhold information and allows OSM to make the decision whether or not to allow the request pursuant to the Freedom of Information Act, 5 U.S.C. 552. Furthermore, Section 9—.776–17(b)(2) restricts determinations of confidentiality to only that information concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the prospector. Finally, the information in question may not be made public unless those persons requesting access to the information and the prospector have had notice and the opportunity to be heard (Section 9—.776–17(b)(3)). For these reasons, OSM believes that Section 9—.776–17 meets the requirements of the Act.

28. Two commenters suggested that the language of Section 9—.776–17(b)(3) does not make it clear that information can still be considered confidential and withheld from public inspection after a hearing has been held.

OSM agrees and has changed Section 9—.776–17(b)(3) to remove the implication that information must be released after notice and hearing even where OSM agrees the information should be withheld.

29. A commenter wanted Section 9—.776–17 revised to describe how one contests a ruling by OSM that information is confidential.

Section 9—.701–14 makes 43 CFR Part 2 applicable to each of the programs promulgated here. The procedures for challenging ruling of confidentiality are covered at 43 CFR 2.41. Therefore Section 9—.776–17 has not been changed.

30. A commenter was concerned that there may be circumstances where some disturbance caused by exploration operations may be exempt from reclamation requirements.

OSM believes that the rules reflect the mandate in Section 512(a) of the Act that all areas which are substantially disturbed be reclaimed. The Act does not authorize OSM to impose requirements on operations which cause only "some" disturbance.

31. A commenter wanted the final exploration rules to give special consideration and protection to aquifers and water resources.

OSM believes that the programs as proposed provide adequate protection to water resources through Sections 9—.815–15 (g), (h), and (j). Drilling of exploratory holes is defined to be a substantial disturbance and would, therefore, be subject to Sections 9—.776–11(c) and 9—.776–12(3)(v).

32. Three commenters were concerned that the proposed exploration rules do not ensure as comprehensive protection to the environment as is required by Section 512(a) of the Act, and requested that all the performance standards of Section 515 be made applicable to exploration.

OSM disagrees. Section 512(a)(2) of the Act requires "*reclamation* in accordance with the performance standards of Section 515 of the Act" (emphasis added). It does not require that exploration operations be conducted in conformance with all performance standards. OSM, therefore, has included in these programs those requirements of Section 515 which address reclamation. Both as proposed and as promulgated, Section 9—.815–15(j) allows OSM to specify additional measures during exploration and reclamation activities.

33. One commenter expressed concern that proposed Section 9—.815–15(b) failed to incorporate the language from 30 CFR 815(b) that requires the prospector to measure environmental characteristics of the area to provide information to support any permit application the prospector may later submit.

OSM neither intends nor believes that this deletion would have any bearing on the requirements a mining operator would have to meet when applying for a permit. The information required for a mining permit is specified in Subchapter G of the permanent program regulations. OSM believes it unnecessary to require a prospector to collect information which may or may not be needed later, depending upon whether the prospector later applies for a permit. While the prudent prospector would presumably gather such information so as to have it available, OSM believes it inappropriate to require it of all prospectors.

34. A commenter suggested that OSM delete Section 9—.815–15(1) from the final exploration program rules because OSM has failed to justify the need to allow permanent impoundments after coal exploration.

OSM agrees and has deleted Section 9—.815–15(1) from the programs promulgated today.

35. A commenter asserted that OSM has no statutory requirement to inspect coal exploration operations.

OSM disagrees. Section 512(c) of the Act makes the prospector subject to the provisions of Section 518 ("Penalties") of the Act, applicable to prospectors who "substantially disturb the natural land surface in violation of Section 512 of the Act or regulations pursuant thereto." Section 512(c) would be meaningless if OSM were prohibited from conducting inspections to determine whether the prospector has violated the Act or regulations. Parts 9—.842, 843, and 845 have been adopted as proposed.

36. Two commenters suggested that the civil penalty assessment system proposed in section 9—.845 be modified to fit the specific mandate of Section 512(c) of the Act. Specifically, the commenters asserted that penalty

assessments have not been accurate and objective because the person assessing the penalty has not visited the site and does not have sufficient information to judge actual on-site conditions accurately. One of the commenters suggested that the inspector who issued the notice of violation should also assess the penalty.

OSM believes that the system in use is adequate. The inspector submits the copies of the citation (the notice of violation or cessation order), the inspection report, and an inspector's statement in which the inspector provides all additional information needed for the assessor to determine the correct proposed assessment. If sufficient information is not contained in these documents, the assessor contacts the inspector by telephone.

In making a proposed assessment, the assessor also considers information submitted by the operator if it is received on time. Because the Act directs OSM to issue proposed assessments within 30 days after issuance of the citation, there is little time for the operator to submit information, and hence the proposed assessment does not always reflect information submitted by him. However, OSM does retain this information and take it into account either at the conference with the operator to review the proposed penalty (if a conference is requested) or in issuing the final assessment. Thus there is ample opportunity for the operator to present his view of the facts, and his view is considered before the assessment is made final. The fact that neither the assessor nor the conference officer has visited the site does not mean that either one is unable to make a fair judgment as to the facts and the appropriate penalty based on the evidence of the inspector and the operator; the same function is performed daily by judges and administrative law judges who decide issues and set penalties on the basis of the evidence provided by the litigants. The fact that OSM gives due consideration to the views of operators is demonstrated by the frequent reduction or elimination of penalties following conferences.

OSM does not provide for assessment of penalties by inspectors, in order to eliminate any opportunity for operators to bring pressures on inspectors not to take enforcement actions or to reduce or eliminate penalties. Furthermore, OSM's present system provides better consistency of assessments. OSM has therefore retained 9—.845 in the final exploration regulations.

37. The same two commenters were further concerned that where the prospector may be in violation of a regulation in the strict sense, there may be only slight environmental harm due to mitigating local circumstances.

The point system contained in 9—.845–11 adequately addresses this concern. Where there is only slight environmental harm, a low number of points would be assigned for "seriousness" of the violation. Under 30 CFR 845.12 OSM has discretion not to assess a penalty for a notice of violation where the violation is assigned 30 points or less. OSM's policy is not to assess a penalty in such a case unless the violation was reckless or willful, the operator had a very poor history of violations, or the operator showed lack of good faith in complying. Thus, as a practical matter an assessment is unlikely to be made in the circumstances described.

38. One commenter also suggested that OSM delete 9—.845–12(a), which requires OSM to impose a penalty for every cessation order.

Section 9—.845–12(a) implements Section 518(a) of the Act, which states that for any violation which "leads to the issuance of a cessation order under Section 521, the civil penalty shall be assessed." Section 9—.845–12(a) has therefore been retained.

39. The same commenter suggested that the point system in Section 9—.845–13(b) be simplified by eliminating consideration of whether previous citations had been appealed, how serious the violation was, and how negligent the violator was.

OSM disagrees. Section 518(a) of the Act requires OSM, in assessing each civil penalty, to consider the criteria of history of violations at the site, seriousness of the violation, negligence on the part of the operator in causing the violation and whether the operator showed good faith in rapidly complying after being informed of the violation. The current system is as fair, accurate, and simple as the law allows. In the case of history of violations, OSM believes it would be unfair to the operator to eliminate consideration of whether previous violations by the operator are on appeal. This amounts to punishing the operator before he has been allowed a full and fair opportunity to contest the violation.

Other Information

The Secretary has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291. The Secretary has also determined that this document will not have a significant economic effect on a substantial number of small entities and therefore does not require a regulatory flexibility analysis under Pub. L. 96–354. Furthermore, in accordance with Section 702(d) of the Act, neither an environmental impact statement nor an environmental assessment will be prepared.

List of Subjects in 30 CFR Parts 922, 923, 937, and 939

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Drafting Information

These regulations were drafted by James M. Kress, Branch of Regulatory Programs, Office of Surface Mining.

Accordingly, 30 CFR Chapter VII, Subchapter T, is amended by adding Part 921 for Massachusetts, Part 922 for Michigan, Part 937 for Oregon, and Part 939 for Rhode Island, as set forth herein.

Dated: April 9, 1982.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

PART 921—MASSACHUSETTS

General

Subpart 921.701—General

Sec.

Areas Unsuitable for Mining

Subpart 921.760—General

Coal Exploration

Subpart 921.770—General Requirements

Subpart 921.776—General Requirements for Coal Exploration

Authority: Pub. L. 95–87, the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

General

Subpart 921.701—General

§ 921.701–3 Authority and scope.

(a) The Secretary is required by Sections 504(a) and 512 of the Surface Mining Control and Reclamation Act of 1977 (the Act) to prepare, promulgate, and implement a Federal coal exploration program for the State of Massachusetts because it failed to submit a program by March 3, 1980 in accordance with Section 504(a) of the Act, 30 CFR Part 736, and the July 25, 1979, and August 21, 1979, opinions of the District Court for the District of Columbia, in *In re: Permanent Surface Mining Regulation Litigation,* 13 ERC 1447 and 1586.

(b) In addition to Part 30 CFR Part 921, the following regulations apply to the Federal Program for coal exploration in Massachusetts:

(1) 30 CFR Part 865 regarding protection of employees; and

(2) 30 CFR Part 706 on restriction of financial interests of Federal employees.

§ 921.701–4 Responsibility.

The Director of the Office of Surface Mining shall be primarily responsible for the regulation of coal exploration on non-Federal and non-Indian lands in the State of Massachusetts under this program in accordance with Sections 504 and 512 of the Act, 30 CFR Part 736, and this subpart. The Director has responsibility for: ensuring that every person who wants to conduct exploration operations files a notice of intention to explore; reviewing and approving applications for coal exploration operations which remove more than 250 tons of coal from the earth in any one location; reviewing and approving plans to reclaim areas that have been substantially disturbed; and ensuring adequate inspection and enforcement of all coal exploration operations for compliance with exploration approvals issued under this program, except where the primary responsibility has been retained by the Secretary as specified in this program. The Director may delegate all or any part of his responsibilities to any other official of the Office of Surface Mining.

§ 921.701–5 Definitions.

As used in this subpart, the following terms have the specified meanings, except where otherwise indicated:

Acid-forming materials means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

Act means the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*).

Applicant means any person seeking approval from OSM to conduct coal exploration pursuant to this program.

Approximate original contour means that surface configuration achieved by backfilling and grading of the areas of exploration so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to exploration and blends into and complements the drainage pattern of the surrounding terrain.

Best technology currently available means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the area of exploration operation, but in no event result in contributions of suspended solids in excesss of requirements set by applicable State or Federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds in accordance with 30 CFR 816 and 817. The Director may determine the best technology currently available on a case-by-case basis.

Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388–77, referred to and incorporated by reference in the definition of anthracite.

Coal exploration means the field gathering of: (a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal in an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this subpart.

Department means the Department of the Interior.

Director means the Director, Office of Surface Mining Reclamation and Enforcement, or the Director's representative.

Disturbed area means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, or noncoal waste is placed by coal exploration operations. Those areas are classified as disturbed until reclamation is complete.

Diversion means a channel, embankment, or other man-made

structure constructed to divert water from one area to another.

Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

Ephemeral stream means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

Existing structure means a structure or facility used in connection with or to facilitate coal exploration operations for which construction began prior to the implementation of this Federal program.

Exploration area means, with respect to hydrology, the topographic and ground water basin surrounding the general vicinity of the proposed operations area, which is of sufficient size including areal extent and depth to include one or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

Federal lands means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

Federal program means a program established by the Secretary pursuant to Sections 504 and 512 of the Act to regulate coal exploration operations on non-Federal and non-Indian lands within a State in accordance with the Act and 30 CFR Chapter VII.

Ground water means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

Hydrologic balance means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

Imminent danger to the health and safety of the public means the existence of any condition or practice, or any violation of an exploration approval or other requirements of the Act in a coal exploration operation, which could reasonably be expected to cause substantial physical harm to persons outside the approval area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

Impoundment means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

Indian lands means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

Intermittent stream means:

(a) A stream or reach of a stream that drains a watershed of at least one square mile, or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

Land use means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by OSM.

(a) "Cropland." Land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

(b) "Pastureland or land occasionally cut for hay." Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(c) "Grazingland." Includes both grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which are adjacent to or an integral part of these operations is also included.

(d) "Forestry." Land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvests and management operations which is adjacent to or an integral part of these operations is also included.

(e) "Residential." Includes single- and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

(f) "Industrial/Commercial." Land used for—

(1) Extraction of transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(g) "Recreation." Land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) "Fish and wildlife habitat." Land dedicated wholly or partially to the production, protection or management or species of fish or wildlife.

(i) "Developed water resources." Includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) "Undeveloped land or no current use or land management." Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has

been allowed to return to forest through natural succession.

Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

Office means the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act.

Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

Perrenial stream means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff.

Person means any individual, any Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, any partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization, and any agency, unit, or instrumentality of Federal, State or local government including any publicly owned utility or publicly owned corporation of Federal, State or local government.

Person having an interest which is or may be adversely affected or person with a valid legal interest shall include any person—

(a) Who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or any related action of the Secretary, or

(b) Whose property is or may be adversely affected by coal exploration or any related action of the Secretary.

Prospector means a person conducting or proposing to conduct coal exploration.

Public office means a facility under the direction and control of a governmental entity which is open to the public on a regular basis during reasonable business hours.

Reclamation means those actions taken to restore explored land to a postexploration land use approved by OSM, as required by this subpart.

Regulatory authority means the Secretary when administering this subpart.

Renewable resource lands means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

Road means a surface right-of-way for purposes of travel by land vehicles used in coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration, including use by coal hauling vehicles leading to transfer, processing, or storage areas.

Secretary means the Secretary of the Interior or the Secretary's representative.

Sedimentation pond means a primary sediment control structure designed, constructed and maintained in accordance with 30 CFR 816.46 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

Significant, imminent environmental harm to land, air or water resources means—

(a) An environmental harm is an adverse impact on land, air, or water resources including, but not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which—

(1) Is causing such harm; or,

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 521(a)(3) of the Act, and is appreciable and not immediately reparable.

Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are—

(a) "A. horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching to soluble or suspended particles is typically the greatest.

(b) "B. horizon." The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) "C. horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Spoil means overburden that has been removed during coal exploration operations.

Substantially disturb means to impact significantly upon land, air, or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, constructing roads and other access routes, and/or placing structures, excavated earth, or other debris on the surface of land.

Surface coal mining operations means—

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine-site, *Provided*, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Act; and *Provided further*, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) Areas upon which the activities described in paragraph (a) of this definition occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface,

resulting from or incident to those activities.

Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

Suspended solids or *nonfilterable residue, expressed as milligrams per liter,* means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waster water and analyses (40 CFR Part 136).

Temporary diversion means a diversion of a stream or overland flow during coal exploration operations which has not been approved by OSM to remain after reclamation as part of the approved postmining land use.

Topsoil means the A soil horizon layer of the three major soil horizons.

Water table means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

§ 921.701-11 Applicability

(a) This part applies to all coal exploration operations within the State of Massachusetts except exploration for coal on Indian or Federal lands.

(b) Each structure used in connection with or to facilitate a coal exploration operation shall comply with the performance standards and the design requirements of Subpart 921.815 of this part, except that—

(1) An existing structure which meets the performance standards of Subpart 921.815 of this part but does not meet the design requirements of Subpart 921.815 of this part shall be exempted from meeting those design requirements by OSM. OSM may grant this exemption only as part of the coal exploration approval process after obtaining the information required by 30 CFR Subpart 921.776.

(2) Where an existing structure meets the performance standards of 30 CFR Chapter VII, Subchapter B, and these standards are at least as stringent as the comparable performance standards in Subpart 921.815 of this part, such structure shall be exempted by OSM from meeting the design requirements of Subpart 921.815 of this part. OSM may grant this exemption only as part of the coal exploration approval process after obtaining the information required by 30 CFR Subpart 921.776.

(3) Where exploration will result in removal of more than 250 tons, as required in § 921.776-13, an existing structure which meets a performance standard of 30 CFR Chapter VII, Subchapter B which is less stringent than the comparable performance standards of Subpart 921.815 of this part or which does not meet a performance standard of Subpart 921.815 of this part for which there was no equivalent performance standard in 30 CFR Subchapter B, shall be modified or reconstructed to meet the design standards of Subpart 921.815 of this part pursuant to a compliance plan approved by OSM in the coal exploration approval after making the findings required by 30 CFR 786.21.

(4) An existing structure which does not meet the performance standards of 30 CFR Chapter VII, Subchapter B, and which the applicant proposes to use in connection with or to facilitate a coal exploration operation shall be modified or reconstructed to meet the design standards of Subpart 921.815 of this part prior to issuance of the exploration approval.

(c)(1) Any person conducting coal exploration on non-Federal and non-Indian lands on or after the effective date of this subpart shall either file a notice of intention to explore or obtain approval of OSM as required by 30 CFR Subpart 921.776.

(2) Two months after the effective date of this subpart, coal exploration performance standards in 30 CFR Subpart 921.815 shall apply to coal exploration on non-Federal and non-Indian lands which substantially disturbs the natural land surface.

§ 921.701-12 Petitions to initiate rulemaking.

The public may petition OSM to initiate rulemaking concerning this exploration program pursuant to 30 CFR 700.12.

§ 921.701-13 Notice of citizen suits.

A person who intends to initiate a civil action under Section 520 of the Act must give notice as provided in 30 CFR 700.13.

§ 921.701-14 Availability of records.

(a) Records required by the Act to be made available locally to the public shall be retained at the U.S. Fish and Wildlife Service, Gateway Center, Suite 700, Newton Center, Massachusetts 02158. Contact Beth Foder.

(b) Other records or documents in the possession of OSM may be requested under 43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act.

§ 921.701-15 Computation of time.

(a) Except as otherwise provided, computation of time under this subpart is based on calendar days.

(b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which OSM is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is 7 days or less.

§ 921.701-16 Termination of the program.

This program shall terminate upon the effective date of a State program for the State of Massachusetts under 30 CFR Part 732.

Areas Unsuitable for Mining

Subpart 921.760—General

§ 921.760-3 General.

Any person who intends to petition to designate non-Federal or non-Indian lands subject to this subpart unsuitable for mining should follow the procedures given at 30 CFR Part 764, provided that no petition may be filed until one year after the effective date of this rule. The provisions of 30 CFR Subchapter F will apply to lands subject to Subpart 921.760.

Coal Exploration

Subpart 921.770—General Requirements for Exploration

§ 921.770-4 Responsibilities.

(a) A person seeking to conduct coal exploration must file a notice of intention or obtain approval of OSM under 30 CFR Subpart 921.776 before commencing exploration.

(b) OSM shall review each application for exploration approval and issue, condition, deny, suspend, or revoke such approvals.

§ 921.770-5 Definitions.

As used throughout Subparts 921.770, 921.776 and 921.787 of this part, except where otherwise indicated:

Applicant means a person who seeks to obtain an exploration approval under Subparts 921.770, 921.776 and 921.787 of this part.

Application for approval means the documents and other information filed with OSM under Subparts 921.770 and 921.776 of this part for the issuance of an exploration approval.

Complete application means an application for exploration approval which contains all information required under the Act and Subpart 921.770 and 921.776 of this part.

Exploration approval means the approval required under Section 512 of the Act.

§ 921.770–12 Coordination with respect to requirements under other laws.

(a) To avoid duplication, OSM shall provide for coordinated review of applications for approval of coal exploration with the governmental agencies responsible for issuing permits under or assuring compliance with:

(1) Any other Federal permit process applicable to those operations including, at a minimum, permits required under the

(i) Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*);

(ii) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*); and

(iii) Resource Conservation and Recovery Act (42 U.S.C. 3251 *et seq.*).

(2) Any water quality management plans which have been approved by the Administrator of the Environmental Protection Agency under Sections 208 or 303(c) and (e) of the Clean Water Act, as amended (33 U.S.C. 1288, 1313 (c) and (e));

(3) The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended, (16 U.S.C. 661 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); Executive Order 11593; and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 4332).

(b) All prospectors shall comply with the following Massachusetts General Laws Annotated and all others not designated by OSM as not interfering with the achievement of the purposes and requirements of the Act.

(1) Section 16. A person engaging in the business of drilling or digging wells within the Commonwealth is required to procure a certificate of registration from the Water Resources Council (WRC) upon payment of an annual fee established by the Commissioner of Administration. The person is also required to report such information as required by the rules and regulations of the WRC within 30 days of completion of the well. A fine of $300 is prescribed for digging or drilling without being registered or for failure to make the requisite report.

(2) Section 17B. From time to time the WRC, with approval from the Board of Environmental Management, may adopt, amend, modify, or repeal orders restricting, regulating, or prohibiting removal, dredging, or otherwise altering or polluting the scenic and recreational streams and rivers of the Commonwealth in order to protect public health, safety, and welfare, and protect public or private property or irreplaceable scenic river resources. The notice required as a condition precedent to adoption or amendment of a regulation by 30-A Massachusetts General Laws Annotated Section 2 must be given to every assessed owner of any land on the banks of any such river or stream.

(3) Section 48. A person is forbidden from draining any pond, reservoir, or body of water (other than those specified hereinafter) to an extent dangerous to fish life therein unless he gives the Director of Fisheries and Game written notice of his intention at least 10 days prior to such draining. Exceptions to this general prohibition are provided in cases of emergency or for draining a body of water used for insect control, irrigation, flooding cranberry bogs, or public water supply.

(4) Sections 40–46. Every landowner is required to give the Director of the Division of Forests and Parks, Department of Environmental Management prior written notice of his intention to cut or cause to be cut forest products on land devoted to forest purposes. The Director is required to examine the forest to be cut and to advise and the assist the landowner in preparing and executing a plan of operations calculated to conform to the forest practices adopted for the region. The penalty for failure to give the Director notice or failure to follow the plan of operations prepared by the Director is $25.00 per acre on which cutting occurred in violation of, or in absence of, such a plan.

Subpart 921.776—General Requirements for Coal Exploration

§ 921.776–11 General requirements—Exploration removing less than 250 tons.

(a) Any person who intends to conduct coal exploration during which less than 250 tons of coal will be removed from the area to be explored shall, prior to conducting the exploration, file with OSM a written notice of intention to explore.

(b) The notice shall include:

(1) The name, address, and telephone number of the person seeking to explore;

(2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration operations;

(3) A description sufficient to enable OSM to identify the location and size of areas at which exploration operations are to be conducted, access routes, the distance from the area or areas to a public road, and means of transportation used or proposed to be used;

(4) A statement of the period of intended exploration;

(5) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration operations.

(c) Any person who conducts coal exploration operations subject to this section which substantially disturb the natural land surface shall comply with 30 CFR Subpart 921.815.

(d) OSM shall, except as otherwise provided in § 921.776–17, place such notices on public file and make them available for public inspection and copying.

§ 921.776–12 General requirements: Exploration removing more than 250 tons.

Any person who intends to conduct coal exploration in which more than 250 tons of coal are to be removed from the area to be explored shall, prior to conducting the exploration, apply for and obtain the written approval of OSM, in accordance with the following:

(a) Each application for approval shall contain, at a minimum, the following information:

(1) The name, address, and telephone number of the applicant;

(2) The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(3) An exploration and reclamation operations plan, including:

(i) A narrative description of the proposed exploration area, describing surface topography; geological, surface water, and other physical features as described in paragraph (a)(5) of this section; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including but not limited to any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); and districts, sites, buildings, structures, or objects listed on the National Register of Historic Places;

(ii) A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

(iii) An estimated timetable for conducting and completing each phase of the exploration and reclamation;

(iv) The estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts;

(v) A description of the measures to be used to comply with the applicable requirements of 30 CFR Subpart 921.815;

(4) The name and address of the owner(s) of record of the surface land and of the subsurface mineral estate of the area to be explored; and

(5) A description of existing roads, occupied dwellings, and pipelines; the proposed location of trenches, roads, and other access routes and structures to be constructed; the location of excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, topographic, cultural, and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(b) Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within one week after OSM has determined the application to be complete, public notice of the filing of the application shall be posted by the applicant at the courthouse or other public office designated by the Director in the vicinity of the proposed exploration area.

(2) The public notice shall state the name and business address of the person seeking approval, the date of filing of the application, the address to which written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration.

(3) Any person with an interest which is or may be adversely affected shall have the right to file written comments on the application within 15 days after the posting of the notice described in paragraph (b)(1) of this section.

§ 921.776–13 Application: Approval or disapproval of exploration removing more than 250 tons.

(a) OSM shall act upon a completed application for approval within 60 days or such longer time as may be reasonable under the circumstances. If additional time is necessary, OSM shall notify the applicant that the plan is being reviewed, but that more time is necessary to complete such review, setting forth the reasons why additional time is needed.

(b) OSM shall approve a complete application if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application:

(1) Will be conducted in accordance with Subpart 921.815;

(2) Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(3) Will not adversely affect cultural resources or districts, sites, buildings, structures, or objects listed on the National Register of Historic Places, unless the proposed exploration has been approved by both OSM and the agency with jurisdiction over such matters.

(c) Each approval shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with 30 CFR Subpart 921.815.

(d) Approval shall be given for a period not to exceed 2 years. Approval may be renewed for successive two-year periods upon reapplication.

(e) Except as otherwise provided in this section, review, revision, and renewal of approvals and transfer, sale, and assignment of rights granted by approvals shall be done in accordance with 30 CFR Part 788.

§ 921.776–14 Application: Notice and hearing for exploration of more than 250 tons.

(a) OSM shall notify the applicant and the appropriate local government officials, in writing, or its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. OSM shall provide public notice of approval or disapproval of each application by publication in a newspaper of general circulation in the general vicinity of the proposed operations.

(b) Any person with an interest which is or may be adversely affected by a decision of OSM pursuant to paragraph (a) of this section shall have the opportunity for administrative and judicial review as set forth in 30 CFR Subpart 921.787.

§ 921.776–15 Requirements for exploration operations.

(a) All coal exploration and reclamation operations which substantially disturb the natural land surface or which remove more than 250 tons of coal shall be conducted in accordance with the coal exploration requirements of this subpart and any conditions in the exploration approval.

(b) Any person who conducts any coal exploration in violation of the provisions of Subpart 921.815 shall be subject to the provisions of Subparts 921.842 through 921.845.

§ 921.776–17 Public availability of information.

(a) Except as provided in paragraph (b) of this section, all information submitted to OSM under this subpart shall be made available for public inspection and copying at the U.S. Fish and Wildlife Service, Gateway Center, Suite 700, Newton Corner, Massachusetts 02158. Contact Beth Foder.

(b)(1) OSM shall not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and OSM determines that the information is confidential and may be withheld under the Freedom of Information Act, 5 U.S.C. 552.

(2) OSM shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(3) Information requested to be held as confidential under this section shall not be made publicly available unless notice and opportunity to be heard is afforded to persons both seeking and opposing disclosure of the information and such information is determined not to be confidential.

Subpart 921.787—Administrative and Judicial Review of Decisions on Coal Exploration

§ 921.787–11 Administrative review.

(a) Within 30 days after the applicant is notified of the final decision of OSM concerning the application for coal exploration under 30 CFR 921.776–14, the applicant, or any person with an interest which is or may be adversely affected, may request a hearing on the reasons for the final decision in accordance with this section.

(b) OSM may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on

the merits of the final determination of the proceeding; and

(3) The relief is not to affect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(4) The relief sought is not the issuance of exploration approval where an approval has been denied, in whole or in part, by OSM.

(c)(1) For the purpose of such hearing, the hearing authority may administer oaths and affirmations, subpoena witnesses, written, or printed materials, compel attendance of witnesses and production of written or printed materials, compel discovery, and take evidence, including but not limited to site inspections of the land to be affected and other coal exploration operations carried on by the applicant in the general vicinity of the proposed operations.

(2) A verbatim record of each public hearing required by this section shall be made and a transcript made available on the motion of any party or by order of the hearing authority.

(3) *Ex parte* contacts between representatives of the parties before the hearing authority and the hearing authority shall be prohibited.

(d) Within 30 days after the close of the record, the hearing authority shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the hearing authority with respect to the appeal.

(e) The burden of proof at such hearings shall be on the party seeking to reverse the decision of OSM.

§ 921.787-12 Judicial review

(a) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to appeal as provided in paragraph (b) of this section, if:

(1) The applicant or person is aggrieved by the decision of the hearing authority in an administrative review proceeding conducted pursuant to § 921.787-11; or

(2) Either OSM or the hearing authority for administrative review under § 921.787-11 fails to act within time limits specified in the Subparts 921.770 throught 921.787 of this part.

(b) The action of OSM or the hearing authority identified in paragraph (a) of this section is subject to judicial review by the United States District Court for the district in which the coal exploration is or would be located, in the time and manner provided for in Section 526(a)(2) and (b) of the Act. The availability of such review shall not limit the operation of rights established in Section 520 of the Act.

Performance Standards

Subpart 921.815—Performance Standards—Coal Exploration

§ 921.815-11 General responsibility of persons conducting coal exploration.

(a) Each person who seeks to conduct coal exploration which substantially disturbs the natural land surface and in which 250 tons or less of coal are removed shall file the notice of intention to explore required under 30 CFR 921.776-11 and shall comply with § 921.815-15.

(b) Each person who conducts coal exploration which substantially disturbs the natural land surface and in which more than 250 tons of coal are removed from the area described by the written approval of OSM shall comply with the procedures described in the exploration and reclamation operations plan approved under § 921.776-12 and shall comply with § 921.815-15.

§ 921.815-13 Required documents.

Each person who conducts coal exploration which substantially disturbs the natural land surface and which removes more than 250 tons of coal shall, while in the exploration area, possess written approval of OSM for the activities granted under 30 CFR 921.776-12. The written approval shall be available for review by the authorized representative of OSM upon request.

§ 921.815-15 Performance standards for coal exploration.

The following performance standards are applicable to coal exploration which substantially disturbs the natural land surface.

(a) Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in 30 CFR 780.16(b) shall not be disturbed during coal exploration.

(b) The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area.

(c)(1) Vehicular travel on other than established roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(2) Any new road in the exploration area shall be constructed to meet the requirements of OSM.

(3) Existing roads may be used for exploration in accordance with the following:

(i) All applicable Federal, State, and local requirements shall be met.

(ii) If the road is significantly altered for exploration, including but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then paragraph (g) of this section shall apply to all areas of the road which are altered or which result in such additional contributions.

(iii) If the road is significantly altered for exploration operations and will remain as a permanent road after exploration operations are completed, the person conducting exploration shall ensure that the requirements of 30 CFR 816.150 through 816.166, as appropriate, are met for the design, construction, alteration, and maintenance of the road.

(4) Promptly after exploration operations are completed, existing roads used during exploration shall be reclaimed either:

(i) To a condition equal to or better than their pre-exploration condition; or

(ii) To a condition required by OSM.

(d) If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(e) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by OSM.

(f) Areas disturbed by coal exploration shall be revegetated by the person who conducts the exploration or his or her agent. If more than 250 tons of coal are removed from the exploration area, all revegetation shall be in compliance with the plan approved by OSM and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved post-exploration land use and in accordance with following:

(1) All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area. If both the pre-exploration and post-exploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface to prevent erosion.

(g) With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent, or perennial streams shall be diverted during coal exploration operations. Overland flow of water shall be diverted in a manner that:

(1) Prevents erosion;

(2) To the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration areas; and

(3) Complies with all other applicable State or Federal requirements.

(h) Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of 30 CFR 816.13, 816.14, and 816.15.

(i) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that OSM determines may remain to:

(1) Provide additional environmental quality data;

(2) Reduce or control the on- and off-site effects of the exploration operations; or

(3) Facilitate future surface mining and reclamation operations by the person conducting the approved exploration operations.

(j) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as those listed in 30 CFR 816.45 or sedimentation ponds which comply with 30 CFR 816.46. OSM may specify additional measures which shall be adopted by the prospector.

(k) Toxic or acid-forming materials shall be handled and disposed of in accordance with 30 CFR 816.48 and 816.103. If specified by OSM, additional measures shall be adopted by the prospector.

Inspection and Enforcement Procedures

Subpart 921.842—Federal Inspections

§ 921.842-11 Federal inspections.

(a) Authorized representatives of the Secretary shall conduct inspections of coal exploration operations as necessary;

(1) To develop or enforce this subpart;

(2) To enforce those requirements and permit conditions imposed under this subpart or 30 CFR Chapter VII or as provided in this section; and

(3) To determine whether any notice of violation or cessation order issued during an inspection authorized under this section has been complied with.

(b)(1) An authorized representative of the Secretary shall immediately conduct a Federal inspection to enforce any requirement of the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart when the authorized representative has reason to believe, on the basis of information available to him or her (other than information resulting from a previous Federal inspection), that there exists a violation of the Act, this subpart, or any condition of an exploration approval, or that there exists any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources.

(2) An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in paragraph (b)(1) of this section.

(c) OSM shall conduct periodic inspection of all coal exploration and reclamation operations required to comply in whole or part with the Act or this subpart, including the collection of evidence with respect to every violation of any condition of the exploration approval, the Act or this subpart.

(d) The inspection required under paragraph (c) of this section shall:

(1) Be carried out on an irregular basis so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the person being inspected or any of his agents or employees, except for necessary onsite meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this subpart, any condition of an exploration approval imposed under this subpart and the Act.

§ 921.842-12 Citizens' requests for Federal inspections.

(a) A citizen may request a Federal inspection under 30 CFR 921.842-11(b), by furnishing to an authorized representative of the Secretary a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition, or practice referred to in 30 CFR 921.842-11(b)(1) exists and setting forth a phone number and address where the citizen can be contacted.

(b) The identity of any person supplying information to OSM relating to a possible violation or imminent danger or harm shall remain confidential with OSM, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Freedom of Information Act (5 U.S.C. 552) or other Federal law;

(c) If a Federal inspection is conducted as a result of information conducted as a result of information provided to OSM by a citizen as described in paragraph (a) of this section, the citizen shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Secretary during the inspection. Such person has a right of entry to, upon and through the coal exploration operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the exploration area. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within 10 days of the Federal inspection or, if there is no inspection, within 15 days of receipt of the citizens's written statement, OSM shall send the citizen the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the Federal inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

(2) If no Federal inspection was conducted, an explanation of the reason why; and

(3) An explanation of the citizen's right, if any, to informal review of the action or inaction of OSM under 30 CFR 921.842-15.

(e) OSM shall give copies of all materials in paragraphs (d) (1) and (2) of this section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted under paragraph (b) of this section.

§ 921.842-13 Right of entry.

(a) Each authorized representative of the Secretary conducting a Federal inspection under 30 CFR 921.842-11:

(1) Shall have a right of entry to, upon, and through any coal exploration operation, without advance notice or a

search warrant, upon presentation of appropriate credentials; and

(2) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation, required under the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart.

(b) No search warrant shall be required with respect to any activity under paragraph (a) of this section except that a search warrant may be required for entry into a building.

§ 921.842-14 Review of adequacy and completeness of inspections.

Any person who is or may be adversely affected by a coal exploration operation may notify OSM in writing of any alleged failure on the part of OSM to make adequate and complete or periodic Federal inspections as provided in 30 CFR 921.842-11 (b)(1), (c) and (d). The notification shall include sufficient information to create a reasonable belief that 30 CFR 921.842-11 (b)(1), (c) and (d) are not being complied with and to demonstrate that the person is or may be adversely affected. OSM shall within 15 days of receipt of the notification determine whether 30 CFR 921.842-11(b)(1), (c) and (d) are being complied with, and if not, shall immediately order a Federal inspection to remedy the noncompliance. OSM shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, to remedy the noncompliance.

§ 921.842-15 Review of decision not to inspect or enforce.

(a) Any person who is or may be adversely affected by a coal exploration operation may ask OSM to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for Federal inspection under 30 CFR 921.842-12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) OSM shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the citizen shall not be disclosed unless confidentiality has been waived or disclosure is required under the Freedom of Information Act or other Federal law.

(c) Informal review under this section shall not affect any right to formal review under Section 525 of the Act or to a citizen's suit under Section 520 of the Act.

§ 921.842-16 Availability of records.

Copies of all records, reports, inspection materials, or information obtained by OSM under Title V of the Act or this subpart shall be made immediately available to the public in the area of exploration so that they are conveniently available to residents of that area, except that Office may refuse to make available:

(a) Investigatory records complied for law enforcement purposes to the extent allowed under the Freedom of Information Act (5 U.S.C. Section 552(b)); and

(b) Information not required to be made available under § 921.776-17 or 30 CFR 786.15.

Subpart 921.843—Federal Enforcement

§ 921.843-11 Cessation orders.

(a)(1) An authorized representative of the Secretary shall immediately order a cessation of coal exploration or of the relevant portion thereof, if he finds, on the basis of any Federal inspection, any condition or practice or any violation of the Act, this subpart, or an exploration approval issued under this subpart, which:

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, or water resources.

(2) If the cessation ordered under paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Secretary shall impose affirmative obligations on the person to whom it is issued to abate the conditions, practice, or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

(b)(1) An authorized representative of the Secretary shall immediately order a cessation of coal exploration operations, or of the relevant portion thereof, when a notice of violation has been issued under §921.843-12(a) and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative.

(2) A cessation order issued under this paragraph shall require the person to whom it is issued to take all steps the authorized representative of the Secretary deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this section shall be in writing, signed by the authorized representative who issued it and shall set forth with reasonable specificity: (1) The nature of the violation; (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, if appropriate, including the time for meeting any interim steps; and (4) a reasonable description of the portion of the coal exploration operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by an authorized representative of the Secretary.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the Secretary may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(f) An authorized representative of the Secretary shall terminate a cessation order, by written notice to the person to whom the order was issued, when he determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of OSM to assess civil penalties for those violations under Subpart 921.845 of this part.

§ 921.843-12 Notices of violation.

(a) An authorized representative of the Secretary shall issue a notice of violation if, on the basis of any Federal inspection, he finds a violation of the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart, which does not create an imminent danger or harm for which a cessation order most be issued under § 921.843-11.

(b) A notice of violation issued under this section shall be in writing, signed by the authorized representative who issued it, and shall set forth with reasonable specificity: (1) The nature of

the violation; (2) the remedial action required, which may include interim steps; (3) a reasonable time for abatement, which may include time for accomplishment of interim steps; and (4) a reasonable description of the portion of the coal exploration operation to which it applies.

(c) An authorized representative of the Secretary may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the prospector that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in paragraph (f) of this section. An extended abatement date pursuant to this section shall not be granted when the prospector's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the prospector in completing the remedial action required.

(d) If the person to whom the notice was issued fails to meet any time set for abatement or for accomplishment of an interim step, the authorized representative shall issue a cessation order under § 921.843–11(b).

(e) An authorized representative of the Secretary shall terminate a notice of violation by written notice to the person to whom it was issued, when he determines that all violations listed in the notice of violations have been abated. Termination shall not affect the right of OSM to assess civil penalties for those violations under Subpart 921.845 of this part.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the prospector of an ongoing operation with an exploration approval has timely applied for and diligently pursued an exploration approval renewal or other necessary approval of designs or plan but such approval has not been or will not be issued within 90 days after a valid approval expires or is required for reasons not within the control of the prospector;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the prospector has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(3) Where the prospector cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days or where, due to climatic conditions, abatement within 90 days clearly:

(i) Would cause more environmental harm than it would prevent; or

(ii) Requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in paragraphs (f)(1) through (f)(4) of this section exist, the prospector may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The prospector shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of paragraphs (c) and (f) of this section. In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevent written or oral information from the prospector or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denyng the request. The inspector's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(i) Any determination made under paragraph (h) of this section shall be in writing and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR Part 4.

(j) No extension granted under paragraph (h) of this section may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extenstion, the prospector may request a further extension in accordance with the procedures of paragraph (h) of this section.

§ 921.843–13 Suspension or revocation of approvals.

(a)(1) Except as provided in paragraph (b) of this section, the Director shall issue an order to a prospector requiring him or her to show cause why approval to conduct coal exploration under the Act should not be suspended or revoked, if the Director determines that a pattern of violations of any requirements of the Act, this subpart, or any condition for approval required by the Act exits or has existed and that the violations were caused by the prospector willfully or through unwarranted failure to comply with those requirements or conditions.

Willful violation means an act or omission which violates the Act, this subpart, or any exploration approval condition required by the Act, or this subpart, commited by a person who intends the result which actually occurs.

Unwarranted failure to comply means the failure of the prospector to prevent the occurrence of any violation of the approval or any requirement of the Act, due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such approval or the Act, due to indifference, lack of diligence, or lack of reasonable care. Violations by any person conducting coal exploration on behalf of the prospector shall be attributed to the prospector, unless the prospector establishes that they were acts of deliberate sabotage.

(2) The Director may determine that a pattern of violations exists or has existed, based on two or more Federal inspections of the exploration operations within any 12-month period, after considering the circumstances, including:

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this subpart, or the approval;

(ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this subpart, or the approval; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The Director shall determine that a pattern of violations exists, if he finds that there were violations of the same or related requirements of the Act, this subpart, or the approval during three or more Federal inspections of the approval area within any 12-month period.

(4)(i) In determining the number of violations within any 12-month period, the Director shall consider only violations issued as a result of a Federal inspection carried out during enforcement of this subpart.

(ii) The Director may consider violations issued as a result of inspections other than those mentioned

in paragraph (a)(4)(i) of this section in determining whether to exercise his discretion under paragraph (a)(2) of this section.

(b) The Director may decline to issue a show cause order, or may vacate an outstanding show cause order, if he finds that, taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the record of the case.

(c) At the same time as the issuance of the order, the Director shall:

(1) File a copy of the order to show cause with the Office of Hearings and Appeals.

(2) If practicable, publish notice of the order, including a brief statement of the procedure for intervention in the proceeding, in a newspaper of general circulation in the area of the coal exploration.

(3) Post the notice at the OSM State Office closest to the area of the coal exploration operations.

(d) If the prospector files an answer to the show cause order and requests a hearing under 43 CFR Part 4, a public hearing shall be provided as set forth in that part. The Office of Hearings and Appeals shall give thirty days' written notice of the date, time and place of the hearing to the Director, the prospector, the and any intervenor. Upon receipt of the notice, the Director shall publish it, if practicable, in a newspaper of general circulation in the area of the coal exploration and shall post it at the OSM State Office closest to those operations.

(e) Within sixty days after the hearing, and within the time limits set forth in 43 CFR Part 4, the Office of Hearings and Appeals shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the Office of Hearings and Appeals revokes or suspends the exploration approval the prospector shall immediately cease coal exploration on the approval area and shall:

(1) If the exploration approval is revoked, complete reclamation within the time specified in the order; or

(2) If the exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

(f) Whenever a prospector fails to abate a violation contained in a notice of violation or a cessation order within the abatement period set in the notice or order or as subsequently extended, the Director shall review the prospector's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to 30 CFR 921.845–15(b)(2).

§ 921.843–14 Service or notices of violations, cessation orders, and show cause orders.

(a) A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

(1) By tendering a copy of the notice of violation or cessation order to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

(b) A show cause order may be served on the person to whom it is issued in either manner provided in paragraph (a) of this section.

(c) Designation by any person of an agent for service of notices and orders shall be made in writing to the appropriate State office of OSM.

(d) OSM may furnish copies to any person having an interest in the coal exploration, or the exploration approval area, such as the owner of the fee or a corporate officer of the prospector or entity conducting coal exploration.

§ 921.843–15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of exploration, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the exploration site so that it may be viewed during the hearing or at any other location acceptable to OSM and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the exploration site shall be deemed to be reasonably close to the exploration site unless a closer location is requested and agreed to by OSM. Expiration of a notice or order shall not affect the Director's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice or violation in question has been abated or the hearing has been waived.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived or if, with the consent of the person to whom the notice or order was issued, that informal public hearing is held later than 30 days after the notice or order was served. For purposes of this paragraph:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order is issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he will be deemed to have waived an informal public hearing unless he requests one within 30 days after service of the notice or order, and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) OSM shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued and;

(2) Any person who filed a report which led to that notice or order.

(d) OSM shall also put notice of the hearing at the OSM State Office closest to the exploration site, and publish it, where practicable, in a newspaper of general circulation in the area of the exploration.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not

govern informal public hearings. An informal public hearing shall be conducted by a representative of OSM, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearing, OSM shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to—

(1) The person to whom the notice or order was issued and;

(2) Any person who filed a report which led to the notice or order.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under Sections 518(b), 521(a)(4), or 525 of the Act.

(h) The person conducting the hearing for OSM shall determine whether or not the exploration site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the exploration site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or the required remedial action.

§ 921.843–16 Formal review of citations.

(a) A person issued a notice of violation or cessation order under 30 CFR 921.843–11 or 921.843–12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing, under 43 CFR Part 4, within 30 days after receiving notice of the action.

(b) The filing of an application for review and request for a hearing under this section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

§ 921.843–17 Lack of information.

No notice of violation, cessation order, show cause order, or order revoking or suspending an approval may be vacated because it is subsequently determined that OSM did not have information sufficient under § 921.842–11(b)(1) or (b)(2) to justify an inspection.

§ 921.843–18 Inability to comply.

(a) No cessation order or notice of violation issued under this subpart may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exits.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under Subpart 921.845 of this part and of the duration of the suspension of an approval under § 921.843–13(e).

§ 921.843–19 Injunctive relief.

OSM may request the Attorney General of the United States to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order, in the district court of the United States for the district in which the coal exploration is located or in which the person to whom the notice of violation or order has been issued has his principal office, whenever that person or his or her agent, in violation of the Act, this subpart, or any condition of an exploration approval imposed under the under the Act or this subpart:

(a) Violates or fails or refuses to comply with any order or decision of the Secretary or an authorized representative of the Secretary under the Act or this subpart;

(b) Interferes with, hinders or delays the Secretary or an authorized representative of the Secretary in carrying out the provisions of the Act or this subpart;

(c) Refuses to admit an authorized representative of the Secretary to an exploration site;

(d) Refuses to permit inspection of an exploration area by an authorized representative of the Secretary;

(e) Refuses to furnish any required information or report;

(f) Refuses to permit access to or copying of any required records; or

(g) Refuses to permit inspection of monitoring equipment .

Subpart 921.845—Civil Penalties

§ 921.845–11 How assessments are made.

OSM shall review each notice of violation and cessation order issued under Subpart 921.843 of this part in accordance with the assessment procedures described in §§ 921.845–12, 921.845–13, 921.845–14, 921.845–15, and 921.845–16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

§ 921.845–12 When penalty will be assessed.

(a) OSM shall assess a penalty for each cessation order.

(b) OSM shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in § 921.845–13.

(c) OSM may assess a penalty for each notice of violation assigned 30 points or less under the point system described in § 921.845–13. In determining whether to assess a penalty OSM shall consider the factors listed in § 921.845–13(b).

§ 921.845–13 Point system for penalties.

(a) OSM shall use the point system described in this section to determine the amount of the penalty and, in the case of notices of violations, whether a mandatory penalty should be assessed as provided in § 921.845–12(b).

(b) Points shall be assigned as follows:

(1) *History of previous violations.* OSM shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration operation. Points shall be assigned as follows:

(i) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year;

(ii) No violation for which the notice or order has been vacated shall be counted; and

(iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) *Seriousness.* OSM shall assign up to 30 points based on the seriousness of the violation, as follows:

(i) *Probability of occurrence.* OSM shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Probability of Occurrence—Points

None—0
Insignificant—1–4
Unlikely—5–9
Likely—10–14
Occurred—15

(ii) *Extent of potential or actual damage.* OSM shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration area, OSM shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration area, OSM shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(iii) *Alternative.* In the case of a violation of an administrative requirement, such as a requirement to keep records, OSM shall, in lieu of paragraphs (b)(2) (i) and (ii) of this section, assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) *Negligence.* (i) OSM shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence.

(C) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(A) *No negligence* means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) *Negligence* means the failure of a prospector to prevent the occurrence of any violation of his or her approval or any requirement of the Act or this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such approval or the Act to indifference, lack of diligence, or a lack of reasonable care.

(C) *A greater degree of fault than negligence* means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration area shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) Good faith in attempting to achieve compliance.

(i) OSM shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

Degree of Good Faith—Points

Rapid compliance— −1 to −10
Normal compliance—0

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this section:

(A) *Rapid compliance* means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) *Normal compliance* means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

§ 921.845–14 Determination of amount of penalty.

OSM shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 921.845–13 to dollar amount according to the following schedule:

Points	Dollars
1	20
2	40
3	60
4	80
5	100
6	120
7	140
8	160
9	180
10	200
11	220
12	240
13	260
14	280
15	300
16	320
17	340
18	360
19	380
20	400
21	420
22	440
23	460
24	480
25	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800
59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600
67	4,700
68	4,800
69	4,900
70 and above 70	5,000

§ 921.845–15 Assessment of separate violations for each day.

(a) OSM may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, OSM shall consider the factors listed in § 921.845–13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which is assigned more then 70 points under § 921.845–13(b), OSM shall assess a civil penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in paragraph (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to Section 521(a) of the Act, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under Section 525(c) of the Act, after a determination that the person to whom the order was issued will suffer irreparable loss or damage from the

application of the requirements, the period permitted for abatement shall not end until the date on which the office of Hearings and Appeals issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under Section 526 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to Section 526(c) of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court; and

(2) Such penalty for failure to abate a violation shall not be assessed for more than 30 days for each such violation. If the prospector has not abated the violation within the 30-day period, OSM shall take appropriate action pursuant to Sections 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a recurrence of the failure to abate.

§ 921.845–16 Waiver of use of formula to determine civil penalty.

(a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in § 921.845–14 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this subpart, or any condition of any exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in § 921.845–13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

§ 921.845–17 Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to OSM and to the inspector who issued the notice of violation or cessation order. OSM shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) OSM shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice in order was issued, by certified mail, within 30 days of the issuance of the notice or order. If the mail is tendered at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(c) Unless a conference has been requested, OSM shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. OSM shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in paragraph (b) of this section, within 30 days after the date the violation is abated.

§ 921.845–18 Procedures for assessment conference.

(a) OSM shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 15 days from the date the proposed assessment or reassessment is mailed.

(b)(1) OSM shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later.

(2) OSM shall post notice of the time and place of the conference at the OSM office closest to the exploration site at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of OSM and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than $500 shall not be final and binding on the Secretary, until approved by the Director or his designee.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in § 921.845–17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by OSM within 30 days after the date of signing, OSM may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) of this section within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At formal review proceedings under Section 518, 521(a)(4), and 523 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

§ 921.845–19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 15 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested, if it has been decided in a review proceeding commenced under § 921.843–16.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) of this section to OSM, which shall hold them

in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in § 921.845–20.

§ 921.845–20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in § 921.845–19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Secretary, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this section, the escrowed funds shall be transferred to OSM in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this subpart, OSM shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to OSM within 15 days after the order is mailed to such person.

PART 922—MICHIGAN

General

Subpart 922.701—General

Areas Unsuitable for Mining

Subpart 922.760—General

Coal Exploration

Subpart 922.770—General Requirements for Exploration

Subpart 922.776—General Requirements for Coal Exploration

Subpart 922.787—Administrative and Judicial Review of Decisions on Coal Exploration

Performance Standards

Subpart 922.815—Performance Standards—Coal Exploration

Inspection and Enforcement Procedures

Subpart 922.842—Federal Inspections

Subpart 922.843—Federal Enforcement

Subpart 922.845—Civil Penalties

Authority: Pub. L. 95–87, the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.)

General

Subpart 922.701—General

§ 922.701–3 Authority and scope.

(a) The Secretary is required by Sections 504(a) and 512 of the Surface Mining Control and Reclamation Act of 1977 (the Act) to prepare, promulgate, and implement a Federal coal exploration program for the State of Michigan because it failed to submit a program by March 3, 1980 in accordance with Section 504(a) of the Act, 30 CFR Part 736, and the July 25, 1979, and August 21, 1979, opinions of the District Court for the District of Columbia, in *In re: Permanent Surface Mining Regulation Litigation*, 13 ERC 1447 and 1586.

(b) In addition to 30 CFR Part 922, the following regulations apply to the Federal Program for coal exploration in Michigan:

(1) 30 CFR Part 865 regarding protection of employees; and

(2) 30 CFR Part 706 on restriction of financial interests of Federal employees.

§ 922.701–4 Responsibility.

The Director of the Office of Surface Mining shall be primarily responsible for the regulation of coal exploration on non-Federal and non-Indian lands in the State of Michigan under this program in accordance with Sections 504 and 512 of the Act, 30 CFR Part 736, and this subpart. The Director has responsibility for: ensuring that every person who wants to conduct exploration operations files a notice of intention to explore; reviewing and approving applications for coal exploration operations which remove more than 250 tons of coal from the earth in any one location; reviewing and approving plans to reclaim areas that have been substantially disturbed; and ensuring adequate inspection and enforcement of all coal exploration operations for compliance with exploration approvals issued under this program, except where the primary responsiblity has been retained by the Secretary as specified in this program. The Director may delegate all or any part of his responsibilities to any other official of the Office of Surface Mining.

§ 922.701–5 Definitions.

As used in this subpart, the following terms have the specified meanings, except where otherwise indicated:

Acid-forming materials means earth materials that contain sulfide minerals or other materials which, if exposed to

air, water, or weathering processes, from acids that may create acid drainage.

Act means the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87, 30 U.S.C. 1201 et seq.).

Applicant means any person seeking approval from OSM to conduct coal exploration pursuant to this program.

Approximate original contour means that surface configuration achieved by backfilling and grading of the areas of exploration so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to exploration and blends into and complements the drainage pattern of the surrounding terrain.

Best technology currently available means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the area of exploration operation, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds in accordance with 30 CFR 816 and 817. The Director may determine the best technology currently available on a case-by-case basis.

Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388–77, referred to and incorporated by reference in the definition of anthracite.

Coal exploration means the field gathering of: (a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal in an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this subpart.

Department means the Department of the Interior.

Director means the Director, Office of Surface Mining Reclamation and Enforcement, or the Director's representative.

Disturbed area means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, or noncoal waste is placed by coal exploration operations. Those areas are classified as disturbed until reclamation is complete.

Diversion means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

Ephemeral stream means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

Existing structure means a structure or facility used in connection with or to facilitate coal exploration operations for which construction began prior to the implementation of this Federal program.

Exploration area means, with respect to hydrology, the topographic and ground water basin surrounding the general vicinity of the proposed operations area, which is of sufficient size including areal extent and depth to include one or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

Federal lands means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

Federal program means a program established by the Secretary pursuant to Sections 504 and 512 of the Act to regulate coal exploration operations on non-Federal and non-Indian lands within a State in accordance with the Act and 30 CFR Chapter VII.

Ground water means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

Hydrologic balance means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

Imminent danger to the health and safety of the public means the existence of any condition or practice, or any violation of an exploration approval or other requirements of the Act in a coal exploration operation, which could reasonably be expected to cause substantial physical harm to persons outside the approval area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

Impoundment means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

Indian lands means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

Intermittent stream means:

(a) A stream or reach of a stream that drains a watershed of at least one square mile, or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

Land use means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by OSM.

(a) "*Cropland.*" Land used for the production of adapted crops for harvest, alone or in a rotation with grasses and of legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

(b) "*Pastureland or land occasionally cut for hay.*" Land used primarily for the

long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(c) "*Grazingland.*" Includes both grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which are adjacent to or an integral part of these operations is also included.

(d) "*Forestry.*" Land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(e) "*Residential.*" Includes single-and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

(f) "Industrial/Commercial." Land used for—

(1) Extraction of transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(g) "Recreation." Land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) "Fish and wildlife habitat." Land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(i) "Developed water resources." Includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) "Undeveloped land or no current use or land management." Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

Office means the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act.

Overburden means any material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

Perrenial stream means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff.

Person means any individual, any Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, any partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization, and any agency, unit, or instrumentality of Federal, State or local government including any publicly owned utility or publicy owned corporation of Federal, State or local government.

Person having an interest which is or may be adversely affected or person with a valid legal interest shall include any person—

(a) Who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or any related action of the Secretary, or

(b) Whose property is or may be adversely affected by coal exploration or any related action of the Secretary.

Prospector means a person conducting or proposing to conduct coal exploration.

Public office means a facility under the direction and control of a governmental entity which is open to the public on a regular basis during reasonable business hours.

Reclamation means those actions taken to restore explored land to a postexploration land use approved by OSM, as required by this subpart.

Regulatory authority means the Secretary when administering this subpart.

Renewable resource lands means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural producton of food and fiber, and grazing lands.

Road means a surface right-of-way for purposes of travel by land vehicles used in coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration, including use by coal hauling vehicles leading to transfer, processing, or storage areas.

Secretary means the Secretary of the Interior or the Secretary's representative.

Sedimentation pond means a primary sediment control structure designed, constructed and maintained in accordance with 30 CFR 816.46 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volumes or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

Significant, imminent environmental harm to land, air or water resources means—

(a) An environmental harm is an adverse impact on land, air, or water resources including, but not limited to, plant and animal life.

(b) An enviromental harm is imminent, if a condition, practice, or violation exists which—

(1) Is causing such harm; or,

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 521(a)(3) of the Act, and is appreciable and not immediately reparable.

Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are—

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "B horizon." The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Spoil means overburden that has been removed during coal exploration operations.

Substantially disturb means to impact significantly upon land, air, or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, constructing roads and other access, and/or placing structures, excavated earth, or other debris on the surface of land.

Surface coal mining operations means—

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which dierctly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine-site, *Provided,* these activities do not include the extraction of coal incidential to the extraction of other minerals, where coal does not exceed 16⅔ percentum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Act; and *Provided further,* that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) Areas upon which the activities described in paragraph (a) of this definition occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depresssions, repair areas, storage areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary or incidential to the reclamation of such operations. This term includes the term surface coal mining operations.

Suspended solids or *nonfilterable residue, expressed as milligrams per liter,* means organic or inorganic materials carried or held in suspension in water which are retained by a standrd glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waster water analyses (40 CFR Part 136).

Temporary diversion means a diversion of a stream or overland flow during coal exploration operations which has not been approved by OSM to remain after reclamation as part of the approved postmining land use.

Topsoil means the A soil horizon layer of the three major soil horizons.

Water table means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

§ 922.701-11 Applicability.

(a) This part applies to all coal exploration operations within the State of Michigan except exploration for coal on Indian or Federal lands.

(b) Each structure used in connection with or to facilitate a coal exploration operation shall comply with the performance standards and the design requirements of Subpart 922.815 of this part, except that—

(1) An existing structure which meets the performance standards of Subpart 922.815 of this part but does not meet the design requirements of Subpart 922.815 of this part shall be exempted from meeting those design requirements by OSM. OSM may grant this exemption only as part of the coal exploration approval process after obtaining the information required by 30 CFR 922.776.

(2) Where an existing structure meets the performance standards of 30 CFR Chapter VII, Subchapter B, and these standards are at least as stringent as the comparable performance standards in Subpart 922.815 of this part, such structure shall be exempted by OSM from meeting the design requirements of Subpart 922.815 of this part. OSM may grant this exemption only as part of the coal exploration approval process after obtaining the information required by 30 CFR Subpart 922.776.

(3) Where exploration will result in removal of more than 250 tons, as required in § 922.776–13, an existing structure which meets a performance standard of 30 CFR Chapter VII, Subchapter B which is less stringent than the comparable performance standards of Subpart 922.815 of this part or which does not meet a performance standard of Subpart 922.815 of this part for which there was no equivalent performance standard in 30 CFR Subchapter B, shall be modified or reconstructed to meet the design standards of Subpart 922.815 of this part pursuant to a compliance plan approved by OSM in the coal exploration approval after making the findings required by 30 CFR 786.21.

(4) An existing structure which does not meet the performance standards of 30 CFR Chapter VII, Subchapter B, and which the applicant proposes to use in connection with or to facilitate a coal exploration operation shall be modified or reconstructed to meet the design standards of Subpart 922.815 of this part prior to issuance of the exploration approval.

(c)(1) Any person conducting coal exploration on non-Federal and non-Indian lands on or after the effective date of this subpart shall either file a notice of intention to explore or obtain approval of OSM as required by 30 CFR Subpart 922.776.

(2) Two months after the effective date of this subpart, coal exploration performance standards in 30 CFR Subpart 922.815 shall apply to coal exploration on non-Federal and non-Indian lands which substantially disturbs the natural land surface.

§ 922.701-12 Petitions to initiate rulemaking.

The public may petition OSM to initiate rulemaking concerning this exploration program pursuant to 30 CFR 700.12.

§ 922.701-13 Notice of citizen suits.

A person who intends to initiate a civil action under Section 520 of the Act must give notice as provided in 30 CFR 700.13.

§ 922.701-14 Availability of records.

(a) Records required by the Act to be made available locally to the public shall be retained at the Michigan Department of Natural Resources, Geological Survey Division, Reclamation and Mining Control Unit, Stevens T. Mason Building, P.O. Box 30028, Lansing, Michigan 48909.

(b) Other records or documents in the possession of OSM may be requested under 43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act.

§ 922.701-15 Computation of time.

(a) Except as otherwise provided, computation of time under this subpart is based on calendar days.

(b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which OSM is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is 7 days or less.

§ 922.701-16 Termination of the program.

This program shall terminate upon the effective date of a State program from the State of Michigan under 30 CFR Part 732.

Areas Unsuitable for Mining

Subpart 922.760—General

§ 922.760-3 General.

Any person who intends to petition to designate non-Federal or non-Indian lands subject to this subpart unsuitable for mining should follow the procedures given at 30 CFR Part 764, provided that no petition may be filed until one year after the effective date of this rule. The provisions of 30 CFR Subchapter F will apply to lands subject to Subpart 922.760.

Coal Exploration

Subpart 922.770—General Requirements for Exploration

§ 922.770-4 Responsibilities.

(a) A person seeking to conduct coal exploration must file a notice of intention or obtain approval of OSM under 30 CFR Subpart 922.776 before commencing exploration.

(b) OSM shall review each application for exploration approval and issue, condition, deny, suspend, or revoke such approvals.

§ 922.770-5 Definitions.

As used throughout Subparts 922.770, 922.776 and 922.787 of this part, except where otherwise indicated:

Applicant means a person who seeks to obtain an exploration approval under Subparts 922.770, 922.776 and 922.787 of this part.

Application for approval means the documents and other information filed with OSM under Subparts 922.770 and 922.776 of this part for the issuance of an exploration approval.

Complete application means an application for exploration approval which contains all information required under the Act and Subparts 922.770 and 922.776 of this part.

Exploration approval means the approval required under Section 512 of the Act.

§ 922.770-12 Coordination with respect to requirements under other laws.

(a) To avoid duplication, OSM shall provide for coordinated review of applications for approval of coal exploration with the governmental agencies responsible for issuing permits under or assuring compliance with:

(1) Any other Federal permit process applicable to those operations including, at a minimum, permits required under the

(i) Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*);

(ii) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*); and

(iii) Resource Conservation and Recovery Act (42 U.S.C. 3251 *et seq.*).

(2) Any water quality management plans which have been approved by the Administrator of the Environmental Protection Agency under Sections 208 or 303 (c) and (e) of the Clean Water Act, as amended (33 U.S.C. 1288, 1313 (c) and (e));

(3) The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); Executive Order 11593; and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 4332).

(b) All prospectors shall comply with the following Michigan State statutes and all others not designated by OSM as interfering with the achievement of the purposes and requirements of the Act.

(1) Explosives Act of 1970, MCL Sections 29.41 through 29.55 which prohibit persons from handling, storing, controlling, using, purchasing, or transferring an explosive unless he has applied for and obtained a valid permit as set out in Section 29.44.

(2) Aboriginal Records and Antiquities Act, MCL Sections 299.50 through 299.55. This act protects, preserves and regulates the taking of aboriginal records and antiquities within the State of Michigan. Under Section 53 it is unlawful for any person to explore or excavate any of the aboriginal remains covered by this Act upon lands owned by the State, except under permit issued by the Director of Conservation.

(3) Rights of Co-Tenants in Lands and Mineral Rights Therein, MCL. Sections 319.151 through 319.156. This act defines the rights of co-tenants, joint owners, tenants in common and co-partners in land and provides for the development and operation of such lands for mining purposes.

(4) Protection of Forests, MCL Sections 320.21 through 320.38. This act provides for the preservation of forests and for the prevention and suppression of forest and prairie fires. Pursuant to Section 320.25, a person is prohibited from operating any engine or other machinery not equipped with spark arresters or other suitable devices to prevent escape of fire or sparks.

(5) Leasing, Control, Taxation, and Seeding of Certain State Lands, MCL Sections 322.401 through 322.429. Section 27 of this act provides the Conservation Department, as successor to the public domain commission, authority to enter into lease with persons, firms, associations, and corporations granting the right to drilling, mining, taking and removing metallic minerals, marl, stove, rock, sand, gravel, earth, oil, and gas from or under all of the unpatented over flowed lands, made lands, and lake bottom lands belonging to the State of Michigan.

(6) Great Lakes Submerged Lands Act, MCL Sections 322.70 through 322.715. This act authorizes the Department of Conservation of the State of Michigan to grant, convey, or lease certain unpatented lake bottomlands and unpatented made lands in the Great Lakes.

(7) Historical Activities Act of 1957, as amended , MCL Sections 399.201 through 399.212. This act authorizes cities, villages, and counties to create historical commissions. Section (5) requires a permit from a Historic District Commission before construction, alteration, repair, moving, or demolition affecting the exterior appearance of a historic structure is made.

(8) Farmland and Open Preservation Act, MCL Sections 554.701 through 544.719 which provide for farmland development rights agreements and open space development rights easements. Under these agreements the

owner of land relinquishes to the public in perpetuity or for a term of years, the right to develop the land.

(9) Protection of Exploration Pits and Holes, Michigan Statutes Annotated Section 28.761, MCL Section 750.493. This act requires that persons digging shafts, pits, holes, or trenches on any uninclosed or unoccupied land within the State to a depth of four or more feet for the purpose of exploring for minerals must erect and maintain a fence or enclosure around the area or be guilty of a misdemeanor.

Subpart 922.776—General Requirements for Coal Exploration

§ 922.776-11 General requirements—Exploration removing less than 250 tons.

(a) Any person who intends to conduct coal exploration during which less than 250 tons of coal will be removed from the area to be explored shall, prior to conducting the exploration, file with OSM a written notice of intention to explore.

(b) The notice shall include:

(1) The name, address, and telephone number of the person seeking to explore.

(2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration operations;

(3) A description sufficient to enable OSM to identify the location and size of areas at which exploration operations are to be conducted, access routes, the distance from the area or areas to a public road, and means of transportation used or proposed to be used;

(4) A statement of the period of intended exploration;

(5) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration operations.

(c) Any person who conducts coal exploration operations subject to this section which substantially disturb the natural land surface shall comply with 30 CFR Subpart 922.815.

(d) OSM shall, except as otherwise provided in § 922.776-17, place such notices on public file and make them available for public inspection and copying.

§ 922.776-12 General requirements: Exploration removing more than 250 tons.

Any person who intends to conduct coal exploration in which more than 250 tons of coal are to be removed from the area to be explored shall, prior to conducting the exploration, apply for and obtain the written approval of OSM, in accordance with the following:

(a) Each application for approval shall contain, at a minimum, the following information:

(1) The name, address, and telephone number of the applicant;

(2) The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(3) An exploration and reclamation operations plan, including:

(i) A narrative description of the proposed exploration area, describing surface topography; geological, surface water, and other physical features as described in paragraph (a)(5) of this section; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including but not limited to any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); and districts, sites, buildings, structures, or objects listed on the National Register of Historic Places;

(ii) A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

(iii) An estimated timetable for conducting and completing each phase of the exploration and reclamation;

(iv) The estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts;

(v) A description of the measures to be used to comply with the applicable requirements of 30 CFR Subpart 922.815;

(4) The name and address of the owner(s) of record of the surface land and of the subsurface mineral estate of the area to be explored; and

(5) A description of existing roads, occupied dwellings and pipelines; the proposed location of trenches, roads, and other access routes and structures to be constructed; the location of excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, topographic, cultural, and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(b) Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within one week after OSM has determined the application to be complete, public notice of the filing of the application shall be posted by the applicant at the courthouse or other public office designated by the Director in the vicinity of the proposed exploration area.

(2) The public notice shall state the name and business address of the person seeking approval, the date of filing of the application, the address to which written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration.

(3) Any person with an interest which is or may be adversely affected shall have the right to file written comments on the application within 15 days after the posting of the notice described in paragraph (b)(1) of this section.

§ 922.776-13 Application: Approval or disapproval of exploration removing more than 250 tons.

(a) OSM shall act upon a completed application for approval within 60 days or such longer time as may be reasonable under the circumstances. If additional time is necessary, OSM shall notify the applicant that the plan is being reviewed, but that more time is necessary to complete such review, setting forth the reasons why additional time is needed.

(b) OSM shall approve a complete application if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application:

(1) Will be conducted in accordance with Subpart 922.815;

(2) Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(3) Will not adversely affect cultural resources or districts, sites, buildings, structures, or objects listed on the National Register of Historic Places, unless the proposed exploration has been approved by both OSM and the agency with jurisdiction over such matters.

(c) Each approval shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with 30 CFR Subpart 922.815.

(d) Approval shall be given for a period not to exceed 2 years. Approval may be renewed for successive two-year periods upon reapplication.

(e) Except as otherwise provided in this section, review, revision, and renewal of approvals and transfer, sale,

and assignment of rights granted by approvals shall be done in accordance with 30 CFR Part 788.

§ 922.776–14 Application: Notice and hearing for exploration of more than 250 tons.

(a) OSM shall notify the applicant and the appropriate local government officials, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. OSM shall provide public notice of approval or disapproval of each application by publication in a newspaper of general circulation in the general vicinity of the proposed operations.

(b) Any person with an interest which is or may be adversely affected by a decision of OSM pursuant to paragraph (a) of this section shall have the opportunity for administrative and judicial review as set forth in 30 CFR Subpart 922.787.

§ 922.776–15 Requirements for exploration operations.

(a) All coal exploration and reclamation operations which substantially disturb the natural land surface or which remove more than 250 tons of coal shall be conducted in accordance with the coal exploration requirements of this subpart and any conditions in the exploration approval.

(b) Any person who conducts any coal exploration in violation of the provisions of Subpart 922.815 shall be subject to the provisions of Subparts 922.842 through 922.845.

§ 922.776–17 Public availability of information.

(a) Except as provided in paragraph (b) of this section, all information submitted to OSM under this subpart shall be made available for public inspection and copying at the State of Michigan Department of Natural Resources, Geological Survey Division, Reclamation and Mining Control Unit, Stevens T. Mason Building, P.O. Box 30028, Lansing, Michigan 48909.

(b)(1) OSM shall not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and OSM determines that the information is confidential and may be withheld under the Freedom of Information Act, 5 U.S.C. 552.

(2) OSM shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(3) Information requested to be held as confidential under this section shall not be made publicly available unless notice and opportunity to be heard is afforded to persons both seeking and opposing disclosure of the information and such information is determined not to be confidential.

Subpart 922.787—Administrative and Judicial Review of Decisions on Coal Exploration

§ 922.787–11 Administrative review.

(a) Within 30 days after the applicant is notified of the final decision of OSM concerning the application for coal exploration under 30 CFR 922.776–14, the applicant, or any person with an interest which is or may be adversely affected, may request a hearing on the reasons for the final decision in accordance with this section.

(b) OSM may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(3) The relief is not to affect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(4) The relief sought is not the issuance of exploration approval where an approval has been denied, in whole or in part, by OSM.

(c)(1) For the purpose of such hearing, the hearing authority may administer oaths and affirmations, subpoena witnesses, written, or printed materials, compel attendance of witnesses and production of written or printed materials, compel discovery, and take evidence, including but not limited to site inspections of the land to be affected and other coal exploration operations carried on by the applicant in the general vicinity of the proposed operations.

(2) A verbatim record of each public hearing required by this section shall be made and a transcript made available on the motion of any party or by order of the hearing authority.

(3) *Ex parte* contacts between representatives of the parties before the hearing authority and the hearing authority shall be prohibited.

(d) Within 30 days after the close of the record, the hearing authority shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the hearing authority with respect to the appeal.

(e) The burden of proof at such hearings shall be on the party seeking to reverse the decision of OSM.

§ 922.787–12 Judicial review.

(a) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to appeal as provided in paragraph (b) of this section, if:

(1) The applicant or person is aggrieved by the decision of the hearing authority in an administrative review proceeding conducted pursuant to § 922.787–11; or

(2) Either OSM or the hearing authority for administrative review under § 922.787–11 fails to act within time limits specified in the Subparts 922.770 through 922.787 of this part.

(b) The action of OSM or the hearing authority identified in paragraph (a) of this section is subject to judicial review by the United States District Court for the district in which the coal exploration is or would be located, in the time and manner provided for in Section 526 (a)(2) and (b) of the Act. The availability of such review shall not limit the operation of rights established in Section 520 of the Act.

Performance Standards

Subpart 922.815—Performance Standards—Coal Exploration

§ 922.815–11 General responsibility of persons conducting coal exploration.

(a) Each person who seeks to conduct coal exploration which substantially disturbs the natural land surface and in which 250 tons or less of coal are removed shall file the notice of intention to explore required under 30 CFR 922.776–11 and shall comply with § 922.815–15.

(b) Each person who conducts coal exploration which substantially disturbs the natural land surface and in which more than 250 tons of coal are removed from the area described by the written approval of OSM shall comply with the procedures described in the exploration and reclamation operations plan approved under § 922.776–12 and shall comply with § 922.815–15.

§ 922.815-13 Required documents.

Each person who conducts coal exploration which substantially disturbs the natural land surface and which removes more than 250 tons of coal shall, while in the exploration area, possess written approval of OSM for the activities granted under 30 CFR 922.776-12. The written approval shall be available for review by the authorized representative of OSM upon request.

§ 922.815-15 Performance standards for coal exploration.

The following performance standards are applicable to coal exploration which substantially disturbs the natural land surface.

(a) Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in 30 CFR 780.16(b) shall not be disturbed during coal exploration.

(b) The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area.

(c)(1) Vehicular travel on other than established roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(2) Any new road in the exploration area shall be constructed to meet the requirements of OSM.

(3) Existing roads may be used for exploration in accordance with the following:

(i) All applicable Federal, State, and local requirements shall be met.

(ii) If the road is significantly altered for exploration, including but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then paragraph (g) of this section shall apply to all areas of the road which are altered or which result in such additional contributions.

(iii) If the road is significantly altered for exploration operations and will remain as a permanent road after exploration operations are completed, the person conducting exploration shall ensure that the requirements of 30 CFR 816.150 through 816.166, as appropriate, are met for the design, construction, alteration, and maintenance of the road.

(4) Promptly after exploration operations are completed, existing roads used during exploration shall be reclaimed either:

(i) To a condition equal to or better than their pre-exploration condition; or

(ii) To a condition required by OSM.

(d) If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(e) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by OSM.

(f) Areas disturbed by coal exploration shall be revegetated by the person who conducts the exploration or his or her agent. If more than 250 tons of coal are removed from the exploration area, all revegetation shall be in compliance with the plan approved by OSM and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved post-exploration land use and in accordance with the following:

(1) All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area. If both the pre-exploration and post-exploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface to prevent erosion.

(g) With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent, or perennial stream shall be diverted during coal exploration operations. Overland flow of water shall be diverted in a manner that:

(1) Prevents erosion;

(2) To the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration areas; and

(3) Complies with all other applicable State or Federal requirements.

(h) Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of 30 CFR 816.13, 816.14, and 816.15.

(i) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that OSM determines may remain to:

(1) Provide additional environmental quality data;

(2) Reduce or control the on- and off-site effects of the exploration operations; or

(3) Facilitate future surface mining and reclamation operations by the person conducting the approved exploration operations.

(j) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as those listed in 30 CFR 816.45 or sedimentation ponds which comply with 30 CFR 816.46. OSM may specify additional measures which shall be adopted by the prospector.

(k) Toxic or acid-forming materials shall be handled and disposed of in accordance with 30 CFR 816.48 and 816.103. If specified by OSM, additional measures shall be adopted by the prospector.

Inspection and Enforcement Procedures

Subpart 922.842—Federal Inspections

§ 922.842-11 Federal inspections.

(a) Authorized representatives of the Secretary shall conduct inspections of coal exploration operations as necessary;

(1) To develop or enforce this subpart;

(2) To enforce those requirements and permit conditions imposed under this subpart or 30 CFR Chapter VII or as provided in this section; and

(3) To determine whether any notice of violation or cessation order issued during an inspection authorized under this section has been complied with.

(b)(1) An authorized representative of the Secretary shall immediately conduct a Federal inspection to enforce any requirement of the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart when the authorized representative has reason to believe, on the basis of information available to him or her (other than information resulting from a previous Federal inspection), that there exists a violation of the Act, this subpart, or any condition of an exploration approval, or that there exists any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources.

(2) An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in paragraph (b)(1) of this section.

(c) OSM shall conduct periodic inspection of all coal exploration and reclamation operations required to

comply in whole or part with the Act or this subpart, including the collection of evidence with respect to every violation of any condition of the exploration approval, the Act or this subpart.

(d) The inspection required under paragraph (c) of this section shall:

(1) Be carried out on an irregular basis so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the person being inspected or any of his agents or employees, except for necessary onsite meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this subpart, any condition of an exploration approval imposed under this subpart and the Act.

§ 922.842–12 Citizens' requests for Federal inspections.

(a) A citizen may request a Federal inspection under 30 CFR 922.842–11(b), by furnishing to an authorized representative of the Secretary a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition, or practice referred to in 30 CFR 922.842–11(b)(1) exists and setting forth a phone number and address where the citizen can be contacted.

(b) The identity of any person supplying information to OSM relating to a possible violation or imminent danger or harm shall remain confidential with OSM, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Freedom of Information Act (5 U.S.C. 552) or other Federal law;

(c) If a Federal inspection is conducted as a result of information conducted as a result of information provided to OSM by a citizen as described in paragraph (a) of this section, the citizen shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Secretary during the inspection. Such person has a right of entry to, upon and through the coal exploration operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the exploration area. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within 10 days of the Federal inspection or, if there is no inspection, within 15 days of receipt of the citizen's written statement, OSM shall send the citizen the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the Federal inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

(2) If no Federal inspection was conducted, an explanation of the reason why; and

(3) An explanation of the citizen's right, if any, to informal review of the action or inaction of OSM under 30 CFR 922.842–15.

(e) OSM shall give copies of all materials in paragraphs (d)(1) and (2) of this section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted under paragraph (b) of this section.

§ 922.842–13 Right of entry.

(a) Each authorized representative of the Secretary conducting a Federal inspection under 30 CFR 922.842–11:

(1) Shall have a right of entry to, upon, and through any coal exploration operation, without advance notice or a search warrant, upon presentation of appropriate credentials; and

(2) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation, required under the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart.

(b) No search warrant shall be required with respect to any activity under paragraph (a) of this section except that a search warrant may be required for entry into a building.

§ 922.842–14 Review of adequacy and completeness of inspections.

Any person who is or may be adversely affected by a coal exploration operation may notify OSM in writing of any alleged failure on the part of OSM to make adequate and complete or periodic Federal inspections as provided in 30 CFR 922.842–11(b)(1), (c) and (d). The notification shall include sufficient information to create a reasonable belief that 30 CFR 922.842–11(b)(1), (c) and (d) are not being complied with and to demonstrate that the person is or may be adversely affected. OSM shall within 15 days or receipt of the notification determine whether 30 CFR 922.842–11(b)(1), (c) and (d) are being complied with, and if not, shall immediately order a Federal inspection to remedy the noncompliance. OSM shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, to remedy the noncompliance.

§ 922.842–15 Review of decision not to inspect or enforce.

(a) Any person who is or may be adversely affected by a coal exploration operation may ask OSM to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for Federal inspection under 30 CFR 922.842–12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) OSM shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the citizen shall not be disclosed unless confidentiality has been waived or disclosure is required under the Freedom of Information Act or other Federal law.

(c) Informal review under this section shall not affect any right to formal review under Section 525 of the Act or to a citizen's suit under Section 520 of the Act.

§ 922.842–16 Availability of records.

Copies of all records, reports, inspection materials, or information obtained by OSM under Title V of the Act or this subpart shall be made immediately available to the public in the area of exploration so that they are conveniently available to residents of that area, except that Office may refuse to make available:

(a) Investigatory records complied for law enforcement purposes to the extent allowed under the Freedom of Information Act (5 U.S.C. Section 552(b)); and

(b) Information not required to be made available under § 922.776–17 or 30 CFR 786.15.

Subpart 922.843—Federal Enforcement

§ 922.843–11 Cessation orders.

(a)(1) An authorized representative of the Secretary shall immediately order a cessation of coal exploration or of the

relevant portion thereof, if he finds, on the basis of any Federal inspection, any condition or practice or any violation of the Act, this subpart, or an exploration approval issued under this subpart, which:

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably be expected to cause significant, imminent, environmental harm to land, or water resources.

(2) If the cessation ordered under paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Secretary shall impose affirmative obligations on the person to whom it is issued to abate the conditions, practice, or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

(b)(1) An authorized representative of the Secretary shall immediately order a cessation of coal exploration operations, or of the relevant portion thereof, when a notice of violation has been issued under § 922.843–12(a) and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative.

(2) A cessation order issued under this paragraph shall require the person to whom it is issued to take all steps the authorized representative of the Secretary deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraph (a) or (b) of this section shall be in writing, signed by the authorized representative who issued it and shall set forth with reasonable specificity: (1) The nature of the violation; (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, if appropriate, including the time for meeting any interim steps; and (4) a reasonable description of the portion of the coal exploration operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by an authorized representative of the Secretary.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the Secretary may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(f) An authorized representative of the Secretary shall terminate a cessation order, by written notice to the person to whom the order was issued, when he determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of OSM to assess civil penalties for those violations under Subpart 922.845 of this Part.

§ 922.843–12 Notices of violation.

(a) An authorized representative of the Secretary shall issue a notice of violation if, on the basis of any Federal inspection, he finds a violation of the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart, which does not create an imminent danger or harm for which a cessation order must be issued under § 922.843–11.

(b) A notice of violation issued under this section shall be in writing, signed by the authorized representative who issued it, and shall set forth with reasonable specificity: (1) The nature of the violation; (2) the remedial action required, which may include interim steps; (3) a reasonable time for abatement, which may include time for accomplishment of interim steps; and (4) a reasonable description of the portion of the coal exploration operation to which it applies.

(c) An authorized representative of the Secretary may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the prospector that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in paragraph (f) of this section. An extended abatement date pursuant to this section shall not be granted when the prospector's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the prospector in completing the remedial action required.

(d) If the person to whom the notice was issued fails to meet any time set for abatement or for accomplishment of an interim step, the authorized representative shall issue a cessation order under § 922.843–11(b).

(e) An authorized representative of the Secretary shall terminate a notice of violation by written notice to the person to whom it was issued, when he determines that all violations listed in the notice of violations have been abated. Termination shall not affect the right of OSM to assess civil penalties for those violations under Subpart 922.845 of this part.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the prospector of an ongoing operation with an exploration approval has timely applied for and diligently pursued an exploration approval renewal or other necessary approval of designs or plan but such approval has not been or will not be issued within 90 days after a valid approval expires or is required for reasons not within the control of the prospector;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the prospector has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy:

(3) Where the prospector cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days or where, due to climatic conditions, abatement within 90 days clearly:

(i) Would cause more environmental harm than it would prevent; or

(ii) Requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in paragraphs (f)(1) through (f)(4) of this section exist, the prospector may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The prospector shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of paragraphs (c) and (f) of this section. In determining whether or not to grant an

abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the prospector or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The inspector's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(i) Any determination made under paragraph (h) of this section shall be in writing and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR Part 4.

(j) No extension granted under paragraph (h) of this section may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the prospector may request a further extension in accordance with the procedures of paragraph (h) of this section.

§ 922.843–13 Suspension or revocation of approvals.

(a)(1) Except as provided in paragraph (b) of this section, the Director shall issue an order to a prospector requiring him or her to show cause why approval to conduct coal exploration under the Act should not be suspended or revoked, if the Director determines that a pattern of violations of any requirements of the Act, this subpart, or any condition for approval required by the Act exists or has existed and that the violations were caused by the prospector willfully or through unwarranted failure to comply with those requirements or conditions. Willful violation means an act or omission which violates the Act, this subpart, or any exploration approval condition required by the Act, or this subpart, committed by a person who intends the result which actually occurs. Unwarranted failure to comply means the failure of the prospector to prevent the occurrence of any violation of the approval or any requirement of the Act, due to indifference, lack of diligence, or lack or reasonable care, or the failure to abate any violation of such approval or the Act, due to indifference, lack of diligence, or lack or reasonable care. Violations by any person conducting coal exploration on behalf of the prospector shall be attributed to the prospector, unless the prospector establishes that they were acts of deliberate sabotage.

(2) The Director may determine that a pattern of violations exists or has existed, based on two or more Federal inspections of the exploration operations within any 12-month period, after considering the circumstances, including:

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this subpart, or the approval;

(ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this subpart, or the approval; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The Director shall determine that a pattern of violations exists, if he finds that there were violations of the same or related requirements of the Act, this subpart, or the approval during three or more Federal inspections of the approval area within any 12-month period.

(4)(i) In determining the number of violations within any 12-month period, the Director shall consider only violations issued as a result of a Federal inspection carried out during enforcement of this subpart.

(ii) The Director may consider violations issued as a result of inspections other than those mentioned in clause (i) in determining whether to exercise his discretion under paragraph (a)(2) of this section.

(b) The Director may decline to issue a show cause order, or may vacate an outstanding show cause order, if he finds that, taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the record of the case.

(c) At the same time as the issuance of the order, the Director shall:

(1) File a copy of the order to show cause with the Office of Hearings and Appeals.

(2) If practicable, publish notice of the order, including a brief statement of the procedure for intervention in the proceeding, in a newspaper of general circulation in the area of the coal exploration.

(3) Post the notice at the OSM State Office closest to the area of the coal exploration operations.

(d) If the prospector files an answer to the show cause order and requests a hearing under 43 CFR Part 4, a public hearing shall be provided as set forth in that part. The Office of Hearings and Appeals shall give thirty days' written notice of the date, time and place of the hearing to the Director, the prospector, and any intervenor. Upon receipt of the notice, the Director shall publish it, if practicable, in a newspaper of general circulation in the area of the coal exploration and shall post it at the OSM State Office closest to those operations.

(e) Within sixty days after the hearing, and within the time limits set forth in 43 CFR Part 4, the Office of Hearings and Appeals shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the Office of Hearings and Appeals revokes or suspends the exploration approval the prospector shall immediately cease coal exploration on the approval area and shall:

(1) If the exploration approval is revoked, complete reclamation within the time specified in the order; or

(2) If the exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

(f) Whenever a prospector fails to abate a violation contained in a notice of violation or a cessation order within the abatement period set in the notice or order or as subsequently extended, the Director shall review the prospector's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to 30 CFR 922.845–15(b)(2).

§ 922.843–14 Service of notices of violations, cessation orders, and show cause orders.

(a) A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

(1) By tendering a copy of the notice of violation or cessation order to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or

order by certified mail or by hand to the person to whom it is issued or his designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

(b) A show cause order may be served on the person to whom it is issued in either manner provided in paragraph (a) of this section.

(c) Designation by any person of an agent for service of notices and orders shall be made in writing to the appropriate State office of OSM.

(d) OSM may furnish copies to any person having an interest in the coal exploration, or the exploration approval area, such as the owner of the fee or a corporate officer of the prospector or entity conducting coal exploration.

§ 922.843-15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of exploration, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the exploration site so that it may be viewed during the hearing or at any other location acceptable to OSM and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the exploration site shall be deemed to be reasonably close to the exploration site unless a closer location is requested and agreed to by OSM. Expiration of a notice or order shall not affect the Director's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice or violation in question has been abated or the hearing has been waived.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this paragraph:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order is issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he will be deemed to have waived an informal public hearing unless he requests one within 30 days after service of the notice or order, and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) OSM shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued and;

(2) Any person who filed a report which led to that notice or order.

(d) OSM shall also put notice of the hearing at the OSM State Office closest to the exploration site, and publish it, where practicable, in a newspaper of general circulation in the area of the exploration.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of OSM, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearings, OSM shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to—

(1) The person to whom the notice or order was issued and;

(2) Any person who filed a report which led to the notice or order,

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under Sections 518(b), 521(a)(4), or 525 of the Act.

(h) The person conducting the hearing for OSM shall determine whether or not the exploration site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the exploration site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or the required remedial action.

§ 922.843-16 Formal review of citations.

(a) A person issued a notice of violation or cessation order under 30 CFR 922.843-11 or 922.843-12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing, under 43 CFR Part 4, within 30 days after receiving notice of the action.

(b) The filing of an application for review and request for a hearing under this section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

§ 922.843-17 Lack of information.

No notice of violation, cessation order, show cause order, or order revoking or suspending and approval may be vacated because it is subsequently determined that OSM did not have information sufficient under § 922.842-11(b)(1) or (b)(2) to justify an inspection.

§ 922.843-18 Inability to comply.

(a) No cessation order or notice of violation issued under this subpart may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under Subpart 922.845 of this part and of the duration of the suspension of an approval under § 922.843-13(e).

§ 922.843-19 Injunctive relief.

OSM may request the Attorney General of the United States to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order, in the district court of the United States for the district in which the coal exploration is located or in which the person to whom the notice of violation or order has been issued has his principal office, whenever that person or his or her agent, in violation of the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart:

(a) Violates or fails or refuses to comply with any order or decision of the Secretary or an authorized representative of the Secretary under the Act or this subpart;

(b) Interferes with, hinders or delays the Secretary or an authorized representative of the Secretary in carrying out the provisions of the Act or this subpart;

(c) Refuses to admit an authorized representative of the Secretary to an exploration site;

(d) Refuses to permit inspection of an exploration area by an authorized representative of the Secretary;

(e) Refuses to furnish any required information or report;

(f) Refuses to permit access to or copying of any required records; or

(g) Refuses to permit inspection of monitoring equipment.

Subpart 922.845—Civil Penalties

§ 922.845-11 How assessments are made.

OSM shall review each notice of violation and cessation order issued under Subpart 922.843 of this part in accordance with the assessment procedures described in §§ 922.845-12, 922.845-13, 922.845-14, 922.845-15 and 922.845-16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

§ 922.845-12 When penalty will be assessed.

(a) OSM shall assess a penalty for each cessation order.

(b) OSM shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in § 922.845-13.

(c) OSM may assess a penalty for each notice of violation assigned 30 points or less under the point system described in § 922.845-13. In determining whether to assess a penalty OSM shall consider the factors listed in § 922.845-13(b).

§ 922.845-13 Point system for penalties.

(a) OSM shall use the point system described in this section to determine the amount of the penalty and, in the case of notices of violations, whether a mandatory penalty should be assessed as provided in § 922.845-12(b).

(b) Points shall be assigned as follows:

(1) *History of previous violations.* OSM shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration operation. Points shall be assigned as follows:

(i) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year;

(ii) No violation for which the notice or order has been vacated shall be counted; and

(iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) *Seriousness.* OSM shall assign up to 30 points based on the seriousness of the violation, as follows:

(i) *Probability of occurrence.* OSM shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Probability of Occurence—Points

None—0
Insignificant—1-4
Unlikely—5-9
Likely—10-14
Occurred—15

(ii) *Extent of potential or actual damage.* OSM shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration area, OSM shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration area, OSM shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(iii) *Alternative.* In the case of a violation of an administrative requirement, such as a requirement to keep records, OSM shall, in lieu of paragraphs (b)(2) (i) and (ii) of this section, assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) *Negligence.* (i) OSM shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(C) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(A) *No negligence* means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) *Negligence* means the failure of a prospector to prevent the occurrence of any violation of his or her approval or any requirement of the Act or this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such approval or the Act due to indifference, lack of diligence, or a lack of reasonable care.

(C) *A greater degree of fault than negligence* means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration area shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) Good faith in attempting to achieve compliance.

(i) OSM shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

Degree of Good Faith—Points

Rapid compliance: −1 to −10
Normal compliance: −0

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this section:

(A) *Rapid compliance* means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) *Normal compliance* means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be

reassessed after the violation has been abated.

§ 922.845-14 Determination of amount of penalty.

OSM shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 922.845-13 to dollar amount, according to the following schedule:

Points	Dollars
1	$20
2	40
3	60
4	80
5	100
6	120
7	140
8	160
9	180
10	200
11	220
12	240
13	260
14	280
14	300
15	300
16	320
17	340
18	360
19	380
20	400
21	420
22	440
23	460
24	480
25	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800
59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600
67	4,700
68	4,800
69	4,900
70 and above 70	5,000

§ 922.845-15 Assessment of separate violations for each day.

(a) OSM may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, OSM shall consider the factors listed in §922.845-13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which is assigned more than 70 points under § 922.845-13(b), OSM shall assess a civil penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in paragraph (a), whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to Section 521(a) of the Act, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under Section 525(c) of the Act, after a determination that the person to whom the order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Office of Hearings and Appeals issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under Section 526 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to Section 526(c) of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court; and

(2) Such penalty for failure to abate a violation shall not be assessed for more than 30 days for each such violation. If the prospector has not abated the violation within the 30-day period, OSM shall take appropriate action pursuant to Sections 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a recurrence of the failure to abate.

§ 922.845-16 Waiver of use of formula to determine civil penalty.

(a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in § 922.845-14 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this subpart, or any condition of any exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in § 922.845-13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

§ 922.845-17 Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to OSM and to the inspector who issued the notice of violation or cessation order. OSM shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) OSM shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice in order was issued, by certified mail, within 30 days of the issuance of the notice or order. If the mail is tendered at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(c) Unless a conference has been requested, OSM shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. OSM shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in paragraph (b) of this section, within 30 days after the date the violation is abated.

§ 922.845-18 Procedure for assessment conference.

(a) OSM shall arrange for a conference to review the proposed assessment or reassessment, upon

written request of the person to whom the notice or order was issued, if the request is received within 15 days from the date the proposed assessment or reassessment is mailed.

(b)(1) OSM shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later.

(2) OSM shall post notice of the time and place of the conference at the OSM office closest to the exploration site at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of OSM and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than $500 shall not be final and binding on the Secretary, until approved by the Director or his designee.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in § 922.845–17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by OSM within 30 days after the date of signing, OSM may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) of this section within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At formal review proceedings under Sections 518, 521(a)(4), and 523 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

§ 922.845–19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 15 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested, if it has been decided in a review proceeding commenced under § 922.843–16.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) of this section to OSM, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in § 922.845–20.

§ 922.845–20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in § 912.845–19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Secretary, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this section, the escrowed funds shall be transferred to OSM in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this subpart, OSM shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to OSM within 15 days after the order is mailed to such person.

PART 937—OREGON

Sec.

Authority: Pub. L. 95–87, the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

General

Subpart 937.701—General

§ 937.701–3 Authority and scope.

(a) The Secretary is required by Sections 504(a) and 512 of the Surface Mining Control and Reclamation Act of 1977 (the Act) to prepare, promulgate, and implement a Federal coal exploration program for the State of Oregon because it failed to submit a program by March 3, 1980 in accordance with Section 504(a) of the Act, 30 CFR Part 736, and the July 25, 1979, and August 21, 1979, opinions of the District Court for the District of Columbia, in *In re: Permanent Surface Mining Regulation Litigation,* 13 ERC 1447 and 1586.

(b) In addition to 30 CFR Part 937, the following regulations apply to the Federal Program for coal exploration in Oregon:

(1) 30 CFR Part 865 regarding protection of employees; and

(2) 30 CFR Part 706 on restriction of financial interests of Federal employees.

§ 937.701–4 Responsibility.

(a) The Director of the Office of Surface Mining shall be primarily responsible for the regulation of coal exploration on non-Federal and non-Indian lands in the State of Oregon under this program in accordance with Sections 504 and 512 of the Act, 30 CFR Part 736, and this subpart. The Director has responsibility for: ensuring that every person who wants to conduct exploration operations files a notice of intention to explore; reviewing and approving applications for coal exploration operations which remove more than 250 tons of coal from the earth in any one location; reviewing and approving plans to reclaim areas that have been substantially disturbed; and ensuring adequate inspection and enforcement of all coal exploration operations for compliance with exploration approvals issued under this program, except where the primary responsibility has been retained by the Secretary as specified in this program. The Director may delegate all or any part of his responsibilities to any other official of the Office of Surface Mining.

§ 937.701–5 Definitions.

As used in this subpart, the following terms have the specified meanings, except where otherwise indicated:

Acid-forming materials means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, from acids that may create acid drainage.

Act means the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*).

Applicant means any person seeking approval from OSM to conduct coal exploration pursuant to this program.

Approximate original contour means that surface configuration achieved by backfilling and grading of the areas of exploration so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to exploration and blends into and complements the drainage pattern of the surrounding terrain.

Best technology currently available means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the area of exploration operation, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds in accordance with 30 CFR Parts 816 and 817. The Director may determine the best technology currently available on a case-by-case basis.

Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388–77, referred to and incorporated by reference in the definition of anthracite.

Coal exploration means the field gathering of: (a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal in an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this subpart.

Department means the Department of the Interior.

Director means the Director, Office of Surface Mining Reclamation and Enforcement, or the Director's representative.

Disturbed area means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, or noncoal waste is placed by coal exploration operations. Those areas are classified as disturbed until reclamation is complete.

Diversion means a channel, embarkment, or other man-made structure constructed to divert water from one area to another.

Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

Ephemeral stream means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

Existing structure means a structure or facility used in connection with or to facilitate coal exploration operations for which construction began prior to the implementation of this Federal program.

Exploration area means, with respect to hydrology, the topographic and

ground water basin surrounding the general vicinity of the proposed operations area, which is of sufficient size including areal extent and depth to include one or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

Federal lands means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

Federal program means a program established by the Secretary pursuant to Sections 504 and 512 of the Act to regulate coal exploration operations on non-Federal and non-Indian lands within a State in accordance with the Act and 30 CFR Chapter VII.

Ground water means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

Hydrologic balance means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

Imminent danger to the health and safety of the public means the existence of any condition or practice, or any violation of an exploration approval or other requirements of the Act in a coal exploration operation, which could reasonably be expected to cause substantial physical harm to persons outside the approval area before the conditions, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

Impoundment means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

Indian lands means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

Intermittent stream means:

(a) A stream or reach of a stream that drains a watershed of at least one square mile, or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

Land use means specific uses of management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by OSM.

(a) "Cropland." Land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

(b) "Pastureland or land occasionally cut for hay." Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(c) "Grazingland." Includes both grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which are adjacent to or an integral part of these operations is also included.

(d) "Forestry." Land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an intergral part of these operations is also included.

(e) "Residential." Includes single- and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle, parking and open space that directly relate to the residential use.

(f) "Industrial/Commercial." Land used for—

(1) Extraction of transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(g) "Recreation." Land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) "Fish and wildlife habitat." Land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(i) "Developed water resources." Includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) "Undeveloped land or no current use or land management." Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

Office means the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act.

Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

Perrenial stream means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff.

Person means any individual, any Indian tribe when conducting surface

coal mining and reclamation operations on non-Indian lands, any partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization, and any agency, unit, or instrumentality of Federal, State or local government including any publicly owned utility or publicly owned corporation of Federal, State or local government.

Person having an interest which is or may be adversely affected or person with a valid legal interest shall include any person—

(a) Who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or any related action of the Secretary, or

(b) Whose property is or may be adversely affected by coal exploration or any related action of the Secretary.

Prospector means a person conducting or proposing to conduct coal exploration.

Public office means a facility under the direction and control of a governmental entity which is open to the public on a regular basis during reasonable business hours.

Reclamation means those actions taken to restore explored land to a postexploration land use approved by OSM, as required by this subpart.

Regulatory authority means the Secretary when administering this subpart.

Renewable resource lands means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

Road means a surface right-of-way for purposes of travel by land vehicles used in coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration, including use by coal hauling vehicles leading to transfer, processing, or storage areas.

Secretary means the Secretary of the Interior or the Secretary's representative.

Sedimentation pond means a primary sediment control structure designed, constructed and maintained in accordance with 30 CFR 816.46 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

Significant, imminent environmental harm to land, air or water resources means—

(a) An environmental harm is an adverse impact on land, air, or water resources including, but not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which—

(1) Is causing such harm; or,

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 521(a)(3) of the Act, and is appreciable and not immediately reparable.

Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are—

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "B horizon." The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Spoil means overburden that has been removed during coal exploration operations.

Substantially disturb means to impact significantly upon land, air, or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, constructing roads and other access routes, and/or placing structures, excavated earth, or other debris on the surface of land.

Surface coal mining operations means—

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine-site, *Provided*, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Act; and *Provided further*, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) Areas upon which the activities described in paragraph (a) of this definition occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

Suspended solids or *nonfilterable residue, expressed as milligrams per liter*, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR Part 136).

Temporary diversion means a diversion of a stream or overland flow during coal exploration operations which has not been approved by OSM

to remain after reclamation as part of the approved postmining land use.

Topsoil means the A soil horizon layer of the three major soil horizons.

Water table means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

§ 937.701-11 Applicability.

(a) This Part applies to all coal exploration operations within the State of Oregon except exploration for coal on Indian or Federal lands.

(b) Each structure used in connection with or to facilitate a coal exploration operation shall comply with the performance standards and the design requirements of Subpart 937.815 of this part, except that—

(1) An existing structure which meets the performance standards of Subpart 937.815 of this part but does not meet the design requirements of Subpart 937.815 of this part shall be exempted from meeting those design requirements by OSM. OSM may grant this exemption only as part of the coal exploration approval process after obtaining the information required by 30 CFR Subpart 937.776.

(2) Where an existing structure meets the performance standards of 30 CFR Chapter VII, Subchapter B, and these standards are at least as stringent as the comparable performance standards in Subpart 937.815 of this part, such structure shall be exempted by OSM from meeting the design requirements of Subpart 937.815 of this part. OSM may grant this exemption only as part of the coal exploration approval process after obtaining the information required by 30 CFR Subpart 937.776.

(3) Where exploration will result in removal of more than 250 tons, as required in § 937.776-13, an existing structure which meets a performance standard of 30 CFR Chapter VII, Subchapter B which is less stringent than the comparable performance standards of Subpart 937.815 of this part or which does not meet a performance standard of Subpart 937.815 of this part for which there was no equivalent performance standard in 30 CFR Subchapter B, shall be modified or reconstructed to meet the design standards of Subpart 937.815 of this part pursuant to a compliance plan approved by OSM in the coal exploration approval after making the findings required by 30 CFR 786.21.

(4) An existing structure which does not meet the performance standards of 30 CFR Chapter VII, Subchapter B, and which the applicant proposes to use in connection with or to facilitate a coal exploration operation shall be modified or reconstructed to meet the design standards of Subpart 937.815 of this part prior to issuance of the exploration approval.

(c)(1) Any person conducting coal exploration on non-Federal and non-Indian lands on or after the effective date of this subpart shall either file a notice of intention to explore or obtain approval of OSM as required by 30 CFR Subpart 937.776.

(2) Two months after the effective date of this subpart, coal exploration performance standards in 30 CFR Subpart 937.815 shall apply to coal exploration on non-Federal and non-Indian lands which substantially disturbs the natural land surface.

§ 937.701-12 Petitions to initiate rulemaking.

The public may petition OSM to initiate rulemaking concerning this exploration program pursuant to 30 CFR 700.12.

§ 937.701-13 Notice of citizen suits.

A person who intends to initiate a civil action under Section 520 of the Act must give notice as provided in 30 CFR 700.13.

§ 937.701-14 Availability of records.

(a) Records required by the Act to be made available locally to the public shall be retained at the State of Oregon, Mine Land Reclamation Office, Department of Geology and Mineral Industries, 1129 S.E. Santiam Road, Albany, Oregon 97321. Contact Paul Lawson.

(b) Other records or documents in the possession of OSM may be requested under 43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act.

§ 937.701-15 Computation of time.

(a) Except as otherwise provided, computation of time under this subpart is based on calendar days.

(b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which OSM is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is 7 days or less.

§ 937.701-16 Termination of the program.

This program shall terminate upon the effective date of a State program for the State of Oregon under 30 CFR Part 732.

Areas Unsuitable for Mining

Subpart 937.760—General.

§ 937.760-3 General.

Any person who intends to petition to designate non-Federal or non-Indian lands subject to this subpart unsuitable for mining should follow the procedures given at 30 CFR Part 764, provided that no petition may be filed until one year after the effective date of this rule. The provisions of 30 CFR Subchapter F will apply to lands subject to Subpart 937.760.

Coal Exploration

Subpart 937.770—General Requirements for Exploration

§ 937.770-4 Responsibilities.

(a) A person seeking to conduct coal exploration must file a notice of intention or obtain approval of OSM under 30 CFR Subpart 937.776 before commencing exploration.

(b) OSM shall review each application for exploration approval and issue, condition, deny, suspend, or revoke such approvals.

§ 937.770-5 Definitions.

As used throughout Subparts 937.770, 937.776 and 937.787 of this part, except where otherwise indicated:

Applicant means a person who seeks to obtain an exploration approval under Subparts 937.770, 937.776 and 937.787 of this part.

Application for approval means the documents and other information filed with OSM under Subparts 937.770 and 937.776 of this part for the issuance of an exploration approval.

Complete application means an application for exploration approval which contains all information required under the Act and Subpart 937.770 and 937.776 of this part.

Exploration approval means the approval required under Section 512 of the Act.

§ 937.770-12 Coordination with respect to requirements under other laws.

(a) To avoid duplication, OSM shall provide for coordinated review of applications for approval of coal exploration with the governmental agencies responsible for issuing permits under or assuring compliance with:

(1) Any other Federal permit process applicable to those operations including, at a minimum, permits required under the

(i) Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*);

(ii) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*); and

(iii) Resource Conservation and Recovery Act (42 U.S.C. 3251 *et seq.*).

(2) Any water quality management plans which have been approved by the Administrator of the Environmental Protection Agency under Sections 208 or 303(c) and (e) of the Clean Water Act, as amended (33 U.S.C. 1288, 1313 (c) and (e));

(3) The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended, (16 U.S.C. 661 *et seq.*); the National Historic Preservation Act of 1966, an amended (16 U.S.C. 470 *et seq.*); Executive Order 11593; and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 4332).

(b) All prospectors shall comply with the following Oregon Revised Statutes (ORS) and all others not designated by OSM as interfering with the achievement of the purposes and requirements of the Act.

(1) ORS 273.225 through 273.241, which requires a lease from the Oregon Division of State Lands before removing any materials from State lands. Taking materials from State lands without a lease is a continuing trespass. If the trespass is deemed to be willful then the damages may be doubled.

(2) ORS 273.551, which authorizes the Division of State Lands to lease State lands or minerals for the right to surface mine or explore for minerals after consultation with the Department of Geology and Mineral Industries.

(3) ORS 273.705 through 273.715, which prohibits the excavation or removal of State owned archaeological, prehistorical, historical or anthropological materials without first obtaining a permit issued by the Division of Lands and the President of the University of Oregon

(4) ORS 273.718 through 273.742, which requires that a permit be issued by the Division of State Lands before removing treasure trove from State owned lands.

(5) ORS 273.775 through 273.790, which assigns authority over minerals located on State lands to the Division of State Lands. The Division may issue an exploration permit authorizing the exploration of minerals and may lease the rights to mine minerals on State lands.

(6) ORS 275.340 authorizes the Counties to lease County designated forest lands for mineral prospecting and mineral excavation.

(7) ORS 516.010 through 516.130. Chapter 516 of the Oregon Revised Statutes contains the organic acts for the Department of Geology and Mineral Industries. One of the Department's responsibilities is to survey the mineral resources of the State.

(8) ORS 517.010 through 517.990. Chapter 517 of the Oregon Revised Statutes contains provisions relating to surface mining and exploration of minerals.

(9) ORS 517.420. These sections provide, in pertinent part, that no mineral locator shall acquire any right to hydrocarbons underlying state land. These statutes also require that the leasing control of lode or placer mineral claims are under the jurisdiction of the Division of State Lands and that notice of the location of the claim is a prerequisite to filing a leasing application with the Division.

(10) ORS 517.611 through 517.700. These statutes regulate the use of dredging machines for the purpose of mining. However ORS 517.611, by definition, excludes industrial mineral dredging from operation of the statues. These statutes require a license from the Division of State Lands before conducting dredging operations disturbing 15 acres or more per year.

(11) ORS 514.010 through 541.990. The Oregon Water Laws require a permit from the Division of State Lands before material may be removed from beds or banks of State waters or before fill may be deposited into State waters.

Subpart 937.776—General Requirements for Coal Exploration

§ 937.776–11 General requirements—Exploration removing less than 250 tons.

(a) Any person who intends to conduct coal exploration during which less than 250 tons of coal will be removed from the area to be explored shall, prior to conducting the exploration, file with OSM a written notice of intention to explore.

(b) The notice shall include:

(1) The name, address, and telephone number of the person seeking to explore.

(2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration operations;

(3) A description sufficient to enable OSM to identify the location and size of areas at which exploration operations are to be conducted, access routes, the distance from the area or areas to a public road, and means of transportation used or proposed to be used;

(4) A statement of the period of intended exploration;

(5) A description of the practice proposed to be followed to protect the environment from adverse impacts as a result of the exploration operations.

(c) Any person who conducts coal exploration operations subject to this section which substantially disturb the natural land surface shall comply with 30 CFR Subpart 937.815.

(d) OSM shall, except as otherwise provided in § 937.776–17, place such notices on public file and make them available for public inspection and copying.

§ 937.776–12 General requirements: Exploration removing more than 250 tons.

Any person who intends to conduct coal exploration in which more than 250 tons of coal are to be removed from the area to be explored shall, prior to conducting the exploration, apply for and obtain the written approval of OSM, in accordance with the following:

(a) Each application for approval shall contain, at a minimum, the following information:

(1) The name, address, and telephone number of the applicant;

(2) The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(3) An exploration and reclamation operations plan, including:

(i) A narrative description of the proposed exploration area, describing surface topography; geological, surface water, and other physical features as described in paragraph (a)(5) of this section; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including but not limited to any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); and districts, sites, buildings, structures, or objects listed on the National Register of Historic Places;

(ii) A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

(iii) An estimated timetable for conducting and completing each phase of the exploration and reclamation;

(iv) The estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts;

(v) A description of the measures to be used to comply with the applicable requirements of 30 CFR Subpart 937.815;

(4) The name and address of the owner(s) of record of the surface land and of the subsurface mineral estate of the area to be explored; and

(5) A description of existing roads, occupied dwellings, and pipelines; the proposed location of trenches, roads,

and other access routes and structures to be constructed; the location of excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, topographic, cultural, and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(b) Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within one week after OSM has determined the application to be complete, public notice of the filing of the application shall be posted by the applicant at the courthouse or other public office designated by the Director in the vicinity of the proposed exploration area.

(2) The public notice shall state the name and business address of the person seeking approval, the date of filing of the application, the address to which written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration.

(3) Any person with an interest which is or may be adversely affected shall have the right to file written comments on the application within 15 days after the posting of the notice described in paragraph (b)(1) of this section.

§ 937.776–13 Application: Approval or disapproval of exploration removing more than 250 tons.

(a) OSM shall act upon a completed application for approval within 60 days or longer time which may be reasonable under the circumstances. If additional time is necessary, OSM shall notify the applicant that the plan is being reviewed, but that more time is necessary to complete such review, setting forth the reasons why additional time is needed.

(b) OSM shall approve a complete application if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application:

(1) Will be conducted in accordance with Subpart 937.815;

(2) Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(3) Will not adversely affect cultural resources or districts, sites, buildings, structures, or objects listed on the National Register of Historic Places, unless the proposed exploration has been approved by both OSM and the agency with jurisdiction over such matters.

(c) Each approval shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with 30 CFR Subpart 937.815.

(d) Approval shall be given for a period not to exceed 2 years. Approval may be renewed for successive two-year periods upon reapplication.

(e) Except as otherwise provided in this section, review, revision, and renewal of approvals and transfer, sale, and assignment of rights granted by approvals shall be done in accordance with 30 CFR Part 788.

§ 937.776–14 Application: Notice and hearing for exploration of more than 250 tons.

(a) OSM shall notify the applicant and the appropriate local government officials, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. OSM shall provide public notice of approval or disapproval of each application by publication in a newspaper of general circulation in the general vicinity of the proposed operations.

(b) Any person with an interest which is or may be adversely affected by a decision of OSM pursuant to paragraph (a) of this section shall have the opportunity for administrative and judicial review as set forth in 30 CFR Subpart 937.787.

§ 937.776–15 Requirements for exploration operations.

(a) All coal exploration and reclamation operations which substantially disturb the natural land surface or which remove more than 250 tons of coal shall be conducted in accordance with the coal exploration requirements of this subpart and any conditions in the exploration approval.

(b) Any person who conducts any coal exploration in violation of the provisions of Subpart 937.815 shall be subject to the provisions of Subparts 937.842 through 937.845.

§ 937.776–17 Public availability of information.

(a) Except as provided in paragraph (b) of this section, all information submitted to OSM under this subpart shall be made available for public inspection and copying at the State of Oregon's Mine Land Reclamation Office, Department of Geology and Mineral Industries, 1129 SE Santiam Road, Albany, Oregon 97321, Attn: Paul Lawson.

(b)(1) OSM shall not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and OSM determines that the information is confidential and may be withheld under the Freedom of Information Act, 5 U.S.C. 552.

(2) OSM shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(3) Information requested to be held as confidential under this section shall not be made publicly available unless notice and opportunity to be heard is afforded to persons both seeking and opposing disclosure of the information and such information is determined not to be confidential.

Subpart 937.787—Administrative and Judicial Review of Decisions on Coal Exploration

§ 937.787–11 Administrative review.

(a) Within 30 days after the applicant is notified of the final decision of OSM concerning the application for coal exploration under 30 CFR 937.776–14, the applicant, or any person with an interest which is or may be adversely affected, may request a hearing on the reasons for the final decision in accordance with this section.

(b) OSM may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(3) The relief is not to affect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(4) The relief sought is not the

issuance of exploration approval where an approval has been denied, in whole or in part, by OSM.

(c)(1) For the purpose of such hearing, the hearing authority may administer oaths and affirmations, subpoena witnesses, written, or printed materials, compel attendance of witnesses and production of written or printed materials, compel discovery, and take evidence, including but not limited to site inspections of the land to be affected and other coal exploration operations carried on by the applicant in the general vicinity of the proposed operations.

(2) A verbatim record of each public hearing required by this section shall be made and a transcript made available on the motion of any party or by order of the hearing authority.

(3) *Ex parte* contacts between representatives of the parties before the hearing authority and the hearing authority shall be prohibited.

(d) Within 30 days after the close of the record, the hearing authority shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the hearing authority with respect to the appeal.

(e) The burden of proof at such hearings shall be on the party seeking to reverse the decision of OSM.

§ 937.787-12 Judicial review.

(a) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to appeal as provided in paragraph (b) of this section, if:

(1) The applicant or person is aggrieved by the decision of the hearing authority in an administrative review proceeding conducted pursuant to § 937.787-11; or

(2) Either OSM or the hearing authority for administrative review under § 937.787-11 fails to act within time limits specified in the Subparts 937.770 through 937.787 of this part.

(b) The action of OSM or the hearing authority identified in paragraph (a) of this section is subject to judicial review by the United States District Court for the district in which the coal exploration is or would be located, in the time and manner provided for in Section 526(a)(2) and (b) of the Act. The availability of such review shall not limit the operation of rights established in Section 520 of the Act.

Performance Standards

Subpart 937.815—Performance Standards—Coal Exploration

§ 937.815-11 General responsibility of persons conducting coal exploration.

(a) Each person who seeks to conduct coal exploration which substantially disturbs the natural land surface and in which 250 tons or less of coal are removed shall file the notice of intention to explore required under 30 CFR 937.776-11 and shall comply with § 937.815-15.

(b) Each person who conducts coal exploration which substantially disturbs the natural land surface and in which more than 250 tons of coal are removed from the area described by the written approval of OSM shall comply with the procedures described in the exploration and reclamation operations plan approved under § 937.776-12 and shall comply with § 937.815-15.

§ 937.815-13 Required documents.

Each person who conducts coal exploration which substantially disturbs the natural land surface and which removes more than 250 tons of coal shall, while in the exploration area, possess written approval of OSM for the activities granted under 30 CFR 937.776-12. The written approval shall be available for review by the authorized representative of OSM upon request.

§ 937.815-15 Performance standards for coal exploration.

The following performance standards are applicable to coal exploration which substantially disturbs the natural land surface.

(a) Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in 30 CFR 780.16(b) shall not be disturbed during coal exploration.

(b) The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area.

(c)(1) Vehicular travel on other than established roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(2) Any new road in the exploration area shall be constructed to meet the requirements of OSM.

(3) Existing roads may be used for exploration in accordance with the following:

(i) All applicable Federal, State, and local requirements shall be met.

(ii) If the road is significantly altered for exploration, including but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then paragraph (g) of this section shall apply to all areas of the road which are altered or which result in such additional contributions.

(iii) If the road is significantly altered for exploration operations and will remain as a permanent road after exploration operations are completed, the person conducting exploration shall ensure that the requirements of 30 CFR 816.150 through 816.166, as appropriate, are met for the design, construction, alteration, and maintenance of the road.

(4) Promptly after exploration operations are completed, existing roads used during exploration shall be reclaimed either:

(i) To a condition equal to or better than their pre-exploration condition; or

(ii) To a condition required by OSM.

(d) If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(e) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by OSM.

(f) Areas disturbed by coal exploration shall be revegetated by the person who conducts the exploration or his or her agent. If more than 250 tons of coal are removed from the exploration area, all revegetation shall be in compliance with the plan approved by OSM and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved post-exploration land use and in accordance with the following:

(1) All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area. If both the pre-exploration and post-exploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface to prevent erosion.

(g) With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent, or perennial stream shall be diverted during coal exploration

operations. Overland flow of water shall be diverted in a manner that:

(1) Prevents erosion;

(2) To the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration areas; and

(3) Complies with all other applicable State or Federal requirements.

(h) Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of 30 CFR 816.13, 816.14, and 816.15.

(i) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that OSM determines may remain to:

(1) Provide additional environmental quality data;

(2) Reduce or control the on- and off-site effects of the exploration operations; or

(3) Facilitate future surface mining and reclamation operations by the person conducting the approved exploration operations.

(j) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as those listed in 30 CFR 816.45 or sedimentation ponds which comply with 30 CFR 816.46. OSM may specify additional measures which shall be adopted by the prospector.

(k) Toxic or acid-forming materials shall be handled and disposed of in accordance with 30 CFR 816.48 and 816.103. If specified by OSM, additional measures shall be adopted by the prospector.

Inspection and Enforcement Procedures

Subpart 937.842—Federal Inspections

§ 937.842-11 Federal inspections.

(a) Authorized representatives of the Secretary shall conduct inspections of coal exploration operations as necessary:

(1) To develop or enforce this subpart;

(2) To enforce those requirements and permit conditions imposed under this subpart or 30 CFR Chapter VII or as provided in this section; and

(3) To determine whether any notice of violation or cessation order issued during an inspection authorized under this section has been complied with.

(b)(1) An authorized representative of the Secretary shall immediately conduct a Federal inspection to enforce any requirement of the Act, this subpart, or any conditions of an exploration approval imposed under the Act or this subpart when the authorized representative has reason to believe, on the basis of information available to him or her (other than information resulting from a previous Federal inspection), that there exists a violation of the Act, this subpart, or any condition of an exploration approval, or that there exists any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources.

(2) An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in paragraph (b)(1) of this section.

(c) OSM shall conduct periodic inspection of all coal exploration and reclamation operations required to comply in whole or part with the Act or this subpart, including the collection of evidence with respect to every violation of any condition of the exploration approval, the Act or this subpart.

(d) The inspection required under paragraph (c) of this section shall:

(1) Be carried out on an irregular basis so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the person being inspected or any of his agents or employees, except for necessary onsite meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this subpart, any condition of an exploration approval imposed under this subpart and the Act.

§ 937.842-12 Citizens' requests for Federal inspections.

(a) A citizen may request a Federal inspection under 30 CFR 937.842-11(b), by furnishing to an authorized representative of the Secretary a signed, written statement (or and oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition, or practice referred to in 30 CFR 937.842-11(b)(1) exists and setting forth a phone number and address where the citizen can be contacted.

(b) The identity of any person supplying information to OSM relating to a possible violation or imminent danger or harm shall remain confidential with OSM, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Freedom of Information Act (5 U.S.C. 552) or other Federal law;

(c) If a Federal inspection is conducted as a result of information provided to OSM by a citizen as described in paragraph (a) of this section, the citizen shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Secretary during the inspection. Such person has a right of entry to, upon and through the coal exploration operation about which he or she supplied information, but only if he or she is in the presence of and is under control, direction and supervision of the authorized representative while on the exploration area. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within 10 days of the Federal inspection or, if there is no inspection, within 15 days of receipt of the citizen's written statement, OSM shall send the citizen the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the Federal inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

(2) If no Federal inspection was conducted, an explanation of the reason why; and

(3) An explanation of the citizen's right, if any, to informal review of the action or inaction of OSM under 30 CFR 937.842-15.

(e) OSM shall give copies of all materials in paragraphs (d) (1) and (2) of this section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted under paragraph (b) of this section.

§ 937.842-13 Right of entry.

(a) Each authorized representative of the Secretary conducting a Federal inspection under 30 CFR 937.842-11:

(1) Shall have a right of entry to, upon, and through any coal exploration operation, without advance notice or a search warrant, upon presentation of appropriate credentials; and

(2) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring

equipment or method of operation, required under the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart.

(b) No search warrant shall be required with respect to any activity under paragraph (a) of this section except that a search warrant may be required for entry into a building.

§ 937.842-14 Review of adequacy and completeness of inspections.

Any person who is or may be adversely affected by a coal exploration operation may notify OSM in writing of any alleged failure on the part of OSM to make adequate and complete or periodic Federal inspections as provided in 30 CFR 937.842-11(b)(1), (c) and (d). The notification shall include sufficient information to create a reasonable belief that 30 CFR 937.842-11(b)(1), (c) and (d) are not being complied with and to demonstrate that the person is or may be adversely affected. OSM shall within 15 days or receipt of the notification determine whether 30 CFR 937.842-11(b)(1), (c) and (d) are being complied with, and if not, shall immediately order a Federal inspection to remedy the noncompliance. OSM shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, to remedy the noncompliance.

§ 937.842-15 Review of decision not to inspect or enforce.

(a) Any person who is or may be adversely affected by a coal exploration operation may ask OSM to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for Federal inspection under 30 CFR 937.842-12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) OSM shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the citizen shall not be disclosed unless confidentiality has been waived or disclosure is required under the Freedom of Information Act or other Federal law.

(c) Informal review under this section shall not affect any right to formal review under Section 525 of the Act or to a citizen's suit under Section 520 of the Act.

§ 937.842-16 Availability of records.

(a) Copies of all records, reports, inspection materials, or information obtained by OSM under Title V of the Act or this subpart shall be made immediately available to the public in the area of exploration so that they are conveniently available to residents of that area, except that Office may refuse to make available:

(1) Investigatory records compiled for law enforcement purposes to the extent allowed under the Freedom of Information Act (5 U.S.C. Section 552(b)); and

(2) Information not required to be made available under § 937.776-17 or 30 CFR 786.15.

Subpart 937.843—Federal Enforcement

§ 937.843-11 Cessation orders.

(a)(1) An authorized representative of the Secretary shall immediately order a cessation of coal exploration or of the relevant portion thereof, if he finds, on the basis of any Federal inspection, any condition or practice or any violation of the Act, this subpart, or an exploration approval issued under this subpart, which:

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably can be expected to cause significant, imminent environmental harm to land, or water resources.

(2) If the cessation ordered under paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Secretary shall impose affirmative obligations on the person to whom it is issued to abate the conditions, practice, or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

(b)(1) An authorized representative of the Secretary shall immediately order a cessation of coal exploration operations, or of the relevant portion thereof, when a notice of violation has been issued under § 937.843-12(a) and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative.

(2) A cessation order issued under this paragraph shall require the person to whom it is issued to take all steps the authorized representative of the Secretary deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this section shall be in writing, signed by the authorized representative who issued it and shall set forth with reasonable specificity: (1) The nature of the violation; (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, if appropriate, including the time for meeting any interim steps; and (4) a reasonable description of the portion of the coal exploration operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by an authorized representative of the Secretary.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the Secretary may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(f) An authorized representative of the Secretary shall terminate a cessation order, by written notice to the person to whom the order was issued, when he determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of OSM to assess civil penalties for those violations under Subpart 937.845 of this part.

§ 937.843-12 Notices of violation.

(a) An authorized representative of the Secretary shall issue a notice of violation if, on the basis of any Federal inspection, he finds a violation of the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart, which does not create an imminent danger or harm for which a cessation order must be issued under § 937.843-11.

(b) A notice of violation issued under this section shall be in writing, signed by the authorized representative who issued it, and shall set forth with reasonable specificity: (1) The nature of the violation; (2) the remedial action required, which may include interim steps; (3) a reasonable time for abatement, which may include time for accomplishment of interim steps; and (4) a reasonable description of the portion of the coal exploration operation to which it applies.

(c) An authorized representative of the Secretary may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the prospector that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in paragraph (f) of this section. An extended abatement date pursuant to this section shall not be granted when the prospector's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the prospector in completing the remedial action required.

(d) If the person to whom the notice was issued fails to meet any time set for abatement or for accomplishment of an interim step, the authorized representative shall issue a cessation order under § 937.843–11(b).

(e) An authorized representative of the Secretary shall terminate a notice of violation by written notice to the person to whom it was issued, when he determines that all violations listed in the notice of violations have been abated. Termination shall not affect the right of OSM to assess civil penalties for those violations under Subpart 937.845 of this part.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the prospector of an ongoing operation with an exploration approval has timely applied for and diligently pursued an exploration approval renewal or other necessary approval of designs or plan but such approval has not been or will not be issued within 90 days after a valid approval expires or is required for reasons not within the control of the prospector;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the prospector has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(3) Where the prospector cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days or where, due to climatic conditions, abatement within 90 days clearly:

(i) Would cause more environmental harm than it would prevent; or

(ii) Requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in paragraphs (f)(1) through (f)(4) of this section exist, the prospector may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The prospector shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of paragraphs (c) and (f) of this section. In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the prospector or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The inspector's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence of disapproval in the file.

(i) Any determination made under paragraph (h) of this section shall be in writing and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR Part 4.

(j) No extension granted under paragraph (h) of this section may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the prospector may request a further extension in accordance with the procedures of paragraph (h) of this section.

§ 937.843–13 Suspension or revocation of approvals.

(a)(1) Except as provided in paragraph (b) of this section, the Director shall issue an order to a prospector requiring him or her to show cause why approval to conduct coal exploration under the Act should not be suspended or revoked, if the Director determines that a pattern of violations of any requirements of the Act, this subpart, or any condition for approval required by the Act exists or has existed and that the violations were caused by the prospector willfully or through unwarranted failure to comply with those requirements or conditions. Willful violation means an act or omission which violates the Act, this subpart, or any exploration approval condition required by the Act, or this subpart, committed by a person who intends the result which actually occurs. Unwarranted failure to comply means the failure of the prospector to prevent the occurrence of any violation of the approval or any requirement of the Act, due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such approval or the Act, due to indifference, lack of diligence, or lack of reasonable care. Violations by any person conducting coal exploration on behalf of the prospector shall be attributed to the prospector, unless the prospector establishes that they were acts of deliberate sabotage.

(2) The Director may determine that a pattern of violations exists or has existed, based on two or more Federal inspections of the exploration operations within any 12-month period, after considering the circumstances, including:

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this subpart, or the approval;

(ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this subpart, or the approval; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The Director shall determine that a pattern of violations exists, if he finds that there were violations of the same or related requirements of the Act, this subpart, or the approval during three or more Federal inspections of the approval area within any 12-month period.

(4)(i) In determining the number of violations within any 12-month period, the Director shall consider only violations issued as a result of a Federal inspection carried out during enforcement of this subpart.

(ii) The Director may consider violations issued as a result of inspections other than those mentioned in clause (i) in determining whether to exercise his discretion under paragraph (a)(2) of this section.

(b) The Director may decline to issue a show cause order, or may vacate an outstanding show cause order, if he finds that, taking into account exceptional factors present in the

particular case, it would be demonstrably unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the record of the case.

(c) At the same time as the issuance of the order, the Director shall:

(1) File a copy of the order to show cause with the Office of Hearings and Appeals.

(2) If practicable, publish notice of the order, including a brief statement of the procedure for intervention in the proceeding, in a newspaper of general circulation in the area of the coal exploration.

(3) Post the notice at the OSM State Office closest to the area of the coal exploration operations.

(d) If the prospector files an answer to the show cause order and requests a hearing under 43 CFR Part 4, a public hearing shall be provided as set forth in that part. The Office of Hearings and Appeals shall give thirty days' written notice of the date, time and place of the hearing to the Director, the prospector, and any intervenor. Upon receipt of the notice, the Director shall publish it, if practicable, in a newspaper of general circulation in the area of the coal exploration and shall post it at the OSM State Office closest to those operations.

(e) Within sixty days after the hearing, and within the time limits set forth in 43 CFR Part 4, the Office of Hearings and Appeals shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the Office of Hearings and Appeals revokes or suspends the exploration approval the prospector shall immediately cease coal exploration on the approval area and shall:

(1) If the exploration approval is revoked, complete reclamation within the time specified in the order; or

(2) If the exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

(f) Whenever a prospector fails to abate a violation contained in a notice of violation or a cessation order within the abatement period set in the notice or order or as subsequently extended, the Director shall review the prospector's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to 30 CFR 937.845–15(b)(2).

§ 937.843–14 Service of notices of violations, cessation orders, and show cause orders.

(a) A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

(1) By tendering a copy of the notice of violation or cessation order to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

(b) A show cause order may be served on the person to whom it is issued in either manner provided in paragraph (a) of this section.

(c) Designation by any person of an agent for service of notices and orders shall be made in writing to the appropriate State office of OSM.

(d) OSM may furnish copies to any person having an interest in the coal exploration, or the exploration approval area, such as the owner of the fee or a corporate officer of the prospector or entity conducting coal exploration.

§ 937.843–15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of exploration, expressly or by necessary implication, shall expire, within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the exploration site so that it may be viewed during the hearing or at any other location acceptable to OSM and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the exploration site shall be deemed to be reasonably close to the exploration site unless a closer location is requested and agreed to by OSM. Expiration of a notice or order shall not affect the Director's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice or violation in question has been abated or the hearing has been waived.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this paragraph:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order is issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he will be deemed to have waived an informal public hearing unless he requests one within 30 days after service of the notice or order, and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) OSM shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued and;

(2) Any person who filed a report which led to that notice or order.

(d) OSM shall also put notice of the hearing at the OSM State Office closest to the exploration site, and publish it, where practicable, in a newspaper of general circulation in the area of the exploration.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of OSM, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearing, OSM shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to—

(1) The person to whom the notice or order was issued and;

(2) Any person who filed a report which led to the notice or order,

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under Sections 518(b), 521(a)(4), or 525 of the Act.

(h) The person conducting the hearing for OSM shall determine whether or not the exploration site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the exploration site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or the required remedial action.

§ 937.843–16 Formal review of citations.

(a) A person issued a notice of violation or cessation order under 30 CFR 937.843–11 or 937.843–12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing, under 43 CFR Part 4, within 30 days after receiving notice of the action.

(b) The filing of an application for review and request for a hearing under this section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

§ 937.843–17 Lack of information.

No notice of violation, cessation order, show cause order, or order revoking or suspending an approval may be vacated because it is subsequently determined that OSM did not have information sufficient under § 937.843–11(b)(1) or (b)(2) to justify an inspection.

§ 937.843–18 Inability to comply.

(a) No cessation order or notice of violation issued under this subpart may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigration of the amount of civil penalty under Subpart 937.845 of this part and of the duration of the suspension of an approval under § 937.843–13(e).

§ 937.843–19 Injunctive relief.

OSM may request the Attorney General of the United States to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order, in the district court of the United States for the district in which the coal exploration is located or in which the person to whom the notice of violation or order has been issued has his principal office, whenever that person or his or her agent, in violation of the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart:

(a) Violates or fails or refuses to comply with any order or decision of the Secretary or an authorized representative of the Secretary under the Act or this subpart;

(b) Interferes with, hinders or delays the Secretary or an authorized representative of the Secretary in carrying out the provisions of the Act or this subpart;

(c) Refuses to admit an authorized representative of the Secretary to an exploration site;

(d) Refuses to permit inspection of an exploration area by an authorized representative of the Secretary;

(e) Refuses to furnish any required information or report;

(f) Refuses to permit access to or copying of any required records; or

(g) Refuses to permit inspection of monitoring equipment.

Subpart 937.845—Civil Penalties

§ 937.845–11 How assessments are made.

OSM shall review each notice of violation and cessation order issued under Subpart 937.843 of this part in accordance with the assessment procedures described in §§ 937.845–12, 937.845–13, 937.845–14, 937.845–15, and 937.845–16, to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

§ 937.845–12 When penalty will be assessed.

(a) OSM shall assess a penalty for each cessation order.

(b) OSM shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in § 937.845–13.

(c) OSM may assess a penalty for each notice of violation assigned 30 points or less under the point system described in § 937.845–13. In determining whether to assess a penalty OSM shall consider the factors listed in § 937.845–13(b).

§ 937.845–13 Points system for penalties.

(a) OSM shall use the point system described in this section to determine the amount of the penalty and, in the case of notices of violations, whether a mandatory penalty should be assessed as provided in § 937.845–12(b).

(b) Points shall be assigned as follows:

(1) *History of previous violations.* OSM shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration operation. Points shall be assigned as follows:

(i) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year;

(ii) No violation for which the notice or order has been vacated shall be counted; and

(iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) *Seriousness.* OSM shall assign up to 30 points based on the seriousness of the violation, as follows:

(i) *Probability of occurrence.* OSM shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Probability of Occurrence—Points

None—0
Insignificant—1–4
Unlikely—5–9
Likely—10–14
Occurred—15

(ii) *Extent of potential or actual damage.* OSM shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration area, OSM shall assign zero to seven points, depending on the

duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration area, OSM shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(iii) *Alternative.* In the case of a violation of an administrative requirement, such as a requirement to keep records, OSM shall, in lieu of paragraphs (b)(2) (i) and (ii) of this section, assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) *Negligence.* (i) OSM shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(C) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(A) *No negligence* means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) *Negligence* means the failure of a prospector to prevent the occurrence of any violation of his or her approval or any requirement of the Act or this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such approval or the Act due to indifference, lack of diligence, or a lack of reasonable care.

(C) *A greater degree of fault than negligence* means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration area shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) Good faith in attempting to achieve compliance.

(i) OSM shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

Degree of Good Faith-Points

Rapid compliance: −1 to −10
Normal compliance: −0

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this section:

(A) *Rapid compliance* means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) *Normal compliance* means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

§ 937.845–14 Determination of amount of penalty.

OSM shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 937.845–13 to dollar amount, according to the following schedule:

Points	Dollars
1	$20
2	40
3	60
4	80
5	100
6	120
7	140
8	160
9	180
10	200
11	220
12	240
13	260
14	280
14	300
15	300
16	320
17	340
18	360
19	380
20	400
21	420
22	440
23	460
24	480
25	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800
59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600
67	4,700
68	4,800
69	4,900
70 and above 70	5,000

§ 937.845–15 Assessment of separate violations for each day.

(a) OSM may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, OSM shall consider the factors listed in § 937.845–13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which is assigned more than 70 points under § 937.845–13(b), OSM shall assess a civil penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in paragraph (a), whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to Section 521(a) of the Act, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under Section 525(c) of the Act, after a determination that the person to whom the order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Office of Hearings and Appeals issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under Section 526 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to Section 526(c) of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court; and

(2) Such penalty for failure to abate a violation shall not be assessed for more than 30 days for each such violation. If the prospector has not abated the violation within the 30-day period, OSM shall take appropriate action pursuant to Sections 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a recurrence of the failure to abate.

§ 937.845–16 Waiver of use of formula to determine civil penalty.

(a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in § 937.845–14 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this subpart, or any condition of any exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in § 937.845–13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

§ 937.845–17 Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to OSM and to the inspector who issued the notice of violation or cessation order. OSM shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) OSM shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice in order was issued, by certified mail, within 30 days of the issuance of the notice or order. If the mail is tendered at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(c) Unless a conference has been requested, OSM shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. OSM shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in paragraph (b) of this section, within 30 days after the date the violation is abated.

§ 937.845–18 Procedures for assessment conference.

(a) OSM shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 15 days from the date the proposed assessment or reassessment is mailed.

(b)(1) OSM shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later.

(2) OSM shall post notice of the time and place of the conference at the OSM office closest to the exploration site at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of OSM and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than $500 shall not be final and binding on the Secretary, until approved by the Director or his designee.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in § 937.845–17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by OSM within 30 days after the date of signing, OSM may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) of this section within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At formal review proceedings under Section 518, 521(a)(4), and 523 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

§ 937.845–19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 15 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may be contested, if it has been decided in a review proceeding commenced under § 937.843–16.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) of this section to OSM, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in § 937.845–20.

§ 937.845–20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in § 937.845–19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Secretary, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this section, the escrowed funds shall be transferred to OSM in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this subpart, OSM shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to OSM within 15 days after the order is mailed to such person.

PART 939—RHODE ISLAND

Authority: Pub. L. 95–87, the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

General

Subpart 939.701—General

§ 939.701–3 Authority and scope.

(a) The Secretary is required by Sections 504(a) and 512 of the Surface Mining Control and Reclamation Act of 1977 (the Act) to prepare, promulgate, and implement a Federal coal exploration program for the State of Rhode Island because it failed to submit a program by March 3, 1980 in accordance with Section 504(a) of the Act, 30 CFR Part 736, and the July 25, 1979, and August 21, 1979, opinions of the District Court for the District of Columbia, in *In re: Permanent Surface Mining Regulation Litigation*, 13 ERC 1447 and 1586.

(b) In addition to Part 30 CFR Part 937, the following regulations apply to the Federal Program for coal exploration in Rhode Island:

(1) 30 CFR Part 865 regarding protection of employees; and

(2) 30 CFR Part 706 on restriction of financial interests of Federal employees.

§ 939.701–4 Responsibility.

(a) The Director of the Office of Surface Mining shall be primarily responsible for the regulation of coal exploration on non-Federal and non-Indian lands in the State of Rhode Island under this program in accordance with Sections 504 and 512 of the Act, 30 CFR Part 736, and this subpart. The Director has responsibility for: ensuring that every person who wants to conduct exploration operations files a notice of intention to explore; reviewing and approving applications for coal exploration operations which remove more than 250 tons of coal from the earth in any one location; reviewing and approving plans to reclaim areas that have been substantially disturbed; and ensuring adequate inspection and enforcement of all coal exploration operations for compliance with exploration approvals issued under this program, except where the primary responsibility has been retained by the Secretary as specified in this program. The Director may delegate all or any part of his responsibilities to any other official of the Office of Surface Mining.

§ 939.701–5 Definitions.

As used in this subpart, the following terms have the specified meanings, except where otherwise indicated:

Acid-forming materials means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, from acids that may create acid drainage.

Act means the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*).

Applicant means any person seeking approval from OSM to conduct coal exploration pursuant to this program.

Approximate original contour means that surface configuration achieved by backfilling and grading of the areas of exploration so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to exploration and blends into and complements the drainage pattern of the surrounding terrain.

Best technology currently available means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the area of exploration operation, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds in accordance with 30 CFR Parts 816 and 817. The Director may determine the best technology currently available on a case-by-case basis.

Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388–77, referred to and incorporated by reference in the definition of anthracite.

Coal exploration means the field gathering of: (a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal in an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this subpart.

Department means the Department of the Interior.

Director means the Director, Office of Surface Mining Reclamation and Enforcement, or the Director's representative.

Disturbed area means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, or noncoal waste is placed by coal exploration operations. Those areas are classified as disturbed until reclamation is complete.

Diversion means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert or store water, support roads or railways, or for other similar purposes.

Ephemeral stream means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

Existing structure means a structure or facility used in connection with or to facilitate coal exploration operations for which construction began prior to the implementation of this Federal program.

Exploration area means, with respect to hydrology, the topographic and ground water basin surrounding the general vicinity of the proposed operations area, which is of sufficient size including areal extent and depth to include one or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

Federal lands means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

Federal program means a program established by the Secretary pursuant to Sections 504 and 512 of the Act to regulate coal exploration operations on non-Federal and non-Indian lands within a State in accordance with the Act and 30 CFR Chapter VII.

Ground water means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

Hydrologic balance means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

Imminent danger to the health and safety of the public means the existence of any condition or practice, or any violation of an exploration approval or other requirements of the Act in a coal exploration operation, which could reasonably be expected to cause substantial physical harm to persons outside the approval area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

Impoundment means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

Indian lands means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

Intermittent stream means:

(a) A stream or reach of a stream that drains a watershed of at least one square mile, or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

Land use means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by OSM.

(a) "Cropland." Land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

(b) "Pastureland or land occasionally cut for hay." Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for

facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(c) "Grazingland." Includes both grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which are adjacent to or an integral part of these operations is also included.

(d) "Forestry." Land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(e) "Residential." Includes single and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

(f) "Industrial/Commercial." Land used for—

(1) Extraction of transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(g) "Recreation." Land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) "Fish and wildlife habitat." Land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(i) "Developed water resources." Includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) "Undeveloped land or no current use or land management." Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

Office means the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act.

Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

Perrenial stream means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff.

Person means any individual, any Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, any partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization, and any agency, unit, or instrumentality of Federal, State or local government including any publicly owned utility or publicly owned corporation of Federal, State or local government.

Person having an interest which is or may be adversely affected or person with a valid legal interest shall include any person—

(a) Who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or any related action of the Secretary, or

(b) Whose property is or may be adversely affected by coal exploration or any related action of the Secretary.

Prospector means a person conducting or proposing to conduct coal exploration.

Public office means a facility under the direction and control of a governmental entity which is open to the public on a regular basis during reasonable business hours.

Reclamation means those actions taken to restore explored land to a postexploration land use approved by OSM, as required by this subpart.

Regulatory authority means the Secretary when administering this subpart.

Renewable resource lands means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazinglands.

Road means a surface right-of-way for purposes of travel by land vehicles used in coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration, including use by coal hauling vehicles leading to transfer, processing, or storage areas.

Secretary means the Secretary of the Interior or the Secretary's representative.

Sedimentation pond means a primary sediment control structure designed, constructed and maintained in accordance with 30 CFR 816.46 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

Significant, imminent environmental harm to land, air or water resources means—

(a) An environmental harm is an adverse impact on land, air, or water resources including, but not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which—

(1) Is causing such harm; or,

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 521(a)(3) of the Act, and is appreciable and not immediately reparable.

Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are—

(a) "A horizon." The uppermost mineral layer, often called the surface

soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles: is typically the greatest.

(b) "B horizon." The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Spoil means overburden that has been removed during coal exploration operations.

Substantially disturb means to impact significantly upon land, air, or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, constructing roads and other access routes, and/or placing structures, excavated earth, or other debris on the surface of land.

Surface coal mining operations means—

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine-site, *Provided,* these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Act; and *Provided further,* that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) Areas upon which the activities described in paragraph (a) of this definition occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

Suspended solids or *nonfilterable residue, expressed as milligrams per liter,* means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR Part 136).

Temporary diversion means a diversion of a stream or overland flow during coal exploration operations which has not been approved by OSM to remain after reclamation as part of the approved postmining land use.

Topsoil means the A soil horizon layer of the three major soil horizons.

Water table means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

§ 939.701-11 Applicability.

(a) This Part applies to all coal exploration operations within the State of Rhode Island except exploration for coal on Indian or Federal lands.

(b) Each structure used in connection with or to facilitate a coal exploration operation shall comply with the performance standards and the design requirements of Subpart 939.815 of this part, except that—

(1) An existing structure which meets the performance standards of Subpart 939.815 of this part but does not meet the design requirements of Subpart 939.815 of this part shall be exempted from meeting those design requirements by OSM. OSM may grant this exemption only as part of the coal exploration approval process after obtaining the information required by 30 CFR Subpart 939.776.

(2) Where an existing structure meets the performance standards of 30 CFR Chapter VII, Subchapter B, and these standards are at least as stringent as the comparable performance standards in Subpart 939.815 of this part, such structure shall be exempted by OSM from meeting the design requirements of Subpart 939.815 of this part. OSM may grant this exemption only as part of the coal exploration approval process after obtaining the information required by 30 CFR Subpart 939.776.

(3) Where exploration will result in removal of more than 250 tons, as required in § 939.776-13, an existing structure which meets a performance standard of 30 CFR Chapter VII, Subchapter B which is less stringent than the comparable performance standards of Subpart 939.815 of this part or which does not meet a performance standard of Subpart 939.815 of this part for which there was no equivalent performance standard in 30 CFR Subchapter B, shall be modified or reconstructed to meet the design standards of Subpart 939.815 of this part pursuant to a compliance plan approved by OSM in the coal exploration approval after making the findings required by 30 CFR 786.21.

(4) An existing structure which does not meet the performance standards of 30 CFR Chapter VII, Subchapter B, and which the applicant proposes to use in connection with or to facilitate a coal exploration operation shall be modified or reconstructed to meet the design standards of Subpart 939.815 of this part prior to issuance of the exploration approval.

(c)(1) Any person conducting coal exploration on non-Federal and non-Indian lands on or after the effective date of this subpart shall either file a notice of intention to explore or obtain approval of OSM as required by 30 CFR 939.776.

(2) Two months after the effective date of this subpart, coal exploration performance standards in 30 CFR Subpart 939.815 shall apply to coal exploration on non-Federal and non-Indian lands which substantially disturbs the natural land surface.

§ 939.701-12 Petitions to initiate rulemaking.

The public may petition OSM to initiate rulemaking concerning this exploration program pursuant to 30 CFR 700.12.

§ 939.701-13 Notice of citizen suits.

A person who intends to initiate a civil action under Section 520 of the Act must give notice as provided in 30 CFR 700.13.

§ 939.701-14 Availability of records.

(a) Records required by the Act to be made available locally to the public

shall be retained at the Rhode Island Department of Environmental Management, 83 Park St., Providence, Rhode Island 02903. Contact Victoria Bell.

(b) Other records or documents in the possession of OSM may be requested under 43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act.

§ 939.701-15 Computation of time.

(a) Except as otherwise provided, computation of time under this subpart is based on calendar days.

(b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which OSM is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is 7 days or less.

§ 939.701-16 Termination of the program.

This program shall terminate upon the effective date of a State program for the State of Rhode Island under 30 CFR Part 732.

Areas Unsuitable for Mining

Subpart 939.760 General

§ 939.760-3 General.

Any person who intends to petition to designate non-Federal or non-Indian lands subject to this subpart unsuitable for mining should follow the procedures given at 30 CFR Part 764, provided that no petition may be filed until one year after the effective date of this rule. The provisions of 30 CFR Subchapter F will apply to lands subject to subpart 939.760.

Coal Exploration

Subpart 939.770 General Requirements for Exploration

§ 939.770-4 Responsibilities.

(a) A person seeking to conduct coal exploration must file a notice of intention or obtain approval of OSM under 30 CFR Subpart 939.776 before commencing exploration.

(b) OSM shall review each application for exploration approval and issue, condition, deny, suspend, or revoke such approvals.

§ 939.770-5 Definitions.

As used throughout Subparts 939.770, 939.776 and 939.787 of this part, except where otherwise indicated:

Applicant means a person who seeks to obtain an exploration approval under Subparts 939.770, 939.776 and 939.787 of this part.

Application for approval means the documents and other information filed with OSM under Subparts 939.770 and 939.776 of this part for the issuance of an exploration approval.

Complete application means an application for exploration approval which contains all information required under the Act and Subparts 939.770 and 939.776 of this part.

Exploration approval means the approval required under Section 512 of the Act.

§ 939.770-12 Coordination with respect to requirements under other laws.

(a) To avoid duplication, OSM shall provide for coordinated review of applications for approval of coal exploration with the governmental agencies responsible for issuing permits under or assuring compliance with:

(1) Any other Federal permit process applicable to those operations including, at a minimum, permits required under the

(i) Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*);

(ii) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*); and

(iii) Resource Conservation and Recovery Act (42 U.S.C. 3251 *et seq.*).

(2) Any water quality management plans which have been approved by the Administrator of the Environmental Protection Agency under Sections 208 or 303 (c) and (e) of the Clean Water Act, as amended (33 U.S.C. 1288, 1313 (c) and (e));

(3) The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); Executive Order 11593; and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 4332).

(b) OSM knows of no statutes of the State of Rhode Island which are applicable to coal exploration.

Subpart 939.776—General Requirements for Coal Exploration

§ 939.776-11 General requirements—Exploration removing less than 250 tons.

(a) Any person who intends to conduct coal exploration during which less than 250 tons of coal will be removed from the area to be explored shall, prior to conducting the exploration, file with OSM a written notice of intention to explore.

(b) The notice shall include:

(1) The name, address, and telephone number of the person seeking to explore;

(2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration operations;

(3) A description sufficient to enable OSM to identify the location and size of areas at which exploration operations are to be conducted, access routes, the distance from the area or areas to a public road, and means of transportation used or proposed to be used;

(4) A statement of the period of intended exploration;

(5) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration operations.

(c) Any person who conducts coal exploration operations subject to this section which substantially disturb the natural land surface shall comply with 30 CFR Subpart 939.815.

(d) OSM shall, except as otherwise provided in § 939.776-17, place such notices on public file and make them available for public inspection and copying.

§ 939.776-12 General requirements: Exploration removing more than 250 tons.

Any person who intends to conduct coal exploration in which more than 250 tons of coal are to be removed from the area to be explored shall, prior to conducting the exploration, apply for and obtain the written approval of OSM, in accordance with the following:

(a) Each application for approval shall contain, at a minimum, the following information:

(1) The name, address, and telephone number of the applicant;

(2) The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(3) An exploration and reclamation operations plan, including:

(i) A narrative description of the proposed exploration area, describing surface topography; geological, surface water, and other physical features as described in paragraph (a)(5) of this section; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including but not limited to any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); and districts, sites,

buildings, structures, or objects listed on the National Register of Historic Places;

(ii) A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

(iii) An estimated timetable for conducting and completing each phase of the exploration and reclamation;

(iv) The estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts;

(v) A description of the measures to be used to comply with the applicable requirements of 30 CFR Subpart 939.815;

(4) The name and address of the owner(s) of record of the surface land and of the subsurface mineral estate of the area to be explored; and

(5) A description of existing roads, occupied dwellings, and pipelines; the proposed location of trenches, roads, and other access routes and structures to be constructed; the location of excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, topographic, cultural, and drainage features; and habitats of any endangered or threatened species listed pursuant to the endangered Species Act of 1973 (16 U.S.C 1531 *et seq.*).

(b) Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within one week after OSM has determined the application to be complete, public notice of the filing of the application shall be posted by the applicant at the courthouse or other public office designated by the Director in the vicinity of the proposed exploration area.

(2) The public notice shall state the name and business address of the person seeking approval, the date of filing of the application, the address to which written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration.

(3) Any person with an interest which is or may be adversely affected shall have the right to file written comments on the application within 15 days after the posting of the notice described in paragraph (b)(1) of this section.

§ 939.776–13 Application: Approval or disapproval of exploration removing more than 250 tons.

(a) OSM shall act upon a completed application for approval within 60 days or such longer time as may be reasonable under the circumstances. If additional time is necessary, OSM shall notify the applicant that the plan is being reviewed, but that more time is necessary to complete such review, setting forth the reasons why additional time is needed.

(b) OSM shall approve a complete application if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application:

(1) Will be conducted in accordance with Subpart 939.815;

(2) Will not jeopardize the continued existence of an endangered or threateded species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(3) Will not adversely affect cultural resources or districts, sites, buildings, structures, or objects listed on the National Register of Historic Places, unless the proposed exploration has been approved by both OSM and the agency with jurisdiction over such matters.

(c) Each approval shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with 30 CFR Subpart 939.815.

(d) Approval shall be given for a period not to exceed 2 years. Approval may be renewed for successive two-year periods upon reapplication.

(e) Except as otherwise provided in this section, review, revision, and renewal of approvals and transfer, sale, and assignment of rights granted by approvals shall be done in accordance with 30 CFR Part 788.

§ 939.776–14 Application: Notice and hearing for exploration of more than 250 tons.

(a) OSM shall notify the applicant and the appropriate local government officials, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. OSM shall provide public notice of approval or disapproval of each application by publication in a newspaper of general circulation in the general vicinity of the proposed operations.

(b) Any person with an interest which is or may be adversely affected by a decision of OSM pursuant to paragraph (a) of this section shall have the opportunity for administrative and judicial review as set forth in 30 CFR Subpart 939.787.

§ 939.776–15 Requirements for exploration operations.

(a) All coal exploration and reclamation operations which substantially disturb the natural land surface or which remove more than 250 tons of coal shall be conducted in accordance with the coal exploration requirements of this subpart and any conditions in the exploration approval.

(b) Any person who conducts any coal exploration in violation of the provisions of Subpart 939.815 shall be subject to the provisions of Subparts 939.842 through 939.845.

§ 939.776–17 Public availability of information.

(a) Except as provided in paragraph (b) of this section, all information submitted to OSM under this subpart shall be made available for public inspection and copying at the State of Rhode Island Department of Environmental Management, 83 Park St., Providence, Rhode Island 02903. Contact Victoria Bell.

(b)(1) OSM shall not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and OSM determines that the information is confidential and may be withheld under the Freedom of Information Act, 5 U.S.C. 552.

(2) OSM shall determine that information is confidential only if it concerns trade secrets or is privileged commerical or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(3) Information requested to be held as confidential under this section shall not be made publicly available unless notice and opportunity to be heard is afforded to persons both seeking and opposing disclosure of the information and such information is determined not to be confidential.

Subpart 939.787—Administrative and Judicial Review of Decisions on Coal Exploration

§ 939.787–11 Administrative review.

(a) Within 30 days after the applicant is notified of the final decision of OSM concerning the application for coal exploration under 30 CFR 939.776–14, the applicant, or any person with an interest which is or may be adversely affected,

may request a hearing on the reasons for the final decision in accordance with this section.

(b) OSM may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(3) The relief is not to affect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(4) The relief sought is not the issuance of exploration approval where an approval has been denied, in whole or in part, by OSM.

(c)(1) For the purpose of such hearing, the hearing authority may administer oaths and affirmations, subpoena witnesses, written, or printed materials, compel attendance of witnesses and production of written or printed materials, compel discovery, and take evidence, including but not limited to site inspections of the land to be affected and other coal exploration operations carried on by the applicant in the general vicinity of the proposed operations.

(2) A verbatim record of each public hearing required by this section shall be made and a transcript made available on the motion of any party or by order of the hearing authority.

(3) *Ex parte* contacts between representatives of the parties before the hearing authority and the hearing authority shall be prohibited.

(d) Within 30 days after the close of the record, the hearing authority shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the hearing authority with respect to the appeal.

(e) The burden of proof at such hearings shall be on the party seeking to reverse the decision of OSM.

§ 939.787-12 Judicial review.

(a) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to appeal as provided in paragraph (b) of this section, if:

(1) The applicant or person is aggrieved by the decision of the hearing authority in an administrative review proceeding conducted pursuant to § 939.787-11; or

(2) Either OSM or the hearing authority for administrative review under § 939.787-11 fails to act within time limits specified in the Subparts 939.770 through 939.787 of this part.

(b) The action of OSM or the hearing authority identified in paragraph (a) of this section is subject to judicial review by the United States District Court for the district in which the coal exploration is or would be located, in the time and manner provided for in Section 526(a)(2) and (b) of the Act. The availability of such review shall not limit the operation of rights established in Section 520 of the Act.

Performance Standards

Subpart 939.815—Performance Standards—Coal Exploration

§ 939.815-11 General responsibility of persons conducting coal exploration.

(a) Each person who seeks to conduct coal exploration which substantially disturbs the natural land surface and in which 250 tons or less of coal are removed shall file the notice of intention to explore required under 30 CFR 939.776-11 and shall comply with § 939.815-15.

(b) Each person who conducts coal exploration which substantially disturbs the natural land surface and in which more than 250 tons of coal are removed from the area described by the written approval of OSM shall comply with the procedures described in the exploration and reclamation operations plan approved under § 339.776-12 and shall comply with § 939.815-15.

§ 939.815-13 Required documents.

Each person who conducts coal exporation which substantially disturbs the natural land surface and which removes more than 250 tons of coal shall, while in the exploration area, possess written approval of OSM for the activities granted under 30 CFR 939.776-12. The written approval shall be available for review by the authorized representative of OSM upon request.

§ 939.815-15 Performance standards for coal exploration.

The following performance standards are applicable to coal exploration which substantially disturbs the natural land surface.

(a) Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in 30 CFR 780.16(b) shall not be disturbed during coal exploration.

(b) The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area.

(c)(1) Vehicular travel on other than established roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(2) Any new road in the exploration area shall be constructed to meet the requirements of OSM.

(3) Existing roads may be used for exploration in accordance with the following:

(i) All applicable Federal, State, and local requirements shall be met.

(ii) If the road is significantly altered for exploration, including but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then paragraph (g) of this section shall apply to all areas of the road which are altered or which result in such additional contributions.

(iii) If the road is significantly altered for exploration operations and will remain as a permanent road after exploration operations are completed, the person conducting exploration shall ensure that the requirements of 30 CFR 816.150 through 816.166, as appropriate, are met for the design, construction, alteration, and maintenance of the road.

(4) Promptly after exploration operations are completed, existing roads used during exploration shall be reclaimed either:

(i) To a condition equal to or better than their pre-exploration condition; or

(ii) To a condition required by OSM.

(d) If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(e) Topsoil shall be removed, stored, redistributed on disturbed areas as necessary to assure successful revegetation or as required by OSM.

(f) Areas disturbed by coal exploration shall be revegetated by the person who conducts the exploration or his or her agent. If more than 250 tons of coal are removed from the exploration area, all revegetation shall be in compliance with the plan approved by

OSM and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved post-exploration land use and in accordance with following:

(1) All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area. If both the pre-exploration and post-exploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface to prevent erosion.

(g) With the exception of small temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no emphemeral, intermittent, or perennial stream shall be diverted during coal exploration operations. Overland flow of water shall be diverted in a manner that:

(1) Prevents erosion;

(2) To the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration areas; and

(3) Complies with all other applicable State or Federal requirements.

(h) Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of 30 CFR 816.13, 816.14, and 816.15.

(i) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that OSM determines may remain to:

(1) Provide additional environmental quality data;

(2) Reduce or control the on- and off-site effects of the exploration operations; or

(3) Facilitate future surface mining and reclamation operations by the person conducting the approved exploration operations.

(j) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as those listed in 30 CFR 816.45 or sedimentation ponds which comply with 30 CFR 816.46. OSM may specify additional measures which shall be adopted by the prospector.

(k) Toxic or acid-forming materials shall be handled and disposed of in accordance with 30 CFR 816.48 and 816.103. If specified by OSM, additional measures shall be adopted by the prospector.

Inspection and Enforcement Procedures

Subpart 939.842—Federal Inspections

§ 939.842-11 Federal inspections.

(a) Authorized representatives of the Secretary shall conduct inspections of coal exploration operations as necessary:

(1) To develop or enforce this subpart;

(2) To enforce those requirements and permit conditions imposed under this subpart or 30 CFR Chapter VII or as provided in this section; and

(3) To determine whether any notice of violation or cessation order issued during an inspection authorized under this section has been complied with.

(b)(1) An authorized representative of the Secretary shall immediately conduct a Federal inspection to enforce any requirement of the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart when the authorized representative has reason to believe, on the basis of information available to him or her (other than information resulting from a previous Federal inspection), that there exists a violation of the Act, this subpart, or any condition of an exploration approval, or that there exists any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources.

(2) An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant, would, if true, constitute a condition, practice or violation referred to in paragraph (b)(1) of this section.

(c) OSM shall conduct periodic inspection of all coal exploration and reclamation operations required to comply in whole or in part with the Act or this subpart, including the collection of evidence with respect to every violation of any condition of the exploration approval, the Act or this subpart.

(d) The inspection required under paragraph (c) of this section shall:

(1) Be carried out on an irregular basis so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without notice to the person being inspected or any of his agents or employees, except for necessary onsite meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this subpart, any condition of an exploration approval imposed under this subpart and the Act.

§ 939.842-12 Citizens' requests for Federal inspections.

(a) A citizen may request a Federal inspection under 30 CFR 939.842-11(b), by furnishing to an authorized representative of the Secretary a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition, or practice referred to in 30 CFR 939.842-11(b)(1) exists and setting forth a phone number and address where the citizen can be contacted.

(b) The identity of any person supplying information to OSM relating to a possible violation or imminent danger or harm shall remain confidential with OSM, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Freedom of Information Act (5 U.S.C. 552) or other Federal law;

(c) If a Federal inspection is conducted as a result of information provided to OSM by a citizen as described in paragraph (a) of this section, the citizen shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Secretary during the inspection. Such person has a right of entry to, upon and through the coal exploration operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the exploration area. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within 10 days of the Federal inspection or, if there is no inspection, within 15 days of receipt of the citizen's written statement, OSM shall send the citizen the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the Federal inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

(2) If no Federal inspection was conducted, an explanation of the reason why; and

(3) An explanation of the citizen's right, if any, to informal review of the

action or inaction of OSM under 30 CFR 939.842–15.

(e) OSM shall give copies of all materials in paragraphs (d) (1) and (2) of this section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted under paragraph (b) of this section.

§ 939.842–13 Right of entry.

(a) Each authorized representative of the Secretary conducting a Federal inspection under 30 CFR 939.842–11:

(1) Shall have a right of entry to, upon, and through any coal exploration operation, without advance notice or a search warrant, upon presentation of appropriate credentials; and

(2) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation, required under the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart.

(b) No search warrant shall be required with respect to any activity under paragraph (a) of this section except that a search warrant may be required for entry into a building.

§ 939.842–14 Review of adequacy and completeness of inspections.

Any person who is or may be adversely affected by a coal exploration operation may notify OSM in writing of any alleged failure on the part of OSM to make adequate and complete or periodic Federal inspections as provided in 30 CFR 939.842–11(b)(1), (c) and (d). The notification shall include sufficient information to create a reasonable belief that 30 CFR 939.842–11(b)(1), (c) and (d) are not being complied with and to demonstrate that the person is or may be adversely affected. OSM shall within 15 days of receipt of the notification determine whether 30 CFR 939.842–11(b)(1), (c) and (d) are being complied with, and if not, shall immediately order a Federal inspection to remedy the noncompliance. OSM shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, to remedy the noncompliance.

§ 939.842–15 Review of decision not to inspect or enforce.

(a) Any person who is or may be adversely affected by a coal exploration operation may ask OSM to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for Federal inspection under 30 CFR 939.842–12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) OSM shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the citizen shall not be disclosed unless confidentiality has been waived or disclosure is required under the Freedom of Information Act or other Federal law.

(c) Informal review under this section shall not affect any right to formal review under Section 525 of the Act or to a citizen's suit under Section 520 of the Act.

§ 939.842–16 Availability of records.

Copies of all records, reports, inspection materials, or information obtained by OSM under Title V of the Act or this subpart shall be made immediately available to the public in the area of exploration so that they are conveniently available to residents of that area, except that Office may refuse to make available:

(a) Investigatory records compiled for law enforcement purposes to the extent allowed under the Freedom of Information Act (5 U.S.C. Section 552(b)); and

(b) Information not required to be made available under § 939.776–17 or 30 CFR 786.15.

Subpart 939.843—Federal Enforcement

§ 939.843–11 Cessation orders.

(a)(1) An authorized representative of the Secretary shall immediately order a cessation of coal exploration or of the relevant portion thereof, if he finds, on the basis of any Federal inspection, any condition or practice or any violation of the Act, this subpart, or an exploration approval issued under this subpart, which:

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, or water resources.

(2) If the cessation ordered under paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Secretary shall impose affirmative obligations on the person to whom it is issued to abate the conditions, practice, or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

(b)(1) An authorized representative of the Secretary shall immediately order a cessation of coal exploration operations, or of the relevant portion thereof, when a notice of violation has been issued under § 939.843–12(a) and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative.

(2) A cessation order issued under this paragraph shall require the person to whom it is issued to take all steps the authorized representative of the Secretary deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this section shall be in writing, signed by the authorized representative who issued it and shall set forth with reasonable specificity: (1) The nature of the violation; (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, if appropriate including the time for meeting any interim steps; and (4) a reasonable description of the portion of the coal exploration operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by an authorized representative of the Secretary.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the Secretary may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(f) An authorized representative of the Secretary shall terminate a cessation order, by written notice to the person to whom the order was issued, when he determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of OSM to assess civil penalties for those violations under Subpart 939.845 of this part.

§ 939.843–12 Notices of violation.

(a) An authorized representative of the Secretary shall issue a notice of violation if, on the basis of any Federal inspection, he finds a violation of the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart, which does not create an imminent danger or harm for which a cessation order must be issued under § 939.843–11.

(b) A notice of violation issued under this section shall be in writing, signed by the authorized representative who issued it, and shall set forth with reasonable specificity: (1) The nature of the violation; (2) the remedial action required, which may include interim steps; (3) a reasonable time for abatement, which may include time for accomplishment of interim steps; and (4) a reasonable description of the portion of the coal exploration operation to which it applies.

(c) An authorized representative of the Secretary may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions shall not exceed 90 days from the date of issuance, except upon a showing by the prospector that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in paragraph (f) of this section. An extended abatement date pursuant to this section shall not be granted when the prospector's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the prospector in completing the remedial action required.

(d) If the person to whom the notice was issued fails to meet any time set for abatement or for accomplishment of an interim step, the authorized representative shall issue a cessation order under § 939.843–11(b).

(e) An authorized representative of the Secretary shall terminate a notice of violation by written notice to the person to whom it was issued, when he determines that all violations listed in the notice of violations have been abated. Termination shall not affect the right of OSM to assess civil penalties for those violations under Subpart 939.845 of this part.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the prospector of an ongoing operation with an exploration approval has timely applied for and diligently pursued an exploration approval renewal or other necessary approval of designs or plan but such approval has not been or will not be issued within 90 days after a valid approval expires or is required for reasons not within the control of the prospector;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the prospector has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(3) Where the prospector cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days or where, due to climatic conditions, abatement within 90 days clearly:

(i) Would cause more environmental harm than it would prevent; or

(ii) Requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in paragraphs (f)(1) through (f)(4) of this section exist, the prospector may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The prospector shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of paragraphs (c) and (f) of this section. In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the prospector or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The inspector's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(i) Any determination made under paragraph (h) of this section shall be in writing and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR Part 4.

(j) No extension granted under paragraph (h) of this section may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the prospector may request a further extension in accordance with the procedures of paragraph (h) of this section.

§ 939.843–13 Suspension or revocation of approvals.

(a)(1) Except as provided in paragraph (b) of this section, the Director shall issue an order to a prospector requiring him or her to show cause why approval to conduct coal exploration under the Act should not be suspended or revoked, if the Director determines that a pattern of violations of any requirements of the Act, this subpart, or any condition for approval required by the Act exists or has existed and that the violations were caused by the prospector willfully or through unwarranted failure to comply with those requirements or conditions. Willful violation means an act or omission which violates the Act, this subpart, or any exploration approval condition required by the Act, or this subpart, committed by a person who intends the result which actually occurs. Unwarranted failure to comply means the failure of the prospector to prevent the occurrence of any violation of the approval or any requirement of the Act, due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such approval or the Act, due to indifference, lack of diligence, or lack of reasonable care. Violations by any person conducting coal exploration on behalf of the prospector shall be attributed to the prospector, unless the prospector establishes that they were acts of deliberate sabotage.

(2) The Director may determine that a pattern of violations exists or has existed, based on two or more Federal inspections of the exploration operations within any 12-month period, after considering the circumstances, including:

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this subpart, or the approval;

(ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this subpart, or the approval; and

(iii) The extent to which violations were isolated departures from lawful conduct.

(3) The Director shall determine that a pattern of violations exists, if he finds that there were violations of the same or related requirements of the Act, this subpart, or the approval during three or more Federal inspections of the approval area within any 12-month period.

(4)(i) In determining the number of violations within any 12-month period, the Director shall consider only violations issued as a result of a Federal inspection carried out during enforcement of this subpart.

(ii) The Director may consider violations issued as a result of inspections other than those mentioned in clause (i) in determining whether to exercise his discretion under paragraph (a)(2) of this section.

(b) The Director may decline to issue a show cause order, or may vacate an outstanding show cause order, if he finds that, taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the record of the case.

(c) At the same time as the issuance of the order, the Director shall:

(1) File a copy of the order to show cause with the Office of Hearings and Appeals.

(2) If practicable, publish notice of the order, including a brief statement of the procedure for intervention in the proceeding, in a newspaper of general circulation in the area of the coal exploration.

(3) Post the notice at the OSM State Office closest to the area of the coal exploration operations.

(d) If the prospector files an answer to the show cause order and requests a hearing under 43 CFR Part 4, a public hearing shall be provided as set forth in that part. The Office of Hearings and Appeals shall give thirty days' written notice of the date, time and place of the hearing to the Director, the prospector, and any intervenor. Upon receipt of the notice, the Director shall publish it, if practicable, in a newspaper of general circulation in the area of the coal exploration and shall post it at the OSM State Office closest to those operations.

(e) Within sixty days after the hearing, and within the time limits set forth in 43 CFR Part 4, the Office of Hearings and Appeals shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the Office of Hearings and Appeals revokes or suspends the exploration approval the prospector shall immediately cease coal exploration on the approval area and shall:

(1) If the exploration approval is revoked, complete reclamation within the time specified in the order; or

(2) If the exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

(f) Whenever a prospector fails to abate a violation contained in a notice of violation or a cessation order within the abatement period set in the notice or order or as subsequently extended, the Director shall review the prospector's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to 30 CFR 939.845–15(b)(2).

§ 939.843–14 Service of notices of violations, cessation orders, and show cause orders.

(a) A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

(1) By tendering a copy of the notice of violation or cessation order to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an exployee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

(b) A show cause order may be served on the person to whom it is issued in either manner provided in paragraph (a) of this section.

(c) Designation by any person of an agent for service of notices and orders shall be made in writing to the appropriate State office of OSM.

(d) OSM may furnish copies to any person having an interest in the coal exploration, or the exploration approval area, such as the owner of the fee or a corporate officer of the prospector or entity conducting coal exploration.

§ 939.843–15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of exploration, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the exploration site so that it may be viewed during the hearing or at any location acceptable to OSM and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the exploration site shall be deemed to be reasonably close to the exploration site unless a closer location is requested and agreed to by OSM. Expiration of a notice or order shall not affect the Director's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice or violation in question has been abated or the hearing has been waived.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this paragraph:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order is issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he will be deemed to have waived an informal public hearing unless he requests one within 30 days after service of the notice or order, and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his request is received on or after the 21st day after service of the notice or order. The extension of time shall be

equal to the number of days elapsed after the 21st day.

(c) OSM shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued and;

(2) Any person who filed a report which led to that notice or order.

(d) OSM shall also put notice of the hearing at the OSM State Office closest to the exploration site, and publish it, where practicable, in a newspaper of general circulation in the area of the exploration.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of OSM, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearing, OSM shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to—

(1) The person to whom the notice or order was issued and;

(2) Any person who filed a report which led to the notice or order,

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under Sections 518(b), 521(a)(4), or 525 of the Act.

(h) The person conducting the hearing for OSM shall determine whether or not the exploration site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the exploration site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or the required remedial action.

§ 939.843–16 Formal review of citations.

(a) A person issued a notice of violation or cessation order under 30 CFR 939.843–11 or 939.843–12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing, under 43 CFR Part 4, within 30 days after receiving notice of the action.

(b) The filing of an application for review and request for a hearing under this section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

§ 939.843–17 Lack of information.

No notice of violation, cessation order, show cause order, or order revoking or suspending an approval may be vacated because it is subsequently determined that OSM did not have information sufficient under § 939.842–11 (b)(1) or (b)(2) to justify an inspection.

§ 939.843–18 Inability to comply.

(a) No cessation order or notice of violation issued under this subpart may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under Subpart 939.845 of this part and of the duration of the suspension of an approval under § 939.843–13(e).

§ 939.843–19 Injunctive relief.

OSM may request the Attorney General of the United States to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order, in the district court of the United States for the district in which the coal exploration is located or in which the person to whom the notice of violation or order has been issued has his principal office, whenever that person or his or her agent, in violation of the Act, this subpart, or any condition of an exploration approval imposed under the Act or this subpart:

(a) Violates or fails or refuses to comply with any order or decision of the Secretary or an authorized representative of the Secretary under the Act or this subpart;

(b) Interferes with, hinders or delays the Secretary or an authorized representative of the Secretary in carrying out the provisions of the Act or this subpart;

(c) Refuses to admit an authorized representative of the Secretary to an exploration site;

(d) Refuses to permit inspection of an exploration area by an authorized representative of the Secretary;

(e) Refuses to furnish any required information or report;

(f) Refuses to permit access to or copying of any required records; or

(g) Refuses to permit inspection of monitoring equipment.

Subpart 939.845—Civil Penalties

§ 939.845–11 How assessments are made.

OSM shall review each notice of violation and cessation order issued under Subpart 939.843 of this part in accordance with the assessment procedures described in §§ 939.845–12, 939.845–13, 939.845–14, 939.845–15 and 939.845–16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

§ 939.845–12 When penalty will be assessed.

(a) OSM shall assess a penalty for each cessation order.

(b) OSM shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in § 939.845–13.

(c) OSM may assess a penalty for each notice of violation assigned 30 points or less under the point system described in § 939.845–13. In determining whether to assess a penalty OSM shall consider the factors listed in § 939.845–13(b).

§ 939.845–13 Point system for penalties.

(a) OSM shall use the point system described in this section to determine the amount of the penalty and, in the case of notices of violations, whether a mandatory penalty should be assessed as provided in § 939.845–12(b).

(b) Points shall be assigned as follows:

(1) *History of previous violations.* OSM shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration operation. Points shall be assigned as follows:

(i) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year;

(ii) No violation for which the notice or order has been vacated shall be counted; and

(iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) *Seriousness.* OSM shall assign up to 30 points based on the seriousness of the violation, as follows:

(i) *Probability of occurrence.* OSM shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Probability of Occurrence—Points

None—0
Insignificant—1–4
Unlikely—5–9
Likely—10–14
Occurred—15

(ii) *Extent of potential or actual damage.* OSM shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration area, OSM shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration area, OSM shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(iii) *Alternative.* In the case of a violation of an administrative requirement, such as a requirement to keep records, OSM shall, in lieu of paragraphs (b)(2) (i) and (ii) of this section, assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) *Negligence.* (i) OSM shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(C) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(A) *No negligence* means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) *Negligence* means the failure of a prospector to prevent the occurrence of any violation of his or her approval or any requirement of the Act or this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such approval or the Act due to indifference, lack of diligence, or a lack of reasonable care.

(C) *A greater degree of fault than negligence* means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration area shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) Good faith in attempting to achieve compliance.

(i) OSM shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

Degree of good faith—Points

Rapid compliance: −1 to −10
Normal compliance: −0

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this section:

(A) *Rapid compliance* means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) *Normal compliance* means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

§ 939.845–14 Determination of amount of penalty.

OSM shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 939.845–13 to dollar amount, according to the following schedule:

Points	Dollars
1	$20
2	40
3	60
4	80
5	100
6	120
7	140
8	160
9	180
10	200
11	220
12	240
13	260
14	280
15	300
16	320
17	340
18	360
19	380
20	400
21	420
22	440
23	460
24	480
25	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800
59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600
67	4,700
68	4,800
69	4,900
70 and above 70	5,000

§ 939.845–15 Assessment of separate violations for each day.

(a) OSM may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, OSM shall consider the factors listed in § 939.845–13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which is assigned more than 70 points under § 939.845–13(b), OSM shall assess a civil penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in paragraph (a), whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to Section 521(a) of the Act, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under Section 525(c) of the Act, after a determination that the person to whom the order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the office of Hearings and Appeals issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under Section 526 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to Section 526(c) of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court; and

(2) Such penalty for failure to abate a violation shall not be assessed for more than 30 days for each such violation. If the prospector has not abated the violation within the 30-day period, OSM shall take appropriate action pursuant to Sections 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a recurrence of the failure to abate

§ 939.845–16 Waiver of use of formula to determine civil penalty.

(a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in § 939.845–14 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this subpart, or any condition or any exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in § 939.845–13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

§ 939.845–17 Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to OSM and to the inspector who issued the notice of violation or cessation order. OSM shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) OSM shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice in order was issued, by certified mail, within 30 days of the issuance of the notice or order. If the mail is tendered at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(c) Unless a conference has been requested, OSM shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. OSM shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in paragraph (b) of this section, within 30 days after the date the violation is abated.

§ 939.845–18 Procedure for assessment conference.

(a) OSM shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 15 days from the date the proposed assessment or reassessment is mailed.

(b)(1) OSM shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by Section 554 of Title 5 of the United Statess Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later.

(2) OSM shall post notice of the time and place of the conference at the OSM office closest to the exploration site at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of OSM and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than $500 shall not be final and binding on the Secretary, until approved by the Director or his designee.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in § 939.845–17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by OSM within 30 days after the date of signing, OSM may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) of this section within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At formal review proceedings under Section 518, 521(a)(4), and 523 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

§ 939.845–19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by

submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 15 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested, if it has been decided in a review proceeding commenced under § 939.843–16.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) of this section to OSM, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in § 939.845–20.

§ 939.845–20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in § 939.845–19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Secretary, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this section, the escrowed funds shall be transferred to OSM in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this subpart, OSM shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to OSM within 15 days after the order is mailed to such person.

[FR Doc. 82–11505 Filed 4–27–82; 8:45 am]

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federal register

Wednesday
April 28, 1982

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Availability of Funding Under the Community Housing Resource Board Program; Competitive Solicitation

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-82-1124]

Availability of Funding Under the Community Housing Resource Board Program; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of competitive solicitation for funding available under the Community Housing Resource Board Program.

SUMMARY: HUD is soliciting applications from eligible Community Housing Resource Boards for funding under the Community Housing Resource Board Program. Resource Boards must meet eligibility criteria and minimum funding standards for specific project proposals in order to qualify for consideration.

DATE: An application for funding may be submitted between May 13, 1982 and June 28, 1982. Any application received after the specified date will not be considered unless it is received before awards are made and meets one of the late application exceptions specified in the application kits.

FOR FURTHER INFORMATION CONTACT: Doris Williams, Office of Procurement and Contracts, Room 5236, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: (202) 755-5585. (This is not a toll-free number.) Funding Application Kits are available upon written or telephone request.

SUPPLEMENTARY INFORMATION: This Notice of competitive solicitation for funding under the Resource Board Program is based on the Interim Regulation published by the Department as 24 CFR Part 120 in the Federal Register on March 25, 1982 (47 FR 12926). Interested Resource Boards are urged to review the regulation and the factors for award in the program application kit in order to determine whether or not they should apply under this program.

The program has two categories of funding: Maintenance and Improvement. *Maintenance* funding should be applied for where the activities of the Resource Board have resulted in full implementation of the terms of the Voluntary Affirmative Marketing Agreement (VAMA). Funding in this category will be provided to maintain Resource Board efforts related to the goals of the VAMA.

Improvement funding should be applied for where the terms of the VAMA have not been fully implemented. Funding in this category will be provided to improve the capability of Resource Board efforts related to the goals of the VAMA.

Eligible Resource Boards may apply for funds only under one category.

Program Background

Section 808(e) of Title VIII of the Civil Rights Act of 1968, as amended, requires the Secretary to "(3) cooperate with and render technical assistance to Federal, State, local and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices . . . and administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title."

Further, Section 809 requires that the "Secretary * * * commence such education and conciliatory activities as in his judgment will further the purposes of this title * * * call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this title and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement."

In order to promote the achievement of the goal of fair housing throughout the United States, the Department of Housing and Urban Development has developed the Voluntary Affirmative Marketing Agreements Program. This program focuses on nationwide efforts to assure nondiscrimination in connection with the sale, rental or financing of housing and the provision of services and facilities in connection therewith and to promote achievement of a condition in which individuals of similar income levels in the same housing marketing area have available to them a like range of choices in housing regardless of their race, color, religion, sex or national origin.

Consistent with its responsibilities under Title VIII, the Department of Housing and Urban Development has entered Voluntary Affirmative Marketing Agreements (VAMA) with the National Association of Realtors and the National Association of Real Estate Brokers. These agreements are intended to promote a broad equal opportunity program which is designed to assure that housing will be marketed on a nondiscriminatory basis. In addition, signatories to an agreement agree to certain programs and activities to acquaint communities with the availability of equal housing opportunities, to establish office procedures to ensure that there is no denial of equal professional service and to make materials available which explain the commitment of signatories to the goal of fair housing.

The VAMAs, signed by associations at the national level, are implemented on a local level, and in addition to providing a program to promote fair housing efforts, commit HUD to provide technical assistance to local real estate boards who become signatories to the VAMA. Assistance in implementing VAMA commitments is provided to the local real estate board through HUD established Community Housing Resource Boards composed of representatives of community organizations dedicated to equal housing opportunity. This program is included in the Catalog of Federal Domestic Assistance, number 14.401, Fair Housing Assistance Program.

Eligible Applicants

In order to be eligible to participate in the program, an applicant must first meet the following criteria:

(a) The applicant must be a Resource Board consisting of HUD appointed representatives from community organizations or agencies dedicated to equal housing opportunity, formed to fulfill HUD's obligation to provide technical assistance to local real estate boards in the implementation and monitoring of progress under the VAMA.

(b) The Resource Board must have been in existence at least six months prior to the issuance date of this Notice of Funds Availability.

Method of Distribution

Applicants for funding must submit all information required in the application kit, including a separate funding proposal. Funding amounts will by $15,000 for smaller Resource Board jurisdictions or $25,000 for larger Resource Board jurisdictions. A large jurisdiction is defined as a community with a population of 50,000 or more; a small jurisdiction is a community with a population under 50,000. Two categories of awards have been established (maintenance and improvement) to distinguish between the types of projects appropriate where, on the one hand, VAMAs are fully implemented, and on the other hand where VAMAs are not implemented. Projects will be evaluated for funding within each category to avoid disadvantaging Resource Boards seeking to fully implement VAMA objectives, but which are located in areas where results under the VAMA have not been demonstrated.

Although the Department does not intend to differentiate between the categories in terms of funding levels, the results of information received through the VAMA program monitoring Form HUD 941A, indicate that a larger number of Resource Boards will be funded in the improvement category, since few Resource Boards are associated with VAMAs that have fully accomplished objectives.

In order to be eligible to apply for and receive funds, a Resource Board must demonstrate in its application that it meets the criteria specified in §§ 120.15(d), 120.20, 120.25, 120.30 and 120.35 of the Community Housing Resource Board Grant Program Interim Rule published in the **Federal Register** on March 25, 1982 (47 FR 12926).

It is important to note that although funds may be used to cover the operating costs associated with the specific funded activities of the Resource Board program, proposals that use the majority of their funds *for program costs* (as opposed to administrative costs) will receive priority consideration.

Application Requirements

Congress has appropriated two million dollars to fund the fair housing efforts of the Community Housing Resource Boards. In most cases, funding will be limited to a one-time proposal for a one-year effort following which Resource Boards will be encouraged to seek funds from other sources for continuing projects. The Department believes that these funds can provide the assistance necessary to afford existing Resource Boards the capability of rendering more effective assistance to local real estate boards. Grant amounts may vary depending upon the size of the jurisdication where the Resource Board operates. The Department has determined that large jurisdictions are eligible to receive larger grants than small jurisdictions.

Other Matters

All applicants are notified that training is an essential part of this program. Accordingly, all funded Resource Boards are required to set aside 5% of the grant amount for training for development purposes. Further clarification on training requirements will be provided, by HUD, during the funding year.

The format and content requirements for applications are described in application kits which will be provided to each Board interested in applying. All applications will receive the same application kits.

Where the factors for award differ for the Maintenance and Improvement Programs, such differences are set forth in the application kit. In the review of applications under the ranking criteria, the Assistant Secretary will give priority consideration to projects which will have a significant impact in areas with substantial minority populations. In addition, in connection with the selection of projects, the Assistant Secretary may take into account the geographic location of projects in order to assure a broad geographic distribution of projects under the program.

Applicant Notification

All applicants will be notified by mail of the results of their applications as soon as review and evaluation of their applications are completed. No information will be made available to applicants during the period of HUD review and evaluation, except for the notification of those applicants that are determined ineligible.

All awards are expected to be announced by HUD within 90 days of the final date of submission of proposals to HUD. Proposals are to be submitted during the first 45 days that this Notice of Funds Availability becomes effective.

(Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601))

Dated: April 19, 1982.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 82-11582 Filed 4-27-82; 8:45 am]

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federal register

Wednesday
April 28, 1982

Part IV

Office of Management and Budget

Budget Rescission and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescission and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report one revision to an existing rescission proposal reducing the amount proposed for rescission by $3.4 billion, three new deferrals of budget authority totaling $87.5 million, and two revisions to existing deferrals increasing the amount deferred by $1 million.

The revision to the rescission proposal affects subsidized housing programs in the Department of Housing and Urban Development.

The deferrals, affect programs in the Departments of Agriculture, State, and Transportation.

The details of each rescission proposal and deferral are contained in the attached reports.

Ronald Reagan.

THE WHITE HOUSE,
April 23, 1982.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission #	Item	Budget Authority
	Department of Housing and Urban Development	
	Housing Programs	
R82-21A	Subsidized housing programs	5,999,789
	Subtotal, rescission proposal	5,999,789

Deferral #	Item	Budget Authority
	Department of Agriculture	
	Forest Service	
D82-3A	Expenses, brush disposal	48,401
	Department of State	
	Other	
D82-241	Migration and refugee assistance	40,000
D82-242	Migration and refugee assistance	10,000
D82-230A	United States bilateral science and technology agreements	2,000
	Department of Transportation	
	Federal Railroad Administration	
D82-243	Commuter rail transfer	37,500
	Subtotal, deferrals	137,901
	Total, rescission proposals and deferrals	6,137,690

SUMMARY OF SPECIAL MESSAGES
FOR FY 1982
(in thousands of dollars)

	Rescissions	Deferrals
Eleventh special message		
New items	---	87,500
Change to amounts previously submitted	(3,400,000)	1,000
Effect of tenth special message	(3,400,000)	88,500
Previous special messages	10,976,998	7,884,270
Total amount proposed in special messages	7,576,998	7,972,770

1/ This amount represents budget authority except for $20,922 thousand in one general revenue sharing deferral of outlays only (D82-23A).

SUPPLEMENTARY REPORT

Report pursuant to Section 1014(c) of Public Law 93-344

This report updates Rescission No. R82-21, transmitted to the Congress on February 8, 1982.

This revision to a rescission proposal for the Department of Housing and Urban Development's subsidized housing program reports a reduction of $3.4 billion in the amount to be rescinded. The decrease from $9.4 to $6.0 billion reflects a decision to increase the financing for and thereby hasten the construction of 70,000 section 8 housing units.

Rescission Proposal No: R82-21A

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Housing and Urban Development	New budget authority (P.L. 97-101) $ 17,373,528,040
Bureau	Other budgetary resources 9,952,324,561
Appropriation title & symbol	Total budgetary resources 27,325,852,601
Subsidized Housing Programs 86X0139	Amount proposed for rescission $ 5,999,789,165*
OMB identification code: 86-0139-0-1-604	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☒ Yes ☐ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☐ Appropriation ☒ Contract authority ☐ Other

Justification: *

This account provides budget authority to enter into long-term subsidy contracts for the Lower Income Housing Assistance Payments program (Section 8), the public housing production program and the public housing modernization program. These programs are executed in part through grants to State and local authorities.

Budget authority totaling $5,999,789,165 is proposed for rescission in FY 1982. The rescission is proposed because the amount of budgetary resources currently available for obligation under the HUD subsidized housing programs is in excess of anticipated requirements. In addition to the Congressional appropriation of $17.4 billion for FY 1982, deobligations of authority from prior years as well as excess budget authority carried over from 1981 will total almost $10 billion in 1982, bringing resources available in this account to $27.3 billion.

The Administration now proposes to commit subsidized housing budget resources in 1982 under an overall program which will make much greater usage of the Section 8 existing program than initially planned. The Administration proposes to commit $1.8 billion in support of public housing modernization in 1982 and to fund about 23,000 new Section 8 and public housing units, including nearly 17,000 units supported by the Section 202 housing for the elderly and handicapped loan fund. In addition it would provide $3.7 billion for financing adjustments for up to 70,000 Section 8 units which were reserved from budget authority provided in 1981 and prior years, but have not yet begun construction. The President's original rescission proposal has been revised by providing $2.3 billion in additional budget authority for Section 8 financing adjustments and $1.1 billion in additional budget authority for Section 8 cost amendments. The proposed 1982 program would also support new contractual commitments for 192,000 units of Section 8 existing housing, with 178,000 of these units to be reserved for the conversion to Section 8 of the rent supplement and rental assistance payments programs, which are now economically unviable.

Estimated Effects:

The proposed rescission will have no effect upon the almost 3.4 million households currently living in HUD subsidized housing, nor will this rescission affect the expected completion in 1982 of another 142,500 units currently under construction.

The current 1982 appropriation of $17.4 billion could be expected to support a net addition to this HUD subsidized housing inventory of another 117,000 units by 1986-87. Under the program now planned in conjunction with the proposed rescission, this net increment would be held to 36,000 units.

Outlay Effects*
(in millions of dollars)

1982 Outlay Estimates		Outlay Savings				
Without Rescission	With Rescission	1982	1983	1984	1985	1986
$6,726	$6,726	---	---	284	417	504

* Revised from previous report.

Of the amount of authority provided under this heading in the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1982, $178,003,321 of contract authority and $5,999,702,100 of budget authority is rescinded: Provided, That the amount of contract authority specified therein for low-income housing for Indian families is reduced by $25,112,000, the budget authority specified therein for public housing construction other than low-income housing for Indian families is reduced by $2,354,400,000, and the contract authority specified therein for modernization of existing low-income housing projects is reduced by $75,000,000: Provided further, That any balances of authorities made available prior to enactment of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1982, which are, or become, available for obligation in fiscal year 1982, shall be added to and merged with the authority approved in the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1982, which remains after the above rescission, and such merged amounts shall be made subject only to terms and conditions of law applicable to authorizations becoming available in fiscal year 1982: Provided further, That up to $1,800,000,000 of available budget authority shall be provided for modernization of existing low-income housing projects (Section 14 of the United States Housing Act of 1937, as amended) including $300,000,000 of budget authority which was deferred by the Supplemental Appropriations and Rescission Act, 1981, Public Law 97-12, with the balance to be provided from deobligations of prior year commitments for public housing projects: Provided further, That none of the merged amounts available for obligation in 1982 shall be subject to the provisions of Section 5(c)(2) and (3) and the fourth sentence of Section 5 (c)(1) of the United States Housing Act of 1937, as amended, (42 U.S.C. 1437c), and Section 213(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 1439).

SUPPLEMENTARY REPORT
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D82-3, transmitted to the Congress on October 1, 1982.

This revision to a deferral of Expenses, Brush Disposal funds in the Forest Service of the Department of Agriculture reports a reduction of $948,442 in the budgetary resources for the account. The decrease, which is attributable to smaller unobligated balances brought forward into 1982 than originally estimated, results in a corresponding reduction in the amount deferred from $49,349,000 to $48,400,558.

Deferral No: D82-3A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Agriculture	New budget authority (P.L. 84-190): $46,384,000
Bureau: Forest Service	Other budgetary resources: 48,400,558*
Appropriation title & symbol: Expenses, Brush Disposal 12X5206 1/	Total budgetary resources: 94,784,558*
	Amount to be deferred: Part of year: $; Entire year: 48,400,558*
OMB identification code: 12-9922-0-2-302	Legal authority (in addition to sec. 1013): [X] Antideficiency Act; [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual; [ ] Multiple-year (expiration date); [X] No-year	Type of budget authority: [X] Appropriation; [ ] Contract authority; [ ] Other

Justification: Purchasers of National Forest timber deposit the estimated cost to the Forest Service of disposing of brush and other debris resulting from their cutting operations pursuant to P.L. 84-190. The deposits becoming available in the current year are estimated and the related disposal operations are planned for the following year. Disposal operations related to deposits made during certain periods of the year cannot be initiated until weather conditions permit. Thus, seasonal factors frequently require deferring use of deposits until the following fiscal year. Efficient program planning is facilitated by operating a stable program well within the funds available in any one year for this purpose.

Estimated Effects: This deferral has no programmatic or budgetary effects. Much of the disposal work for which deposits have been made cannot be done or is not planned to be done during the same year that the timber is harvested and the collections are realized. Examples include areas where the timber purchaser has not completed all of the contract obligations during the year the harvest is accomplished.

Outlay Effect: This deferral has no effect on Fy 1982 outlays.

Deferral No: D82-241

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of State	New budget authority (P.L. 97-161): $472,500,000
Bureau:	Other budgetary resources: ---
Appropriation title & symbol: Migration and refugee assistance 1/ 1921143	Total budgetary resources: 472,500,000
	Amount to be deferred: Part of year: $40,000,000; Entire year:
OMB identification code: 19-1143-0-1-151	Legal authority (in addition to sec. 1013): [X] Antideficiency Act; [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [X] Annual; [ ] Multiple-year (expiration date); [ ] No-year	Type of budget authority: [X] Appropriation; [ ] Contract authority; [ ] Other

Justification: This appropriation provides for the transportation and initial resettlement of refugees in the United States and for the relief of refugees overseas. Lower than expected refugee flows from Southeast Asia and the Soviet Union result in the savings of $40,000,000. In accordance with the Administration's goal to control government spending, these excess funds are deferred pending congressional action on a request to transfer this amount to help offset supplemental requirements of the State Department for emergency overseas security needs.

Estimated Effects: The effect of this deferral will be to preserve these funds pending congressional action on the transfer request.

Outlay Effects: This deferral action, by itself, has no effect on outlays. However, if the Congress approves the transfer request, outlays in this account would be reduced by $32 million to offset outlay increases in the accounts receiving the funds.

1/ This account is the subject of another deferral (D82-242).

Deferral No: D82-242

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of State	New budget authority (P.L. 97-161) $ 472,500,000
Bureau	Other budgetary resources ---
Appropriation title & symbol Migration and Refugee Assistance 1/ 1921143	Total budgetary resources 472,500,000
	Amount to be deferred: Part of year $ 10,000,000 Entire year
OMB identification code: 19-1143-0-1-151	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program [ ] Yes [X] No	
Type of account or fund: [X] Annual [ ] Multiple-year _____ (expiration date) [ ] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: This appropriation provides for the transportation and initial resettlement of refugees in the United States and for the relief of refugees overseas. Lower than expected refugee flows, principally from Southeast Asia and the Soviet Union, result in savings of $10,000,000. Given the uncertainty of the worldwide refugee situation, these funds are deferred pending a review of refugee needs later in the year. At that time, it will be determined whether the funds will be required for refugee admissions, for reprogramming, or will be proposed for rescission.

This deferral is taken in accordance with the Antideficiency Act (31 U.S.C. 665) to insure the most economical use of funds.

Estimated Effects: This deferral action will have no programmatic effect.

Outlay Effects: This deferral action has no effect on outlays.

1/ This account is the subject of another deferral (D82-241).

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of Public Law 93-344

This report revises Deferral No. D82-230 transmitted to the Congress on February 5, 1982.

The amount deferred for the United States Bilateral Science and Technology Agreements is $2,000,000, an increase of $1,000,000 over the amount previously reported as deferred. This increase results from additional budgetary resources made available by the Fourth Continuing Resolution making further continuing appropriations for fiscal year 1982 (P.L. 97-161), enacted March 31, 1982.

Deferral No: D82-230A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of State	New budget authority (P.L. 97-161*): $3,700,000*
Bureau:	Other budgetary resources:
Appropriation title & symbol: United States bilateral science and technology agreements 19X1151	Total budgetary resources: 3,700,000*
	Amount to be deferred: Part of year: $; Entire year: 2,000,000*
OMB identification code: 19-1151-0-1-153	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☐ Appropriation ☐ Contract authority ☐ Other

Justification: *This appropriation finances the United States' share of expenses associated with funding selected science and technology projects through joint funds established with Yugoslavia and Poland. Projects selected by the managing United States-Yugoslavia Joint Board and the United States-Poland Joint Board are usually in the areas of agriculture, energy, ecology, technology, health and transportation. This appropriation includes $2,000,000 for the first year funding of a five-year S&T agreement with Poland. Negotiations on the agreement have been suspended since the Polish Government imposed martial law on December 13, 1981. Accordingly, funds for the agreement with Poland are being deferred until the Government of Poland lifts martial law.

Estimated Effect: *This deferral action will delay obligations for the agreement with Poland.

Outlay Effect: *This deferral action will reduce 1982 outlays by $2 million.

Deferral No: D82-243

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Transportation	New budget authority (P.L. 97-102): $60,000,000
Bureau: Federal Railroad Administration	Other budgetary resources:
Appropriation title & symbol: Commuter Rail Transfer 69X0747	Total budgetary resources: 60,000,000
	Amount to be deferred: Part of year: $; Entire year: 37,500,000
OMB identification code: 69-0747-0-1-603	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: Congress appropriated $60 million in the Department of Transportation and Related Agencies appropriation Act, 1982, for specific commuter rail services. $45 million is provided to facilitate the transfer of commuter services from Conrail to other operators, and $15 million is provided for the Chicago Regional Transit Authority.

$22.5 million has been released for use in 1982: the entire $15 million for the Chicago Regional Transit Authority and $7.5 million for pre-transfer expenses of Conrail commuter services. As required by Section 1139(a) of the Northeast Rail Service Act, DOT issued a rule on February 4, 1982, governing the allocation and use of the Conrail commuter service transfer funds (47 FR 5227; emergency interim final rule). The interim final rule provides for a comment period ending March 22 and alterations to the rule will be considered.

Since by law the transfers from Conrail must occur by January 1, 1983 (i.e., the start of the second quarter of fiscal year 1983), $37.5 million will be made available for certain types of expenses to be incurred upon and/or after the transfer of services during FY 1983. This action is consistent with congressional intent to provide no-year funding to accomplish the transfer of commuter services.

Estimated Effects: This deferral is in accordance with the emergency interim final rule and has no programmatic effects.

Outlay Effect: This deferral will reduce outlays by $4.0 million in FY 1982.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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 20, 1982